

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
AUSTIN, TEXAS

**CONTRACT MODIFICATION**

**1. CONTRACT NO: 200441**  
Contracted Bus Operations  
& Maintenance Services

**2. CONTRACT  
MODIFICATION NO.:**  
30

**3. EFFECTIVE DATE:**  
Upon full execution

**4. CONTRACTOR  
NAME:**  
MV Transportation

**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**

**Prior: \$706,057,906.77**

**New: \$706,057,906.77**

**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 CFO  
(print or type)

Signature: 

Date: 4/12/2022

DocuSigned by:

*Marie Meisenbach Graul*

CC90E4517A9E42E

**9. CAPITAL METRO - CONTRACTING OFFICER'S EXECUTION:**

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

Signature: 

Date: April 21, 2022

E-SIGNED by Anita Deibert  
on 2022-04-21 17:22:44 GMT

**10. DESCRIPTION OF CONTRACT MODIFICATION:**

This modification is made in accordance with Exhibit E-Revised-5, Contractual Terms and Conditions, Section 21, entitled **CHANGES**, which is made a part hereof for all pertinent purposes.

1. Refer to Exhibit E-Revised-5, Contractual Terms and Conditions. Exhibit E-Revised-5 is replaced in its entirety with **Exhibit E-Revised-6**, attached hereto and made a part hereof for all pertinent purposes.
2. Refer to Exhibit F-Revised-10, Scope of Services. Exhibit F-Revised-10 is replaced in its entirety with **Exhibit F-Revised 11**, 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 30**

**EXHIBIT E-Revised-6**  
**CONTRACTUAL TERMS AND CONDITIONS**  
**(SERVICES CONTRACT)**

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**1. DEFINITIONS**

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

- (a) "Applicable Anti-Corruption and Bribery Laws" means international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the Contractor's provision of goods and/or services to Authority, including without limitation "FCPA" or any applicable laws and regulations, including in the jurisdiction in which the Contractor operates and/or manufactures goods for the Authority, relating to anti-corruption and bribery.
- (b) "Authority," "Capital Metro," "Cap Metro," "CMTA" means Capital Metropolitan Transportation Authority.
- (c) "Change Order" means a written order to the Contractor signed by the Contracting Officer, issued after execution of the Contract, authorizing a change in the term or scope of the Contract.
- (d) "Contract" or "Contract Documents" means this written agreement between the parties comprised of all the documents listed in the Table of Contents, Change Orders and/or Contract Modifications that may be entered into by the parties.
- (e) "Contract Award Date" means the date of the Contract award notice, which may take the form of a purchase order, signed Contract or Notice of Award, issued by the Authority.
- (f) "Contract Modification" means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.
- (g) "Contract Sum" means the total compensation payable to the Contractor for performing the Services as originally contracted for or as subsequently adjusted by Contract Modification.
- (h) "Contract Term" means period of performance set forth in the paragraph entitled "Term" contained in 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) **three (3)** 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**

<b>Offense Type</b>	<b>Action Required</b>
<b>Crimes Against the Person (other than sex crimes)</b>	
Felony	Submit to Capital Metro for review if less than 10 years from date of <b>release from confinement</b>
Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of <b>conviction</b>
Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of <b>conviction</b>
<b>Crimes Against the Person - Sex Crimes/Registered Sex Offenders</b>	
ALL	Submit to Capital Metro for review
<b>Crimes Against Property</b>	
Felony	Submit to Capital Metro for review if less than 10 years from date of <b>release from confinement</b>
<b>Moral Crimes, including, but not limited to: Drug Crimes, Prostitution, Bigamy, Illegal Gambling, Child Pornography</b>	
Felony	Submit to Capital Metro for review if less than 10 years from date of <b>release from confinement</b>
Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of <b>conviction</b>
Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of <b>conviction</b>
<b>Driving Offenses</b>	
Class A or B Misdemeanor, DWI/DUI or other "serious driving offense"	Disqualified if less than 7 years from date of conviction or deferred adjudication. Submit to Capital Metro for review if between 7-10 years since conviction or deferred adjudication or more than 2 convictions in a lifetime
Class C Misdemeanor Moving Violations	Disqualified from driving if more than 2 moving violations in the past 5 years (Any more than one driving safety course taken for a moving violation that appears on a five (5) year record will be treated as a moving violation and will count against the employee)

The Contractor may not assign an employee to provide Services if the employee has any conviction in the applicable categories listed above, unless an exception is granted by the Authority in accordance with subparagraph (d).

(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 this **Exhibit E**.

**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**.

(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](http://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.**

**TO THE EXTEND 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-6 – Contractual Terms and Conditions**
- 4. **Exhibit E-1-Revised-3 – Addendum to Contractual Terms and Conditions, Federally Assisted**
- 5. **Exhibit F-Revised-11 – Scope of Services**
- 6. Exhibit IT-Revised-1 – Proprietary Rights and Data Security Addendum
- 7. **Exhibit B-Revised-3 – Representations and Certifications**
- 8. ~~Attachments 1–24~~
- 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**.

(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**.

(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**.

(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.

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(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**, 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.

- thereto.
- (ii) Other real property, including utility distribution systems, buildings, structures, and improvements
  - (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.

**EXHIBIT F – Revised-11-Mod 30**  
**SCOPE OF SERVICES**

**CONTRACT 200441 (RFP 304769)**  
**CONTRACTED BUS OPERATIONS & MAINTENANCE SERVICES**

**CONTENTS OF SCOPE**

Due to the complex and lengthy nature of this solicitation, a framework of this Scope of Services is provided in this section to better identify the content elements of the document.

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## 1. DEFINITIONS

**Accident:** An unforeseen and unplanned event or circumstance. An event in which there is contact with another vehicle, fixed object or a person or animal which results in physical damage to property or a complaint of pain or an observable injury to any individual involved.

**Action Plan:** A written plan submitted by the Service Provider at the request of CMTA to address deficiencies or shortcomings.

**Americans with Disabilities Act of 1990 (ADA):** The Americans with Disabilities Act of 1990 (and 2008 amendment).

**Air Time:** For the two-way radio system, the frequencies made available for exclusive CMTA use.

**Asset Management System:** See Enterprise Asset Management System.

**Automated Passenger Counter (APC):** Automatic Passenger Counters count riders boarding and getting off the bus at each stop, and counts can be used for reporting and analysis.

**Automatic Vehicle Location (AVL):** Position determination via an automatic technology or combination of technologies, such as Global Positioning System (triangulation of satellite signals) and includes real-time reporting of that location to a dispatcher.

**Block:** A vehicle schedule, i.e. the daily assignment for an individual bus. One or more Runs may work a Block.

**Body Damage:** Any accident damage, and/or a ding, dent, scrape, bend, scratch, tear, and/or break in the exterior body panels that is easily visible from 3 feet away, including: broken or cracked glass; missing exterior pieces and/or trim that have been hit and knocked loose, or off; and painted bumpers that have been deformed at one time to have the paint cracked and creased.

**Bomb Threat:** Credible written or oral (e.g., telephone) communication threatening the use of an explosive or incendiary device for the purpose of disrupting public transit services or to create a public emergency.

**Boarding:** The entry of passengers onto a public transportation vehicle. Boarding starts with entering the vehicle and ends with the seating of each passenger and closure of the doors.

**Business Day:** Monday through Friday between the hours of 8 a.m. to 5 p.m., excluding CMTA recognized holidays.

**Bus Bridge:** A temporary system of shuttle buses bypassing a failure in some other mode of transit.

**Bus Services/Bus Transit Services: The service of operating and maintaining the buses. The fixed route bus** Bus services are commonly multiple stop routes operating within neighborhoods and may include service directly to Park & Rides, Transit Facilities, the University of Texas, Downtown Austin, and along Bus Rapid Transit routes.

**Capital Metropolitan Transportation Authority:** (Used interchangeably with “CMTA,” “Capital Metro,” “The Authority”) the public transportation authority that operates bus, paratransit and commuter rail services for Austin and several suburbs in Travis and Williamson counties.

**Cash Box Vaulting:** Removal of the cash box from the fare box, insertion of the cash box into the vault for emptying and replacing the empty cash box into the fare box from which it came. This activity is completed immediately following fare box probing.

**CMSV:** Capital Metro Support Vehicle.

**Collective Bargaining Agreement (CBA):** The contractual agreement between an employer and a labor union that governs wages, hours, and working conditions for employees and which can be enforced against both the employer and the union for failure to comply with its terms.

**Computer Aided-Dispatch/Automatic Vehicle Location (CAD/AVL):** System that connects vehicles to dispatching software. It automatically collects vital data used by dispatchers (CAD) such as bus GPS locations (AVL) to

manage schedule adherence, breakdowns and emergencies. It also integrates with other systems to pass information to in-vehicle equipment (headsights, annunciators, etc.) and passenger information systems (website and mobile applications).

**Collision:** A vehicle accident in which there is an impact of a transit vehicle with: another transit vehicle, a non-transit vehicle, an object, a person(s) (suicide excluded), an animal or a rail vehicle.

**Commuter Rail:** A transit mode that is an electric or diesel propelled railway for urban passenger train service consisting of local short distance travel operating between a central city and adjacent suburbs.

**Contract or Contract Documents:** The writings and drawings embodying the legally binding obligations between CMTA and the Service Provider for completion of the work under the Contract.

**Contracted Local Law Enforcement:** A local police department, sheriffs or Department of Public Safety (DPS) agency contracted by CMTA to provide security services.

**Contracted Security Force:** Non-sworn security guards (i.e., not sworn police officers) contracted by CMTA to provide security.

**Contractor:** The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with CMTA for the performance of Services or work under the Contract, commonly referred to in this document as the "Service Provider."

~~**COTR:** The Contracting Officer's Technical Representative responsible for monitoring the Service Provider's progress in fulfilling the technical requirements specified in this contract. The COTR maintains administration records, approves invoices and performs periodic (month/quarter/annual) monitoring reports to confirm the Service Provider is meeting the terms and conditions under this contract.~~

**Customer:** Synonymous with the defined term "Passenger".

**Defect Card:** A form completed by the bus operator that documents completion of the pre-trip and other inspections and notes any mechanical defects or body damage on the vehicle.

**Digital Video Recorder (DVR):** The component permanently installed in the radio box but does not include the HDD or cables.

~~**Docking Station:** A device used to review footage contained on the HDD. It must be connected to a separate desktop computer to function.~~

**Downtown Austin:** The central business district of Austin, Texas. Downtown is located on the north bank of the Colorado River. The approximate borders of Downtown include Lamar Boulevard to the west, Martin Luther King, Jr. Boulevard and the University of Texas at Austin to the north, Interstate 35 to the east, and Lady Bird Lake to the south.

**Driver:** See definition of Operator.

**Enterprise Asset Management System:** The management of the maintenance of physical assets of an organization throughout each asset's lifecycle. EAM is used to plan, optimize, execute, and track the needed maintenance activities with the associated priorities, skills, materials, tools, and information. This covers the design, construction, commissioning, operations, maintenance and decommissioning or replacement of plant, equipment and facilities (Also: Asset Management System).

**Exception:** Relief from a specific reporting requirement or PDC based on either a threshold value or documentation of good cause. Service Provider may request an exception from any contractual requirement or PDC. Exception requests must be provided in writing and require written approval by CMTA.

**Fare:** Payment required from each passenger for a ride on any mode of transportation provided by CMTA.

**Farebox Probing:** Extracting data from the farebox. This activity also unlocks the cash box and is followed by Cash Box Vaulting.

Frontline Personnel: Staff required to perform basic, frontline transit jobs, including, but not limited to: Bus Operators, Mechanics, Service Island/Utility Workers, parts clerks, road supervisors, maintenance supervisors, third-party testers, and run dispatchers.

**General Manager:** The individual designated by the Service Provider to manage the services daily and who represents the Service Provider in contract administration.

**Hard Disk Drive (HDD):** The component that stores video footage and can be removed from the DVR for reviewing by means of a docking station.

**Headway:** The time interval between vehicles moving in the same direction on a particular route.

**Incident:** Any unusual occurrence (excluding a vehicle or passenger Accident), disruption or misconduct involving service that results or has the potential to result in property damage, personal injury, commission of a crime including assault, harassment or reports thereof.

**Key Personnel:** means the General Manager.

**Lost Time:** The amount of time that scheduled revenue service is not performed.

**Major Repair:** Repairs to major vehicle systems or components, including engine rebuilding, transmission rebuilding, differential/rear axle rebuilding, and major body repair. Often referred to as heavy repair.

**MetroBus:** Local, Crosstown, and Flyer route branded service of Capital Metro.

**MetroRapid:** Bus Rapid Transit (BRT) branded service of Capital Metro.

**Missed Trip:** A scheduled trip that did not operate, in whole or in part, for a variety of reasons including operator absence, vehicle failure, Radio or Run Dispatch error, traffic, accident or other unforeseen reason.

**Mobile Data Terminal (MDT):** A device that allows digital communication between a vehicle and a central office.

**National Safety Council (NSC):** The National Safety Council (NSC) is a 501(c)(3) nonprofit, nongovernmental public service organization promoting health and safety in the United States of America. Headquartered in Itasca, Illinois, NSC is a member organization, founded in 1913 and granted a congressional charter in 1953.

**Non-Preventable Accident:** A collision in which the Vehicle Operator did everything reasonably possible to avoid the collision.

**Non-Revenue Vehicle (NRV):** A vehicle used to support the provision of public transportation service. NRV's are not regularly used to transport customers but may be used for transportation on an ad hoc basis when revenue vehicle failures occur. Also known as Support Vehicle.

**OEM:** Original Equipment Manufacturer.

**Offeror:** An entity that submits a Proposal

**Operations:** The day to day delivery of service, including bus service, vehicle maintenance, fleet cleaning and fueling and all other services required to deliver services identified in the contract.

**Operations and Maintenance Oversight:** The division of CMTA that is responsible for the overall operations and administration of transportation services offered within the CMTA service portfolio.

**Operators:** The personnel scheduled to operate the vehicles in the delivery of Bus service. Also referred to as Drivers or Vehicle Operators.

**Paddle:** Specific start and end times, time points and line instructions for one specific block.

**Park and Ride:** Park and ride lots provide parking for people who wish to transfer from private vehicles, bicycles, and other modes to public transit or carpools/vanpools.

**Passenger:** Any person being transported. Used interchangeably with "rider" and "Customer" in this document.

**Performance Deficiency Credit (PDC):** A fixed dollar amount for Service Provider's failure to perform a specific obligation under this Contract which amount shall be reflected as a credit against amounts owing Service Provider under the Contract; a penalty under Texas Transportation Code Section 451.137.

**Preventive Maintenance Inspection (PMI):** The PMI includes the Inspection, the Repetitive, and the PM Repairs. A PMI is a scheduled event of condition-based inspection and maintenance of vehicle systems, components and functions against established criteria. The Repetitive are a mileage and time-based set of maintenance tasks and steps that are performed after the Inspection, and before the PMI repairs. The PMI Repairs are those repairs generated from the list of defects from the Inspection. All repairs are to be completed prior to the vehicle being

returned to service. All work is to be completed in accordance with the standards identified in the Scope of Services. Once a vehicle begins its PMI, it is to remain out of service until all repairs are complete.

**Preventable Accident/Collision:** A collision in which the Vehicle Operator failed to do everything that reasonably could have been done to avoid it.

**Price per Vehicle Service Hour (VSH):** The dollar amount charged to CMTA for each hour of service provided by the Service Provider in a CMTA-branded vehicle. VSH are measured from gate-to-gate.

**Program Manager:** The CMTA technical representative who has been designated as having the responsibility for assessing the Service Provider's technical performance and progress, inspecting and periodically reporting on such performance and progress during the stated period of performance, and finally certifying as to the acceptability of the Service Provider's work in its entirety or any portion thereof, as required by the Contract Documents.

**Project:** The implementation of the requirements of the Contract, including this **Exhibit F**.

**Property Damage:** The estimated dollar value of all property that is damaged in a Reportable Incident. This includes CMTA-owned property and other vehicles and property involved in the incidents that are not owned by CMTA.

**Proposal:** An Offeror's response to this RFP.

**Public Transportation:** As defined in the Federal Transit Act, "transportation by a conveyance that provides regular and continuing general or special transportation to the public.

**Quality Assurance (QA):** The systematic monitoring and evaluation of the various aspects of the service provided to maximize the probability that minimum standards of quality are being attained.

**Quality Control (QC):** The process by which the quality of all factors involved in fulfilling contract provisions is reviewed.

**Qualified Instructor:** A person responsible for instructing operator trainees. Persons designated as a "qualified instructor" for bus operator training must have a record of safe driving and at least two years of experience driving professionally and demonstrated the ability to provide high-quality customer service.

**Queue Bus (QBus)/Run as Directed (RAD):** A vehicle used in place of the assigned vehicle to provide revenue service until the assigned vehicle can return in service.

**Radio Dispatcher:** An individual who maintains radio contact with Vehicle Operators used in providing service, monitors location and availability of vehicles in real time, ensures timely transport of passengers, handles issues and service disruptions encountered and ensures operational data is correctly reconciled in dispatching applications.

**Recovered Service:** The time when the queue bus or run as directed bus resumes ~~takes over~~ revenue service and operates until the regular service bus returns to service.

**Revenue Vehicle:** A vehicle which transports CMTA customers.

**Rider:** See definition of Passenger.

**Road Call:** A road call occurs when a failure of any component or system on a bus causes the bus to be unable to complete its scheduled service without repair. See this **Exhibit F**-Section 17.25.2 for further elaboration.

**Route:** A specified path taken by a transit vehicle usually designated by a number or a name, along which passengers are picked up or discharged.

**Run:** A Vehicle Operator's daily work assignment. One or more runs can work a single Block. A Run may include multiple Blocks. A Vehicle Operator's schedule is primarily determined for each sign-up period through the Run-cut process where bus schedules are integrated with driver assignments.

**Run-cutting:** The process of generating daily bus driver work assignments in a cost-efficient manner to meet all contract requirements negotiated between the union and the employer.

**Run Dispatcher:** An individual responsible for monitoring the duties performed at the dispatch window as operators report to work. They manage work assignments and assign open or unfilled work consistent with the Collective Bargaining Agreement (CBA).

**Safety Management System:** Safety management system (SMS) refers to a systematic approach to managing safety by organizational goals, policy, structure, planning, accountability and safe standard operating procedures. SMS is implemented, monitored, and controlled for continuous improvement, achievement and sustainability in maintaining the standard by managing the risks associated with the organization.

**Scheduled Revenue Service:** Service scheduled to be provided for transporting passengers.

**Scope of Services:** This document, which is a written description of services to be performed or the technical requirements to be fulfilled under the Contract. Commonly referred to as "**Exhibit F**" throughout this document.

**Security Incident:** An occurrence of a Bomb Threat, bombing, arson, hijacking, sabotage, cyber security event, assault, robbery, rape, burglary, suicide, attempted suicide, larceny, theft, vandalism, homicide, fare evasion, trespassing, nonviolent civil disturbance, or CBR (chemical/biological/radiological) or nuclear release.

**Service Interruption:** An unplanned event (e.g., Accident, Incident, Mechanical, Detour/Blockage, Pull Out – Shortage of Operators/Buses) that result in the loss of service or change out of vehicle.

**Service Provider:** The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with CMTA for the performance of Services or work under the Contract, also referred to in this document as the "Contractor."

**Services:** The services to be performed by the Service Provider as described in the Scope of Services, including, but not limited to, aspects of Bus Services as set forth in this Scope of Services.

**SharePoint:** A web-based, collaborative platform that integrates with Microsoft Office and primarily used document management and storage system.

**Staffing and Personnel Plan:** The plan attached as Exhibit G ~~as part of a Proposal~~ that outlines an Offeror's staff needed to fulfill the **Bus Transit Services** requirements of the Contract, including vehicle operators, vehicle maintenance technicians, facility and building maintenance personnel, electronics technicians, supervisory, and administrative personnel. The Staffing and Personnel Plan may be modified at any time by Capital Metro.

**Supplemental Service:** Scheduled when events, detours or other planned activity is expected to increase the demand for service.

**Support Vehicle:** See definition of Non-Revenue Vehicle (NRV).

**Time Point:** A designated location and time used to define the schedule for a revenue vehicle.

**Transit Facilities:** Transit facilities are large multimodal bus stops where buses on several routes converge to allow riders the opportunity to change buses or transfer to other modes.

**Total Miles:** Total miles recorded on the vehicle including miles incurred during breaks, fueling, scheduled and unscheduled maintenance periods and training.

**Trip:** The operation of a revenue vehicle between two terminal points on a route. Trips are generally noted as inbound, outbound, eastbound, westbound, etc. to identify directionality when being discussed or printed.

**Unreported Vehicle Damage:** Any damage **found** to a vehicle that was not **reported** covered **or covered** in an accident report. ~~and is found on a vehicle.~~

**UT Service (University of Texas Bus Service):** Designated routes designed to meet the needs of students of the University of Texas.

**Vandalism:** The willful or malicious destruction or defacement of transit property or vehicles.

**Vehicle:** A transportation vehicle operated pursuant to this Contract. Also referred to in this Scope of Services as a transit vehicle, public transportation vehicle, and transportation vehicle.

**Vehicle Miles:** The miles that vehicles travel while in revenue service (actual vehicle revenue miles) plus deadhead miles. Actual vehicle miles exclude: miles for special event service, operator training, and vehicle maintenance testing.

**Vehicle Service Miles (VSM):** The mileage from the time a vehicle leaves the gate to the time the vehicle returns to the gate less miles incurred during breaks, fueling and scheduled and unscheduled maintenance periods.

**Vehicle Operator:** Synonymous with Driver and Operator. Direct-hire employees of the Service Provider with whom CMTA contracts service to operate vehicles transporting passengers.

**Vehicle Service Hours (VSH):** The time a vehicle leaves the gate to the time it arrives at the gate from the last scheduled time point. Not included as part of VSH are pre-trip inspection time and scheduled or unscheduled maintenance periods (vehicle breakdowns).

## **2. CMTA BACKGROUND AND OVERVIEW**

2.1 Capital Metro is seeking a partner to operate and maintain its Bus Services. Service Provider will provide **administration of Bus Transit Services, including the direct management of all Frontline Personnel** all personnel necessary to perform the Services and all other goods and ancillary services needed to deliver the Services. The ideal partner will be aggressively focused on ensuring the best possible experience for our customers through data-driven continuous improvement processes. **Capital Metro staff will establish the strategies and tactics needed to ensure excellent service on a daily basis. Service Provider will employ and manage an engaged workforce of Frontline Personnel and ensure a positive and effective relationship with ATU Local 1091.** All CMTA's revenue service (bus, paratransit and rail) is provided through contracts with private service providers. This practice is consistent with the requirements set forth in Senate Bill 650, passed by the Texas Legislature in 2011.

2.2 **Cooperation.** CMTA will consistently refine the service delivery process to ensure that the highest possible quality of service is provided. Given the nature of this project, CMTA is seeking Offerors that will bring a positive attitude and significant management expertise to CMTA transit operations. The Project may undergo revisions and modifications to operating and administrative requirements as it is implemented and developed. CMTA is looking for Offeror's that will work cooperatively with CMTA on these changes. The Service Provider shall make recommendations to CMTA management about operational or process changes as they become apparent. The Service Provider is expected to work with CMTA in the ongoing development of policies and procedures which will establish and maintain operating methods, procedures and protocols for all to follow. The Service Provider shall be open to change, development and flexibility to achieve an integrated, smoothly operating transportation service. It will be unacceptable for Service Providers to react to suggestions for change or modification of its procedures with resistance. Service Provider should view this Project as a team **and a collaborative effort and striving** strive for decisions which result in a mutually beneficial outcome.

2.3 **Passengers.** CMTA passengers are the core of CMTA's transit service; therefore, customer service is of paramount importance. The Service Provider shall transport Passengers within a safe, comfortable, clean, and secure environment during all phases of their trips. The Service Provider shall endeavor to provide the systematic approach necessary to provide safe, reliable, customer service with compassion and understanding, and provide the support services in maintenance, operations and administration to meet Passenger needs. The Service Provider shall ensure that its employees respond to Passenger inquiries and requests in a positive, prompt and appropriate manner.

2.4 CMTA Responsibilities **CMTA shall be responsible for all aspects of CMTA's bus transportation services not specifically assigned to Service Provider in this Contract.**

## **3. SERVICE AND FACILITY OVERVIEW**

3.1 **Purpose.** The Service Provider shall provide safe, reliable and dependable public transportation services to customers in central Texas. The service includes **direct operation of Bus Services service and the performance of** ongoing routine and preventive maintenance of the facility buildings, and equipment.

3.2 **Facility Locations.** The CMTA facilities ("Facilities") provided for this service are the East Fifth Operations and Maintenance Facility located at 2910 East 5th Street, Austin, Texas 78702 and the North Operations and Maintenance Facility located at 9315 Old McNeil Road, Austin, Texas 78758. CMTA will occupy portions of both facilities.

3.3 **Meeting Space.** Service Provider will have access to shared meeting space (conference rooms, etc.) within CMTA facilities on a reservation basis.

3.4 **Furniture.** Basic office furniture will be provided by CMTA and may be in a used condition. The Service Provider is responsible for the replacement of this basic furniture as needed. The furniture will remain CMTA's property after contract termination.

3.5 **Vending Machines.** Vending machines within the Facilities are managed by CMTA. Service Provider must not install vending machines at the Facilities.

3.6 **Utilities.** CMTA will provide water, sewer and electrical utilities.

3.7 **Services.** The Service Provider will be required to provide directly operate Bus Services and its staff will perform the ongoing routine and preventive maintenance activities for Vehicles, of the Facilities' buildings and equipment as directed by Capital Metro. Bus Services are commonly multiple stop routes operating within neighborhoods and may include service directly to Park & Ride and Transit Facilities, and Downtown Austin. ~~Service Provider will provide all personnel necessary to perform the Services and all other goods and ancillary services needed to deliver the Services.~~ The Service Provider must obtain and keep current all required licenses, permits and certifications to operate CMTA Bus Services throughout the term of the Contract.

3.8 **Responsibilities.** The key responsibilities of this Contract include direct operation of bus service, performing vehicle maintenance, radio and run dispatching, street supervision, performing the ongoing routine and preventive maintenance of the facility buildings, and managing employee engagement and labor relations ~~equipment and all management and administration needed to support these efforts.~~

~~3.8.1 Unless explicitly stated as a CMTA responsibility, Service Provider is responsible for all equipment, supplies, staff, effort and management services necessary to operate a high quality public transportation service.~~

~~3.9 **Expectations.** Service Provider shall provide for the operations and maintenance services necessary to deliver a high quality public transportation service to the Central Texas community. Any materials, services, programs, projects or other efforts necessary to provide high quality public transportation are the responsibility of the Service Provider, unless explicitly stated otherwise.~~

3.10 **Service Delivery.** Service Provider shall provide Services in a safe, courteous, professional, dependable manner and in accordance with trip schedules and other schedules provided by CMTA.

3.11 **Hours of Service.** Bus Service is provided 24 hours a day, seven days a week, 365 days a year. Service Provider will be expected to provide service during all requested hours. Hours of service are subject to change at the discretion of CMTA. Annual total Scheduled Vehicle hours and miles are provided in Attachment - Annual Service Estimates.

3.11.1 Route detail information for all scheduled Bus Service is provided in the Capital Metro Website-[www.capmetro.org](http://www.capmetro.org)

3.11.2 The phasing of new Bus Services and changes to existing Bus Services will coincide with regular service change periods which are typically: Mid-January, Late-May and Mid-August. Exact dates for new operation of Bus Services will be determined by CMTA and coordinated with the Service Provider to ensure sufficient time to meet obligations for the selection of work.

3.12 **Adjustment to Service.** CMTA reserves the right to adjust Bus Service at any time. Modifications to services include, but are not limited to holiday modified schedules, extending, deleting or adding routes, or parts of routes, and expanding or decreasing scheduled service hours. Scheduled service hours are determined by CMTA. CMTA may make changes to facilitate additional service or reductions in service. Those changes will be provided to Service Provider with advanced notice as determined by CMTA to meet obligations for the selection of work. Attachment - Holiday Service Levels.

~~3.12.1 Using the base hours provided in Attachment X — Annual Service Estimates, service projections and a fixed and variable pricing, Offerors are to include in their Proposals the increment at which their proposed pricing will increase or decrease. Pricing schedules must be included for each increment provided and are detailed in Exhibit A-Revised-3 and Exhibit A-1-~~

3.13 **Special Event Service.** Service Provider from time to time will be required to provide special event service requested by CMTA. These services vary from year to year. ~~Payment for special event services shall be based on variable rate per revenue hour provided in Exhibit A-1-Revised-2.~~ When special event services are operated, adequate field supervision and dispatch services shall be assigned to support the additional service. Following each

~~special event service, Service Provider will immediately report the following to CMTA: total hours operated, total amount of buses utilized, total Passengers transported, total miles traveled, and other items as directed by CMTA.~~

~~3.14 **Rail Bus Bridging.** As directed by CMTA, Service Provider shall periodically coordinate with CMTA's rail staff to participate in the planning, training, practice exercises and implementation of bus bridging efforts during times of service interruptions or inoperability of the rail system for any reason. Rail bus bridging includes, but is not limited to, the transport of passengers between designated rail stations or bus stops during service interruptions. After conducting actual Bus Bridges, Service Provider shall invoice CMTA for all hours incurred based on the Service Provider's variable rate per hour. Following each event of a Bus Bridge, Service Provider will immediately report the following to CMTA: total hours operated, total amount of buses utilized, total Passengers transported, total miles traveled, and other items as directed by CMTA. See Attachment – Bus Bridge Procedures.~~

~~3.14.1 Bus Bridge practice exercises will be conducted on a periodic basis at the discretion of CMTA. Such training exercises will be coordinated with CMTA's rail and security departments.~~

3.14.2 CMTA may at CMTA's sole discretion, call upon other CMTA service providers to assist in a Bus Bridge. Service Provider agrees to work cooperatively with CMTA staff and other stakeholders that are called upon to assist in emergency Bus Bridge operations.

3.15 **Route and Schedule Planning.** CMTA is responsible for route and schedule planning for the Services under the contract.

3.15.1 CMTA will provide electronic copies (in PDF format) of headways and paddles for all Bus Services that the Service Provider will operate. Service Provider will be responsible for making copies for its use and distribution.

3.15.2 CMTA will ~~not~~ provide any **all route scheduling and run** ~~Run~~ cutting services for Service Provider. All Service Provider run cuts will be provided to CMTA's planning department electronically as soon as possible, but no more than three (3) weeks after Service Provider's receipt of schedule information. **Service Provider and Union representatives may collaborate with Cap Metro staff to inform schedule parameters surrounding each run cut.**

3.15.3 CMTA and Service Provider will meet to determine appropriate schedules for providing route and schedule information to meet Service Provider's obligations for the selection of work.

#### **4. ADMINISTRATIVE OFFICE EQUIPMENT AND SERVICES**

4.1 **Copiers and Printing.** The Service Provider shall be responsible for providing its employees with any printers, copiers, fax, scanning, or other related business or finishing services necessary to operate daily business.

4.2 **Desktop Computers.** Service Provider is responsible for all desktop computers in Service Provider's office areas. Any technology infrastructure or computer hardware or software that Service Provider needs and is not explicitly described as being provided by CMTA in this Exhibit F a specific attachment is the sole responsibility of the Service Provider. Service Provider shall comply with industry-standard information security best practices, including, but not limited to, system hardening, use of antivirus software, operating system patching, firewalls, and other security controls.

4.3 **Equipment.** Service Provider shall provide any equipment or infrastructure needs not explicitly described as being provided by CMTA in the Contract or included as part of an attachment.

4.4 **Cable TV.** CMTA will provide basic cable television service.

4.5 **Phones.** CMTA will provide a telephone system for Service Provider's use at the Facilities. CMTA will provide domestic long distance (within the continental United States) service. Service Provider will be required to utilize a third party or calling card for international long distance. Additional phones will be handled by submitting requests to CMTA I.T. Department.

4.5.1 All telephone lines used for communication with Customers for Customer call report resolution and accident/incident follow up shall be recorded and retained for a period not less than 45 days from the date of the call. Resulting audio recordings shall be provided to CMTA upon request.

## **5. TECHNOLOGY AND COMMUNICATION**

5.1 **Office Infrastructure and Computer Networks.** CMTA will provide basic infrastructure for office work at the Facility, including the existing wiring for computer and telephone systems. Service Provider must provide and maintain needed network equipment, including switches. Any modification and addition of any infrastructure must be approved in advance by CMTA.

5.2 **Internet/Wi-Fi.** Service Providers shall be required to provide their own internet services. Service Providers are responsible for providing their own facility Wi-Fi service or mobile hot spots, except where specifically indicated by CMTA. The Service Provider shall seek permission from CMTA prior to installing such equipment at the Facility to ensure there are no conflicts with existing CMTA systems. VPN access to CMTA's networks will not be granted to the Service Provider under this Contract.

5.2.1 The Service Provider shall be responsible for providing its employees with any online or local access to office products required to operate daily business. This includes, but not be limited to, products in the Microsoft Office suite (e.g. Microsoft Word, Excel, etc.), financial systems, human resources systems, and any other corporate-use software outside of CMTA's network.

5.3 Any technology infrastructure or computer hardware or software that Service Provider needs and is not explicitly discussed in this Contract or not explicitly detailed as being part of this Contract is the sole responsibility of the Service Provider.

5.4 Unless explicitly stated otherwise, CMTA will not provide any computers, copiers, printers or fax machines. Service Provider will be required to configure and maintain internal network of office equipment.

5.4.1 Printing on CMTA printers shall only be done when using CMTA networks such as Citrix.

5.4.2 CMTA will provide the following devices and support:

5.4.2.1 Enterprise Asset Management (currently Spear/Infor) workstations for vehicle maintenance bays.

5.4.2.2 Computer-Aided Dispatch / Automatic Vehicle Location (currently OrbCAD) workstations for dispatch.

5.4.2.3 Dispatch and Scheduling application (currently Trapeze v18) workstations and swipe-in/badging peripherals for dispatch.

5.4.2.4 Digital Video Recorder systems (currently Apollo, MobileView) PC desktop and software only.

5.5 **Access Security and Training.** CMTA requires all Service Provider staff with access to CMTA networks, equipment, and software take part in mandatory CMTA End User Security Awareness Training on an annual basis. Additionally, each Service Provider employee working on CMTA networks, equipment, data, and/or software shall be required to agree in writing to abide by all applicable CMTA security policies and procedures prior to being allowed to access (either on-site or remotely) CMTA facilities, networks, equipment, data, or software.

5.5.1 The Service Provider shall notify CMTA of separated employees and complete a CMTA IT access termination request form within 24 hours of that employee's separation from employment with Service Provider.

## **6. ADMINISTRATIVE TECHNOLOGY**

6.1 **SharePoint.** CMTA makes use of the document storage and team collaboration tools found in Microsoft SharePoint. The Service Provider shall be granted access to CMTA's Operations Extranet (shared by all providers) as well as assigned a site of its own, administered by CMTA staff. This site shall be used ONLY to store content to be shared between CMTA and the Service Provider. Additional features at present include: access to policy and procedure documents, contact lists, service impact information, active site evaluations, and more. CMTA shall provide a login for each worker who needs access.

6.2 **Email.** The Service Provider shall be responsible for providing its employees with company-issued individual user email accounts for daily use. Service Provider's employees must only use their company-issued email accounts in connection with the performance of all services and work performed under the Contractor.

6.2.1 The Service Provider shall create (at a minimum) email distribution lists for its Run Dispatch team, ~~Radio Dispatch team,~~ field supervisor team, vehicle maintenance supervision team, building maintenance team and leadership team that can be accessed from outside the Service Provider's network through an email address. This will allow CMTA to add the Service Provider to its internal contact lists. The membership of these email distribution lists shall be kept current by the Service Provider.

6.3 **Customer Relationship Management (CRM).** ~~CMTA's Customer Service Department is the central receiving point of all customer feedback. This feedback in the form of a "Customer Call Report" (CCR) is assigned to a team to ensure the customer receives a response and any concerns or recommendations are addressed. CMTA shall provide Service Provider with~~ **read-only** access to Service One software for this purpose.

6.4 **Emergency Notification System.** CMTA makes use an emergency notification system (currently Everbridge) to send voice, email, or text messages to CMTA employees and service providers about such events as building evacuations, active shooter events, etc., occurring at CMTA facilities. CMTA requires that all core operations staff (Leadership, Transportation Supervisors, Radio and Run Dispatchers) enroll in this system. All other on-site staff and Vehicle Operators may opt into the notification system as desired; however, Vehicle Operators on duty should receive their primary notifications through Radio or Run Dispatch.

6.5 **Support Services.** ServiceNow is CMTA's IT Help Desk Application. All Service Providers will be granted access and be allowed to file a trouble or request ticket for every issue or outage concerning CMTA-provided technology (<https://capmetro.servicenow.com/>). For priority issues, please call 512-389-7570 or otherwise directed by CMTA. The IT Help Desk is staffed Monday – Friday, 8:00 a.m. – 5:00 p.m. local prevailing time. After-hours assistance is available only for emergencies and requires a telephone call. See Attachment - CMTA IT Incident Response Process for more information, including service level expectations based on degree of urgency. The Service Provider shall perform front-line troubleshooting before determining if CMTA's IT group needs to get involved.

## **7. Computer Aided Dispatch/Automated Vehicle Location System**

7.1 **Computer Aided-Dispatch/Automatic Vehicle Location (CAD/AVL).** CMTA uses a complete CAD/AVL system called OrbCAD, including on board Mobile Data Terminal (MDT) and GPS antenna integrated to onboard components such as APC, headsigns, and annunciation systems. OrbCAD integrates with CMTA's several Trapeze software modules. Licenses for Service Provider staff's use of these systems are provided by CMTA. Service Provider's staff must agree to any terms of use and policies required under the licenses.

7.2 **Installations and Upgrades.** Service Provider will be required to cooperate with CMTA and technology vendors to coordinate upgrades, future installations and implementation of the technology systems. CMTA will provide required training for all appropriate personnel.

7.3 **System Testing.** Service Provider will be required to participate in system testing and acceptance, including mini-fleet testing. Mini-fleet testing will include the testing of the complete functionality of the system on a small segment of the fleet (as determined by CMTA) with all onboard technology components installed. Service Provider will be reimbursed for each hour of mini-fleet testing in-service testing (above and beyond normally scheduled service) based on the variable cost per hour.

7.4 **CAD System Use.** Service Provider will be required to utilize the CMTA-provided computer-aided dispatch system (CAD).

7.5 **Service Data.** Service Provider must enter all Service related data into the CAD system (e.g. service loss, service interruption delay, accident and incident information, maintenance failures, customer incidents, etc.).

7.6 **Operator Log In and Log Out Requirement.** Service Provider's bus operators will be required to log-in to and log-out of the CAD/AVL system at the start and end of each shift, respectively.

7.7 **System Maintenance.** Service Provider will be responsible for maintenance of on-board vehicle technology equipment in accordance with OEM's recommendations.

7.8 **Training.** Radio and Run Dispatchers must receive training on use of the Radio Console, OrbCAD and Trapeze OPS systems by an authorized training provider. Training must be complete enough for all dispatch personnel to fully utilize the systems. CMTA will provide all required training.

7.9 **Monitoring, Reporting and Resolution.** Radio and Run Dispatchers will monitor the CAD/AVL systems for correct operation and if issues are found, follow the procedures established by CMTA for reporting. In the event Dispatcher find any data errors (e.g. time points) they will follow the procedures established by CMTA for resolution.

7.10 **Testing.** ~~Radio Dispatchers~~ will be required to participate in testing of patches and fixes of the system to ensure operability.

7.11 **Use of Systems.** Service Provider is required to use these systems to optimize service performance and following accordance with procedures established by CMTA.

## 8. ORGANIZATION AND PERSONNEL REQUIREMENTS

8.1 **Organization.** An Offeror shall submit an organizational chart to CMTA with its Proposal. The organizational chart proposed by the Service Provider shall include lines of authority, responsibility, and communication for all positions. This information shall be incorporated into the Mobilization Plan. Service Provider shall provide CMTA with an updated organizational chart annually, and as changes are made to it.

### 8.2 **Workforce Requirements & Staffing and Personnel Plan**

8.2.1 The Service Provider shall be responsible for determining the direct staffing levels and salaries for positions included in Service Provider's fixed costs as required to ~~provide and deliver~~ **support administration of the Services consistent with the minimum staffing levels established by Cap Metro.** Staffing levels by the Service Provider for positions included in Service Provider's fixed costs shall be adequate to reflect service levels throughout the Contract term. ~~Unless the Scope of Services is modified~~ **changes to minimum staffing levels are directed by CMTA either by modification to the Staffing and Personnel Plan or otherwise, changes to staffing levels for positions included in Service Provider's fixed costs deemed necessary by the Service Provider to meet the Contract requirements and provide high quality service shall be implemented at no cost to CMTA. For positions not defined within the established minimum staffing levels, the Service Provider shall be responsible for maintaining the required staffing levels to meet the service levels throughout the Contract term which levels must be approved by Capital Metro.**

8.2.2 The Service Provider shall ensure that **its staff** ~~sufficient staff are hired and retained~~ to meet this Contract's service requirement and remain in compliance with applicable CMTA policies and procedures, and all local, State and Federal laws throughout the term of the Contract.

8.2.3 ~~As of the Contract start date, the Service Provider shall have hired and trained all necessary vehicle operators, vehicle maintenance technicians, facility and building maintenance personnel, electronics technicians, supervisory, and administrative personnel as identified in its staffing and personnel plan (Staffing and Personnel Plan). The Staffing and Personnel Plan shall be submitted with an Offerors' Proposal.~~ **Capital Metro will directly provide recruiting, screening, and hiring support services to Service Provider. Capital Metro will provide the recruiting and screening services and will submit to the Service Provider all suitable candidates meeting the eligibility requirements for final consideration and hiring. All candidates must satisfy Service Provider's hiring standards. Service Provider will have final authority with respect to vetting candidates and hiring decisions.**

### 8.3 **Criminal History, Driving History and Motor Vehicle Requirements**

8.3.1 The requirements for all personnel including Vehicle Operators are in the "Personnel Assignments" section of the Terms and Conditions ([Exhibit E-Revised-6](#)).

## 8.4 Staff Conduct

8.4.1 The Service Provider staff (includes all employees and subcontractors) are expected to conduct themselves in a professional manner. Service Provider staff must be polite and courteous in their speech and manner including exercising patience and self-control even when others do not. When confronted with a disruptive or unruly passenger or situation, staff and subcontractors must follow the procedures and training as outlined in the Service Provider's proposed training and any other instruction provided by the Service Provider or provided by CMTA.

8.4.2 All Service Provider staff performing Services under this Contract shall always wear a CMTA-issued photo identification badge while on duty, in accordance with Access Control Policy. See Attachment - Access Control Policy. This badge must be clearly visible and front-facing. Any staff member who has not yet received a CMTA Service Provider badge or misplaces it must be provided a temporary ID by the Service Provider that clearly identifies the employee's name and job title and is reported to CMTA Security. Replacement of lost ID badges shall result in a \$50 chargeback on the monthly invoice per instance.

8.4.3 Upon the request of CMTA, the Service Provider shall promptly remove from service to CMTA any employee who CMTA considers unsuitable for such work or who has displayed any act of discourtesy, rudeness, use of profanity, or any other act deemed unacceptable by CMTA.

8.4.4 **Staff Feedback.** The Service Provider shall establish mechanisms for receiving and responding to feedback from all its staff. Such processes must include a system for documenting the content and timelines for both the feedback and response. Documentation should be kept in such a way that feedback may be analyzed by topic, employee, respondent, and, when applicable, route, vehicle and location data. Such documentation will be shared with CMTA as requested **made available for CapMetro to review at all times.**

## 8.5 Key Personnel and Staffing

8.5.1 The Service Provider shall assign Key Personnel to the Contract in accordance with the Staffing and Personnel Plan. Key Personnel shall include, in addition to the General Manager, personnel who perform work in accordance with the job functions as outlined in this section. Key Personnel should have a minimum of four (4) years of recent (within the past eight (8) years) experience in their field of expertise managing a transit operation of similar size, scope and complexity.

8.5.2 CMTA must approve the General Manager assigned to this Contract, as well as other Key Personnel. Key Personnel includes: The General Manager and the most senior person in charge **with full responsibility for ensuring all work is performed in accordance with this Contract** of the following functional areas: ~~Service Operations, Safety and Training, Vehicle Maintenance, and Building Maintenance.~~ The Service Provider shall propose the General Manager and Key Personnel with their proposal. The Service Provider shall describe the selection process, job summary, required qualifications and timeline for selecting Key Personnel. ~~All Key Personnel shall be in place at least ninety (90) days prior to October 1, 2019 January 4, 2020.~~

8.5.3 The Service Provider shall maintain the Key Personnel identified in its Staffing and Personnel Plan throughout the Contract term. Key Personnel changes during the Contract term shall require a letter with explanation and replacement schedule/plan. All the Service Provider's Key Personnel work hours shall be 100 percent (100%) dedicated to providing services for CMTA under this Contract, unless otherwise approved in writing by CMTA. CMTA operations span the entire seven-day week. Working hours of Key Personnel are expected to include weekends, as needed. CMTA will have the authority to direct the removal of any Key Personnel from service to CMTA if it is determined that such individual is not performing the work in a proper or skillful manner or that such removal is otherwise in the best interests of CMTA.

8.5.4 The requirements of this section shall not be construed to ~~(1) restrict Service Provider authority to determine that more than the minimum number of employees identified are needed to perform the work; (2) impose a mandatory staffing level throughout the Contract term; (3) limit the Service Provider's ability to manage the number of positions and size of workforce it determines to be necessary to perform the work, consistent with its Staffing and Personnel Plan, as vacancies occur or as services are adjusted during the Contract term; or (4) restrict the Service Provider's ability to dismiss employees for cause during the Contract term.~~

8.5.5 Any change in the General Manager position that occurs within twenty-four (24) months of the Contract start date shall require the Service Provider to pay CMTA a PDC of fifteen thousand dollars (\$15,000), per change.

8.5.6 The Service Provider shall fill vacant Key Personnel positions with CMTA approved persons within sixty (60) calendar days of such a position becoming vacant. For each day the position remains vacant, CMTA shall be issued a rebate equal to the cost of the salary and benefits for the open position beginning on day one (1) of the vacancy. A PDC shall be assessed for Key Personnel positions that remain vacant for over sixty (60) days. Beginning on day sixty-one (61) a \$1,000 per day PDC shall be assessed for a vacant General Manager position ~~and a \$500 per day PDC shall be assessed for any other Key Personnel position that remains vacant.~~ Unreasonable delays with filling key position vacancies caused solely by CMTA shall not be counted against the Service Provider.

8.5.7 To ensure the continuity of consistent high service standards over the life of this Contract, the Service Provider shall retain qualified and experienced key personnel to perform services pursuant to the Contract requirements. The Service Provider shall make every reasonable effort to retain the services of the Key Personnel it names in its Proposal to provide services pursuant to this Contract for a minimum of two (2) years from the Contract start date.

8.5.8 The Service Provider shall ensure that its Key Personnel, including the General Manager, are sufficiently experienced, qualified and skilled to provide the service requirements established in this Contract at a high level of professionalism throughout the life of this Contract. In the event the Service Provider intends to replace the named General Manager, ~~or other Key Personnel,~~ CMTA shall be afforded notice and the opportunity to provide input regarding any proposed replacement. As such, the Service Provider shall submit to CMTA the resume and qualifications of a suitable replacement within thirty (30) days after notification of the General Manager ~~or Key Personnel's~~ resignation or termination. The Service Provider agrees to consider CMTA's input regarding any proposed Key Personnel replacements, and CMTA reserves the right to interview candidates at CMTA's discretion. The Service Provider's failure to provide a suitable General Manager, ~~or Key Personnel,~~ who is qualified and capable of satisfactorily providing the services required pursuant to this Contract, may result in termination of the Contract at CMTA's sole discretion.

8.5.9 The General Manager shall be the Service Provider's representative for the administration of the Contract and the supervision of work. In all matters relating to the performance of the work and payment therefore, and in all situations involving actual recommended or proposed changes, CMTA shall accept commitments and instructions of the Service Provider only from the General Manager or a duly authorized representative of the General Manager as designated in writing.

8.5.10 In all aspects of managing the Services, the Service Provider shall ensure that the Key Personnel exhibits a customer service focus **both internal and external customers**) and continuous commitment to improving the delivery of service. The Service Provider shall ensure that the Key Personnel exemplifies a positive attitude and a team approach, fostering good communication with all parties involved with the use and delivery of service.

8.5.11 In the temporary absence of one (1) day or longer of the General Manager ~~or other Key Personnel,~~ the Service Provider shall ensure that other designated supervisory personnel shall be assigned responsibility for proper operation of the service as set forth in this Contract. The Service Provider shall notify CMTA whenever the General Manager or Key Personnel are temporarily unavailable and identify the staff member who will be serving as backup. The Service Provider shall ensure that the General Manager or the designated supervisory personnel shall be available during all hours of service to make decisions and provide coordination as necessary. CMTA reserves the right to receive rebates equal to the wages and benefits for extended (2 weeks or longer) General Manager ~~or Key Personnel~~ absences.

8.5.12 Key Personnel assigned to this Project will not be replaced without 90-day advance written notice to CMTA, unless the departing employee does not provide Service Provider with notice or the employee is removed for cause.

## 8.6 Key Personnel Responsibilities

8.6.1 Primary point of contact for the Service Provider is CMTA's **Vice President, Bus Operations** ~~COTR or designee (normally the Program Manager Director, Contract Oversight).~~ Should she/he not be available the

secondary point of contact is the ~~Director, Contract Oversight~~ Program Manager, Bus Contracts. Contract modifications should be directed to CMTA Procurement's Contract Administrator.

8.6.2 The principal function of the General Manager will be to oversee employees of Service Provider and monitor ~~operational~~ activities associated with the services described herein. The General Manager will be responsible to CMTA for supporting the safe and reliable provision of all Services ~~services~~ referenced herein. The General Manager will be expected to directly supervise the daily activities of all Operators, Run Dispatchers, transportation supervisors, maintenance technicians ~~employees~~, and other Service Provider personnel supporting CMTA system operations.

8.6.3 The ~~General Manager~~ Service Provider will work cooperatively with CMTA in matters of assuring service quality, providing operational data, responding to comments from Passengers and general public, and responding to specific requests for other assistance as the need arises.

8.6.4 The General Manager or designated member of the Service Provider's Management team shall be required to attend periodic meetings, such as the monthly Operations Committee of the CMTA Board of Directors, the monthly CMTA Board of Directors general meeting, monthly Advisory Committee meetings and others as requested by CMTA.

8.6.5 Service Provider shall not use Key Personnel for the Contract who live outside the service area served by CMTA without prior approval of CMTA.

**8.6.6 Payroll Administration. Service Provider's ability to accurately calculate and timely deliver paychecks to its employees is crucial to retaining an engaged workforce. Documented issues of incomplete payment (defined as a payment not received by an employee by the close of business on the regularly scheduled payment date) to an employee caused by the actions or omissions of Service Provider will result in a PDC of \$50 per incident.**

## **9. GENERAL PERSONNEL**

### **9.1 Vehicle Operators**

9.1.1 CMTA recognizes that the success of its transportation program, service delivery and overall customer experience is built upon the strength of its Vehicle Operators. The expectation is that the Service Provider will ensure ~~shall field qualified, highly skilled and well-trained~~ Vehicle Operators maintain with a primary focus on Safety and excellent customer service. **Vehicle operators shall work under the daily direction of the OCC.**

9.1.2 In addition to the qualifications listed in the "Personnel Assignments" section of the Contractual Terms and Conditions (~~Exhibit E-Revised-6~~), Vehicle Operators shall meet the following pre-employment requirements:

- Possess a valid State of Texas Driver's License appropriate for the class of vehicle to be operated.
- Vehicle Operators must have maintained a valid driver's license for ~~five (5)~~ **three (3)** years.
- Demonstrate English language competency (reading, writing and speaking). CMTA encourages bilingual (English/Spanish) hiring practices.
- Have good oral and written communication skills as demonstrated in the pre-employment vetting.
- Always show sensitivity to Passengers' needs and possess the ability to handle complaints and problems as required.
- Any personnel assigned to operate a CMTA revenue vehicle shall pass a biennial Federal Department of Transportation (DOT) physical examination and a comprehensive drug screen as detailed by 49 CFR 391.41.
- Demonstrate the physical agility to perform the requirements of this position.

### **9.2 Radio Dispatch**

**9.2.1 Service Provider will provide adequate Radio Dispatch personnel to enable effective driver/vehicle assignments and prompt responses to all areas of operations, which could impact service. CMTA will periodically**

monitor radio communications between Service Provider Radio Dispatch office and Service Provider's drivers. Radio Dispatch personnel will be on duty during scheduled times established by Capital Metro all times when services are scheduled to operate. Radio Dispatchers are required to wear CMTA approved uniforms as described in Attachment - CMTA Uniform and Appearance Standards.

9.2.2 Service Provider personnel performing radio dispatching functions for all services will perform their duties at the CMTA Operations Control Center (OCC) located at the North Operations Facility. Radio Dispatchers will work collaboratively with CapMetro Radio Controllers under the direction of CapMetro OCC Managers

9.2.3 MetroRapid Dedicated Dispatch. Contractor will provide a dedicated dispatcher for the MetroRapid BRT service. As service hours expand, Contractor is expected to increase staffing accordingly.

### 9.3 Run Dispatch

9.3.1 Service Providers will appoint qualified individuals to serve as Run Dispatchers. These Run Dispatchers will assign operators to maintain attendance for assigned work and assign available operators for open work. Run Dispatch personnel will be on duty during all times when services are scheduled to operate. Run Dispatchers will assign operators to vacant runs as required. The Run Dispatchers will receive calls from operators calling in as absent, assign open work, operate Trapeze software, receive and validate accident reports, log in, maintain, and gather items turned in as Lost and Found, assign work as needed for required mandated testing and screening, and other duties directed by CapMetro. as assigned. Run Dispatchers are required to wear CMTA approved uniforms as described in Attachment - CMTA Uniform and Appearance Standards.

### 9.4 Transportation Road Supervisors

9.4.1 The Service Provider's Transportation Road Supervisors are the first line of response for all operational issues and work under the daily direction of the OCC. It is vital to the success of the Service Provider to have adequate staff available to perform all the duties required of this position. Service Provider shall provide continuous daily street supervision of ~~contracted service~~ Bus Service including the monitoring of schedule adherence, on-street operation, and on-route compliance. Transportation Road Supervisors will be on duty during scheduled times established by Capital Metro. Any necessary tablet or mobile computer used by the transportation supervisor for monitoring CAD/AVL and other service applications will be provided by the Service Provider. This supervision will include conducting ride checks (on-board) to ensure operator adherence to procedures (e.g., fare collection, ADA compliance, and passenger relations) and includes responding to investigation of major incidents ~~and all accidents within thirty (30) minutes of being notified~~ as directed by the Capital Metro OCC. CMTA reserves the right to independently conduct similar investigations and adherence checks of its own without notice to ensure compliance with terms of the Contract. A Transportation Road Supervisor shall respond to an emergency involving a different Service Provider or CMTA property at the request of CMTA.

9.4.2 ~~Transportation Supervisors shall be required to provide ad hoc support to CMTA, including, but not limited to, attending public meetings, assisting with public outreach activities, etc., at the discretion of CMTA.~~

9.4.3 Transportation Road Supervisors are required to wear CMTA approved uniforms as described in Attachment - CMTA Uniform and Appearance Standards.

### 9.5 Vehicle Maintenance Technicians (Mechanics) and Supervisors

9.5.1 The Service Provider shall be responsible for staffing ~~and directing~~ the vehicle maintenance technicians and first-level supervisory functions function to assure that there is a sufficient supply of safe, reliable and clean vehicles for service every day as directed by Capital Metro personnel. Some of the duties of Vehicle Maintenance Technicians include those described in the vehicle maintenance section of this Exhibit F.

### 9.6 Building Maintenance Technicians and Supervisors

9.6.1 The Service Provider shall be responsible for staffing ~~and directing~~ the building and equipment maintenance technician function to assure that assigned buildings are properly maintained and available for service every

day, as directed by Capital Metro personnel. Some of the duties of Building Maintenance Technicians include those described in the building maintenance section of this Exhibit F-Revised-8.

## 9.7 Suitable Personnel

9.7.1 The Service Provider's provision of qualified, capable and experienced personnel is essential to the performance of its contractual obligation under the Contract. As such, failure to provide suitable personnel consistent with contractual requirements as described in this Scope of Services shall be deemed a material breach of Contract and subjects the Contract to termination for default. The Service Provider shall ensure that its employees are qualified, capable and suitable to perform the **job duties in the position for which they are assigned**. ~~requirements of this Contract.~~ The Service Provider shall provide all pertinent employee records regarding driving records, training, qualifications, incidents/accidents, passenger complaints and related matters to CMTA as soon as possible upon request.

~~9.7.2 Employees assigned by the Service Provider to work on the Contract shall be deemed ineligible for rehire by another contract service provider of CMTA, and employees of other contractor services providers of CMTA are ineligible for rehire by Service Provider, if such employees' employment is involuntarily separated because of a drug and alcohol policy violation, serious safety or customer service violation, or significant accident history, including those resulting in major property damage or personal injuries. The Service Provider shall verify eligibility for rehire with the other CMTA contract service providers. See Attachment - Service Provider Reference Check Form. The Service Provider shall cooperate with other CMTA contract service providers to verify that former employees are not ineligible for re-hire.~~

~~9.7.3 Service Provider shall meet Department of Transportation (DOT) requirements when requesting employment history information from any former employer, including the requirements of the DOT Code of Federal Regulations Title 49: Transportation, Part 40— Procedures for Transportation Workplace Drug and Alcohol Testing Program which states that an employer shall maintain a copy of the written request for information sent to the former employer including the signature of the potential employee authorizing the release of this information to Service Provider.~~

9.7.4 ~~2~~ In the event a **current employee's** ~~an applicant's~~ background or qualifications do not meet the criteria set forth in the Contractual Terms and Conditions (Exhibit E-Revised-6), the Service Provider may request CMTA review via Attachment - Risk Assessment Request Form.

~~9.7.5 Service Provider shall ensure that all employees receive regular training that develops skills and increases understanding of people to include people with varying disabilities and of varying ages, regardless of ethnic/national origin, color, race, religion, sex, gender or orientation. All employees shall also be required to receive an orientation on CMTA's services.~~

9.7.6 As directed by Capital Metro, the The Service Provider shall **utilize Capital Metro** ~~propose~~ training programs for **all frontline employees, including but not limited to** Vehicle Operators, Transportation Supervisors, Radio Dispatchers, Run Dispatchers, and Mechanics **and maintenance supervisors. When receiving training, such personnel will be compensated their standard rate of pay by Service Provider.** ~~which shall be incorporated into this Contract upon CMTA's approval. The training program shall include methods for measuring the effectiveness of the training in developing skills and improving performance. More information related to training requirements can be found in Section 13 of this Exhibit F-Revised-8.~~

**9.7.7 For all employees performing services under this Contract, Service Provider shall provide name, position, mailing address, email address and telephone number information to Capital Metro for the purposes of facilitating internal communications about Capital Metro services, events, and projects. Such data shall be provided weekly in a format agreed upon by the parties. Alternately, the data can be provided through an application interface with a Service Provider system, if available.**

## **10. VEHICLE OPERATOR EXPECTATIONS, CONDUCT, & DRESS**

### 10.1 Vehicle Operator Expectations

10.1.1 Vehicle Operators are required to have a working knowledge of Routes and their work assignments.

10.1.2 Deviations from the schedule, including unscheduled breaks or operating ahead of schedule, are not permitted unless the Vehicle Operator receives authorization from law enforcement, a supervisor or other authorized person in charge, which may be another service provider or CMTA personnel. If unavoidably delayed, the Vehicle Operator shall report the cause for the delay.

10.1.3 Vehicle Operators shall stop at all marked CMTA bus stops where potential Customers are present, see Attachment – Making Safe Bus Stops.

10.1.4 Vehicle Operators shall comply with CMTA fare collection procedures. See Attachment – CMTA Fare Collection Procedures.

10.1.5 Vehicle Operators shall wear ANSI Class 3 (or similar) reflective safety vests when performing duties in the roadway or on the yard.

10.1.6 Vehicle Operators shall set out safety cones or triangles as needed when the vehicle obstructs traffic, will be parked for an extended period, and emergencies.

10.1.7 Vehicle Operators shall be polite and courteous in their speech and manner including exercising patience and self-control even when others do not.

## 10.2 Prohibited Conduct: Cause for Removal from Service

10.2.1 The Service Provider shall immediately remove any Vehicle Operator from service found to have committed unsafe or inappropriate acts while providing service under this Contract. The Service Provider shall notify CMTA if a Vehicle Operator will be removed from service for this reason and submit a written report within 24 hours.

10.2.2 CMTA will require Service Provider to immediately remove any Vehicle Operator from CMTA service (pending investigation) for any one of, but not necessarily limited to the following:

- Committing unsafe, inappropriate or criminal acts while providing service.
- Failure to follow CMTA policies and procedures.
- Failure to carry a valid Vehicle Operator's license while providing service.
- Cell phone use while operating CMTA vehicle, including texting and use of wireless headphones or devices.
- Revocation, suspension or non-renewal of a valid Texas Driver's License.
- Use of any tobacco product on CMTA vehicle or property, in accordance with the Tobacco Free policies of CMTA.
- Failure to follow safety rules and regulations.
- Failure to follow security policies, guidelines and procedures.
- Arrests for any reason.
- Notification of an active warrant from any law enforcement or judicial agency.
- Failure to meet Vehicle Operator employment requirements in Exhibit E-Revised-6 or this Exhibit F.
- Failure to display employee ID/security badge visibly while on CMTA property.

## 10.3 Vehicle Operator Dress Code and Personal Appearance Standards

10.3.1 The Service Provider shall ensure its Vehicle Operators conform to professional appearance standards consistent with the contractual guidelines set forth in Attachment - Uniform and Appearance Standards. These guidelines shall ensure a standard appearance among Vehicle Operators and Supervisors that is consistent with the high standards CMTA's professional Vehicle Operators are expected to meet every day. When providing service under this Contract, Vehicle Operators shall present a neat and clean appearance and wear only the CMTA authorized uniform.

10.3.2 The Service Provider shall ensure its Vehicle Operators observe professional standards regarding personal appearance. This includes when reporting for duty and while on duty, including training assignments that require operation of CMTA branded equipment. The Service Provider is authorized to allow its Vehicle Operators reporting for non-driving training or duties to wear casual clothing appropriate for the workplace. The Service Providers shall ensure that all clothing worn by its employees fit well, are clean, wrinkle-free and in good repair.

## **11. SAFETY**

11.1 Public Transportation Agency Safety Plan and Safety Management System. Service Provider must comply with Capital Metro's Public Transportation Agency Safety Plan (the "ASP") developed pursuant to 49 C.F.R. Part 673 ("Part 673"), as revised, supplemented, and/or updated from time to time. Contractor will collaborate with Capital Metro to ensure compliance with Part 673 requirements and the ASP, including but not limited to providing documents related to implementation of Safety Management Systems ("SMS") and results of SMS processes and activities, and documents that, in whole or by reference, describe programs, policies, and procedures for carrying out the ASP. Contractor will maintain such documentation for a minimum of 3 years from the date of creation and make such documentation available upon request to Capital Metro or its agents, and/or to the Federal Transit Administration or other Federal entity or a State Safety Oversight Agency, as defined in 49 C.F.R. 673.5, having jurisdiction.

~~Service Provider shall implement a safety program that adopts the Safety Management System (SMS) approach defined by the FTA and shall submit a comprehensive SMS Plan to CMTA for approval. Service Provider shall implement a safety program that adopts the Safety Management System (SMS) approach defined by the FTA and shall submit a comprehensive SMS Plan to CMTA for approval. CMTA will establish an "umbrella" SMS plan. Service Provider SMS plan must coordinate with the Public Transportation Agency Safety Plan. An Approved SMS plan is required prior to the start of services. Service Provider SMS must coordinate with the agency-wide plan. An approved SMS plan is required prior to the start of services.~~

This SMS plan shall include but not limited:

- ~~• Vehicle Operator procedures for handling emergencies and incidents (medical, fire, safety, fuel and other fluid spills)~~
- ~~• Accident Investigation Training~~
- ~~• Hazard Identification (as defined in SMS Plan)~~
- ~~• Assault Prevention & Awareness~~
- ~~• Handling potential blood borne pathogens~~
- ~~• Accident Response Plan~~
- ~~• Accident review process and trend analysis~~
- ~~• Process for determination of accidents as preventable or non-preventable, using National Safety Council guidelines~~
- ~~• Employee retraining (remedial) provisions~~
- ~~• Fatigue management for bus operators and other shift-work staff, including processes for ensuring limitations to the hours of service for these staff~~
- ~~• Use of an inertia-based camera system for capturing near-accidents and analyzing triggered events, including retraining employees on unsafe driving behaviors and analyzing data regarding near-misses~~
- ~~• Facility and yard safety~~
- ~~• Shop safety~~
- ~~• Maintenance practices to promote safe function of the vehicles~~
- ~~• Programs and methods to be used in promoting safety awareness, including administrative functions~~

~~11.1.1 The Service Providers shall ensure that Safety and Operations Managers participate in monthly System Safety meetings with CMTA staff.~~

11.1.2 Service Provider shall **participate in** ~~conduct~~ periodic emergency readiness training and drills. Service Provider shall also participate in such drills at the direction of CMTA.

~~11.1.3 Service Provider's Safety Manager shall obtain DOT Transit Safety and Security Program (TSSP) certification within two (2) years of being assigned to safety management duties under this Contract.~~

~~11.1.4 Service Provider shall provide to its applicable employees a program for post-accident training.~~

11.1.5 **Parking.** The revenue vehicle parking and storage space at the ~~North Operations and Maintenance Facility~~ requires **the Facilities may require** a nose-to-tail parking configuration of all buses. As such, buses will not be individually accessible (i.e. to access one bus, another bus may have to be moved). Contractor is expected to organize their operation in such a manner that takes into consideration such nose-to-tail parking and associated safety precautions.

## 11.2 Enterprise Risk Management Programs

CMTA has a program and processes for managing risks and pursuing opportunities. Service Provider must have similar processes in place. As part of this program, it is understood that some risks must be accepted to achieve goals and conduct business, while other risks are unacceptable. To this end, CMTA and Service Provider will work together to manage the unacceptable risks, while ensuring that service delivery standards are maintained.

## 11.3 Safety Equipment

11.3.1 The Service Provider shall have biohazard clean-up and first aid kits in all supervisor vehicles. The Service Providers shall ensure that these kits comply with OSHA and any other applicable regulatory standards. Service Providers shall make disposable gloves and anti-microbial wipes available to all Vehicle Operators.

11.3.2 The Service Provider shall ensure that all vehicles have properly operating safety equipment, fire extinguishers, and reflectors.

11.3.3 Service Provider shall ensure that all necessary safety equipment is installed, in working order and utilized in the Facility.

## 11.4 Accident or Severe Incident Procedure

11.4.1 Emergency Notifications. Service Provider must comply with emergency notification procedures **as directed by Capital Metro.** ~~set forth in Attachment – Emergency Notification Procedure.~~

11.4.2 Vehicle & Passenger Accidents. Service Provider must comply with the responsibilities related to accidents and incidents **as directed by Capital Metro** ~~set forth in Attachment – Accident and Incident Scene Responsibilities and Attachment – Accident/Incident Protocols.~~

11.4.3 Service Provider's reporting shall comply with Federal, State and CMTA requirements. See Attachment - Accident Definitions & Criteria for Monthly Reporting. All events classified as an accident or incident shall be reported to CMTA within twenty-four (24) hours or less from the time of the accident. Accident reports shall be legible and include information as described in CMTA policies and procedures. See Attachment - Accident/Incident Report Templates.

11.4.4 The Service Provider's designated accident investigation staff shall respond immediately in person to the above described incidents or accidents and complete an accident investigation. Unreported/discovered vehicle damage shall be reported in the same manner as described in Section ~~41.5.3~~ 11.4.3. Service Provider shall make every effort to investigate the cause and preventability of unreported damage using Attachment – Preventability Checklist for Unreported Damage.

11.4.5 Details of every vehicle and Passenger accident or incident, including vehicle number, damage estimates to CMTA vehicles, preventability claims, severity category, elapsed hours between the prior work day and time of accident, and hours worked in the previous seven calendar days shall be reported to CMTA in the format detailed in Attachment - Monthly Accident/Incident Log by the fifth (5th) Business Day of the following month. The Service Provider shall also submit a Quarterly Accident Claims log due by 10th Business Day after quarter ends. See Attachment – Quarterly Accident Claims Log.

11.4.6 Accident preventability **will be determined by Capital Metro and** shall be based on the National Safety Council's (NSC) "Guide to Determine Motor Vehicle Collision Preventability." Whenever preventability determinations are in question, the Service Provider safety staff shall consult with CMTA to reach resolution. CMTA will make the final determination of preventability on all accidents and incidents. **Service Provider personnel determining rulings shall have the training necessary to determine rulings per NSC guidelines.**

## 11.5 Safety in the Workplace

11.5.1 The Service Provider shall be responsible for compliance with all applicable Federal, State and local laws, ordinances, and regulations during the performance of this Contract. CMTA will require Service Provider, as deemed appropriate, to comply with additional safety requirements. Such additional requirements shall be provided to Service Provider in writing.

11.5.2 Service Provider shall implement safety rules and procedures **as directed by Capital Metro and** in accordance with transit industry best practices and CMTA procedures. These include but are not limited to the following:

- Furnish and enforce the use of all personal protective equipment needed to complete the tasks required by this Contract.
- Provide employees special safety training prior to working with hazardous materials or operations.
- Provide warning signs, barricades and verbal warnings as required by OSHA.
- Have a formal manual for emergency/evacuation policies and procedures available on site and shall inform its employees of emergency procedures.
- Develop yard/lot safety policies for the operating facility and submit them to CMTA for approval.
- Manage issues of employee fatigue, including processes to institute limits to the hours of service of Bus Operators.

~~11.5.3 Service Provider is required to document its Safety Program in its Safety Management System (SMS) plan that includes the elements, components and key activities of SMS, and an Emergency Response Plan as listed in Attachment – Plan Submittal Requirements for review and approval by the CMTA Program Manager, Bus Contracts.~~

11.5.4 Service Provider is required to coordinate its safety efforts with CMTA in the interest of ensuring a seamless approach to the safety of CMTA's system. This includes all efforts to fully implement Safety Management Systems (SMS) as described in the FTA's National Public Transportation safety plan.

11.5.5 Service Provider shall fully promote and support CMTA's Employee Reporting System and Close Call Reporting System. See Attachment - CMTA's Employee Reporting System and Close Call Reporting System. Service Provider shall not implement competing systems that will degrade the effectiveness and universality of these agency-wide systems.

11.5.6 The Service Provider is required to submit an OSHA 300 log detailing industrial injuries to CMTA monthly.

11.5.7 CMTA procedures restrict the use of mobile phones and other personal electronic devices while on duty. CMTA requires a zero-tolerance policy for violations of this procedure. See Attachment – Electronic Device Procedure.

## **12. SECURITY**

12.1 **Contracted Security Force.** CMTA provides for on-site security personnel to patrol the facility grounds and monitor building access. All Service Provider employees are expected to visibly wear a CMTA issued badge while on CMTA grounds and inside all CMTA buildings. All Service Provider employees will comply with directions given by security department personnel including producing issued access control badges upon demand. Visitors must

enter through the main entrance of the Facility and sign in with security. Visitors are required to be escorted while on CMTA grounds or inside CMTA buildings.

**12.2 Contracted Local Law Enforcement.** CMTA contracts with off duty sworn police officers to provide police assistance for incidents that occur during daily operations. CMTA expects Service Provider's Radio Dispatch to utilize available internal police force for incidents which include but are not limited to; disorderly conduct, passenger intoxication, criminal trespass, theft of services, use of drugs, smoking on a bus or on CMTA controlled property, vandalism, suspicious activity, suspicious packages and vehicle towing.

12.2.1 Major incidents where passengers, operators or public are in imminent harm or danger should be called into 911. After reporting to 911, CMTA's contracted law enforcement should also be dispatched. Major incidents include but are not limited to: passenger, operator or public need of medical assistance, assault, fighting on bus or on CMTA controlled facility, display and/or use of weapons, Bomb Threats or threats against the public.

12.2.2 CMTA's contracted law enforcement officers that have the appropriate commercial driver's license on occasion, will request and operate CMTA's buses for police related duties as approved by CMTA's Chief Operating Officer or his/her designee. Service Provider will cooperate with such requests to make vehicles available for this purpose.

**12.3 Cap Metro Public Safety Staff. Service Provider staff will work collaboratively with Capital Metro Public Safety staff, including transit police (future), public safety dispatchers and public safety ambassadors.**

### **13. ~~VEHICLE OPERATOR &~~ OPERATIONS STAFF TRAINING**

13.1 The Service Provider shall be **required to utilize Capital Metro's Operations Training Academy as directed by Capital Metro, to ensure all staff are adequately trained and regularly retrained. When receiving training, Service Provider will compensate personnel their applicable standard rates of pay. Capital Metro's Operations Training Academy shall meet or exceed industry standards. Until such time as Capital Metro's Operations Training Academy is implemented the curriculum currently in place and provided by Service Provider will be utilized.** ~~expected to develop, implement, and maintain a formal training and retraining program for all Vehicle Operators and operations staff members, including but not limited to Transportation Supervisors, Radio and Run Dispatchers, Vehicle Maintenance and Electronics Technicians, and Facility and Building personnel. The program shall provide formal accident retraining measures, including criteria for determining the success of training/retraining efforts. The program must also include a plan for ongoing and applicable in-service evaluations. It is the Service Provider's responsibility to provide additional training if the training requirements are determined by CMTA or Service Provider to be insufficient.~~

~~13.2 The program shall detail the training proposed for incumbent and new Vehicle Operators and operations staff members, including but not limited to Transportation Supervisors, Radio and Run Dispatchers, Vehicle Maintenance and Electronics Technicians, and Facility and Building personnel. Incumbent training shall take place and be completed before the first day of service. The Service Provider's Training Plan shall describe how incumbent employees will be trained to assure that they are fully ready for operation at the start of service.~~

- ~~• The program will include a requirement for contractor personnel conducting Safety Facility Audits to be provided OSHA 10 training at a minimum, and OSHA 30 training as the recommended training.~~

- ~~• Incumbent training shall take place and be completed before the first day of service. The Service Provider's Training Plan shall describe how incumbent employees will be trained to assure that they are fully ready for operation at the start of service.~~

~~13.3 Service Provider will provide applicable training for all personnel working on the Contract. It is the sole responsibility of Service Provider to ensure that each operator is fully knowledgeable of his/her duties and responsibilities and can operate a bus in a safe and professional manner. It is also Service Provider's responsibility to provide additional training if the training requirements deemed to be insufficient by CMTA or Service Provider.~~

~~13.4 New Vehicle Operators shall have a minimum of forty (40) hours of classroom training, forty (40) hours of behind the wheel and Customer Service training and forty (40) hours of one-on-one training in revenue service. Offerors shall provide a detailed outline of the Training Plan with their Proposals. The complete Training Plan shall be submitted to CMTA for review and approval prior to start up.~~

~~13.5 All training and retraining shall be documented for each employee.~~

~~13.6 The Training Plan shall include curriculum/topics, frequency and measurements of effectiveness. The curriculum/topics shall be reviewed and adjusted with input from CMTA as necessary to reflect trends and urgency. The Training Plan must include, at a minimum, the following components for all personnel:~~

- ~~● Monthly safety meetings for operators, mechanics and front-line supervisory personnel~~
- ~~● Refresher training after all preventable accidents~~
- ~~● Defensive Driving Vehicle Operator Training every two (2) years, such as National Safety Council (NSC) course, or an equivalent course approved by CMTA.~~
- ~~● Vehicle familiarization as needed before operation of vehicle.~~

~~13.7 CMTA will, at its discretion, develop content for particular training modules (e.g. customer service training, etc.). When such content is developed, CMTA is responsible for providing "train the trainer" sessions to orient Service Provider to the objectives of the module, content and intended delivery mechanism. Service Provider is responsible for ensuring that an adequate number of staff participate in these sessions to ensure that the content is only delivered by a trained trainer.~~

~~13.8 CMTA Quality Assurance may attend and audit the training program, training sessions and documentation at any time.~~

~~13.9 No Service Provider employee shall be allowed to operate any branded vehicle before a clear driving motor vehicle record and background check has been completed and verified.~~

~~13.10 The training for Vehicle Operators, Radio and Run Dispatchers, Transportation Supervisors and all other front-line operations staff shall include:~~

- ~~● The program must provide formal retraining measures, including criteria for determining the success of retraining efforts.~~
- ~~● All vehicle operations personnel will be trained in the assisting of mobility limited passengers, including the proper securement of passengers in a wheelchair.~~
- ~~● Effects of fatigue on vehicle operation and work performance and strategies for managing fatigue while working irregular shifts.~~
- ~~● Eight Hours of annual customer service refresher training for bus operators, to include diversity and conflict mitigation training.~~
- ~~● Training for bus operators and supervisors at each scheduled service change to ensure all personnel have a working knowledge of the CMTA system.~~
- ~~● All vehicle operations personnel will be trained in assisting passengers with limited mobility, including the proper securement of passengers in a wheelchair.~~

~~13.11 The training program must include training in personal safety, including, at a minimum, theft/robbery prevention, violence in the workplace, assault prevention, and information regarding operator responsibilities included in the FTA's Transit Watch program.~~

~~13.12 Service Provider must incorporate customer service training program that includes at minimum the American Public Transportation Association's (APTA) best practices for customer service training into its new hire and ongoing training program, including but not limited to refresher and remedial retraining. Customer service training requirements may change as improvement opportunities are identified.~~

~~13.13 Persons designated as a “qualified instructor” for bus operator training under the Contract must have a record of safe driving, at least two years of experience driving professionally, and a demonstrated ability to provide high-quality customer service.~~

~~13.14 At a minimum, operator training will consist of the following:~~

- ~~● Acquisition of Class B Commercial Driver’s License (CDL) with passenger endorsement, defensive driving, railroad safety (Operation Lifesaver), farebox training including proper log in and off, route training on all routes, pre-trip inspections, deadhead routes, Defect Cards, CMTA accident reports, how to read a paddle, radio procedures, interior bus camera system, including save button, silent alarm procedures, wheelchair securement, proper operation of wheelchair ramps/lift(s) on all series of buses, yard safety and rules, bike securement and rack operation.~~

- ~~● Prior to release from training to operate in revenue service, operators must have a working knowledge of all routes and procedures.~~

- ~~● Prior to release from training to operate in revenue service, operators must have received a minimum of eight (8) hours Sensitivity Training with regards to handling persons with disabilities.~~

**13.2** No operator will be allowed to operate equipment in CMTA service until the successful completion of the training necessary to properly operate the vehicle type **and route** to which the operator will be assigned, as documented and signed off by a qualified instructor **as determined by Capital Metro. Service Provider Run Dispatchers are required to ensure that all assignments comply with this requirement.**

**13.3** **No maintenance employee will be allowed to perform repairs or inspections for which they have not been fully trained as required by Capital Metro . Service Provider Shop Supervisors are required to ensure that all work assignments comply with this requirement.**

~~13.15~~ **13.4 Service Provider supervisors** A qualified instructor or supervisor will evaluate each operator employed under the contract at least once every six (6) months, which includes documented **on-the-job**/in-service evaluations, license and medical certificate checks.

~~13.16 Service Provider shall ensure all operators complete the training requirements specified in the Contract.~~

~~13.17 CMTA must approve all exceptions to the required minimum training standard in writing.~~

~~13.18 Radio and Run Dispatchers must receive the applicable training on use of the Radio Console, Xerox OrbCAD and Trapeze OPS systems. Training must be complete enough for all dispatch personnel to fully utilize the systems.~~

~~13.19 Personnel assigned work that requires asset management system and other system data entry shall have the adequate training that will assure system records and reports are available as designed.~~

## **14. SERVICE QUALITY AND PERFORMANCE INDICATORS**

14.1 Service Provider is required to manage its business in ways that maximize the customer experience at all times. Service Provider must work to continuously improve its processes and procedures for the benefit of the customer experience,

14.1.1 The Service Provider shall ensure there are qualified supervisory personnel available to physically respond (as necessary) to any accidents/serious incidents or other service disruptions during all hours of revenue service in accordance to Contract requirements. The Service Provider shall provide sufficient transportation supervisor coverage in the Service Area to ensure an appropriate response time as ~~determined~~ **directed** by CMTA.

14.1.2 Service Provider shall manage the daily availability of vehicles and operators to facilitate the speedy restoration of service in the event of a service disruption.

~~14.1.3 Service Provider shall establish procedures for handling mechanical issues on in-service buses that minimize the impact on service.~~

~~14.1.4 Service Provider shall investigate and analyze incidents and customer comments to identify the root cause of recurring problems and adjust processes and procedures accordingly.~~

14.1.5 Additional Customer Support. Service Provider is required to provide personnel **a Transportation Supervisor** to support the Capital Metro customers at Republic Square Southbound from 6:00 a.m. to 9:00 a.m. and from 4:00 p.m. to 7:00 p.m. Monday through Friday. This staff member will be knowledgeable of all Capital Metro services, **procedures** and provide proactive support of customers in the area. This staff member is also required to support the Operations Control Center staff in handling service interruptions in this area. This staff member must support all Capital Metro services, including those operated by other service providers.

If directed by CMTA, Service Provider is required to **deploy Transportation Supervisors to additional locations**, add additional personnel to support the Capital Metro customers, including but not limited to customer field support staff. Should CMTA decide to issue such a directive, CMTA will work collaboratively with Service Provider to develop the scope for such an effort. Price for the effort will be negotiated at the time, using the pricing details provided in Exhibit A Revised 3 as the basis of calculating the incremental cost increase for the directed change.

14.2 CMTA reserves the right to monitor Service Provider in its performance of the Contract. CMTA **employees and** representatives, ~~from time to time~~, will ride in CMTA-furnished, Service Provider-operated vehicles with or without prior notice to Service Provider to ensure compliance with the Contract. CMTA Contract Oversight Staff functions include, but are not limited to: administration of contract monitoring plans, operations and vehicle maintenance quality assurance audits (remote, records and in-service), assessing PDC's **reporting** and reviewing Service Provider invoices to accurately compensate for work performed.

14.3 Performance measures are included in this Contract to provide the highest level of service possible. CMTA will monitor the Service Provider in its performance of the Contract to ensure adherence to all performance specifications

14.4 The Service Provider is expected to meet or exceed the performance metrics as outlined in this Contract on a monthly basis unless otherwise specified in this Contract. Should the Service Provider exceed or fall short of acceptable standards, payments to the Service Provider shall be adjusted from the total fixed and variable costs of the original invoice (not including other reimbursements, fees, etc.). Adjustments are based on the incentive or PDC ~~percentage~~ **amount** indicated in the Contract. The Service Provider shall be required to submit detailed Action Plans to address any performance indicators that fall short of the standard.

14.5 **CMTA Contract Oversight Operations and Maintenance Quality Assurance.** ~~CMTA Quality Assurance staff for both Vehicle Maintenance and Operations shall perform audits of the Service Provider's performance throughout the term of this Contract. These include but are not limited to audits of personnel or vehicle files, remote audits of archival data, in-service audits, and yard audits, and audits of maintenance activities. The results of these audits shall be rated and recorded. Deficiencies noted require a written response from the Service Provider.~~ **Service Provider and Capital Metro staff will work collaboratively to address issues identified during oversight activities.**

14.6 **Key Performance Indicator PDCs.** Service Provider will be eligible to be paid incentives and will be subject to disincentives based upon monthly performance. Details regarding the structure of the incentive and disincentives are provided below. Notwithstanding the foregoing or any other provision of this Contract to the contrary, Service Provider shall not be assessed PDCs or disincentives related to any functions that are within CMTA's oversight responsibilities unless CMTA can demonstrate that Service Provider has failed to comply with its obligations under this Contract that caused the performance failure.

The following information is provided as a general overview of the methodology that will be used to measure performance, as well as the general magnitude of the penalties associated with performance.

Service Provider incentives and penalties imposed by CMTA will be applied to the monthly total dollar amount of **service hours invoiced plus** the **variable and** fixed fee. Incentives and penalties are assessed one month in arrears. Goals, incentives and penalties are set forth below:

**On-Time Performance.** An on-time trip is one that departs 0 minutes early and no more than 5 minutes late.

On Time Performance	Incentive/ Penalty
84.5% and above	<del>0.25%</del> <b>0.10%</b>
83.00% to 84.49%	0.00%
78.50% to 82.99%	<del>-0.25%</del> <b>-0.10%</b>
78.49% and below	<del>-0.50%</del> <b>-0.15%</b>
<b>Goal</b>	<b>83.00%</b>

**Miles Between Road Calls.** A Road Call is any failure of any component or system on a vehicle that causes the vehicle to be unable to complete its scheduled service without repair.

MBRC	Incentive / Penalty
5800 and above	<del>0.25%</del> <b>0.10%</b>
5,500 to 5,799	0.00%
5,200 to 5499	<del>-0.25%</del> <b>-0.10%</b>
5,199 and below	<del>-0.50%</del> <b>-0.15%</b>
<b>Goal</b>	<b>5,500</b>

**Complaints.** This performance goal will be measured per 100,000 passengers as measured by monthly counts of documented customer complaints. Ridership will be provided by the CMTA Planning Department. All complaints logged in the CMTA Customer Service database regarding Contractor's service will be counted in this measure.

Complaints	Incentive / Penalty
26.99 and below	<del>0.25%</del> <b>0.10%</b>
27.00 to 30.00	0.00%
30.01 to 32.00	<del>-0.25%</del> <b>-0.10%</b>
32.01 and above	<del>-0.50%</del> <b>-0.15%</b>
<b>Goal</b>	<b>30</b>

**Total preventable accidents per 100,000 Vehicle Miles.** An accident is any contact with an object, vehicle or person which results in property damage or injury. A preventable accident is one in which the driver failed to do everything that reasonably could have been done to avoid the crash, as defined by the National Safety Council's Guide to Determine Motor Vehicle Accident Preventability. Final determination of preventability is at the sole discretion of CMTA.

Accident Rate	Incentive / Penalty
0.90 and below	<del>0.25%</del> <b>0.10%</b>
0.91 to 0.98	0.00%
0.99 to 1.25	<del>-0.25%</del> <b>-0.10%</b>
1.26 and above	<del>-0.50%</del> <b>-0.15%</b>
<u>Goal</u>	<u>0.98</u>

**14.6.1**

Overall Performance	Incentive
If the goal is met for all Key Performance Indicators listed above	0.50%

14.6.2 CMTA will periodically meet with the Service Provider to consider its input on performance goal adjustments. Operational measures include on time performance, passenger complaints, vehicle accidents/collisions, passenger accidents/injuries, and miles between road calls. CMTA shall have the final say in the setting of performance indicator goals.

14.7 **Performance Monitoring.** The Service Provider shall develop and submit a Performance Monitoring Plan after contract award. This plan shall include, at a minimum, details regarding how the Service Provider will:

- Monitor daily operations, including, but not limited to, Vehicle Operator check-in, pull-out, Safety, schedule adherence, pull-in, etc.
- Oversee Radio and Run Dispatch functions to include (but not limited to) service delivery, schedule adherence, and On-Time Performance.
- ~~Measure training/retraining efforts, including accident and Customer Service retraining.~~
- Perform Quality Assurance inspections for both Operations and Maintenance and the supervision of these functional areas.
- ~~Manage Customer Service issues and CCR workflow—establishing/maintaining a culture of courtesy.~~
- Perform in-service (on board, shadow, etc.) audits, with focus on Passenger Boarding/alighting, mobility aid securement, safe operation, etc. (Include specific reference to Attachments (Service Bus Stops, Passenger interactions, etc.).)

14.7.1 The plan shall include methods the Service Provider will use to identify metrics and goals, the process to measure performance success, establish frequencies of quality assurance inspections, the process to establish steps to correct deficiencies in performance, and the plan to communicate findings to CMTA.

~~14.8 **Mystery Rider Program.** Service Provider shall implement a plan for periodic inspections of bus operator performance by outside persons otherwise not known to the workforce. Service Provider shall prepare a written plan for this activity for CMTA's approval prior to beginning services under the Contract. Mystery riders must ride the service on different routes, different times of day, and different days of the week each month. Any "Poor" rating shall include a comment describing reason for the poor rating. Total time spent on the service by mystery riders should reach a minimum of 1% of service hours provided in that month.~~

14.9 **Employee Survey.** Periodically, CMTA conducts surveys of employees (of both the Authority and its Service Providers) to gain insight into overall management of CMTA operations. Service Provider is required to encourage participation in such surveys by all its employees and to cooperate with and coordinate the administration of such surveys.

14.10 **Service Data and Performance Monitoring Tools.** Service will be monitored and measured using a CAD/AVL system, OrbCAD, Trapeze and other system reports. These systems will be provided by CMTA. The following requirements and associated PDC's have been established to ensure accurate data is available to CMTA and CMTA customers.

14.10.1 Service Provider must enter all Service and service impacting related data into the CAD/AVL system (e.g. service loss, service interruption delay, accident and incident and security information, maintenance failures, customer incidents, etc.), in accordance with the OrbCAD/AVL Operational Procedure document and any updates during the term of this contract. See Attachment – OrbCAD/Operational Procedure.

14.10.2 All vehicles which leave the yard must be logged in the OrbCAD system.

14.10.3 All vehicles must remain logged in while off site and while in service. Through the course of a transit day vehicles must be logged off a specific Block and another vehicle logged on in its place. Such log offs and logons must be managed to reduce the amount of time in which no data is being associated with that service. ~~Failure to have a Block logged in for a period exceeding 10 minutes will result in a PDC of \$50 per occurrence.~~

~~14.10.4 When a bus is running more than 5 minutes and 59 seconds behind schedule, bus operators must provide a canned data message explaining the reason for the delay. See Attachment OrbCad Procedure.~~

14.10.5 To ensure that services operate in a timely manner, Service Provider is expected to ensure that all Blocks start service on time. A ~~queue bus or~~ **run as directed bus** may be used in place of the regularly scheduled bus to enter service at the first scheduled time point on time (no more than 5 minutes late). ~~Service provider Radio Dispatch shall manage a Block estimated to arrive late in a manner that reduces service impact and determine the time point to direct late Block to, based on the following Block's estimated arrival.~~ Failure to enter service at the first scheduled time point on time (no more than 10 minutes late) will result in a PDC of \$100 per occurrence.

14.10.6 All service not operated (e.g. lost time) must be properly and accurately documented in the OrbCAD system. ~~Any service not operated will not be compensated.~~

14.10.7 Service Provider is encouraged to utilize service recovery queue buses as a mechanism to avoid delays and reduce lost time in the event of mechanical failures and vehicle accidents.

**Service Recovery Q Buses:** ~~Vehicle hours for service recovery queue buses are at the Service Provider's expense and will not be reimbursed by CMTA. Any gaps in service (e.g. mechanical failures, vehicle accidents, etc.) will not be compensated. The use of a service recovery queue bus mitigates lost service and is noted as recovered service. The proper use of a service recovery queue bus is to be done in a seamless way, such that all portions of the route receive complete service. Service Recovery Queue Bus hours are not compensated unless assigned to a revenue service Block (i.e. recovered service).~~

Capital Metro, at its discretion, will schedule Supplemental ~~Queue buses and Run-as-Directed Queue buses.~~

Run as Directed: Run-as-Directed Queue buses are scheduled daily and utilized to improve bus spacing, relieve overcrowding, and alleviate customer-facing schedule concerns, as directed by Capital Metro.

Supplemental: Supplemental queue buses are scheduled when events, detours or other planned activity is expected to increase the demand for service.

~~Run-as-Directed Queue buses are scheduled daily and utilized to improve bus spacing, relieve overcrowding, and alleviate customer-facing schedule concerns, as directed by Capital Metro.~~

Supplemental Queue ~~buses and~~ Run-as-Directed Queue buses are considered scheduled service and are paid at the per hour rate established in the most current Exhibit A-Revised-3.

14.10.8 Service Provider is required to explain all periods of "off route" status for any vehicle by creating an OrbCAD Incident Report. The exception to this requirement is when an off-route status is on the "Established Off Route Data Error List" maintained by CMTA for erroneous off route statuses that have previously been documented and determined to be caused by schedule data that CMTA is working to correct. If the Service Provider suspects that an off-route status is caused by erroneous data but is not on the "Established Off Route Data Error List" the Service Provider will create an OrbCAD Incident Report using the "Erroneous Off Route" sub code until such time that CMTA adds it to the "Established Off Route Data Error List."

14.10.9 Failure to properly and accurately document an incident, **in the applicable systems including but not limited to OfbCad, Infor, and other documentation systems, and** including but not limited to failure to accurately reflect change out buses, lost time, or service **interruptions and incident response details** delays will result in a PDC of \$100 per occurrence. The PDC will not apply until after the seventh day of the incident, which represents the time allowed to accurately reconcile and finalize incident entries.

14.11 **Exceptions and Extensions.** From time to time, situations will arise wherein a factor outside of the control of the Service Provider will impede performance. When such a situation arises, the Service Provider are eligible for an exception or extension, consistent with the provisions set forth in Exhibit E-Revised-6, Contractual Terms and Conditions, section entitled "Excusable Delays." Whenever possible, the Service Provider must request an exception or extension in advance. Such requests must be submitted in writing, and should fully explain the circumstances being faced; the specific contractual requirement or deadline for which an exception or extension is being requested; an explanation of efforts undertaken to mitigate the impacts of the exception or extension; and the specific relief being requested. See Attachment - Contract Performance Exception Request. The request should be submitted to the COTR, or his/her designee for consideration. If the Service Provider is dissatisfied with the COTR's determination, they may request that the CMTA Director of Procurement or his/her designee, review the request. CMTA retains sole discretion in approving all exceptions or extensions.

## **15. FACILITY, BUILDING AND EQUIPMENT MAINTENANCE**

15.1 Service Provider shall ~~provide twenty-four (24) hour building maintenance services and~~ be responsible for the ongoing routine and preventive maintenance of CMTA's buildings and equipment **at the direction of Capital Metro**. The Service Provider shall fulfill the requirements of the Contract. Service Provider shall be responsible for **performing** the **assigned** building maintenance **activities** of the 2910 Vehicle Maintenance **building**, Service Island building and Administration building, Administrative Annex located at 624 N. Pleasant Valley, 9315 Old McNeil Administration and Maintenance Building, Service Island Building, and Rail Maintenance Facility. ~~Maintenance items shall include, but limited to revenue vehicle parking lot, employee parking lot, gates, fencing, yard lights, emergency generator, all structures, equipment and machines, and all regulatory, environmental and waste streams.~~

~~15.2 Service Provider shall be responsible for the entirety of all sites, except where otherwise identified in the Scope of Services. The Service Provider shall submit a Facility, Building and Equipment Maintenance Plan that describes how the Service Provider will meet the requirements of the CMTA Facility, Building and Equipment Maintenance Program. This plan shall include detailed description of work that the Service Provider will undertake to ensure they meet the requirements of the Program. The plan shall also include details for the provision of periodic driver safety training, forklift operator certification and refresher training for up to twenty-five (25) Public Facilities and Treasury personnel. This Plan must be approved by CMTA prior to the commencement of service and reviewed annually.~~

15.3 CMTA will provide existing major shop equipment such as bus lifts, portable bus lifts, jack stands, special tools, portable fans, specialized test equipment a/c servicing machines, needed for the performance of the Services. ~~See Attachment – Building, Equipment, PM Program and Tool List. (The attachment contains a listing of assets, the PM narrative for the asset at various frequencies, and the total Building Maintenance labor hours anticipated to fulfill the program). CMTA will be responsible for catastrophic failure of major systems and large equipment that is not the result of Service Provider's actions, or abuse, misuse, neglect, or negligence.~~

15.4 Service Provider is responsible for **performing** maintenance of the fuel delivery system, including pumps, dispensers, valves, piping monitors and fuel management, **as directed by CMTA**. CMTA will maintain the fuel management software and back end systems. Service provider is responsible for learning and understanding the fuel management software as it pertains to preventive maintenance and repairs.

15.5 Service Provider is responsible for **performing** the preventive maintenance program on all building systems **at the direction of Capital Metro**, and the shop and garage equipment. CMTA will identify the Preventive Maintenance Inspections required for all facilities. ~~See Attachment – Building and Equipment PM Program.~~

~~15.6 Service Provider will be responsible for bird control and bird equipment in the maintenance shop areas and must maintain the bird control system.~~

~~15.7 CMTA will have no responsibility for the maintenance of shop, major shop equipment, air handling equipment, bus lifts, paint booths, heaters, water piping, bus wash, air compressors, oil and grease delivery systems, or any such equipment. It is expected by CMTA that this type of equipment will last the term of this contract with~~

proper care and maintenance. It is the Service Provider's responsibility to provide for the care and maintenance of all such equipment.

15.7.1 CMTA will be responsible for the portion of the major repairs and catastrophic events that exceed \$8,000 to equipment approved by CMTA, such as, underground storage tanks, pipes, and lines, if such repairs are not the result of Service Provider's actions, abuse, misuse, neglect, or negligence. Service Provider will detail the scope of the needed repair or replacement and provide adequate documentation (up to three quotes) that the cost exceeds \$8,000. CMTA reserves the right to direct Service Provider to perform such repairs.

15.8 In cases of catastrophic failure of major systems or equipment that is not the result of abuse, misuse, or neglect on the part of the Service Provider, CMTA will address the situation as a capital project at CMTA's expense. Service Provider will follow the preventative maintenance program for any such systems or equipment and facility. Items that arise outside of the Scope of Services, will be handled as an additional cost to CMTA, but require CMTA's prior written approval. Any such costs shall be reimbursed as a pass through. The Service Provider will assist with coordinating activities to address the solution. Examples of items that would be outside the scope (if not caused by Service Provider): underground storage tanks, separators, piping, roofs, foundations, concrete, and electrical wiring up to the breaker panels.

15.9 Service Provider shall staff for Building Maintenance **consistent with the minimum staffing levels established by Capital Metro per paragraph 8.2** with sufficient technicians to accommodate the **work assigned by Capital Metro**. PM and Corrective work detailed in Attachment - Building Equipment PM Program. This attachment provides an overview of Building Maintenance hours required to fulfill the program. The labor hours in this attachment represents the anticipated Building Maintenance PM Inspections, PM repairs and other corrective and miscellaneous work for the provided facility and for the CMTA Administrative Annex at 624 N. Pleasant Valley Road. Ad-hoc work requests by CMTA will be considered as within the scope of work, including but not limited to, signage, white boards, desk repairs, painting, picture hanging etc.

15.10 As part of the Proposal response, an Offeror shall provide sample job descriptions for Building Maintenance Technicians, and how the Offeror tests candidates or ensures candidates meet the requirements of the job descriptions.

15.11 Service Provider shall assume that equipment is in various stages of life cycles, and that replacement of some tools and equipment is considered normal. Service Provider must return like inventory of shop equipment at the end of Contract in good usable condition. Service Provider is responsible for any replacement and/or repair of shop tools and equipment.

15.12 CMTA will be responsible for major systems such as roofs, asphalt and concrete repairs, and major underground storage tank repairs. This does not include preventive maintenance or repair work. Service Provider is responsible for fuel delivery monitoring and fuel quality issues such as filtration maintenance and occasions of microbial growths and the treatment of such in underground tanks and transit vehicle fuel tanks.

15.13 CMTA shall provide the following "Service Contracts" for the Service Provider to use to fulfill the applicable service, however the Service Provider shall be responsible to ensure the communications to each contractor is met to fulfill the applicable service requirements. Failure to sufficiently communicate with a contractor may result in a PDC of \$200.00 per incident.

15.13.1 CMTA will provide for a contract for HVAC maintenance. Service Provider shall coordinate maintenance activities for HVAC systems with CMTA's designated Service Provider. See Attachment - CMTA Provided Building Services for details regarding the services provided by this contract.

15.13.2 CMTA will provide for a contract for landscape maintenance. See Attachment - CMTA Provided Building Services for details regarding the services provided by this contract.

15.13.3 CMTA will provide for a contract for janitorial service. Service Provider shall provide coordination and some direction with janitorial service. Service Provider is responsible for maintaining the cleanliness of all maintenance work areas (Maintenance Shop and Service Island) separately from the janitorial service contract. Each incident of failure to maintain clean work areas will result in a \$200 PDC. See Attachment - CMTA Provided Building Services for details regarding the services provided by this contract.

~~15.13.4 CMTA shall provide, at its discretion, other service contracts as needed, and Service Provider will provide the same oversight duties.~~

15.14 **Building Maintenance Preventive Maintenance (PM) Inspections and the Asset Management System (currently Infor Spear4i).** CMTA will provide training on its Asset Management System and Service Provider shall be required to use the system to **document** manage routine and preventive maintenance **work** programs.

15.14.1 Preventive Maintenance Inspections are required for facility systems and equipment. Past due inspections will result in a \$100 PDC per day and shall be charged this amount each day until the inspection is performed to the satisfaction of CMTA.

15.14.2 The Asset Management System will track the performance dates and produce a monthly report. Service Provider shall follow the priority rating list and dates of issue. ~~See Attachment — Contracted PM and WO Requirements (may change with new software program).~~ CMTA will also perform random inspections and if it is determined that corrective action is necessary, a corrective action request shall be generated by CMTA, or CMTA will instruct the Service Provider to enter a corrective action request. Failure to correct/address a corrective action request within twenty-four (24) hours of receipt will result in a \$100 PDC per day until the Service Provider corrects or addresses the issue to the satisfaction of CMTA.

15.14.3 Service Provider shall review, fully complete, and close all preventative maintenance work **as directed by Capital Metro**, within fourteen (14) calendar days. ~~Unless an exception is approved, failure to have standard preventative maintenance work fully completed and closed within the fourteen (14) calendar day period will result in a \$100 PDC per day until the Service Provider corrects or addresses the issue to the satisfaction of CMTA.~~

15.15 Preventative maintenance work that relates to critical regulatory or environmental matters that affect the daily operations of the facility shall be addressed by Service Provider per the priority ratings **as directed by Capital Metro**, but not later than fourteen (14) days after the date provided in the Asset Management System. ~~Failure of Service Provider to address and perform the required preventative maintenance work correctly within the time frame will result in a \$400 PDC per day until the Service Provider corrects or addresses the issue to the satisfaction of CMTA.~~

~~15.16 Preventive Maintenance (PM) Inspections are required for facility systems and equipment. PM inspections that are performed past due will result in a \$100 PDC per day per inspection missed.~~

15.17 Corrective work will be addressed immediately in cases of critical equipment **as directed by Capital Metro**, and in any case, no later than seven days (7). ~~Corrective work that goes beyond fourteen (14) days, without specific approved extension, will result in a \$100 PDC per day per occurrence. Extensions will not be approved if submitted after the first seven (7) days. This shall include extension approval dates or denied extensions. Extensions shall follow the current approval process. Examples include, but are not limited to spills, permit failures or downed equipment.~~

~~15.18 Service Provider shall manage all waste streams and follow all applicable City, State, and Federal environmental laws. All records, inspections, manifests shall be made available for review. CMTA will help maintain some site permits and shall provide copies to Service Provider, however any permits or inspections not on file with CMTA and that are necessary for the work shall be secured by Service Provider. A biannual update shall be required, and Service Provider shall be responsible to update and submit a regulatory and environmental compliance record.~~

~~15.19 Service Provider shall maintain all protective fire systems. CMTA will provide fire panel annual inspections under a separate contract and Service Provider shall provide access to the fire panels. Service Provider shall maintain fire risers and annual inspections. If such inspections require repairs or changes, Service Provider shall obtain written approval from CMTA before performing the repairs. Service Providers shall maintain all fire extinguishers, annual inspections and have all routine maintenance provided (recharging, testing etc.). This will also include all backflow devices listed with City of Austin, fire hydrant annual testing or other devices as required by city code, state code or federal codes. Fire suppression systems shall be inspected annually per regulations if applicable.~~

15.20 Service Provider shall make every effort to reduce waste, recycle waste, and reduce carbon footprint before disposal. CMTA reserves the right to require the Service Provider to comply with any environmental sustainability management procedures in CMTA's ESMS (Environmental Sustainability Management System) program as developed. ~~Waste sludge shall be treated using approved biological treatment and tested after treatment before disposal. Sludge water shall be treated until it does not show any oil sheen and tested and disposed to sanitary sewers in accordance with applicable laws. Once tested, sludge shall be approved by the landfill, and shall be documented in the biannual report. CMTA reserves the right to approve the process used for sludge treatment and testing used by the Service Provider.~~

15.21 ~~Equipment and tools are subject to inspection and audit at any time by CMTA during the contract. Failure to maintain tools and equipment will be cause for CMTA to put such equipment out of service until repaired. Such action does not relieve Service Provider of responsibilities for service delivery.~~

15.22 **Replacement of Special Hand Tools.** ~~The replacement of an asset such as a special tool that is designed to be a hand tool for specialized work by a mechanic/technician is the responsibility of the Service Provider. The special hand tool is typically identified uniquely by an OEM repair manual.~~

~~However, if all of the following criteria has been met, CMTA will assume responsibility for the cost of its replacement:~~

- ~~• The tool must be replaced as result of it not able to remain in usable condition through preventive maintenance, and the cost of repair is 50% or more of the replacement cost.~~
- ~~• The tool has failed despite on-time preventive maintenance.~~
- ~~• There has not been abuse or misuse by Service Provider employees.~~
- ~~• The retail cost of the tool or equipment, in its unit price, exceeds \$8,000.~~

~~The limit of \$8,000 is per item or occurrence and shall be subject to Service Providers' not to exceed pricing indicated in the most current Exhibit A-Revised-3 Pricing Schedule, depending on each case.~~

~~The Authority shall have final approval of any such replacement. Items so replaced shall become the property of CMTA and shall be the responsibility of the Service Provider to maintain.~~

15.23 **Replacement of Shop Equipment.** ~~Service Provider is responsible for the replacement of shop equipment. However, if all of the following criteria has been met, CMTA will assume responsibility for the cost of its replacement:~~

- ~~• A replacement of an asset / equipment (not a hand tool) that must be replaced as a result of it not being able to remain in usable condition through preventive maintenance.~~
- ~~• The cost of repair is 50% or more of the replacement cost.~~
- ~~• The equipment item is used to perform repair and maintenance functions on buildings or vehicles. The equipment may also be an asset that supports building functions, such as pumps, compressors etc.~~
- ~~• The equipment has failed despite on-time preventive maintenance.~~
- ~~• There has not been abuse or misuse by Service Provider employees.~~
- ~~• The retail cost of the equipment, in its unit price, exceeds \$8,000.~~

~~The limit of \$8,000 is per item or occurrence and shall be subject to Service Providers' not to exceed pricing indicated in Exhibit A-Revised-3 Pricing Schedule, depending on each case.~~

~~15.23.1 The Authority shall have final approval of any such replacement. Items replaced shall become the property of CMTA and shall be the responsibility of the Service Provider to maintain.~~

15.24 ~~Failure of the Service Provider to perform the maintenance of equipment and tools on time will be cause for CMTA to order the equipment to be placed out of service, and necessary repairs to be performed in an expedient manner under CMTA's direction at the Service Provider's expense. Such action shall not relieve the Service Provider of their obligation to perform Services under the Contract.~~

~~15.25 **Storeroom and Parts Inventory.** Service Provider shall manage the storerooms including the procurement and stocking of replacement parts, supplies, and specialized tools, for the building and equipment assigned under this contract. As composition changes through the contract term, Service Provider shall adjust inventory and tooling as needed. Service Provider shall manage the inventory using CMTA's EAM. CMTA reserves the right to utilize limited space in the storeroom for CMTA equipment and supplies, as needed.~~

~~15.25.1 Service Provider shall maintain inventory levels to prevent requests for extensions for repairs based on parts. If inventory is used as the reason for such extensions, the extension will be restricted to 7 days. Repairs not made after the approved extension will result in a \$500 PDC each week until repairs are made.~~

15.26 Service Provider shall provide good housekeeping to all areas of CMTA's property used by the Service Provider, including parking lots. Oil spots shall be spot treated and cleaned following local laws. All areas shall be kept clean of any trash and all drums, containers etc. shall be maintained in orderly fashion **as directed by Capital Metro**. Failure to keep areas cleaned shall result in a \$200 PDC per incident found.

~~15.27 All lighting shall be maintained by Service Provider including, but not limited to, shop lights, parking lot lighting and exit signs. Replacement parts shall be kept on hand to avoid long down times.~~

~~15.28 Service Provider shall maintain all grease traps, if applicable, and have them serviced every ninety (90) calendar days. All drain lines connected to a grease trap shall be cleaned every four months. Service Provider shall clean kitchen hood on an annual basis or as regulations require. Copies of service shall be kept and reported in the biannual reports to CMTA Building Maintenance QA.~~

~~15.29 Service Provider will provide yard re-striping every three years, or as needed. If Service Provider wishes to change any striping they must obtain advance approval from CMTA and provide the agreed upon changes at no cost to CMTA. Service Provider shall keep any compliance striping in approved condition (fire lanes, barriers, walkways etc.), and make any repairs to provide safe and visible stripes.~~

~~15.30 Service Provider shall maintain all fences, gates, motor controllers, barricades, and storm water drain inlets. Service Provider shall maintain spill stations as required for sound environmental safety, following all compliance requirements for employees and buildings. A "spill station" is defined as a central location allowing easy access for emergency cleanup.~~

~~15.31 Service Provider shall maintain all existing signage and replace when needed due to wear or damage. Name plates and room numbers shall be created by the Service Provider.~~

~~15.32 In addition to all PDC assessments included in this Section, the following PDCs will be assessed due to Service Provider's delays, negligence, or unsatisfactory performance:~~

- ~~• In the event CMTA must rent facility space or equipment: \$300.00 PDC per day.~~
- ~~• In the event CMTA must replace or repair equipment or structures: \$600.00 PDC per day and Service Provider will also pay for the cost of replacement or repair.~~

~~15.33 **CMTA Furnished Equipment.** CMTA will provide the Service Provider with the listed on: Attachment – Building, Equipment, PM Program and Tool List.~~

15.34 **Safety Data Sheets (SDS).** The Service Provider shall provide access to Safety Data Sheet (SDS) on all chemicals stored or used by them. Service Provider shall follow all local, federal and state requirements on storing and using chemicals, products or waste.

## **16. VEHICLES**

16.1 **Vehicle Use and Responsibilities.** The Service Provider shall not use or permit the use of vehicles in a negligent or improper manner or in violation of any law, or to void any insurance covering the vehicles, or permit the vehicles to become subject to any lien, charge or encumbrance. The Service Provider shall defend and hold CMTA harmless from all fines, forfeitures or penalties for traffic or parking violations or for the violation of any other

statute, law, ordinance, rule or regulation of any duly constituted public authority. The Service Provider shall bear all risks of damage or loss of the vehicles, or any portions of the vehicles, not covered by insurance. ~~All replacements, repairs or substitutions of parts or equipment shall be at the cost and expense of the Service Provider and shall be accessions to the vehicles. The Service Provider, always and at the Service Provider's expense, shall keep the vehicles in good working order, condition, and repair, with allowable wear and tear excepted. The Service Provider shall cause its employees and agents to take all steps to safeguard the vehicles and to cooperate with CMTA in effecting recovery from any person or persons liable for loss or damage to any vehicle.~~

**16.2 Fleet Composition.** CMTA shall provide a vehicle mix of accessible cutaway vans, transit buses, and over-the-road buses to be operated by the Service Provider. A detailed list of the current fleet is in Attachment - Fleet Inventory. CMTA reserves the right to change the composition of the fleet at any time. The Service Provider shall be required to procure all support vehicles as needed and as outlined in the "Service Provider Non-Revenue Vehicle Requirements" section below.

**16.2.1 Emerging Technology Buses.** CMTA ~~has initiated~~ **is pursuing** the implementation of battery electric buses and **will continue to pursue** the testing and implementation of other emerging technologies such as autonomous and semi-autonomous vehicles, fast charge battery systems, on route charging of battery electric buses, hydrogen range extenders, and so on. The service provider shall facilitate the adoption of emerging technologies by actively participating in **Capital Metro's** programs designed to insure the success of these new kinds of buses, to include for example: participating in CMTA-provided basic and specialized training, the formation of dedicated maintenance teams, the collection and reporting of performance data, the participation in routine meetings, and the development and implementation of new procedures, processes and protocols necessary to ensure the safety and reliability of the new technology buses. These changes to the fleet will directly and indirectly affect all areas of the operation, maintenance and servicing of CMTA's fleet. ~~CMTA anticipates the delivery of approximately forty (40) battery electric transit buses between the fiscal years of 2020 and 2024. In advance of such implementation, CMTA will work collaboratively with Service Provider to develop the scope for such an effort. Price for staff training and necessary support equipment negotiated at the time, using the pricing details provided in the most current Exhibit A-Revised-4 as the basis of calculating the incremental cost increase for these items.~~

~~16.2.1.1 Reimbursement for Emerging Technology Activity. – CMTA has placed orders for battery electric buses and chargers to be delivered to the **Service Provider** service provider. These will become a standard part of the transit bus fleet, used to provide daily service. In preparation for operating and maintaining this Emerging Technology, as discussed in Exhibit F, Revised-6, Section 16.2.1, CMTA will provide assistance with staff training and necessary support equipment. This assistance will be in the form of reimbursements for approved expenses.~~

~~16.2.1.2 Term of Reimbursable Actions. – Requests for reimbursements may be submitted for any qualified reimbursable activity that occurs throughout the base period of the contract. Reimbursable requests may be submitted for training Tools, equipment, or parts that were purchased prior to the execution of modification 2, however, are subject to review and approval by CMTA. Authorization for reimbursables shall be obtained prior to incurring the cost.~~

~~16.2.1.3 Special Staff Training. – The Service Provider shall be reimbursed for CMTA-approved specialized training of staff, including bus operators, vehicle mechanics, building technicians, service island attendants, supervisors, and trainers. Training will be reimbursed on a per student, per class, hourly basis at the blended hourly rates detailed in Mod #2. Students must be present and attend the whole class for reimbursement to be paid. When an inhouse trainer teaches the class, the cost of the trainer will be reimbursed. The hourly rates shall include all incremental costs associated with the training, including student wages, overhead, record keeping, course preparation, course materials, supplies, set up time, and class oversight. The Service Provider shall seek authorization from CMTA prior to scheduling or hosting reimbursable training classes by submitting a request to include class description, schedule, agenda, class roster, and total reimbursable cost. CMTA will review the submitted information and decide if the class is eligible for reimbursement. Failure to obtain prior approval in writing may result in non-reimbursement.~~

~~16.2.1.4 Special Equipment, Tools, and Spare Parts. – The Service Provider shall be reimbursed the pure pass-through cost for CMTA-approved specialized equipment and tools, and for specialized spare~~

~~parts to be kept in inventory. The pure-pass-through cost shall be limited to cost of the item and associated freight and shall not include handling charges or mark-up by the Service Provider. Specialized equipment and tools are those necessary for the diagnosis and repair specifically of the emerging technology on the buses and the chargers. Only equipment and tools that are necessary and unique to the emerging technology will be eligible, and the use of these reimbursed items shall be limited to maintenance activities on the emerging technology. Spare Parts specific to the emerging technology and which have capital costs over \$500.00 per item, or lead times which exceed two weeks, may be eligible for reimbursement. Spare Parts are limited to those that are unique to the emerging technology, such as traction motors, voltage inverters, electrical contractors, and so on, and does not include items that are typically found on traditional technology buses, such as body panels, windows, door motors, and so on. Reimbursed spare parts shall be kept in inventory and shall be replaced in inventory upon use. The spare parts shall remain the property of CMTA and shall be returned to CMTA upon CMTA's request. The Service Provider shall seek authorization from CMTA prior to making any purchase of equipment, tool, or spare part by submitting a detailed description, a vendor quote, the intended purchasing source, a plan for keeping and maintaining, and the total reimbursable cost. CMTA will review the submitted information and decide if the purchase is eligible for reimbursement. Failure to obtain prior approval in writing may result in non-reimbursement.~~

~~16.2.1.5 Emerging Technology Activity Documentation. In addition to existing contractual requirements for record keeping, the Service Provider shall keep a detailed record of staff trained in Emerging Technologies, and of all special equipment, tools and spare parts purchased.~~

### 16.3 Non-Revenue Vehicle (NRV) Requirements

16.3.1 **Support Fleet Inventory.** Service Provider shall supply all NRVs for Street Supervision, Vehicle Operator Relief, Maintenance Service calls, and other use by Service Provider's staff. The vehicles shall be new, within one model year when placed in service, and must not remain in service after seven (7) years from date of in servicing. CMTA does not intend to assume ownership of the NRV's procured by the Service Provider at the end of the Contract.

16.3.2 **Support Fleet Branding.** All NRVs provided under this Contract shall have a white exterior unless a change is approved by CMTA to ensure uniformity of appearance. Vehicles shall be decaled at the cost of the Service Provider with CMTA approved branding as outlined in the CMTA policies and procedures and defined in Attachment – Graphic **Identity** and Fleet Branding Policy. ~~A logo identifying the Service Provider is allowed on non-revenue vehicles, but the design must be approved in advance by CMTA.~~ Branding must receive final approval from the CMTA Marketing Department prior to installation. Upon termination of the Contract, **or retirement of a vehicle**, the Service Provider must remove all CMTA related branding and numbering at the Service Provider's expense.

16.3.3 **Supervisor Vehicle Configuration.** Street Supervisor vehicles shall be equipped with a full-size light bar on the roof, a biohazard cleanup kit, first aid kit, fire extinguisher, warning triangles, and be configured to safely transport from two (2) to six (6) passengers. At least two (2) of the Street Supervisor vehicles must be wheelchair accessible. **At least two (2) vehicles must be equipped with equipment to detect low hanging limbs and other clearance impediments.**

16.3.4 **Relief Vehicle Configuration.** Vehicle Operator Relief vehicles shall be equipped with a fire extinguisher, and warning triangles.

16.3.5 **Maintenance Vehicle Configuration.** Maintenance Service vehicles shall be equipped with a full-size light bar, fire extinguisher, and warning triangles. **At least one vehicle at each garage must be equipped with a spill response kit and equipment.**

16.3.6 **Staff Vehicle Configuration.** Staff vehicles shall be equipped with fire extinguisher and warning triangles.

16.3.7 **Non-Revenue Vehicle Maintenance.** Service Provider shall be responsible for all maintenance and repair of non-revenue vehicles supplied by Service Provider to ensure they are kept safe, reliable and clean at the

direction of CMTA. CMTA reserves the right to review maintenance and safety records and practices of all support vehicles and to remove them from service as determined necessary by CMTA.

**16.3.8 Non-Revenue Vehicle Usage.** Non-Revenue Vehicles shall not be used for regular revenue service, but Street Supervisor vehicles may be used for extraordinary service to transport passengers.

#### 16.4 Revenue Vehicles Requirements

**16.4.1 Revenue Fleet Inventory.** CMTA shall supply all revenue vehicles required to meet revenue service.

**16.4.2 Revenue Vehicle Usage.** The Service Provider shall use the vehicles supplied by CMTA as required under this Contract and consistent with terms and conditions outlined in this Contract. CMTA supplied revenue vehicles shall only be used for the transportation of CMTA customers, unless specifically directed to do so otherwise by CMTA.

**16.4.3 Fleet Spare Ratio.** CMTA will provide an adequate number of vehicles to the Service Provider to assure a **spare ratio of at least eighteen percent (18%) but not exceeding** twenty percent (20%). ~~spare ratio (+/- two percent).~~ The Service Provider's spare ratio is the number of spare vehicles divided by vehicles required for annual maximum service, across the fleet as a whole.

**16.4.4 Fleet Replacement Schedule.** Cutaways are kept for seven (7) years, transit buses are kept for fourteen (14) years, and over-the-road buses are kept for sixteen (16) years. The exact window for replacement is one year. For example, a cutaway van will be replaced when it is between 7 years and 1 day old and 7 years and 364 days old.

~~16.4.4.1 At the start of the contract, thirty three (33) transit buses and six (6) commuter coaches will remain in service beyond their scheduled life. The vehicles transit buses will be replaced in fiscal year 2020 which is 5 years beyond the plan, and the commuter coaches will be replaced in FY 2021 which is 2 years beyond the plan. The scheduled engine and transmission replacements on these vehicles will be reimbursed by CMTA on a pure pass through basis. The Service Provider will be required to support CMTA in monitoring the health of these components and CMTA will direct the Service Provider if and when to replace these components.~~

**16.4.5 Fleet Changes.** CMTA may assign additional vehicles at any time during the term of this Contract by giving ten (10) days' written notice to the Service Provider of CMTA's intention to assign additional vehicles. CMTA may demand redelivery of all CMTA vehicles, or any number thereof, at any time prior to the expiration of this Contract by giving ten (10) days' written notice to the Service Provider of CMTA's intention to resume possession of the vehicles. CMTA shall be responsible for the selection of vehicles to be assigned and returned.

**16.4.6 Vehicle Storage.** Service Providers shall ensure that vehicles used under this Contract are stored on the provided storage yard while not in service.

~~16.4.7 AM/FM Radios. Service Providers shall ensure vehicle AM/FM radios are disabled on all revenue vehicles, if applicable.~~

#### 16.5 Delivery of CMTA Vehicles to Service Provider

~~16.5.1 Vehicle Delivery Overview. Upon commencement of Contract, or as additional vehicles are assigned to the Service Provider, the Service Provider shall receive each CMTA vehicle after the vehicle has been thoroughly inspected by both CMTA and the Service Provider jointly, except for newly built vehicles being delivered from the factory which will be signed off by CMTA at the factory and separately inspected by the Service Provider upon delivery. Joint inspections, when required, shall occur no more than sixty (60) **ninety (90)** days prior to the date of vehicle delivery, and attendance by Service Provider shall be mandatory. The Service Provider shall be required to sign-off on inspection documentation for each vehicle. The Service Provider is responsible for taking an initial photo inventory of the vehicles and shall supply digital photographs for each vehicle inspected. CMTA reserves the right to engage a third party to assist in vehicle inspections, at the expense of CMTA.~~

16.5.2 **Vehicle Warranty.** The Service Provider acknowledges that the vehicles are provided to the Service Provider on an "as is" basis and that CMTA makes no warranties regarding past vehicle maintenance or the vehicles, including without limitation the body, engine, transmission, drive train, other mechanical parts, electrical systems, any accessories and all options on the vehicles.

16.5.3 **In Processing Responsibility.** The Service Provider shall be responsible for receiving and in processing of vehicles, whether at the commencement of the Contract, as assigned during the course of the contract, or as new buses are delivered from the bus OEM, prior to putting the vehicle into revenue service. Receiving and in processing tasks include but are not limited to transferring or installation of in-lifecycle equipment such as onboard fare collection equipment, re-keying of fare collection equipment, transfer or install of CAD/AVL system and radio, performing an in-service PM, installation of gate transponder, installation of inertia-based camera system, changing advertising placards, and completing other make ready tasks. The vehicles must be made ready within two (2) weeks of delivery, and at a rate of five (5) per week, minimum if available.

16.5.4 **Delivery Condition.** Revenue vehicles provided will meet the following criteria:

- Have no **Body Damage** ~~Body Damage~~
- Not be out of service
- Not be late for any scheduled maintenance activity
- ~~Have at least 500 miles from being due for a preventative maintenance inspection (PMI)~~
- ~~Be fully fueled after its most recent operation in service~~
- Shall be in "like-new" condition minus allowable wear and tear as described in Attachment - Definition of Like-New Minus Allowable Wear and Tear.

~~16.5.5 **Post-Delivery Repairs.** Any vehicle delivered that does not meet the above criteria as shown on the joint inspection report shall be repaired by the Service Provider at CMTA expense during or prior to the next scheduled PMI, not to exceed 120 days after delivery. CMTA shall reimburse actual parts cost and labor rates as provided in the most current Exhibit A Revised 3, and actual cost of repairs performed by CMTA approved vendors as needed. After the 120 day period, all vehicles shall be deemed accepted by the Service Provider as delivered.~~

16.5.6 **Receiving New Vehicles.** The Service Provider shall be responsible for receiving new vehicles, transferring or installation of in-lifecycle equipment including but not limited to onboard fare collection equipment, CAD/AVL and radio equipment to the new vehicle from the old vehicle, performing an in-service PM, and complete other make ready tasks, prior to putting the vehicle into revenue service. The vehicles must be made ready within two (2) weeks of delivery, and at a rate of five (5) per week, minimum if available.

## 16.6 Return Delivery of CMTA Vehicles to CMTA

~~16.6.1 **Vehicle Return Overview.** Upon expiration of the term, or the earlier termination of this Contract, or as required by CMTA, the Service Provider shall deliver vehicles to CMTA by releasing the vehicles to CMTA or CMTA's agent or by transporting or shipping the vehicles as CMTA directs. ~~The Service Provider shall return each CMTA vehicle after the vehicle has been thoroughly inspected by both CMTA and the Service Provider jointly. Joint inspections shall occur no more than sixty (60) ~~ninety (90)~~ days prior to the date of vehicle return, and attendance by Service Provider shall be mandatory. The Service Provider shall be required to sign off on inspection documentation for each vehicle. The Service Provider shall be responsible for taking a final photo inventory of the vehicles and shall supply digital photographs for each vehicle inspected. CMTA reserves the right to engage a third party to assist in vehicle inspections, at the expense of CMTA.~~~~

16.6.2 **Out Processing Responsibility.** The Service Provider shall be responsible for out processing tasks as directed by CMTA which include but are not limited to removal or reconfiguration of fare collection equipment (including re-key), radio, gate transponder, inertia-based camera system, and advertising placards. Service Provider has until the scheduled date of return to repair any defects identified during the pre-return vehicle inspections.

16.6.3 **Return Condition.** The criteria for return of the vehicles shall include:

- Have no Body Damage
- Not be out of service
- Not be late for any scheduled maintenance activity
- ~~Have at least 500 miles from being due for a PMI~~
- ~~Be fully fueled after its most recent operation in service~~
- Shall be in "like-new" condition minus allowable wear and tear **with a minimum score of Acceptable** as described in Attachment - Definition of Like-New Minus Allowable Wear and Tear

~~16.6.4 **Post-Return Repairs.** Any vehicle returned that does not meet the above criteria shall be repaired by CMTA at the Service Provider's expense. The Service Provider shall be responsible for actual costs incurred by CMTA to make such repairs.~~

16.6.5 **Retiring Old Vehicles.** The Service Provider shall be responsible for retiring vehicles at end of vehicle life. This includes removing and returning to CMTA inventory, equipment from the vehicles which has not reached the end of equipment life, including but not limited to Radio, Camera System, CAD/AVL, APC, OBV, Fare-box, Bike Rack, S-1 Gard, Literature Rack, Message Board, Passenger Wi-Fi, Cellular Router, and Event Data Recorder. This retirement responsibility also includes removing CMTA logos from interior and exterior of bus, completing a disposal assessment form, and transporting the vehicle to the designated off-site disposal parking area. See Attachment - Procedure for Retiring a Vehicle Asset. Retiring buses must **be safe and functional and** have tires with **at least** minimum legal tread depth, ~~only.~~

16.6.6 **Leased Vehicles.** Service Provider may be required to acquire additional revenue vehicles through a lease agreement or a purchase along with any ancillary required units to support the implementation of new or additional services. Should CMTA opt to pursue such an arrangement, required vehicle specifications will be provided by CMTA. Pricing for such leased or purchased vehicles will be negotiated at the time and documented through a modification to this contract. Additionally, these vehicles can be but not limited to gas, diesel, electric, CNG, hybrid, autonomous.

## **17. VEHICLE MAINTENANCE**

17.1 **Vehicle Maintenance Responsibility.** The Service Provider shall be responsible for **performing all Capital Metro-directed** maintenance and repair of all vehicles and all on board equipment systems (revenue and non-revenue), to ensure they are kept in a safe, reliable and clean condition. Maintenance shall be performed to original equipment manufacturer (OEM) standards and to CMTA's written instructions or specifications. Vehicle maintenance shall be performed in a timely manner. The Service Provider shall maintain records for all work performed. CMTA shall **direct and** closely oversee **all the** maintenance activities.

~~17.2 **CMTA Maintenance Program.** CMTA shall provide a well-defined and comprehensive maintenance program by which vehicles shall be maintained. See Attachment - CMTA Preventative Maintenance Program. The Maintenance Program shall not be compromised or reduced, as it is essential for the continued service life of the vehicles. It is to be considered as a minimum amount of effort required for fleet vehicles at their present age and mileage. The maintenance program includes, but is not limited to routine requirements for:~~

- ~~Preventive Maintenance Inspection~~
- ~~Preventive (Repetitive) Maintenance~~
- ~~Body Inspection~~
- ~~Fire suppression system inspection~~
- ~~Texas State inspection and registration renewal~~
- ~~Wheelchair ramp / lift inspection~~
- ~~HVAC inspection~~
- ~~Electronics Systems Inspection~~

~~17.3 **Service Provider Maintenance Plan.** The Service Provider shall submit a Vehicle Maintenance Plan that describes how the Service Provider will meet the requirements of the CMTA Maintenance Program. This plan shall include detailed description of work that the Service Provider will undertake to ensure they meet the requirements of the Program. The Vehicle Maintenance Plan must be approved by CMTA prior to the starting of service and reviewed annually. The Plan shall include, but not be limited to the following elements:~~

- ~~● Preventive Maintenance Inspection and Repair~~
- ~~● Corrective Repairs~~
- ~~● Pre-Trip and Post-Trip Inspection Repairs~~
- ~~● Road Call Handling~~
- ~~● Body Work Repairs~~
- ~~● Engine and Transmission Rebuilds~~
- ~~● Vehicle Cleanliness (include shampoo, disinfecting, pest treatment)~~
- ~~● Fuel Handling (include ordering, receiving, dispensing, and reconciliation. See Attachment — Fueling Procedures.~~
- ~~● Tire Maintenance~~
- ~~● In Processing / Out Processing of Vehicles~~
- ~~● Warranty Administration~~
- ~~● Quality Assurance / Quality Control Plan~~
- ~~● Maintenance Data Handling, Analysis, Trending and Decision Making~~
- ~~● Maintenance Training~~
- ~~● Diagnostic Tools and Software~~
- ~~● Shop Safety and Cleanliness~~
- ~~● Parts Inventory Management~~
- ~~● Non-Revenue Vehicle Maintenance~~
- ~~● State Inspection and Registration Management~~
- ~~● Fluid Analysis Plan~~
- ~~● Mobile Technology Management Plan~~

17.4 **Timely Maintenance.** The Service Provider shall perform all maintenance in a timely fashion. Service Provider shall maintain buses so that no repair requires the bus to be out of service for more than thirty (30) days.

17.5 **Maintenance Staff Qualifications.** ~~The Service Provider shall perform all or part of the work using Service Provider’s personnel, or may utilize subcontractor(s) to perform all or part of the work. In all cases, the Service Provider is responsible for assuring that the work is performed by qualified personnel and to CMTA standards. If third-party work is necessary to facilitate repairs, such work will be managed by Capital Metro.~~

17.6 **Vehicle Registration and State Inspection.** ~~The Service Provider Capital Metro shall be responsible for managing vehicle registration / license plate renewals, including application for registration and license plate renewal, retrieval of registration stickers and license plates from the Tax Office. The Service Provider shall be responsible for to include timely completion of the state inspection, the application for the registration and license plate renewal, retrieval of registration stickers and license plates from the Tax Office, and installation of registration stickers and license plates. Costs associated with such renewals shall be borne by Service Provider. No vehicle shall be allowed in service with an expired registration or past due for annual safety inspection. CMTA shall be responsible for initial registration of new vehicles.~~

17.7 **Storeroom and Parts Inventory.** ~~The Service Provider shall Capital Metro will manage the storeroom including the procurement and stocking of replacement parts, supplies, and specialized tools, for the fleets assigned under this contract. As fleet composition changes through the Contract. Service Provider shall adjust inventory and tooling as needed. Service Provider clerks shall manage distribution of the inventory using CMTA’s EAM. CMTA reserves the right to utilize limited space in the storeroom for CMTA equipment and supplies, as needed.~~

17.8 **Shipping and Receiving.** Service Provider clerks shall be responsible for managing the receiving dock, including the administration of shipping and receiving tasks for CMTA. The receiving dock is the main delivery point for CMTA business.

17.9 **Maintenance Campaigns.** The Service Provider shall perform maintenance campaigns as needed directed by Capital Metro to satisfy OEM vendor bulletins, recalls, OEM vehicle upgrades, and to satisfy the recommendations of the Service Provider's and Capital Metro's own predictive maintenance.

17.10 **Shop Cleanliness.** The Service Provider shall keep all work areas clean and free of clutter, dirt and grease. After each repair, the technician must ensure the general work area they have been occupying including the floor and work tables are clean of debris, oil, grease, shop supplies and tools. The service island floor and work areas should also be clean and be without any debris, oil, grease, shop supplies and tools after each major fueling cycle.

17.11 **OEM Configuration.** The Service Provider shall maintain all vehicles in original configuration as delivered from the original equipment manufacturer (OEM) and with modifications as specified by CMTA. Only OEM or better replacement parts shall be used. Any change away from OEM configuration or use of non-OEM part shall require prior written approval from CMTA before being implemented. CMTA may direct the service provider to make configuration changes to vehicles, and CMTA will reimburse the Service Provider for actual labor at the agreed upon rate in Exhibit A-Revised-5 for configuration changes.

17.12 **Cannibalization.** No vehicle shall be cannibalized for parts. No vehicle shall be repaired using parts taken from another vehicle without prior written approval of Capital Metro.

17.13 **Failure to Maintain.** Failure by the Service Provider to maintain CMTA furnished vehicles as defined by the manufacturer's technical manual and CMTA written instructions will result in the vehicles being repaired by a CMTA-selected third party at Service Provider's expense. Such action does not relieve the Service Provider's obligation to provide service under the terms of the Contract.

17.14 **Hubodometers.** Service Provider shall maintain hubodometers which shall be replaced immediately when defective.

~~17.15 **Body Work.** Service Provider's Vehicle Maintenance Plan must include a process for body inspection and repair that allows only minor body damage to accumulate. The process must dictate that all body damage, no matter the severity, is repaired on every unit at least once every six months. Per section 17.3, The Vehicle Maintenance Plan must be approved by CMTA prior to the starting of service and reviewed annually.~~

~~17.16 **Diagnostic Tools.** The Service Provider shall pay for and maintain all diagnostic tools, including computers, software and licenses necessary to properly diagnose and maintain vehicles.~~

17.17 **Warranties.** Capital Metro shall administer vehicle warranties and shall receive all monies and credits. Service Provider shall be responsible for supporting warranty recovery and shall not put into peril any warranties that exist on a vehicle/component from the OEM or after-market supplier. ~~The Service Provider shall be responsible for all warranty administration and shall have a system for aggressively identifying warranty claims, recording claims, and enforcing claims against the manufacturers. Monies and credits received by the Service Provider shall be the property of the Service Provider. Work performed by Service Provider or sub-contractors shall have the same warranty as provided by manufacturers or certified rebuilders. If a~~ warranty is lost due to negligence, Service Provider shall be required to purchase or compensate CMTA for the remainder of the warranty from the OEM.

17.18 **Advertising Requirements.** The Service Provider shall allow advertising vendors, contracted by CMTA or its contractors, access to all buses to install and remove advertising material on the interior and exterior of the vehicles. Service Provider shall be responsible for making buses available, cleaning the vehicle in preparation for installation, and, in cases of inclement weather providing a bay. The Service Provider shall be responsible for inspecting the vehicle prior to installation and after removal of advertising to report any damage. CMTA shall be responsible for determining if repairs are needed and when authorized will assume the cost of those repairs. Service Provider shall be responsible for replacement of advertising material damaged in vehicle accidents. Service Provider shall not install any advertising that is not authorized by CMTA.

### 17.19 Preventive Maintenance Inspections (PMI) and Preventive Maintenance Repetitives (PMR)

17.19.1 **PMI and PMR Overview.** The PMI and PMR form the backbone of CMTA's Maintenance Program. The scope of the preventative maintenance program for CMTA vehicles is extensive and thorough. It shall not be compromised or reduced, as it is essential for the continued service life of the vehicles, **and to provide safe and reliable service.** It is to be considered as a minimum amount of effort required for vehicles at their present age and mileage. No modifications, **adjustments, or omissions** to the PMI or PMR are to be made without written approval from CMTA.

17.19.2 **PMI Timeliness.** Revenue vehicles shall not be placed in revenue service if they are past due for a PM Inspection. ~~Any vehicle that is placed into service while past due for a PMI/PMR will result in a \$1,000 PDC per vehicle per day.~~

17.19.3 **PMI Repairs Schedule.** All repairs required from the PMI are to be completed prior to the vehicle being returned to revenue service. Any exceptions must be approved in advance by CMTA and cannot affect safety and reliability. Failure to adhere to this schedule shall result in a vehicle being removed from service by CMTA. Such action does not relieve Service Provider's obligation to provide service under the terms of the Contract.

17.19.4 **Steam Cleaning.** Each time a revenue vehicle enters a shop for a PMI, the engine, transmission, radiator and condensers must be thoroughly cleaned of accumulated dirt and debris.

17.19.5 **Oil Analysis.** The Service Provider shall be responsible for **performing the** sampling and analysis of engine and transmission oil as **directed by Capital Metro.** ~~part of the maintenance program. The Service Provider shall have a plan in place to analyze the results and take appropriate action to protect the asset. The minimum requirements for the oil analysis plan are outlined in Attachment — Oil Analysis. Copies of the oil analysis reports shall be made available to CMTA.~~

17.19.6 **OEM Severe Service Requirement.** The Service Provider is also responsible for knowing, understanding, and following the OEM's maintenance requirements with consideration to the duty cycle that the vehicle is operated on. Where a manufacturer identifies maintenance intervals specific for "severe service," that "severe service" is to be used. This applies to both new and existing vehicles in the Service Provider's fleet.

17.19.7 **Records Accuracy.** The Service Provider shall maintain accurate records and proof of inspection and repetitive tasks performed, including inspection measurements taken, defects found, and the corrective repairs performed.

### 17.20 Mobile Technology Systems Maintenance

17.20.1 **Mobile Technology Systems.** Service Provider shall be responsible for routine inspection and maintenance of all on board equipment installed on the vehicle by OEM or as added by CMTA.

17.20.2 **Maintenance.** Service Provider shall inspect and maintain equipment in accordance with OEM's recommendations and as directed by CMTA. Service Provider shall maintain equipment spares, and testing equipment as supplied **and directed** by CMTA.

17.20.3 **Patches.** Service Provider shall be required to participate in testing of patches and fixes of the system to ensure continued operability and reliability of the technology system.

~~17.20.4 **Health Monitoring.** When available, Service Provider shall utilize health monitoring and telemetry systems daily to ensure a proactive approach to vehicle and system maintenance and reliability. If issues are discovered, the Service Provider shall take immediate action to resolve issues discovered.~~

~~17.20.5 **Spare Components.** CMTA shall provide a limited quantity of spare components for agency specific on-board systems. The spares will be issued to the Service Provider at the start of the Contract and an equivalent quantity of fully functional spares shall be returned at Contract termination. The Service Provider shall replace any equipment lost, stolen or damaged beyond repair at the replacement market price. Service Provider shall be responsible for maintaining additional spare components as needed to ensure equipment availability and mitigate downtime.~~

17.20.6 **Warranty and RMA Process.** CMTA shall provide a limited warranty for **technology systems such as, but not limited to,** CAD/AVL system major components, Passenger Wi-Fi router, and Cellular router. The Service Provider shall utilize the Return Material Authorization (RMA) process, as established by CMTA, for repair

of these components. ~~Service Provider~~ **Capital Metro** shall be responsible for maintenance cost of all other systems and system components that are not under a CMTA-provided warranty.

17.20.7 **New Technology.** As CMTA implements new technology and upgrades existing systems, Service Provider shall perform as an active partner in supporting the procurement, testing, configuring, implementing, and maintaining these systems. This activity includes but is not limited to document review, meeting attendance, and providing appropriate resources in a timely manner to meet project schedules. Such requirements apply to systems including, but not limited to, CAD/AVL, Trapeze, and EAM. Service Provider shall be responsible for providing quality assurance and quality control of any vehicle configuration changes, including work performed by third parties.

17.20.8 **Electronics Training.** The Service Provider shall provide technicians to repair the on-board electronic systems. **The technicians will be required to complete established training hours through Capital Metro's Operations Training Academy.**

17.20.9 **Technology Equipment.** The current equipment and systems are listed below and CMTA reserves the right to remove or add to the list, as new systems or technology become available.

- Destination and Block Sign System
- CAD/AVL System
- Passenger Displays
- Annunciator System
- Stop Request and Lift Request
- Automatic Passenger Counters
- Revenue Collection Systems
- Mobile Ticketing System
- Customer Wi-Fi Router System
- Cellular Communication System
- Telemetry System
- Camera System
- Radio System
- DriveCam, Mobileye, and Zonar systems

17.20.10 **Optional Technology Changes.** If directed by CMTA, Service Provider is required to add, delete, upgrade or otherwise change mobile technology equipment installed on vehicles. Should CMTA decide to issue such a directive, CMTA will work collaboratively with Service Provider to develop the scope for such an effort. Price for the effort will be negotiated at the time, using the pricing details provided in the most current Exhibit A-Revised-3 as the basis of calculating the incremental cost increase for the directed change. DriveCam, Mobileye, and Zonar systems will not be deleted without the addition of replacement systems that provide equivalent or superior functionality.

## 17.21 Radio System

17.21.1 **Radio System.** The Service Provider will be furnished with a radio system equal to or compatible with CMTA's current radio system. The Service Provider shall ~~support~~ **be responsible for all the ongoing** maintenance ~~and maintenance costs~~ of the radio system. All radio equipment provided under this Contract shall remain the property of CMTA and returned to CMTA at the end of the Contract term in working condition.

17.21.2 **Radio Assignments.** One mobile radio will be assigned per bus and one per supervisor vehicle. Mobile/handheld radios will be provided for supervisors and managers. CMTA shall provide a limited number of spares to ensure communication reliability. ~~Two (2)~~ Maestro consoles will be provided for Service Provider use at a location determined by CMTA.

17.21.3 **Radio Installation.** Initial installation and final removal of radio systems in support vehicles will be performed by Lower Colorado River Authority (LCRA) and cost is the responsibility of CMTA. ~~Radio installation for support vehicles that have been moved or swapped are at the cost of the Service Provider after initial installation.~~

Installation and removal of radio systems in revenue vehicles is considered routine maintenance ~~and cost~~ is the responsibility of the Service Provider. Installation and removal of consoles is the responsibility of CMTA.

17.21.4 **Radio Ancillary Equipment.** Replacement batteries, clips, microphones, receivers and other ancillary equipment required or desired for use under this Contract, shall be procured through LCRA and shall be the responsibility of the Service Provider. The Service Provider shall replace any equipment lost, stolen or damaged beyond repair at the replacement market price.

17.21.5 **Radio Maintenance.** ~~The Service Provider~~ **Capital Metro** shall be responsible for all **routine** maintenance and **routine** maintenance costs of the radio system. Radio component repair (i.e. RF Deck, Control Head, Portable Radios, etc.) shall be performed by LCRA, ~~at a rate per hour for labor, plus the cost of parts. CMTA will deduct radio maintenance costs incurred, from the monthly Service Provider invoice. The current regular hourly labor rate is \$92.50, but this rate is subject to change in the future if LCRA changes the rate.~~

17.21.6 **Radio Reliability.** The Service Provider shall ensure that radio communications are operational for all Vehicle Operators in revenue service, all Transportation Supervisors on duty, and for the Service Provider's Radio Dispatch.

17.21.7 **Radio Airtime.** CMTA, at CMTA's expense, will provide airtime required for the radio system to operate.

## 17.22 Revenue Collection Systems

17.22.1 **Revenue Collection Systems.** CMTA shall supply the fareboxes and all related revenue collection equipment, including Vaults and Probing Equipment. **Capital Metro shall supply parts and direct the Service Provider in proper maintenance of this equipment.** ~~Maintenance of and spare parts for this equipment is the responsibility of the Service Provider.~~

17.22.2 **Revenue System Maintenance.** The Service Provider shall maintain the fare and revenue collection equipment **at the direction of Capital Metro**, including but not limited to fare boxes, probes, vaults, etc., to the manufacturer's specification and as directed by CMTA. ~~The Service Provider~~ **Capital Metro** will be responsible for the replacement parts as needed.

17.22.3 **Revenue System Key Control.** The Service Provider shall be responsible for specific revenue collection equipment keys and shall be responsible for all key control. Service Provider shall be responsible cost of parts and labor to re-key equipment, if keys are lost or otherwise unaccounted for.

17.22.4 **Revenue System Media.** CMTA shall provide fare media and fare signage. The Service Provider shall be responsible for timely **communication regarding** ~~ordering of~~ media **needed** from CMTA, restocking fareboxes with media, and changing signage as directed by CMTA.

17.22.5 **Probing and Vaulting.** The Service Provider shall be responsible for daily Farebox Probing and Cash Box Vaulting. All buses used in service, including ~~Q-buses~~ **RADs**, must be probed and vaulted prior to parking the unit. CMTA will provide and maintain the backend system (a.k.a. garage system or garage machine) to support probing and vaulting.

17.22.6 **Fare Collection Procedures.** The Service Provider shall follow CMTA procedures related to fare collection, including: fare collection by bus operators; probing area procedures and security measures; equipment maintenance; key control; and storage of revenue collection equipment.

17.22.7 **CARTS Fare Collection Equipment Servicing.** ~~The service provider~~ **Service Provider** shall provide revenue collection system probing, dumping, preventive maintenance, ad hoc repairs, and replenishing of card stock in CARTS buses, in a quantity of up to 20 buses. The service provider shall provide all parts and labor. The service provider shall work cooperatively with CARTS to schedule buses in for routine fare system preventive maintenance and inspections **as directed by Capital Metro**. CARTS will deliver and retrieve vehicles to the service provider's location.

## 17.23 Security Camera System

17.23.1 **Security Camera Systems.** CMTA shall supply the Security Camera Systems on revenue vehicles. Service Providers shall be responsible for all maintenance of this equipment **as directed by Capital Metro**.

~~17.23.2 **Docking Station.** CMTA shall provide a dedicated PC workstation for the purposes of Service Provider reviewing and copying footage from removable hard drives on legacy camera systems. Service Provider shall~~

be responsible for regular maintenance of the equipment and keeping it in good working order. This equipment shall remain CMTA property and shall be returned to CMTA at the end of the Contract.

**17.23.3 Video Request and Downloads.** Service Provider shall be responsible for the download of video footage. CMTA video footage requests include, but not be limited to, accident, complaint, and security incident footage. Service Provider shall provide requested footage within twenty-four (24) hours. Service Provider must also comply with requests for immediate retrieval of footage, at CMTA's direction, when items are urgent. CMTA reserves the right to remove the video storage device (HDD, SSD, etc.) on any bus, vehicle, or docking station and replace with equivalent.

## 17.24 Tires

**17.24.1 Tire Lease.** ~~The Service Provider must~~ **Capital Metro will** supply tires on a mileage lease basis during the term of the Contract, ~~such that at the end of the contract, CMTA will be able to take over the tires on a mileage run-out basis for a subsequent Service Provider/contract term. The mileage lease Contract term shall end concurrent with the end of this Contract, with the run-out period commencing with the end of the Contract. Service Provider shall ensure that CMTA can use the runout provision of the tire lease at the end of Service Provider's term. The Service Provider shall not own the tires at the end of the Contract.~~

**17.24.2 Replacement Tires.** Replacement tires shall be OEM quality or a grade better and ~~must~~ **will** be provided by **Capital Metro** Service Provider. Recaps or retreads shall not be permitted.

**17.24.3 Tire Maintenance Standard.** Tires shall be maintained **by Service Provider, as directed by Capital Metro** ~~to the standard set forth in the CMTA maintenance program.~~ At all times, tire tread depth shall be maintained to at least 4/32" for all tires. Tire air pressures shall be maintained to values specific for each bus type and a tire with an air pressure that is more than ten (10) psi below the specification shall be considered as a flat. Tires that do not meet the above criteria will be cause for the bus to be removed from service.

**17.24.4 New Bus Tires.** ~~Service Provider~~ **Capital Metro** shall provide tires for new OEM bus builds and shall assume responsibility for tires of any bus assigned to the service provider.

## 17.25 Road Calls

**17.25.1 MBRC Metric.** CMTA measures Miles Between Road Calls (MBRC) as a key performance indicator (KPI) to characterize the customer experience when reporting to the Board of Directors. CMTA also utilizes MBRC to gauge the maintenance shop's impact on the customer experience. The MBRC KPI is the basis of reporting, and of calculation of incentives and disincentives. The calculation of this metric only considers **Mechanical road calls that are considered under the control of maintenance.** ~~mechanical failures;~~ however, all road calls are tracked to identify trends which indicate failures that can be prevented. Non-mechanical road calls, **and Other Mechanical road calls,** are not included in the MBRC Metric, however in all cases, the exclusion of any road call from being included in the MBRC metric requires that all scheduled maintenance on the system has taken place and the failure is the result of something outside of the control of the shop.

**17.25.2 Road Call Definition.** CMTA's definition of a "road call" is any failure of any component or system on a vehicle that causes the vehicle to be unable to ~~complete~~ **perform** its scheduled service without **incurring the need for** repair. A road call exists whether the vehicle is returned to the shop for repair, a Mechanic is sent to the vehicle for repair, or the vehicle is towed back to the shop for repair. **The following criteria must be considered when determining if an incident is categorized as a road call:** ~~Two key items must be in place for an incident to be classified as a road call:~~

~~17.25.3 Repair of the vehicle is necessary:~~

- **If the failure occurs on the yard, it is not a road call.**
- **If the vehicle has left the yard when failure occurs, it is a road call.**
- **If the vehicle is deadheading when the failure occurs, it is a road call.**
- If an out-of-service condition occurs, **it is a road call.** ~~on the bus, a repair is required.~~
- If a mechanic **is sent to the bus and** makes a repair, **or the bus is returned to the yard and a repair is made,** it is a road call.

- If **anyone other than a mechanic** ~~a Transportation Supervisor~~ is sent to repair a vehicle, he/she is acting in the role of a Mechanic and it is a road call.
- If **anyone** ~~a Supervisor~~ responds to a vehicle to investigate a Vehicle Operator complaint and finds no repair is necessary, it is not a road call. Non-mechanical personnel shall not be allowed to diagnose critical systems on the vehicle, such as but not limited to brakes, steering, and fire suppression system.
- If a **M**echanic cannot duplicate the failure after troubleshooting, and no repair is needed, it is not a road call.
- ~~• The vehicle is unable to complete its scheduled revenue service.~~
- ~~• If the vehicle has left the yard when the failure occurs, it is a road call. If the failure occurs on the yard, it is not a road call.~~
- ~~• If the vehicle is deadheading, it is a road call.~~
- It does not matter if revenue time was lost or if service was delayed when the failure occurred, it is a road call.

17.25.4 **Road Call Categories.** Road calls fall into three categories: Mechanical, Non-Mechanical, and Other-Mechanical. All road calls shall be reported in an approved format as required to CMTA.

17.25.4.1 **Mechanical Road Call Category Definition.** Mechanical road calls result from failure of components or systems that are essential to the core function of the vehicle. The purpose of identifying mechanical road calls is to identify those failures that are the responsibility of the maintenance department and best reflect their responsibility for the failure. **These failures drive the MBRC metric.** Such systems include (but are not limited to):

- Engine
- Transmission
- Brakes
- Electrical
- Doors/Body
- Steering & Suspension
- Wipers/Accessories
- Wheelchair ramp/lift
- HVAC

17.25.4.2 **Non-Mechanical Road Call Category Definition.** Non-mechanical road calls result from failure of components or systems that are essential to the core function of the vehicle but are not a direct reflection of the quality of maintenance being performed in the shop and are not included in the MBRC metric. Such failures include (but are not limited to):

- Tires **punctures**
- Accidents
- Vehicle Operator error
- Soiled interior
- Vandalism

17.25.4.3 **Other-Mechanical Road Call Category Definition.** Other-mechanical road calls result from failure of components or systems that are considered outside of the core function of the vehicle. Failures on these systems will be categorized as mechanical or non-mechanical for purposes of trending but are not included in the MBRC metric. Examples would include:

- Communication Systems
- Surveillance Systems
- Revenue Collection Systems

17.25.5 **Repeat Roadcalls.** The Service Provider is responsible to track road calls and if a vehicle experiences a road call for the same reported issue three (3) times in a forty-five (45) day period, the vehicle must be removed and held from service until a thorough investigation is completed. Prior to returning the vehicle to service, the Service Provider ~~must provide and CMTA must agree on a written explanation of the root cause failure and associated repairs made. CMTA reserves the right to review the report and require additional investigation, including the immediate removal of the vehicle from revenue service.~~

## 17.26 Serviceable Requirements and Vehicle Change Outs

17.26.1 **Serviceable Condition Overview.** CMTA has stringent condition requirements that a bus must meet to be considered serviceable and used in revenue service. The Service Provider shall ensure that no vehicle that has an out of service condition is allowed into service, and that no vehicle is allowed to remain in service if an out of service condition occurs. Should an out of service condition occur while the vehicle is in service, the Service Provider shall arrange for a change out of the vehicle.

17.26.2 **Out of Service Conditions – Removal from Service.** The following list contains examples of conditions that shall cause a bus to be taken out of service. CMTA reserves the right to remove any vehicle from service for any condition that CMTA deems as not safe, not reliable, or not clean. Out of Service conditions include but are not limited to:

- Malfunctioning MDT or CAD/AVL system
- Inoperable two-way radio
- Class 3 fluid leak
- Class 2 or 3 coolant leak
- Any class of fuel leak
- Brakes slack, inoperative, weak, slow
- Exhaust smoke
- Malfunctioning horn
- Malfunctioning turn signal or brake lights
- Malfunctioning high or low beam headlights
- HVAC not capable of attaining interior temperature to 72 degrees cooling, or 68 degrees heating
- Malfunctioning door latches or locks
- Tire low air pressure (5 psi or more)
- Tire tread under 4/32" for all tires
- Vehicle Operator's seat unable to maintain position (height or slide)
- Vehicle Operator's seat belt inoperative
- Cracked windshield glass in the Vehicle Operator's field of vision
- Cracked passenger window glass
- Transmission slipping, or not shifting
- Engine lack of power
- Engine no start
- Check engine light
- Stop engine light
- Engine shuts down
- Malfunctioning Defroster
- Malfunctioning doors, entrance, lift, or emergency exit doors
- Body Damage
- Biohazard
- Malfunctioning windshield wipers or washer

- Loose outside mirrors
- Malfunctioning wheelchair lift or ramp
- Malfunctioning wheelchair restraints
- Malfunctioning flip seats
- Exhaust, fuel fumes or smoke in vehicle
- Malfunctioning power steering system
- Malfunctioning suspension system
- Graffiti of offensive nature
- Malfunctioning onboard fare collection equipment, if equipped
- Malfunctioning or damaged destination sign, if equipped
- Any condition that directly or indirectly compromises safety

17.26.3 **Out of Service Conditions – Withhold from Service.** No revenue vehicle shall be placed into service with any Out of Service Condition, ~~however if the~~ ~~—The following systems are must be~~ fully functional when the vehicle is placed in service, but ~~failure should these~~ conditions arise while the vehicle is in service, it will be allowed to continue if safety is not compromised:

- Passenger seats and seatbelts
- Surveillance Systems
- Be free of any graffiti and etched window glass

17.26.4 **Change Out Requirement.** When an out-of-service condition occurs, the vehicle shall be changed out and returned to the garage in an expeditious manner at the direction of CMTA. The change-out mechanic shall depart the yard in not more than thirty (30) minutes, and, ~~at least ninety five percent (95%) of the time, the out-of-service bus shall be returned to the yard in not more than two and one half (2 ½) hours. If a change out mechanic departs the yard late, a \$100 PDC per incident shall be assessed. If more than five percent (5%) of the out-of-service buses return to the yard late, in a given month, a \$250 PDC per incident shall be assessed with an additional \$100 PDC per hour beyond the initial 2 ½ hours until the bus is returned to the yard. The PDC shall be assessed on the most egregious (longest time) road call change-outs, in the month. The change-out clock starts when the decision is made to change out the vehicle, or in cases where the vehicle must be towed, when the decision is made to tow the vehicle.~~

17.26.5 **Change Out Pre-Trip Inspection.** Prior to departing the yard, the change out vehicle shall have a complete pre-trip inspection performed to ensure that the vehicle is ready for service. **Change out vehicles may be pre-tripped and staged ready to deploy for a changeout without a second pre-trip inspection.**

17.26.6 **Street Repairs. Simple mechanical** Mechanical failures that require less than **ten (10) five** minutes to complete are allowed to be made on the street provided the action does not place a technician, vehicle operator, passenger or the public in a hazardous environment. When such repairs occur, whether performed by a technician or supervisor, a technician is required to review the repaired system when the vehicle returns to property and prior to the vehicle returning to service the next day. This review shall be documented on the work order.

17.26.7 **No Open Road Call Work Orders.** No revenue vehicle shall be placed into revenue service with an open road call work order.

## 17.27 Vehicle Servicing and Cleanliness

17.27.1 **Vehicle Servicing Overview.** The Service Provider shall maintain a clean appearance on the exterior and the interior of the vehicle at ~~any and~~ all times that the bus is in service. The Service Provider shall ensure that all revenue vehicles are serviced daily. The vehicles shall be fueled, fluid levels checked, tires inspected, and the interior cleaned. The exteriors shall be cleaned less frequently, depending upon water conservation efforts.

17.27.2 **Fueling Requirements.** All vehicles that have been used in service must be fueled prior to being placed into service the next day.

17.27.3 **Fluid Requirements.** The Service Provider shall check ~~vehicle the following~~ fluid levels **daily, including engine oil, coolant, and diesel exhaust fluid (DEF), as directed by Capital Metro** and bring to correct

levels as needed: ~~engine oil, coolant, and diesel exhaust fluid.~~ Any vehicle that uses more than the following amounts of fluids must be checked by Service Provider and repaired as needed. All excess fluid consumption related work must be recorded on a work order associated with the vehicle serviced. The amount / rates of consumption are as follows:

- Engine oil - 1 quart per 100 miles
- Coolant - 1 quart per day

17.27.4 **Tire Requirements.** The tires will be visually inspected for damage, indication of low air, and missing or damaged lugs.

17.27.5 **Interior Cleaning Requirements.** Vehicle interiors shall be cleaned daily. This includes removing trash, sweeping and mopping the floor, and cleaning the windows, windshield, stanchions, grab handles, steering wheel, dashboard, door handles and the forward bulkhead. The passenger and driver seats shall be inspected and cleaned of spills and stains. **Vehicles shall be disinfected as directed by Capital Metro.**

17.27.6 **Graffiti Removal Requirements.** Vehicle interior and exterior shall be inspected daily for graffiti which shall be removed prior to placing the vehicle into service.

17.27.7 **Exterior Cleaning Requirements.** The vehicle exteriors shall be washed a minimum of ~~once~~ three times per week, after precipitation, ~~and~~ after other events which cause the vehicle(s) to look dirty, or as directed by CMTA. Vehicle rims shall be hand scrubbed when the exterior of the vehicle is washed, **or when maintenance activity has soiled the rims.**

17.27.8 **Windshield Fluid Requirements.** Windshield washer fluid shall be checked and brought to full level three times per week.

~~17.27.9 **Detailing Requirements.** Every forty-five (45) days, each vehicle shall be detail cleaned in accordance with the instructions provided in Attachment - Vehicle Detailing.~~

~~17.27.10 **Seat Shampoo Requirements.** Every one-hundred eighty (180) days, all cloth seats shall be shampooed.~~

17.27.11 **Cleanliness Inspections.** Service Provider shall conduct routine inspections to ensure that the vehicles are **clean.** ~~cleaned in accordance with instructions outlined above.~~

17.27.12 **CMTA Supplied Fuel.** CMTA shall provide onsite fueling capability for the fleet. CMTA shall provide for a fuel supplier and pay for fuel delivered for revenue and non-revenue vehicles. CMTA shall not provide fuel for non-revenue vehicles designated for private use by staff. Service Provider is responsible for fuel monitoring, ordering, receiving, dispensing, documenting and reconciling as outlined in Attachment - CMTA Fueling Procedures **and as directed by Capital Metro.**

~~17.27.13 **Non-Fuel Fluids.** The Service Provider shall be responsible for providing~~ **Capital Metro will provide** all non-fuel fluids and lubricants, including any fluids necessary to support the emission reduction systems, such as diesel exhaust fluid. Only CMTA approved fluids, coolant, oils and lubricants are to be used.

## 17.28 Vehicle Operator Pre-Trip and Post-Trip Inspections

17.28.1 **Pre-Trip / Post-Trip Requirement.** The vehicle operator shall perform a Pre-Trip and Post-Trip Inspection each time the vehicle is used in service. The Service Provider shall have a documented process that prescribes how the vehicle operators will perform and document their Pre-Trip and Post-Trip Inspections and how the issues and defects discovered will be **documented** ~~addressed.~~

17.28.2 **Defect Repair Timeliness.** The Service Providers shall ensure that all vehicle operator complaints and reported vehicle defects are addressed prior to the next time the vehicle is placed into service, **as directed by Capital Metro.**

17.28.3 **Pre / Post Trip Inspection Requirements.** The Pre-Trip and Post-Trip inspections shall include a thorough review of the following items to ensure safety, functionality and roadworthiness:

- Directional signals and flashers
- Brake lights and tail lights
- Headlights

- Windshield wipers/washers
- Interior lights
- Exterior and interior mirrors
- Horn
- Service and parking brakes
- Door operation
- Wheelchair lift / ramp
- Fire extinguisher, fire suppression system
- Climate control systems
- Tires and wheel lugs
- Fluid leaks
- Communication Systems
- Surveillance Systems
- Revenue Collection Systems
- **Destination and Interior Digital Signs**
- Body Damage including dents, scrapes, broken lenses or windows
- Interior condition including seats
- Lap/shoulder belts and extensions
- Mobility device securement equipment and floor/wall anchors, **including folding seats**
- Warning Triangles
- **Pedestrian deflector at rear wheel**

### 17.29 Asset Management System

17.29.1 **System Usage Requirement.** The Service Provider shall be required to utilize CMTA's Asset Management System (~~Spear 4i System or any system provided by CMTA to replace Spear 4i~~) to record maintenance activities. CMTA shall provide the software, hardware, printers, cabling etc. to enable full functionality. CMTA shall provide ~~train-the-trainer type~~ training to Service Provider on the use of the system. The maintenance system software is designed to be a permanent record of maintenance, to forecast and track preventive and corrective maintenance, and to assist in distributing work requests to appropriate staff. The Service Provider is responsible for ensuring all maintenance employees are using the system appropriately, ensuring data integrity, and shall utilize the software on a real-time basis to the greatest extent possible.

17.29.2 **Maintenance Record Requirements.** A maintenance record shall be created for any maintenance activity requiring more than five (5) minutes of labor, or any material consumption. Maintenance records must contain adequate detail including the reason for the work order, (the complaint), the procedure followed to understand and diagnose the problem (the cause), and the action undertaken to remediate the problem (the cure). Work orders must capture detailed cost of labor and materials as well as a description of work performed, including any work performed by a third party, such as body repair, engine rebuilds, etc., **and all work must be properly documented with Vehicle Maintenance reporting Standards (VMRS) codes.** The Asset Management software work order data entry must be completed by the mechanic or technician that performs the maintenance work.

17.29.3 **Maintenance Record Retention.** All records maintained by the Service Provider during the term of the Contract shall become the property of and be furnished to CMTA at the end of the Contract term. Any physical maintenance records, such as Preventive Maintenance Inspection forms, shall be kept for the life of the vehicle plus three years. Any records that have not met this retention schedule by the end of the Contract term shall be given to CMTA. Copies of the Pre-Trip and Post-Trip inspection records must be kept for 120 days.

~~17.29.4 **New Replacement Asset Management System.** During the term of this contract CMTA will implement a new Asset Management System used for vehicle and building maintenance. The Service Provider shall cooperate with, and actively contribute to, the configuration, testing and launch of that system, including but not~~

limited to system debugging, system set up, input of inventory part numbers, creating failure mode lists and training staff/end users.

17.29.5 **Maintenance Personnel Training. Capital Metro will provide training** Training and certification of maintenance personnel for all vehicles, ~~shall be the responsibility of the Service Provider.~~

17.30 **CMTA Support Vehicles (CMSV).** The Service Provider shall provide comprehensive maintenance, fueling and cleaning of CMTA's fleet of 55 to 65 Support Vehicles (CMSVs) **as directed by Capital Metro.** The fleet may vary in size. The fleet of support vehicles includes a wide variety of vehicle configurations such as, police cars, facility maintenance trucks, battery-electric staff cars, and hy-rail equipped vehicles. See attachment – CMTA CMSV Vehicles. The CMSVs are parked at three locations: 2910 E. 5<sup>th</sup> Street, 624 N. Pleasant Valley, and 9315 McNeil Road, and may be moved between locations as needed. ~~The Service Provider shall manage the logistics, scheduling, and communication with the end user, including the identification of a phone extension that end users can call Mon-Fri, 8:00 AM – 5:00 PM, to leave a message, ask questions, and to arrange service. Note that this does not require a full-time service writer, and call-backs on phone messages are allowed within a reasonable time.~~ **The Service Provider shall perform maintenance of Capital Metro CMSVs as directed by Capital Metro.** All maintenance inspections and work shall be recorded in the asset management system, ~~and the Service Provider shall submit invoicing for billable work each month.~~

17.30.1 **CMSV Routine Fueling, Washing and Cleaning.** The Service Provider shall provide 30 hours of labor each week toward routine fueling, cleaning and washing of the CMSV fleet. For CMSVs parked at 2910 E. 5<sup>th</sup> Street, 624 N. Pleasant Valley, and at 9315 McNeil Rd., the Service Provider shall retrieve and return the vehicles from their parking spaces. For vehicles parked at any other location, the Service Provider shall provide on demand fueling when the vehicle is brought to the service island and cleaning and washing when arranged in advance and brought to the service island. All CMSVs shall be fueled, washed and cleaned when any service is performed on the vehicle. ~~The Service Provider shall~~ **Capital Metro will** provide all cleaning supplies and windshield washer fluid.

17.30.2 **CMSV Maintenance.** The Service Provider shall maintain the CMSV fleet to ensure that vehicles are kept safe, reliable, and clean **as directed by Capital Metro.** Maintenance includes but is not limited to: preventive maintenance inspections, state inspections, administration of registration, recurring maintenance (mileage and time based), end-user noted defects, flat tires, tow-ins, accident repair, OEM recalls and campaigns, and transport of vehicle to dealership or other off-site location for work by a third-party shop.

17.30.3 **CMSV Parts and Labor.** ~~The Service Provider will be reimbursed for parts on a pass-through basis. The Service Provider is expected to maintain adequate access to parts inventory to minimize repair times. CMTA may opt to provide some parts directly and may opt to provide swing unit components to facilitate fast turnaround times. The Service Provider will be paid labor hours for repair work based upon data in Mitchell on Demand (MOD), CMTA's Repair Labor Schedule (RLS), and CMTA's Quote, Authorization and Verification (QAV) process. See Attachment – CMSV Repair Labor Schedule. The labor rate shall be at the contracted CMSV labor rate. The Service Provider shall consult MOD to determine billable labor hours by vehicle make, model, year and repair task. CMTA shall provide access to MOD. For data not available in MOD, the Service Provider shall consult RLS to determine billable labor hours. CMTA has prepared a Repair Labor Schedule that specifies labor for common tasks. For repair tasks not in MOD nor the CMTA Repair Labor Schedule, the Service Provider shall provide a quote for the work, commence work only after receiving written authorization, and invoice for the work only after receiving a statement of work verification from Capital Metro.~~

17.30.4 **CMSV Third-Party Repairs.** If the Service Provider opts to send a vehicle to third party for repair, CMTA will pay for the work however CMTA reserves the right to require Service Provider to acquire multiple quotes to ensure a fair and reasonable cost for the repair. If the repair is listed in MOD, CMTA reserves the right to limit payment to the hours listed in MOD and at the Service Provider's contracted CMSV labor rate. CMTA reserves the right to send repair work to a third party in which case CMTA shall be responsible for payment to the third party.

17.30.5 **Prioritized CMSVs and Turnaround Times.** The Service Provider shall prioritize and expedite work on police vehicles (black & whites) and facility maintenance trucks. The turnaround time for prioritized vehicles shall be 24 hours 85% of the time and 72 hours 95% of the time. The turnaround time for non-prioritized CMSV shall be 24 hours 70% of the time and 72 hours 80% of the time. The turnaround time shall be measured from the time the vehicle is delivered to the garage, until the time the end user is notified the vehicle is available for pick up.

	24 hours	72 hours
Priority CMSV	85%	95%
Non-Priority CMSV	70%	80%

~~17.30.6 CMSV Invoicing.~~ On a monthly basis, the Service Provider shall submit a summary of CMSV work performed, along with supporting documentation.

**18. MAINTENANCE OVERSIGHT**

18.1 **CMTA Access Rights.** CMTA shall have immediate and unrestricted access to all CMTA and Service Provider supplied vehicles and equipment, all current or archived maintenance data and records for such and shall have access to all areas of the facility during planned or unannounced visits. This includes total access to any electronic program or system used in support of the Contract.

18.2 **Oversight Audits and Inspections.** CMTA conducts regular audits and inspections of vehicles, equipment, facilities, and any activities performed by the Service Provider. The Service Provider is required to make vehicles available for such inspections on suitable lifts or inspection pits. Examples of current Vehicle Maintenance Quality Assurance audit forms can be found in Attachment - Vehicle Maintenance Quality Assurance Forms. CMTA reserves the right to engage a third party to assist in vehicle inspections, at the expense of CMTA. The type of inspection or audit that CMTA performs include, but are not limited to:

- PMI and follow-up repairs
- Fuel delivery and dispensing
- Road call handling
- In-service
- Ready-line
- Work order quality
- Tire pressure and condition
- Existing Body Damage
- Cleanliness
- Fleet condition

~~18.3 **Monthly Joint Inspections.** CMTA will schedule Monthly Joint Vehicle Inspections with Service Provider's Maintenance Manager or their designee. If defective items are found that are not sufficient to cause the vehicle to be out of service, then the vehicle can continue to be used in revenue service. All defects shall be corrected within seven (7) days of the joint inspection. At the end of the seven (7) day period, CMTA may schedule a follow up joint inspection to ensure that all items identified for repair were corrected. If repairs were not completed, CMTA may assess a PDC in the amount of \$100 per day, per vehicle, until all repairs are made and verified by the CMTA inspector.~~

18.4 **Removing Vehicles from Service.** CMTA shall have, at its sole discretion, the authority to remove from service, any vehicle that poses a safety, reliability, or appearance issue. Such action does not relieve Service Provider's obligation to provide service under the terms of the Contract. For any item that is found that causes the vehicle to be taken out of service, the vehicle is to remain out of service until the repairs are completed. The Service Provider must notify CMTA when repairs are complete and CMTA will require a re- inspection of the vehicle prior to allowing the vehicle back into service.

**19. DATA AND REPORTING**

19.1 Service Provider will establish a program of data analysis and analytics for operations, customer service, safety, maintenance and other all data collected under this Contract. Service provider is expected to use data analytics to draw conclusions about the information contained in the data for the purposes of continuous improvement of processes and procedures.

19.2 Service Provider will submit operating data and related information to the specification and satisfaction of CMTA. Reports will be provided in MS Word or MS Excel format, unless otherwise specified or agreed to in writing.

19.3 Any and all records maintained by Service Provider during the term of the contract shall become the property of and be furnished to CMTA at the end of the Contract term.

19.4 As CMTA's requirements for data changes from time to time, Service Provider will cooperate and assist CMTA in implementing revised data collection procedures and methods as established through new technology.

19.5 Service Provider will be responsible for accurate and timely completion of any requested forms at given time intervals. All data collected and/or reports generated must be prepared legibly and be typed or developed utilizing an MS Word or MS Excel (version 2010 or later) format and will be submitted electronically, unless otherwise specified or agreed to in writing by CMTA.

19.6 Service Provider will be required to maintain all project records as requested by CMTA. CMTA retains the right to add or delete any report which is needed to help maintain the reliability of the fleet and ensure the quality and efficiency of the services provided.

19.7 Service Provider shall strictly adhere to required and agreed upon reporting schedules. Reports, contents and frequency of reporting will be subject to change with business needs and practices.

19.8 Accuracy and completeness of reporting is critical. Service Provider will be assessed a PDC of \$1,000 for each incident in which Service Provider has ~~inaccurately reported missed mileage,~~ fails to report a ~~late lost time~~ or missed trip, or fails to report a mechanical road call **in the appropriate systems. The PDC will not apply until after the seventh day after the incident, which represents the time allowed to accurately reconcile and finalize incident entries.** ~~The PDC will not apply until after the seventh day of the incident, which represents the time allowed to accurately reconcile and finalize incident entries.~~

~~19.9 Daily Reports. Daily reports shall be provided on the following Business Day by 2:00 p.m. The daily report will include the previous day's performance data, unless there is a documented change as communicated by CMTA. The data content in the daily report will include:~~

Daily Report Data:

- ~~Number of Vehicle Accidents~~
- ~~Number of Passenger Accidents~~
- ~~On Time Performance~~
- ~~Number of Wheelchair Pass Bys~~
- ~~Total Complaints~~
- ~~Total Service Interruptions by Category (Accident, Mechanical, Service, Other)~~
- ~~Number of Incident Delay~~
- ~~Number of Q Buses Used~~
- ~~Recovered Service~~
- ~~Total Lost Time~~
- ~~Number of Missed Pull Outs~~
- ~~Number of Late Pull Outs~~
- ~~Number of early Pull Outs~~
- ~~Number of PMs Closed (On time and Late)~~
- ~~Total Three-peat Road Calls (Vehicle # and Issue)~~

~~19.9 The daily reports listed in the previous section shall be aggregated on a weekly, monthly and quarterly basis and in a report provided to CMTA.~~

~~19.9.1 Weekly report due by 3:00 p.m. each Monday on a template provided by CMTA.~~

19.9.2 Quarterly report due by 5:00 p.m. on the 16th of the month. Quarterly Reports should document analysis of data trends and establish whether Monthly Action Plans have been successful on a template provided by CMTA.

19.10 **Monthly Reports.** The Service Provider shall submit the following monthly reports due no later than the tenth (10th) calendar day of the following month.

- NTD monthly report detailing the prior month and year to date data collected for the NTD report.
- Number of down vehicles by day including the number of days each vehicle has been down.
- Monthly summary of PMIs and mileage intervals.
- Number of PMI overdue and amount of mileage overdue.
- Monthly summary of fuel deliveries, reconciled with fuel dispensed.

19.11 By the fifth (5th) calendar day of the month, the Service Provider shall submit a written update of current employees, by number and by position (i.e., Vehicle Operators, Mechanics, Radio and Run Dispatchers, Transportation Supervisors, etc.) certified by the General Manager to be qualified to perform work under this Contract. It shall specifically list all new employees, their positions and all terminations, promotions and job transfers.

19.12 Service Provider shall perform job site safety inspections monthly. A report of Service Provider's findings and observations, as well as corrective measures taken, where required, shall be prepared and submitted to CMTA.

19.13 **Monthly Invoicing.** Service Provider shall bill CMTA monthly after the end of the prior month. CMTA will provide the Service Provider an invoice template with sections detailing the billing and performance incentives and PDC's. The Service Provider shall have until the close of the tenth (10th) calendar day of each month to submit the prior month's invoice and all supporting documentation to CMTA Account Payable and CMTA Bus Program Manager, or designee. Supporting documentation shall be submitted with the invoice. The Service Provider shall use Trapeze Ops to record actual work assignments as work is assigned. A maximum of one (1) invoice per month will be accepted by CMTA.

## 20. NATIONAL TRANSIT DATABASE REQUIREMENTS

The Service Provider shall collect data, keep records, and provide reports sufficient to enable CMTA to meet its Federal Transportation Administration National Transit Database (NTD) reporting requirements. The Service Provider is responsible for obtaining all pertinent FTA NTD regulations and procedures (FTA Circular C2710.1A) to ensure that all required information is collected and reported in a timely and accurate fashion.

20.1 Monthly, Service Provider shall provide a report detailing the prior month and year to date data collected for the NTD report **to include Revenue miles, Revenue hours and VOMS.** This report is due on or before the tenth (10th) calendar day of the following month.

20.2 The Service Provider's Annual NTD submission includes, but is not limited to, forms A-30, F-30, R-20, R30, and S-10 (including 3rd party independent audit) **for Motor Bus (MB) and Commuter Bus (CB) modes.** As the FTA may alter NTD forms from year to year, the Service Provider is responsible for using the most current forms. CMTA will make every effort to notify the Service Provider when they are aware a change has been made.

20.3 The Service Provider shall obtain an independent (third party) audit of annual NTD operation statistics (currently included in the S-10 form) at the Service Provider's expense. Audits shall comply with federally mandated audit procedures (current details available on the NTD Program website <http://www.ntdprogram.gov>). See Attachment - NTD Audit Review Procedures for more detailed information.

20.4 Timelines for annual NTD report submissions shall be subject to CMTA's filing requirement. Unless otherwise notified, all NTD reporting indicated by CMTA shall be received on or before November 30th for the prior fiscal year (ending September 30th). Failure to submit complete and accurate NTD reporting by the required timeline shall result in a total PDC of \$500 per calendar day. Reports not received on or before December 15th of each calendar year shall result in a total PDC of \$2,000 per calendar day.

## **21. PUBLIC INFORMATION REQUESTS**

21.1 CMTA has a right of access to certain information created, collected, assembled or maintained under the terms of this Contract.

21.2 The Service Provider shall be required to provide such information, including but not limited to, video recording and other media and information to CMTA in accordance with the Texas Public Information Act (the "Act"), Texas Government Code, Chapter 552, by the required deadline.

21.3 The Service Provider shall notify CMTA prior to the required deadline if Service Provider wishes to assert that the requested information is not subject to disclosure under the terms of the Contract and the Texas Public Information Act.

## **22. CUSTOMER SERVICE AND COMPLAINTS**

Providing excellent customer service is a key element in CMTA's strategic plan. Service Provider is expected to provide all public transportation services with a focus on ensuring a positive experience for the customer. To that end, Service Provider must work cooperatively with staff in CMTA's customer service call center to provide information and service to our customers, including, but not limited to:

22.1 Service Provider must comply with requests for customer assistance, including dispatching a supervisor to the scene, dispatching a security officer to the scene, or providing courtesy transportation to a stranded customer.

22.2 Service Provider must comply with requests to query operators via the radio system regarding customer issues. For example, location of the bus, presence of lost items, or operator recollection of an unusual service event.

22.3 Service Provider is expected to log all service ~~interruptions~~ delays in the CAD/AVL system OrbCAD within a maximum of fifteen (15) minutes following the start of the delay.

22.4 CMTA's Customer Service operates a call center for intake of all customer complaints. When Service Provider receives a phone call or written passenger complaint directly, details regarding the complaint must be forwarded to the CMTA Customer Service for inclusion into the CMTA database.

22.5 Service Provider will be provided software (CMTA's in-house passenger comment system, CRM, ServiceOne) and data links by CMTA to access all complaint information. The software will be on loan through consignments available online.

~~22.6 Service Provider shall respond to passenger complaints within four (4) calendar business days of receipt. Final resolution to the complaint must be documented. See Attachment - Customer Comment Report Procedure.~~

~~22.6.1 Service Provider will contact each caller by telephone or follow up with written correspondence if necessary to the complaint.~~

~~22.6.2 If an investigation is required, Service Provider will conduct an investigation and the caller will be contacted by telephone or written correspondence regarding the results of the investigation.~~

~~22.6.3 Service Provider will document resolutions to each complaint in ServiceOne.~~

~~22.6.4 The Service Provider shall achieve seventy-five percent (75%) complaint resolution within ten (10) days, and one hundred percent (100%) complaint resolution within thirty (30) days.~~

22.7 Service Provider shall notify the Program Manager, Director, Contract Oversight or designee immediately of any complaint alleging employee misconduct such as inappropriate conversation, touching, assault, (physical or verbal), etc.

22.8 **Lost and Found Policy and Procedures.** Service Provider shall adhere to the Lost and Found Policy. See Attachments – Lost and Found Policy and Lost and Found Procedures. Recovered items must be gathered from the Service Provider’s main office, Service Island and Run Dispatch, tagged and recorded in a ledger.

### **23. DRUG AND ALCOHOL PROGRAM**

Service Provider agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with 49 CFR Part 655, 49 CFR Part 40, and 49 CFR Part 29 and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of the State of Texas or CMTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655, 49 CFR Part 40, and 49 CFR Part 29 and review the testing process.

23.1 Service Provider Drug and Alcohol policy shall include zero tolerance for positive results. Employees with a confirmed positive drug or alcohol test shall not be used to perform work under this Contract. The Service Provider agrees to certify annually its compliance with Part 655 before March 1st of every calendar year and to submit the Management Information System (MIS) reports before February 10th of every calendar year to CMTA.

23.2 To certify compliance, the Service Provider shall sign a Substance Abuse Certification by October 1st of each year to certify compliance with Federal Transit Administration requirements governing substance abuse.

23.3 The Service Provider agrees to submit for review and approval before commencement of work a copy of its Policy Statement and Drug and Alcohol Plan developed to implement its drug and alcohol testing program.

23.4 The Service Provider agrees to consult with CMTA at the initiation of the Contract and in the event of a service agent change related to the selection of a certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium.

23.5 The Service Provider is responsible for the costs of establishing and maintaining (including costs of defending related claims and actions) the required drug and alcohol prevention program under this Contract. Such costs shall be included as part of this Contract.

23.6 CMTA Quality Assurance staff may audit the Service Provider’s Drug and Alcohol Program and any employee records at any time.

### **24. EMERGENCIES AND SERVICE DISRUPTIONS**

24.1 Service Provider shall develop, implement, and maintain a program to respond to emergencies and routine problems that occur. Upon request, Service Provider shall draft such procedures for CMTA approval **follow Capital Metro procedures to respond to emergencies and routine problems that occur.** Procedures include, but are not limited to:

- Passenger injuries
- Disturbances
- Illness
- Vehicle emergencies and equipment failures
- Fluid spills and leaks
- On site and bus / vehicle fires
- Inclement weather
- Accidents
- Detours
- Employee Injuries

24.2 Service Provider must participate in periodic emergency readiness training and drills, at the direction of CMTA.

~~24.3 Service Provider's operations staff (supervisors and managers) will supplement CMTA staff in the region's Emergency Operations Center (EOC) during regional emergencies.~~

24.4 From time to time, local law enforcement and first responders will require CMTA buses for use in evacuating buildings, transporting persons to shelters as part of hurricane response and/or cold weather plans, use as a cooling station at structure fires, etc. Such requests must be met with urgency to provide the requested service. Service Provider will be compensated the variable rate per hour for all such uses of buses.

## **25. LABOR RELATIONS**

25.1 Nothing in this Scope of Services shall be construed as requiring the Service Provider to assume or otherwise be bound by the terms and conditions of any collective bargaining agreement or other labor contract of CMTA's prior Service Provider (incumbent).

25.2 The Service Provider shall recognize ATU Local 1091 (the "Union") as the authorized representative, for purposes of collective bargaining, of its employees who perform work of the type performed by the prior employer bargaining unit represented by ATU Local 1091. The Service Provider shall commence collective bargaining negotiations as promptly as possible and shall negotiate in good faith with the goal of reaching a collective bargaining agreement with the Union as soon as possible. Any such collective bargaining agreement shall include provisions addressing health benefits, retirement, grievance procedures, recognition of seniority, and related matters that are normally the subject of collective bargaining between management and labor in the private sector transportation industry. The service provider shall establish initial terms and conditions of employment in accordance with the following requirements:

25.2.1 Seniority Rights. The Service Provider shall recognize the seniority rights of represented employees in accordance with the existing seniority roster at the prior employer. Seniority shall apply to those matters normal subject to seniority status under collective bargaining agreements in the transit industry, including layoffs, re-hiring/return from furlough, bidding on shifts and selection of vacation.

25.2.2 Health and Welfare. The Service Provider shall offer health, disability, dental, life and accidental death insurance for its employees that is substantially equivalent, in terms of type and scope of coverage, to the insurance coverage offered by the prior employer. The Service Provider shall bargain collectively with ATUL Local 1091 regarding contributions to premiums, co-payments, deductibles and other economic matters relating to such insurance.

25.2.3 Retirement. The Service Provider shall provide a retirement plan for its employees. The Service Provider shall bargain collectively with ATUL Local 1091 regarding the terms and conditions of such retirement plan, including the levels or amounts of employee and employer contributions to the plan.

25.2.4 Wages. The Service Provider shall pay each employee ~~an amount of the prior employer an hourly wage, at the outset of his or her employment with the Service Provider,~~ **an amount** that is not less than the **applicable** hourly wage **defined in Attachment 1 – Framework for Wages** . ~~in effect for such employee on the date of his or her separation from employment with the prior employer.~~

25.2.5 Grievances. The Service Provider shall establish a procedure for the consideration, appeal and resolution of grievances. **Meeting Service-Provider established grievance timelines is critical to maintaining positive labor relations. Documented incidents of failing to meet Service-Provider's established grievance timelines will result in a PDC of \$100 per incident.**

25.2.6 Discipline. The Service Providers shall establish a procedure for handling employee discharge and other discipline that allows for discharge or discipline if work is not satisfactory or for other just cause and that

provides advance written notice to the employee, an opportunity for response before a proposed disciplinary action becomes final, and a process for appeal to a neutral party.

**25.2.7 Accrued Leave.** The Service Provider shall ensure that individual employee balances of accrued sick, vacation, and other Paid Time Off (Seniority Day, Birthday, Floating Holiday) leave are established at the level which are in existence on the date of the employee's separation of employment with the prior employer. ~~coordinate with the prior employer to transfer financial liability for accrued leave through payment negotiated between the prior employer and Service Provider. The Service Provider must ensure that individual employee balances of accrued sick and vacation leave are established at the level which are in existence on the date of the employee's separation of employment with the prior employer.~~ This will include any vacation earned that has not been taken. The Service Provider shall honor the vacation mark ups of the prior employer.

25.2.8 The terms and conditions specified above shall remain in effect as initial terms and conditions of employment until a collective bargaining agreement is reached with the Union. The collective bargaining agreement between the Service Provider and the Union must contain (at a minimum) the terms, conditions and subjects specified above unless the Service Provider and the Union expressly agree to alternative terms.

25.3 The Service Provider shall not enter into a collective bargaining agreement or other labor contract with the labor organization representing its workforce for a longer term than the base term of this Contract with CMTA, or if any option is exercised, for longer than the term of that option.

25.4 The Service Provider shall provide CMTA, throughout the Contract term, with copies of all collective bargaining agreements, side letters, and amendments entered into with any union representing the Service Provider's employees.

25.5 The Service Provider shall propose a comprehensive Labor Relations approach. The Labor Relations Plan should detail Service Provider's approach to labor relations, including efforts expected to avoid a work stoppage. Additionally, Service Provider shall certify that it has a plan for continuing to provide service in the event of a work stoppage.

25.6 Capital Metro will maintain the accrued liability for accrued time off for all employees, including accrued vacation, sick time, other Paid Time Off (Seniority Day, Birthday, Floating Holiday) under the terms of any collective bargaining agreement between the Service Provider and the union representing its employees or under the terms of any employment contract or agreement. The Service Provider shall be responsible for the payment of all liabilities to its employees accrued during the term of the Contract (and any option periods exercised by CMTA), including accrued vacation, sick time, and any other benefits accrued under the terms of any collective bargaining agreement between the Service Provider and the union representing its employees or under the terms of any employment contract or agreement. All such payments shall be made by the Service Provider at the end of the Contract term (or option period) to the next employer, and no additional compensation shall be provided by CMTA for such accrued liabilities. The Service Provider shall not have any obligation for the liabilities of the prior Service Provider (incumbent) to its employees.

25.6.1 The Service Provider must report the value of such accruals to Capital Metro quarterly, including details about the type of leave accrued, the hours of leave accrued, forfeited, and the current rate of pay. Accrual information must be reported on an individual employee basis.

25.6.2 The Service Provider must report the value of accrued leave paid out each month, including details about the type of leave taken, the hours of leave accrued, forfeited, and the current rate of pay on a quarterly basis. Payout information must be reported on an individual employee basis.

25.6.3 The Service Provider must report pay rate changes each month on an individual employee basis. The value of that employee's accrued leave balance will be adjusted at the end of the month during which they receive a pay rate change.

25.6.4 On a quarterly basis, Capital Metro will reimburse the Service Provider for the amount of leave paid less the value of new accruals (including adjustments for pay rate changes). If the accruals exceed payments, the service provider will provide a credit on the invoice, and it will be deducted from MV's subsequent invoice.

25.6.5 The Service Provider shall not have any liability for accrued leave at the end of the contract term.

25.7 The Service Provider shall recognize existing seniority of employees. The Service Provider shall provide a priority of offer employment to all bargaining unit employees of CMTA's prior (incumbent) Service Provider who are represented by the Union and are employed by the incumbent on the day prior to the commencement of services under this contract. The Service Provider shall offer a priority of employment to non-represented employees of the prior employer. The Service Provider shall not be required to offer employment to any person who:

- Fails to successfully complete drug and alcohol testing
- Fails to successfully complete a physical examination for the specific position involved
- Fails the background or MVR checks conducted per Exhibit E-Revised-6, Contractual Terms & Conditions

25.8. If necessary, to assist in the transition of any services or employees to another entity, the Service Provider must, upon request, provide de-identified health care claims information to Capital Metro and any other non-proprietary and non-confidential information that would aid in ensuring that the cost of coverage is fully understood.

25.9 If services are to be transitioned at any time to a subsequent service provider, the Service Provider must ensure that any former employee can access all contributed amounts in any Health Savings Account or other such flexible spending account.

## **26. ANNUAL BUS ROADEO**

~~Service Provider will be responsible for coordinating, organizing and implementing the annual local Bus Rodeo for operators and mechanics on behalf of CMTA. Operators and maintenance teams from all CMTA's bus and para-transit service providers are eligible to participate. Staff from Service Provider, CMTA and other bus service providers can be expected to serve as judges. Service Provider should include costs for the local Rodeo in its fixed fee price proposal. Service Provider is encouraged to develop plans to solicit sponsorships from vendors and/or other services providers and reflect these sponsorships in a lowered cost included in their fixed fee. Local Rodeo winners (top scoring operator and maintenance team) will be sent to the APTA International Bus Rodeo in the spring. CMTA will reimburse the winners' employer for actual travel expenses associated with this trip, provided such travel occurred within CMTA's travel guidelines. CMTA's reimbursement will include guest registration for the spouse or partner of each Rodeo Team members.~~

## **27. MARKETING AND PUBLIC RELATIONS**

27.1 CMTA shall furnish all schedules, maps, and other printed materials required for marketing the service.

27.2 Service Provider shall distribute CMTA passenger notices, cooperate and participate in marketing, promotion, advertising, public relations, and public education programs and projects undertaken by CMTA from time to time. This includes distribution of pocket schedules on each vehicle.

~~27.3 **Bus Stop Closure Services.** Service Provider is responsible for posting ad hoc postings related to detours, Service changes and other CMTA events. Such ad hoc requests are limited to 15 or fewer postings.~~

~~27.3.1 When more than 15 postings are required, Service Provider shall be eligible for additional reimbursement, as detailed in the most current Exhibit A-Revised-3. To qualify for additional reimbursement, Service Provider shall comply with the requirements detailed in Attachment Bus Stop Closures. Such postings may pertain to any CMTA service or event and are not limited to support of the Services operated by Service Provider.~~

~~27.4 Service Provider will be responsible for ensuring that a space is provided for distributing pocket schedules to operators (current wall racks or equivalent). Service Provider is responsible for keeping this area stocked with CMTA-provided pocket schedules. The area must be fully stocked prior to morning and afternoon pull out, seven days a week.~~

~~27.5 Service Provider is responsible for ensuring that revenue service vehicles are stocked with pocket schedules, as directed by CMTA.~~

~~27.6 Service Provider is responsible for periodically delivering and retrieving large public information postings (sandwich boards) from Park and Rides, Rail Stations, Transfers Centers and other locations as designated by CMTA.~~

27.7 CMTA shall be the exclusive official public media contact in connection with transportation service. Under no circumstances shall Service Provider or its employees be permitted to distribute any confidential printed or written materials pertaining to CMTA or other affiliates without permission from the CMTA Program Manager, Director, Contract Oversight or designee. Service Provider is required to notify and consult with the Authority prior to making public statements or conducting media interviews in an official capacity.

## **28. FAILURE TO COMPLY**

If any services performed hereunder or equipment provided hereunder do not conform with the requirements of the contract, CMTA shall have the right to require Service Provider to immediately take all necessary steps to ensure future performance of the Services in conformity with the requirements of the Contract and reduce the contract price to reflect the reduced value of the actual vehicle hours performed. In the event Service Provider fails promptly to take necessary steps to ensure future performance of the Services is in conformity with the requirements of the Contract, CMTA shall have the right to terminate the Contract for default.

## **29. SYSTEM-WIDE CAPITAL METRO POLICIES**

Service Provider shall at all times comply, and cause its assigned personnel and subcontractors to comply, with CMTA's ~~system-wide~~ policies and procedures. CMTA's ~~system-wide~~ policies and procedures, as revised, supplemented, and updated from time to time. These policies and procedures include, but are not limited to, the documents ~~can be found on~~ CMTA's service provider extranet site located at [https://capmetro.sharepoint.com/sites/EXT\\_MOSP/PoliciesProcedures/Forms/AllItems.aspx?viewpath=%2Fsites%2FEXT\\_MOSP%2FPoliciesProcedures%2FForms%2FAllItems.aspx](https://capmetro.sharepoint.com/sites/EXT_MOSP/PoliciesProcedures/Forms/AllItems.aspx?viewpath=%2Fsites%2FEXT_MOSP%2FPoliciesProcedures%2FForms%2FAllItems.aspx) or **as otherwise provided by CMTA to the Service Provider during the term of the Contract**. CMTA will notify Service Provider of any changes to ~~system-wide~~ policies or procedures, or of any changes to the link that accesses the ~~system-wide~~ policies and procedures. Service Provider will be responsible for the distribution of such policies and procedures, as amended, supplemented and updated from time to time, to all assigned personnel and require familiarity with such policies and procedures by all assigned personnel. ~~Refer to Attachment – List of CMTA Policies and Procedures.~~

## **30. INNOVATIVE BENEFIT PROGRAMS**

30.1 CMTA and current Service Provider employees participate in two innovative benefit programs, the Wellness program and the Child Care Center. ~~Proposers should assume the inclusion of these programs for Service Provider employees. CMTA expects that the value of these programs will be demonstrated by cost savings in other areas. Proposers should detail how these savings are reflected in the pricing proposal in the pricing assumptions section of Volume 1 (see Exhibit C- Revised-1 for details on proposal contents).~~

30.2 Child Care. CMTA operates a child care center serving the needs of families with children from infant through pre-Kindergarten (age 5). CMTA extends priority access to Service Provider employees to gain a higher priority on the waiting list for enrollment. CMTA has established a reduced tuition rate schedule for CMTA employees. Should the Service Provider wish to extend these reduced tuition rates to their employees as an additional benefit, CMTA will facilitate such rate discounts as a credit to the amounts owned on the Service Providers monthly invoice. Federal and or State tax credits may be available to companies contributing to center-based child care for their employees.

30.3 Wellness Program. CMTA provides an award-winning wellness program **that is available to Service Provider's employees**. A description of the Wellness Program is provided in Attachment – Wellness Program Description.

### **31. MOBILIZATION AND START UP SCHEDULE**

31.1 Service Provider shall provide an implementation/mobilization schedule submitted with its Proposal. This schedule shall include all the key elements and resources necessary to guarantee uninterrupted services on the date established for contracted services to begin (the Mobilization period would be from Notice to Proceed, anticipated to be Mid-August, 2019, through January 4, 2020 ~~Schedule shall be based on the anticipated contract award date of April 1, 2019~~ and the contracted services to begin January 5, 2020, ~~October 1, 2019~~). Service Provider shall provide passengers a seamless transition that aims to provide those passengers with high-quality and uninterrupted service throughout this process.

31.1.1 Service Provider mobilization plan shall detail the communication with incumbent employees and timelines for application, interview, training, etc. Should employees being transferred be required to undergo training, Service Provider shall work with the existing Service Provider as to agreeable dates/times employees will be allowed to attend training session(s).

31.2 During mobilization, CMTA will make available to the Service Provider at each facility three (3) buses for training during the weekday, and up to twenty (20) buses during the weekend for training purposes. During this period, CMTA will be responsible for servicing and maintenance of these vehicles. The Service Provider will be responsible for any damage and/or abuse resulting from training activities.

31.3 Service Provider shall have adequate staff onsite before the startup of the Contract. The Service Provider shall also maintain adequate staffing levels up through the transition.

31.4 All plans referenced in the Scope of Services requested by CMTA shall be submitted by the Service Provider after contract award in accordance with the schedule established by CMTA. All plans require CMTA approval before implementation.

31.5 The required plans specific to this Scope of Services shall be submitted within the required timeframe. The Service Provider will not be allowed to begin service until all plans are submitted and approved by CMTA.

31.6 Service Provider recognizes that the Services under this Contract are vital to CMTA and shall be continued without interruption and that upon Contract expiration, another entity, either CMTA or another Service Provider, will continue them. Service Provider agrees to exercise its best efforts and cooperation to affect an orderly and efficient transition.

### **32. IMPROVEMENTS TO REQUESTED SERVICES**

32.1 It is CMTA's desire to provide the most efficient and cost-effective service without compromising service quality. If there are requirements that are included in the description of services that could be modified to reduce cost or improve quality, please identify those areas on a separate attachment along with the potential savings. Such alternate proposals shall be submitted with an in-depth description, detailing the proposal and the benefit to CMTA. See Exhibit C-Revised-1 – Solicitation Instructions and Conditions.

32.1 Service or Technology Innovations: Service Provider will be required to support CMTA in deploying future transit innovations, such as, but not limited to, electric buses, fully or partially automated vehicles, on-demand/flexible service delivery models, mobility as a service technology, innovative fare collection or other public transit innovations which may arise. Should CMTA decide to launch such a project, CMTA will work collaboratively with Service Provider to develop the scope for such services. Price for such service will be negotiated at the time, using the pricing details provided in the most current Exhibit A-Revised-3 as the basis of calculating the incremental cost increase for such pilot service. Service Providers shall describe in their proposal their approach and capability for supporting such efforts. See Exhibit C-Revised-1 – Solicitation Instructions and Conditions.