



CONTRACT NO. 200384
(RFP 304274)
DYNAMIC MESSAGING SIGNS (DMS) UPGRADES or SOLAR
EPAPER REPLACEMENT

CONTRACTOR:

Luminator Mass Transit LLC
900 Klein Rd.
Plano, TX 75074
Phone: (972) 424-6511
Fax: (972) 633-0767

AWARD DATE:

April 2, 2019

CONTRACT TERM:

270 days from Notice to Proceed

PRICE:

\$1,388,753.00

PROJECT MANAGER:

Becky Gauthier
(512) 369-6280
becky.gauthier@capmetro.org

CONTRACT ADMINISTRATOR:

Denny Ross
(512) 369-7724
denny.ross@capmetro.org

**CONTRACT 200384
(RFP 304274)
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SOLAR EPAPER REPLACEMENT
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CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
AUSTIN, TEXAS

AWARD/CONTRACT

1. SOLICITATION NO: 304274	2. CONTRACT NO.: 200384	3. EFFECTIVE DATE: Upon Signature
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4. CONTRACTS ADMINISTRATOR		
NAME: Denny Ross, CA III	PHONE: (512) 369-7724	
5. SHIP TO ADDRESS: Capital Metro 2910 East 5 th Street Austin, Texas 78702	6. DELIVERY TERMS: FOB Destination	
7. DISCOUNTS FOR PROMPT PAYMENT:		
8. CONTRACTOR NAME & ADDRESS: Luminator Mass Transit LLC 900 Klein Rd. Plano, TX 75074	9. REMITTANCE ADDRESS: (If different from Item 8)	
PHONE: (972) 424-6511		
FAX: (972) 633-0767		

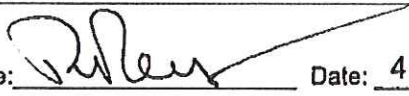
CONTRACT EXECUTION

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

NEGOTIATED AGREEMENT: (Contractor is required to sign below and return an original document to the Contracting Officer within five (5) calendar days of receipt.)

Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified below and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this Award/Contract, (b) the solicitation, as amended, and (c), such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein.

SIGNATURE OF CONTRACTOR:

Name/Title: Rich Rosselet VP & CFO Signature:  Date: 4 / 1 / 19

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

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

ALTERATIONS IN CONTRACT:

Refer to Exhibit B, Representations & Certifications. Exhibit B shall be replaced in its entirety with **Exhibit B - Revised-1**, attached hereto and made a part hereof for all pertinent purposes. Changes are marked with a vertical line at the margin and highlighted in yellow.

Refer to Exhibit E (Contractual Terms and Conditions). Exhibit E shall be replaced in its entirety with **Exhibit E - Revised-1**, attached hereto and made a part hereof for all pertinent purposes. Changes are marked with a vertical line at the margin and highlighted in yellow.

ACCEPTED AS TO: Exhibit A-Revised-5, Pricing Schedule, Dated February 15, 2019, Section 10, Items 1 through 16, inclusive for a Total Not-to-Exceed Price of: \$1,388,753.00.

SIGNATURE OF CONTRACTING OFFICER:

Typed Name: Aunta Debeert
Muhammad Abdullah,
Contracting Officer

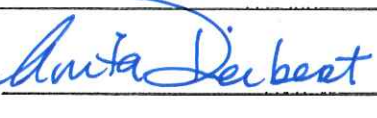
Signature:  Date: 4/5/19

EXHIBIT A - REVISED - 5

PRICING SCHEDULE

RFP 304274

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

1. IDENTIFICATION OF OFFEROR AND SIGNATURE OF AUTHORIZED AGENT

Company Name (Printed)	Luminator Mass Transit LLC.		
Address	900 Klein Rd.		
City, State, Zip	Plano, TX 75074		
Phone, Fax, Email	(972) 424-6511	(972) 633-0767	dkelleher@luminatorusa.com
The undersigned agrees, if this offer is accepted within the period specified, to furnish any or all supplies and/or services specified in the Schedule at the prices offered therein.			
Authorized Agent Name and Title (Printed)	Dan Kelleher Vice President of Sales		
Signature and Date	<i>Daniel Kelleher</i>		2-15-19

2. ACKNOWLEDGEMENT OF AMENDMENTS

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

Amendment #	Date	Amendment #	Date
Amend-1-Cmplt	11/13/2018	340274-Amd-4-Cmplt	12/5/2018
340274-Amd-2-Cmplt	11/28/2018	340274-Amd-5	1/11/2019
340274-Amd-3-Complete	12/3/2018	340274-Amd-6-Cmplt	1/11/2019

3. PROMPT PAYMENT DISCOUNT

# of Days	30	Percentage	%
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Note, payment terms are specified in Exhibit E, Contractual Terms and Conditions.

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

The Authority hereby accepts this offer.

Authorized Agent Name and Title (Printed)	
Signature and Date	
Accepted as to:	

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

For further information regarding Exhibit A, you may:

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

OR

- Submit a public information request directly to PIR@capmetro.org.

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

EXHIBIT B – Revised - 1

REPRESENTATIONS AND CERTIFICATIONS

(LOCALLY FUNDED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)

MUST BE RETURNED WITH THE OFFER

1. TYPE OF BUSINESS

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

- An individual
- A partnership
- A sole proprietor
- A corporation
- Another entity _____

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

2. PARENT COMPANY AND IDENTIFYING DATA

(a) The offeror (mark one):

- is
- is not

owned or controlled by a parent company. A parent company is one that owns or controls the activities and basic business policies of the offeror. To own the offering company means that the parent company must own more than fifty percent (50%) of the voting rights in that company.

(b) A company may control an offeror as a parent even though not meeting the requirements for such ownership if the company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of dominant minority voting rights, use of proxy voting, or otherwise.

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

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

Luminator Technology Group
900 Klein Rd,
Plano, TX 75074

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

(a) The offeror (and all joint venture members, if the offer is submitted by a joint venture) certifies that in connection with this solicitation:

(1) the prices offered have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, with any other offeror or with any other competitor;

(2) unless otherwise required by law, the prices offered have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening of bids in the case of an invitation for bids, or prior to contract award in the case of a request for proposals, directly or indirectly to any other offeror or to any competitor; and

(3) no attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

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

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

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

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

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

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

4. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

(a) In accordance with the provisions of 2 C.F.R. (Code of Federal Regulations), part 180, the offeror certifies to the best of the offeror's knowledge and belief, that it and its principals:

(1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(2) have not within a three (3) year period preceding this offer been convicted of or had a civil judgment rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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

(4) have not within a three (3) year period preceding this offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

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(b) Where the offeror is unable to certify to any of the statements above, the offeror shall attach a full explanation to this offer.

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

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

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

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

5. COMMUNICATIONS

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

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

Individual's Name	Date/Subject of Communication

(Attach continuation form, if necessary.)

6. CONTINGENT FEE

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

- has
- has not

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

- has
- has not

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

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

7. CODE OF ETHICS

(a) Statement of Purpose

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

(b) Applicability

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

(c) Standards of Ethical Conduct

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

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

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

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

(d) Roles and Responsibilities

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

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

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

(1) Anonymous Fraud Hotline – Internal Audit

(2) Anonymous Online Ethics Reporting System

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

(4) Safety Hotline

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

(e) Ethical Business Transactions

Section 1. Impartiality and Official Position

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

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

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

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

(2) No Board Member or employee shall:

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

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

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

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

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

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

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

Section 2. Employment and Representation

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

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

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

Section 3. Gifts

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

No Board Member or employee shall:

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

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

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

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

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

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

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

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

Section 4. Business Meals and Functions

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

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

Section 5. Confidential Information

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

No Board Member or employee shall:

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

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

Section 6. Financial Accountability and Record Keeping

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

A Board Member or employee shall:

(1) Not falsify a document or distort the true nature of a transaction.

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- (2) Properly disclose risks and potential liabilities to appropriate Capital Metro staff.
- (3) Cooperate with audits of financial records.
- (4) Ensure that all transactions are supported by accurate documentation.
- (5) Ensure that all reports made to government authorities are full, fair, accurate and timely.
- (6) Ensure all accruals and estimates are based on documentation and good faith judgment.

Section 7. Conflict of Interest

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

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

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

Disclosure

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

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

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

Definitions

- (1) A Local Government Officer is defined by Tex. Loc. Govt. Code § 176.001(4). A Local Government Officer is:
 - (i) A member of the Board of Directors;
 - (ii) The President/CEO; or
 - (iii) A third party agent of Capital Metro, including an employee, who exercises discretion in the planning, recommending, selecting or contracting of a vendor.
- (2) A Family Member is a person related within the first degree by consanguinity or the second degree by affinity as defined by Tex. Govt. Code, Ch. 573.
- (3) A Family Relationship is a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity as defined by Tex. Govt. Code, Ch. 573.
- (4) A Local Government Officer must file a Conflicts Disclosure Statement (FORM CIS) if

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

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

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

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

Section 9. Duty to Report and Prohibition on Retaliation

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

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

Section 10. Penalties for Violation of the Code of Ethics

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

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

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

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

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

Section 11. Miscellaneous Provisions

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

(2) Within sixty (60) days of the effective date for the adoption of this Code each Board Member and employee of Capital Metro will receive a copy of the Code and sign a statement acknowledging that they have read,

understand and will comply with Capital Metro's Code of Ethics. New Board Members and employees will receive a copy of the Code and are required to sign this statement when they begin office or at the time of initial employment.

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

8. **RESERVED**

9. **TEXAS ETHICS COMMISSION CERTIFICATION**

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

10. **TEXAS LABOR CODE CERTIFICATION (CONSTRUCTION ONLY)**

Contractor certifies that Contractor will provide workers' compensation insurance coverage on every employee of the Contractor employed on the Project. Contractor shall require that each Subcontractor employed on the Project provide workers' compensation insurance coverage on every employee of the Subcontractor employed on the Project and certify coverage to Contractor as required by Section 406.96 of the Texas Labor Code, and submit the Subcontractor's certificate to the Authority prior to the time the Subcontractor performs any work on the Project.

11. **CERTIFICATION REGARDING ISRAEL**

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

12. **CERTIFICATION REGARDING FOREIGN TERRORIST ORGANIZATIONS**

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

13. **CERTIFICATION OF PRIME CONTRACTOR PARTICIPATION**

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

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

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

14. **SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS**

(a) These representations and certifications concern a material representation of fact upon which reliance will be placed in awarding a contract. If it is later determined that the offeror knowingly rendered an erroneous or false certification, in addition to all other remedies the Authority may have, the Authority may terminate the contract for default and/or recommend that the offeror be debarred or suspended from doing business with the Authority in the future.

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

- (b) The offeror shall provide immediate written notice to the Authority if, at any time prior to contract award, the offeror learns that the offeror's certification was, or a subsequent communication makes, the certification erroneous.
- (c) Offerors must set forth full, accurate and complete information as required by this solicitation (including this attachment). Failure of an offeror to do so may render the offer nonresponsive.
- (d) A false statement in any offer submitted to the Authority may be a criminal offense in violation of Section 37.10 of the Texas Penal Code.
- (e) I understand that a false statement on this certification may be grounds for rejection of this submittal or termination of the awarded contract.

Name of Offeror:

Luminator Mass Transit, LLC

Type/Print Name of Signatory:

Rich Rosselet

Signature:



Date:

4/1/2019

EXHIBIT E – REVISED-1
CONTRACTUAL TERMS AND CONDITIONS
(SERVICES CONTRACT)

1. DEFINITIONS

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

- (a) “Applicable Anti-Corruption and Bribery Laws” means international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the Contractor’s provision of goods and/or services to Authority, including without limitation “FCPA” or any applicable laws and regulations, including in the jurisdiction in which the Contractor operates and/or manufactures goods for the Authority, relating to anti-corruption and bribery.
- (b) “Authority”, “Capital Metro”, “Cap Metro”, “CMTA” means Capital Metropolitan Transportation Authority.
- (c) “Change Order” means a written order to the Contractor signed by the Contracting Officer, issued after execution of the Contract, authorizing a change in the term or scope of the Contract.
- (d) “Contract” or “Contract Documents” means this written agreement between the parties comprised of all the documents listed in the Table of Contents, Change Orders and/or Contract Modifications that may be entered into by the parties.
- (e) “Contract Award Date” means the date of the Contract award notice, which may take the form of a purchase order, signed Contract or Notice of Award, issued by the Authority.
- (f) “Contract Modification” means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.
- (g) “Contract Sum” means the total compensation payable to the Contractor for performing the Services as originally contracted for or as subsequently adjusted by Contract Modification.
- (h) “Contract Term” means period of performance set forth in the paragraph entitled “Term” contained in Exhibit E.
- (i) “Contracting Officer” means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and finding on behalf of the Authority. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (j) “Contractor” means the entity that has assumed the legal obligation to perform the Services as identified in the Contract.
- (k) “Days” means calendar days. In computing any period of time established under this Contract, the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or State of Texas holiday, in which event the period shall run to the end of the next business day.
- (l) “FAR” means the Federal Acquisition Regulations codified in 48 C.F.R. Title 48.
- (m) “FCPA” means the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., as amended.
- (n) “Force Majeure Event” means strikes, lockouts, or other industrial disputes; explosions, epidemics, civil disturbances, acts of domestic or foreign terrorism, wars within the continental United States, riots or insurrections; embargos, natural disasters, including but not limited to landslides, earthquakes, floods or washouts; interruptions by government or court orders; declarations of emergencies by applicable federal, state or local authorities; and present or future orders of any regulatory body having proper jurisdiction.

- (o) "FTA" means the Federal Transit Administration.
- (p) "Fully Burdened Hourly Labor Rate" means an hourly rate that includes all salary, overhead costs, general and administrative expenses, and profit.
- (q) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights, and any derivative works thereto; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- (r) "Manufacturing Materials" mean any completed or partially completed supplies and materials, parts, dies, jigs, fixtures, plans, drawings, information, and contract rights specifically produced or specially acquired by the Contractor for the performance of the Contract.
- (s) "Notice of Award" means formal notice of award of the Contract to the Contractor issued by the Contracting Officer.
- (t) "Notice to Proceed" means written authorization for the Contractor to start the Services.
- (u) "Project Manager" means the designated individual to act on behalf of the Authority, to monitor and certify the technical progress of the Contractor's Services under the terms of this Contract.
- (v) "Proposal" means the offer of the proposer, submitted on the prescribed form, stating prices for performing the work described in the Scope of Services.
- (w) "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.
- (x) "Subcontract" means the Contract between the Contractor and its Subcontractors.
- (y) "Subcontractor" means subcontractors of any tier.
- (z) "Works" means any tangible or intangible items or things that have been or will be prepared, created, maintained, serviced, developed, incorporated, provided or obtained by the Contractor (or such third parties as the Contractor may be permitted to engage) at any time following the effective date of the Contract, for or on behalf of the Authority under the Contract, including but not limited to any (i) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes but is not limited to manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object code, source code or other programming code, HTML code, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, and (vii) all other goods, services or deliverables to be provided to the Authority under the Contract.

2. TYPE OF CONTRACT

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

(1) Definite-Quantity/Definite-Delivery. The following line items in Exhibit A-Pricing Schedule and Exhibit A-1 Pricing DMS Spare Parts are definite-delivery/definite quantity as follows:

- (i) All items in Exhibit A Revised-5-Pricing Schedule of Sections 8, 8A, 8B, and Sections 9, 9A and 9B, 10, 10A and 10B.
- ~~(ii) All items in Exhibit A-1 Pricing DMS Spare Parts of Section B.~~

(2) Indefinite-Quantity/Indefinite-Delivery. The following line items in Exhibit A-Pricing Schedule and Exhibit A-1 Pricing DMS Spare Parts 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) All items in Exhibit A Revised-5 Revised-Pricing Schedule of Sections 10, 10A, 10B, 10C, 10D and 10E 11, 11A, 11B, 11C, 11D, 11E, 12A, 12B, 12C, 12D, and 12E.
- (ii) This Contract is subject to the following minimum/maximum paragraph:
 - (a) Minimum order. The Authority will order a minimum of \$1,000 for the Services and supplies under this Contract.
 - (b) Maximum order. The Authority will order a maximum not to exceed the total dollar amount of this Contract.
- (iii) There is no limit to the number of orders that may be placed under this Contract.

3. TERM

The term of the Contract shall be 270 days from the Contract Notice to Proceed. No Services shall be performed under this Contract prior to issuance of a Notice to Proceed.

4. OPTION TO EXTEND CONTRACT TERM

The Authority shall have the unilateral right and option to extend the Contract for up to five (5) option periods for a twelve (12) month duration each at the option prices set forth in Exhibit A - Pricing Schedule and Exhibit A-1 – Pricing DMS Spare Parts (if applicable) upon written notice to Contractor.

5. ADDITIONAL OPTION TO EXTEND CONTRACT PERFORMANCE

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 six (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) Subject to the withholding regarding retainage as provided herein, all undisputed invoices shall be paid within the time period allowed by law through the Texas Prompt Payment Act, Tex. Gov't Code § 2251.021(b).

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

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

7. PERFORMANCE BOND

(a) Performance Bond. The Contractor shall provide a Performance Bond if the Contract amount exceeds one hundred thousand dollars (\$100,000.)

(b) All required bonds shall be in an amount equal to one hundred percent (100%) of the Contract amount. The surety company providing the bonds must be authorized to do business in the State of Texas. The surety company shall be approved for the amount of the bonds and either hold a certificate of authority from the U.S. Department of Treasury or have obtained reinsurance from a Treasury-listed insurer, in accordance with the requirements of Article 7.19-1. *Vernon's Texas Insurance Code*, as amended.

(c) The Contractor shall be required to submit all required bonds to the Contracting Officer within ten (10) days from the date of Notice of Award.

8. PAYMENT MILESTONES

Plan	10%
Design	15%
Develop	15%
Test	15%
Deploy/Go Live	30%
Closeout	15%

9. ACCEPTANCE CRITERIA

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

10. INSURANCE

(a) The Contractor shall furnish proof of Capital Metro-stipulated insurance requirements specified below. All insurance policies shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to the Authority and shall contain a contract waiver of subrogation in favor of the Authority. The Contractor shall furnish to the Authority certificate(s) of insurance evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Prior to the expiration of a certificate of insurance, a new certificate of insurance shall be furnished to the Authority showing continued coverage. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to the Authority and the Authority shall be named as an Additional Insured under each policy, Professional Liability insurance if required by this Contract. All insurance policies shall be written by reputable insurance company or companies acceptable to the Authority with a current Best's Insurance Guide Rating of A+ and Class XIII or better. 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 Dollars and No/100 Dollars (\$1,000,000) with an aggregate of Two Million Dollars and No/100 Dollars (\$2,000,000) with coverage that includes:

- (i) Products and Completed Operations Liability
- (ii) Independent Contractors
- (iii) Personal Injury Liability extended to claims arising from employees of the Contractor and the Authority.
- (iv) Contractual Liability pertaining to the liabilities assumed in the agreement.

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

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

(4) **Technology Errors & 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.

(5) **Cyber Liability Insurance** with limits no less than \$1,000,000

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

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

(d) Each insurance policy shall contain the following endorsements: PRIMARY AND NON-CONTIBUTORY INSURANCE and WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS, which shall be evidenced on the Certificate of Insurance. The General Liability insurance shall include contractual endorsement(s) which acknowledge all indemnification requirements under the Agreement. All required endorsements shall be evidenced on the Certificate of Insurance, which shall be evidenced on the Certificate of Insurance. Proof that insurance coverage exists shall be furnished to the Authority by way of a Certificate of Insurance before any part of the Contract work is started.

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

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

(g) All insurance required to be maintained or provided by the Contractor shall be with companies and through policies approved by The Authority. 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.

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 the 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. 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.

15. 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.

16. 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.

17. 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.

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

18. PERSONNEL ASSIGNMENTS

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

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

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

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

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

(3) **National Sex Offender Registry**

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

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

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

Offense Type	Action Required
Crimes Against the Person (other than sex crimes)	
Felony	Submit to Capital Metro for review if less than 10 years from date of release from confinement
Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction
Crimes Against the Person - Sex Crimes/Registered Sex Offenders	
ALL	Submit to Capital Metro for review
Crimes Against Property	
Felony	Submit to Capital Metro for review if less than 10 years from date of release from confinement
Moral Crimes, including, but not limited to: Drug Crimes, Prostitution, Bigamy, Illegal Gambling, Child Pornography	
Felony	Submit to Capital Metro for review if less than 10 years from date of release from confinement
Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction

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Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction
Driving Offenses	
Class A or B Misdemeanor, DWI/DUI or other "serious driving offense"	Disqualified if less than 7 years from date of conviction or deferred adjudication. Submit to Capital Metro for review if between 7-10 years since conviction or deferred adjudication or more than 2 convictions in a lifetime
Class C Misdemeanor Moving Violations	Disqualified from driving if more than 2 moving violations in the past 5 years (Any more than one driving safety course taken for a moving violation that appears on a five (5) year record will be treated as a moving violation and will count against the employee)

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

(d) The Contractor may request the Authority perform an individual assessment of a candidate with a criminal conviction meeting one of the above categories. In conducting an individual assessment, the Authority's review will include, but not be limited to, the following factors:

- (1) The nature and gravity of the offense or conduct;
- (2) The degree of harm caused by the offense or conduct;
- (3) The time that has elapsed since the conviction or completion of probation or jail time;
- (4) The nature of the job sought, including the job duties, environment and level of supervision;
- (5) Any incorrect criminal history;
- (6) Wrongful identification of the person;
- (7) The facts and circumstances surrounding the offense or conduct;
- (8) The number of offenses for which the candidate was convicted;
- (9) The subsequent conviction for another relevant offense;
- (10) The age of the person at the time of conviction or completion of probation or jail time;
- (11) Evidence that the person performed the same type of work, post-conviction, with the same or different employer, with no known incidents of criminal conduct;
- (12) The length and consistency of employment history before and after the conviction in a similar field as the current position sought;
- (13) Rehabilitation efforts, e.g., education, treatment, training;
- (14) Employment or character references and any other information regarding fitness for the particular position;
- (15) Whether the person is bonded or licensed under any federal, state or local program or any licensing authority;
- (16) The person's statement of the circumstances surrounding the offense and conviction and relevant factors is consistent with publicly available record related to the crime and conviction; and

(17) Any other factors deemed relevant in the consideration of a particular assessment.

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

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

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

(e) The Contractor will conduct new criminal history background checks on all assigned personnel every two (2) years during the Contract to ensure the preceding criterion are still met by the assigned personnel and notify the Authority if an employee has a subsequent arrest with pending disposition or conviction (or change in driving record, as applicable) that requires further review by the Authority using the criterion set forth above. The Authority reserves the right to request that the assigned individual be removed from performing work under this Contract.

19. BADGES AND ACCESS CONTROL DEVICES

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

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

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

20. CHANGES

(a) The Authority may, at any time, by written order, make changes within the general scope of the Contract in the Services to be performed. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of any Services under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract shall be modified in writing accordingly. Any claim of the Contractor for adjustment under this paragraph must be asserted in writing within thirty (30) days from the date of receipt by the Contractor of the notification of change unless the Contracting Officer grants a further period of time before the date of final payment under the Contract.

(b) No Services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Authority.

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

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

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

21. 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 subparagraph.

(c) Except with respect to the defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the 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 perform 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 subparagraph, may require the Contractor to transfer title and deliver to the Authority in the manner

and to the extent directed by the Authority any Manufacturing Materials as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and the Contractor shall, upon direction of the Authority, protect and preserve property in possession of the Contractor in which the Authority has an interest. Payment for completed Manufacturing Materials delivered to and accepted by the Authority shall be at the Contract price. The Authority may withhold from amounts otherwise due the Contractor for such completed Manufacturing Materials such sum as the Authority determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.

(e) 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.

22. 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.

23. CONTRACTOR CERTIFICATION

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

24. INTELLECTUAL PROPERTY PROVISIONS

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

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

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

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

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

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

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

ANY CLAIM OR ASSERTION BY ANY THIRD PARTY THAT THE WORKS INFRINGE ANY THIRD-PARTY RIGHTS. The foregoing indemnity obligation shall not apply to instances in which the Authority either:

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

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

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

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

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

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

25. 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.

26. 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.

27. SUSPENSION OF SERVICES

- (a) The Authority may order the Contractor in writing to suspend all or any part of the Services for such period of time as the Authority determines to be appropriate for the convenience of the Authority.
- (b) If the performance of all or any part of the Services is, for an unreasonable period of time, suspended or delayed by an act of the Authority in the administration of this Contract, or by the Authority's failure to act within the time specified in this Contract (or, if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension or delay, and the Contract modified in writing accordingly. However, no adjustment shall be made under this paragraph for any suspension or delay to the extent (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.
- (c) No claim under this paragraph shall be allowed (1) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Authority in writing of the act or failure to act involved (but this requirement shall not apply to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this subparagraph shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this paragraph.

28. 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.

29. 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.

30. 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.

31. CONFLICT OF INTEREST

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

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

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

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

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

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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 E. 5th Street, Austin, Texas 78702.

39. 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.

40. 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.

41. 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.

42. 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.

43. INDEMNIFICATION

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

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

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

(3) THE USE, CONDITION, OPERATION OR MAINTENANCE OF ANY PROPERTY, VEHICLE, FACILITY OR OTHER ASSET OF THE AUTHORITY TO WHICH THE CONTRACTOR HAS ACCESS OR AS TO WHICH THE CONTRACTOR PROVIDES SERVICES; OR

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

(b) "ACTION" MEANS ANY ACTION, APPEAL, PETITION, PLEA, CHARGE, COMPLAINT, CLAIM, SUIT, DEMAND, LITIGATION, MEDIATION, HEARING, INQUIRY, INVESTIGATION OR SIMILAR EVENT, OCCURRENCE OR PROCEEDING.

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

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

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

(f) THE INDEMNIFICATION OBLIGATIONS AND RIGHTS PROVIDED FOR IN THIS CONTRACT DO NOT REQUIRE (AND SHALL NOT BE CONSTRUED AS REQUIRING) THE CONTRACTOR TO INDEMNIFY, HOLD HARMLESS, OR DEFEND ANY INDEMNIFIED PARTY (OR ANY THIRD PARTY) AGAINST ANY ACTION OR CLAIM (OR THREATENED ACTION OR CLAIM) CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF ANY INDEMNIFIED PARTY, ITS AGENTS OR EMPLOYEES, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF ANY INDEMNIFIED PARTY, OTHER THAN THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS OF ANY TIER.

(g) THIS PARAGRAPH WILL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS CONTRACT.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. ORDER OF PRECEDENCE

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

1. Exhibit A – Revised-5 Pricing Schedule
- ~~2. Exhibit A1 – Pricing DMS Spare Parts~~
3. Exhibit E – Revised-1 Contractual Terms and Conditions
4. Exhibit F – Revised-2 Scope of Services
5. Exhibit H4/H2 – Revised-1 Compliance Matrix
6. Exhibit H3-Revised-1 Compliance Matrix EPPM Phases
7. Exhibit H4-Revised-2 Compliance Matrix Questions Solar Only
8. Exhibit B – Revised-1 Representations and Certifications

9. Other provisions or attachments to the Contract

52. 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.

53. VARIATION IN ESTIMATED QUANTITY

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

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. MISCELLANEOUS

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

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

manner hereinabove described shall be effective upon such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified.

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

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

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

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

(d) 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. Gov't 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.

56. 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.

57. 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.

58. PERFORMANCE MANAGEMENT DISINCENTIVES

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

The availability and reliability of the Dynamic Messaging Signs Upgrades/Solar ePaper Replacement system is critical to the delivery of Capital Metro services. The customer-facing component must be operating correctly to ensure the successful delivery of schedule and service-related messages. Capital Metro will track deficiencies and provide Contractor a monthly report on findings. Disincentives will be assessed as follows whenever the following conditions are found:

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

Condition	DMS Sign is not Functional	DMS Sign has errors	DMS Sign Software is not functional	DMS Sign Software has minor issue System otherwise functioning
Acknowledgement	2 hours	2 hours	30 minutes	4 hours
Response	2 hours to Site	2 hours to Site	1 hour	8 hours to site
Mean time to Recovery (MTTR):	4 hours	8 hours	2 hours	Next regular business day
Disincentive Assessed*:	\$500 per event / \$1000 per 24-hour day it remains out of service	\$100 per event / \$200 per 24-hour day it remains out of service	\$500 per event / \$1000 per 24-hour day it remains out of service	\$50 per event / \$100 per 24-hour day it remains out of service

EXHIBIT F-REVISED-2
Dynamic Messaging Signs (DMS) Upgrade or Solar ePaper Replacement
SCOPE OF SERVICES

1. **Objective.** Capital Metropolitan Transportation Authority (“CMTA” or “Capital Metro”) requires upgrade or Solar ePaper Replacement of one hundred twelve (112) Dynamic Message Signs (“DMS”). Proposers may propose on either upgrade or replacement or both and CMTA will select the proposal that represents the best value using the criteria in Exhibit C. This Exhibit F – Scope of Services and Exhibit H1 - Compliance Matrix describe the Upgrade requirements. This Exhibit F – Scope of Services and Exhibit H2 - Compliance Matrix for the Solar ePaper replacement requirements.
2. **Upgrades.** The DMS upgrades shall be for Windows 10 IoT Long Term Servicing Branch (“LTSB”), 4G LTE, Routers and Antenna. CMTA is requesting proposals for all hardware, software, services, and licenses necessary to upgrade its Dynamic Message Signs (“DMS”). The specific upgrades vary by:
 - Type of service: Rail Ethernet Communications vs. Rapid & Bus Cellular Communications; and
 - Date installed: Original Rapid deployment vs. Rapid Expansion and Westgate deployments now in progress.

See Table 1 below for the DMS Upgrades Required by Quantity and Service Type.

Upgrade Type to Be Provided	Quantity	Service	Sign Type
Windows 10 IoT LTSB	12	Rail	Double
Windows 10 IoT LTSB	2	Rail	Single
Windows 10 IoT LTSB Total	14		
Windows 10 IoT LTSB, 4G, Router & Antenna	80	Rapid (Original)	Single
Windows 10 IoT LTSB, 4G, Router & Antenna Total	80		
Router & Antenna	16	Rapid 801/803 Expansion*	Single
Router & Antenna	2	Rapid Westgate*	Single
Router & Antenna Total	18		
Total DMS to be Upgraded	112		
Spare Parts List	19		
<i>*Station construction projects in progress</i>			

2.1. **Windows 10 IoT LTSB Upgrade.** The 94 Rail and Rapid (Original) DMS are running on a legacy OS, which is past the end of mainstream and extended Microsoft support. The current environment shall have the hardware and operating system upgraded for Windows 10 IoT LTSB. The DMS manuals for both types of signs are included as Appendix A - MetroRapid DMS Manual and Appendix B - MetroRail DMS Manual.

2.2. **4G LTE Upgrade.** The 80 Rapid (original) DMS modems/routers are utilizing the third generation (3G) of wireless mobile telecommunication technology which shall reach end of its support lifecycle 12/31/2019. These DMS require upgrade to 4G LTE technology.

- 2.3. **Router and Antenna Upgrade.** The 18 Rapid (Original and Expansion) and Westgate shall be upgraded to the Sierra LX-60 Router or approved equivalent (see Appendix D) and compatible Antenna (see Appendix E) to (1) support 4G LTE technology, (2) allow for additional ethernet based devices to be added moving forward, and (3) leverage CMTA's mobile device manager, Airlink Mobility Manager ("AMM") for monitoring health, network traffic, location, etc. Contractor shall be responsible for cost and management of any coordination with Sierra Wireless.
- 2.4. **DMS Locations.** The location of the DMS are listed and shown in the maps included as Appendix C - DMS Locations.
- 2.5. **Coordination with DMS Vendor.** The Contractor shall be responsible for ensuring that the upgrade maintains the DMS current functionality, as well as being compliant with existing warranty and support program. Consequently, the Contractor shall be responsible for the cost and management of any coordination with the vendor that supplied the DMS, Conduent Inc., that may be necessary for design, development, integration, test, and deployment.
- 2.6. Contractor must install using a licensed and bonded electrician. Contractor should treat this initiative as a turnkey project.
- 2.7. **Disposal of Replaced Components and Materials.** Contractor shall be responsible for the immediate removal from DMS sites and safe disposal of all components and materials of any type being replaced in performing the work in accordance with all local, state and federal regulations, and in a manner that will not expose CMTA to any cyber security risk of any kind. **CONTRACTOR SHALL INDEMNIFY AND HOLD CMTA HARMLESS FOR ANY CLAIM, DEMAND, SUIT, ACTION, INVESTIGATION, ALLEGATION OR ANY OTHER PROCEEDING, ARISING OUT OF, OR RELATION TO ANY ERROR OR OMISSION MADE IN SAID DISPOSAL.** Contractor shall present a copy of the disposal plan for CMTA to review internally as part of the submittal process.
- 2.8. **Project Completion Term.** The Contractor shall deliver all fully-functioning upgrades and phase deliverables within nine months of Notice to Proceed.
3. **Current Environment.** The DMS application information suite is comprised of the Conduent Advanced Traveler Information System (ATIS) Manager, Web SysCon and SignApp.
- 3.1. ATIS Manager is the server application that communicates with the sign client to exchange vehicle schedule/real-time arrival information and sign health status (up/down). SignApp is the client software running on the On-Board Computer (OBC) that resides inside each sign.
- 3.2. The communications between the signs and the ATIS Manager are bi-directional and can be initiated from either end.
- 3.3. To facilitate server-initiated communications, the corresponding services running on each controller are assigned with fixed Internal Private IP addresses. The modem is configured with port forwarding rules, so that traffic with a controller's IP Address can be forwarded to another controller IP address.
- 3.4. The ATIS Manager continuously monitors each SignApp for the following health information:
- 3.4.1. LED panel power supply unit status (Pass/Fail)
 - 3.4.2. SBC-sign controller communications status (Pass/Fail)
 - 3.4.3. Count of LED pixel fails (decimal number indicating the number of LED fails)

- 3.4.4. Sign firmware ID and version numbers (e.g. "FW0334 v002.6")
- 3.4.5. LED panel overheating (Yes/No)
- 3.4.6. Current sign brightness level (e.g. 75%)

3.5. The following data can currently be received and displayed on the DMS:

- 3.5.1. Destinations, arrivals and departures information
- 3.5.2. Courtesy information and current time updates
- 3.5.3. Announcements for service disruptions or emergencies
- 3.5.4. CMTA shall provide a document with the rotation of next departure, next message and special message with variable timing

4. Replace DMS With Solar. The selected Contractor shall replace the existing DMS with outdoor Solar ePaper or Dynamic Messaging Signs (Solar DMS) that will integrate with CMTA’s traveler tools through a provided API which will display and provide audio of predictive bus departure information and special messages. See Table 2 below for the DMS Replace with Solar ePaper Required by Quantity and Service Type.

Table 2: DMS Replace with Solar ePaper Required by Quantity and Service			
Service	Quantity	Sign Type	# of Screens
Rail	12	Double	24
Rail	2	Single	2
	14		26
Rapid	98	Single	98
	98		98
Total DMS to be Replaced with Solar	112		124
Spare Signs	11		11

5. Technical Solution for Replacement. The Contractor shall provide a fully hosted and maintained, n-tiered software solution accessed through a secure web client that is able to display CMTA’s real-time feed. After Contract award, Capital Metro will provide to the Contractor HaCon Traveler Tool API or the Swiftly API, both of which provide GTFS-RT and static GTFS schedule and detour data built using standard GTFS protocols. The production trip planner with real-time data is available at <https://capmetro.hafas.cloud>. See Appendix I for a sample of the API fields. See Exhibit H-2, Compliance Matrix for additional requirements. The Swiftly API will be provided to the selected Contractor if CMTA determines to use instead of the HaCon API.

6. Physical Installation Solution. The design of the stations where the DMS are installed are attached as Appendix F - MetroRapid Stations and Appendix G – MetroBus Westgate Park & Ride (both types use cellular communications) and Appendix H - MetroRail Stations (which use ethernet communications). The DMS currently installed are electric-powered signs with attached brackets on the sign used to hang from the shelters.

7. DMS Locations. The location of the DMS are listed and shown in the maps included as Appendix C - DMS Locations.

8. Design and Engineering for Replacement. CMTA is seeking the simplest solution in terms of physical installation such as removal of the current DMS and replacement with a similar size solar ePaper DMS, plus installation of a connected solar collection device on the top of the shelters. Another simple solution may be to

replace the current DMS with a static, non-powered sign and install a smaller ePaper DMS in a more prominent location that is easier for waiting riders to see than the current sign. CMTA acknowledges that the physical retrofit of the stations may be more complex. The Contractor shall provide all design and engineering services needed to retrofit the current stations with solar DMS in a manner that will not compromise the structural integrity of the stations and that will be comparable to the current installation. **All shelter modifications are subject to the agency's review and approval.**

- 9. Safe and Legal Installation.** The Contractor shall be responsible for costs and complying with any applicable regulations including but not limited to City of Austin construction permits, traffic control, noise ordinances for safe and legal installation. Contractor must install using a licensed and bonded electrician. Contractor should treat this initiative as a turnkey project.
- 10. Solar Collection.** CMTA anticipates that the physical installation of the solar collection device will be in a similar location and in a similar manner at most stations ("standard design"); however, some stations may require additional design for the optimal placement of the solar collection device due to the urban setting and geographical location. Likewise, while the majority of IDIQ solar DMS can use a standard design, some locations for the IDIQ solar DMS may require additional design for optimal placement of the solar collection device. The Contractor shall be responsible for analyzing each location and providing design, engineering and installation services that will provide the functional requirements herein.
- 11. Exclusions.** The Dynamic Message Signs are the only components that CMTA is seeking solar replacements. Other amenities at the stations (lights, wi-fi and at rail stations, video cameras) will remain on electrical power.
- 12. Disposal of Replaced Components and Materials.** Contractor shall be responsible for the immediate removal from DMS sites and safe disposal of all components and materials of any type being replaced in performing the work in accordance with all local, state and federal regulations, and in a manner that will not expose CMTA to any cyber security risk of any kind. **CONTRACTOR SHALL INDEMNIFY AND HOLD CMTA HARMLESS FOR ANY CLAIM, DEMAND, SUIT, ACTION, INVESTIGATION, ALLEGATION OR ANY OTHER PROCEEDING, ARISING OUT OF, OR RELATION TO ANY ERROR OR OMISSION MADE IN SAID DISPOSAL.** Contractor shall present a copy of the disposal plan for CMTA to review internally as part of the submittal process.
- 13. Project Completion Term.** The Contractor shall deliver a fully-functioning solar ePaper DMS solution replacing existing DMS and phase deliverables within nine months of Notice to Proceed, but in no case later than December 1, 2019.
- 14. Indefinite Delivery/Indefinite Quantity ("IDIQ")** In addition to the replacement of the existing DMS with solar DMS, this Scope of Services and Exhibit H1 Compliance Matrix includes an Indefinite Delivery/Indefinite Quantity ("IDIQ") requirement for other CMTA-designated locations. If CMTA selects an upgrade proposal for the existing DMS, it will have the option to award this Scope of Services only as to the IDIQ portion.
- 15. Indefinite Delivery/Indefinite Quantity ("IDIQ") Requirements.** The IDIQ solar ePaper DMS diagonal screen sizes requested are 13", 23", 32", 42," and 57". Contractor may propose additional sizes that meet all other requirements. CMTA will install the IDIQ signs. Contractor will be responsible for providing all installation instructions needed for installation. All functional requirements described in this Exhibit H-1 and Exhibit H-2 apply to the IDIQ solar DMS except for those terms specifically applicable to replacement of the existing DMS at MetroRapid, MetroBus and MetroRail stations: Exhibit F paragraphs 4. Replace with Solar, 6. Physical Installation Solution, 7. DMS Locations, 8 Design and Engineering for Replacement, 9. Safe and Legal Installation, 11. Exclusions and 13. Project Completion Term and Exhibit H-2, paragraph 7 Physical Installation.

16. Capital Metro shall provide the following:

- 16.1. Project Manager to manage the project for Capital Metro
- 16.2. A technical lead to assist with the project and liaison with Capital Metro stakeholders
- 16.3. Facilities and network access for on-site personnel
- 16.4. For the Upgrade project only: Sim cards available within 3 weeks of Contractor's timely provision of the IMEI numbers from the routers and cellular service for the routers

17. Proposal. Contractor shall provide a cost and technical proposal that includes:

- 17.1. Cost Proposal showing individual pricing for staff positions with hours and fully burdened labor rates
- 17.2. Technical proposal describing the strategy for completing work and acknowledgement that it shall comply with all requirements described herein
- 17.3. Proposed schedule for completing all work including the work within nine months of Notice to Proceed.

18. Payment Milestones Percentages. Payment for the project phases shall be paid in the following percentages of total Project Cost:

- 18.1. Plan: 10%
- 18.2. Design: 15%
- 18.3. Develop: 15%
- 18.4. Test: 15%
- 18.5. Deploy/Go Live: 30%
- 18.6. Closeout: 15%

19. Phase Closeout. Payment shall be governed based on:

- 19.1. Notification of Plan Phase Completion with Proof of Deliverables
- 19.2. Sign off on Go Live Phase Acceptance Certificate
- 19.3. Phase Invoice upon Receipt of CMTA Authorization to Invoice which must contain the CMTA signed
- 19.4. Acceptance Certificate

Exhibit H-1 - Compliance Matrix
DMS Signs Upgrades

Exhibit H-1 DMS Signs Upgrade Only							
Instructions: <ul style="list-style-type: none"> For each Compliance Term, select "C-Comply", "N-Cannot Comply" or "A-Will Comply with Alternative." The comments section shall be used for "A-Will Comply with Alternative" for explaining the alternative, or where requested in the Compliance Term column. Do not add comments for "C" or "N" unless instructed otherwise. The selected Contractor ("Contractor") must deliver a system encompassing all requirements including delivery of third-party products to make the solution fully functional. The requirements in the Scope of Services and Compliance Matrix are functional in nature and do not encompass all requirements. The Contractor shall determine, through the Plan and Design phases, the impacts of the Solution and specific technical modifications needed to carry out the intent herein. The Contractor shall document and discuss said needs with CMTA and implement the agreed-upon solution accordingly. Contractor must deliver all Compliance Terms unless it is within a section marked "Optional" that is not exercised or CMTA agrees to an alternative. The final column entitled "Test #" shall be used during the Develop Phase when the Contractor will update the Compliance Matrix with the test number that responds with each line. 							
#	Compliance Matrix	Proposer Questions	CMTA Responses	Compliance	Contractor Comments	CMTA Response	Test #
1	Contractor shall provide all hardware, software, services, and licenses necessary to upgrade the DMS and shall ensure all DMS production systems resume normal operations after upgrade						
2	Provide full documentations and updated manuals reflective of the upgraded systems installed at Capital Metro, including all diagrams for the installation						
3	Adhere to the CMTA change management process of completing and submitting the change request form timely for CMTA review and timely notification of CMTA staff of any system change						
4	Production upgrades shall occur at a time to minimize outage and impact to business areas. Provide rollback of system upgrade if upgrade was not successful so that normal business operations can be resumed						
5	Provide onsite installation and support for the software upgrade and transition from existing to upgraded system during go-live						
6	Replace existing Exhibit A-1 - DMS Spare parts with the parts applicable for the upgrades herein DMS Router DMS OnBoard Computer DDR3 RAM Compact Flash card Cell Antenna						
7	Windows 10 IoT LTSB. Provide software and system upgrade from the current version(s) of DMS operating systems to Windows 10 IoT LTSB for existing MetroRail and MetroRapid: <ul style="list-style-type: none"> Upgrade both Production and Test DMS On-Board computer systems environments Test that all the current applications necessary for DMS running on the legacy systems shall work on the future systems Ensure testing of all DMS Systems in Test environment to verify success of upgrade and provide testing evidence thereof prior to upgrade of production Must be compatible with System Center Configuration Manager (SCCM) automated patching setup and configuration Install Random Access Memory (RAM) and preloaded (Windows 10 IoT LTSB/Text to Speech App/Sign App) Compact Flash (CF) card 						
8	Cellular Technology 4G LTE Upgrade: <ul style="list-style-type: none"> Replace 3G with 4G LTE for MetroRapid (Original) Provide the IMEI numbers from the routers, so that CMTA can order the SIM cards. CMTA's wireless vendor requires the IMEI numbers before providing the SIM cards The Contractor shall provide the IMEI numbers a minimum of 3 weeks prior to the need for timely stage execution. 						
9	Routers. Replace the modems that are used for the MetroRapid (Original) DMS and the Cradlepoint routers for the MetroRapid 801/803 Expansion and Westgate DMS with the Sierra LX-60 Router or approved equivalent, see Appendix D: Router Salient Characteristics <ul style="list-style-type: none"> Propagate configuration to be defined by Network Security and Operation SMEs to all DMS and maintain with a 3-year warranty thereafter Collaborate with CMTA and Sierra Wireless (AMM vendor) for the router configuration Be responsible for configuration assistance for the cost and management of Sierra Wireless services Test that the new router continues to support all the current functionality from the existing modem Install Ethernet cable to the Router Remove Serial modem/Cradlepoint Router power cable from the relay and connect Router to the PSU3 12v Power supply Install the Router or bracket and cable pass through 						
10	Antennas. Replace the current antennas with the GNSMB-COV multi-band antenna (supports 4G LTE, GPS and single port 802.11ac Wi-Fi coverage) or approved equivalent (see Scope's Appendix E: Antenna Salient Characteristics) for the existing MetroRapid stations as well as the MetroRapid 801/803 Expansion and Westgate: <ul style="list-style-type: none"> Provide onsite installation and support for the Antenna upgrade Connect the new Antenna to the Router 						

Exhibit H-2 - Compliance Matrix
SOLAR ePaper Replacement

Exhibit H-2 DMS Solar ePaper Only							
Instructions: <ul style="list-style-type: none"> •For each Compliance Term, select "C-Comply", "N-Cannot Comply" or "A-Will Comply with Alternative." •The comments section shall be used for "A-will comply with an alternative" for explaining the alternative, or where requested in the Compliance Term column. •Do not add comments for "C" or "N" unless instructed otherwise. •The selected Contractor ("Contractor") must deliver a system encompassing all requirements including delivery of third-party products to make the solution fully functional. •The requirements in the Scope of Services and Compliance Matrix are functional in nature and do not encompass all requirements. The Contractor shall determine, through the Plan and Design phases, the impacts of the Solution and specific technical modifications needed to carry out the intent herein. The Contractor shall document and discuss said needs with CMTA and implement the agreed-upon solution accordingly. •Contractor must deliver all Compliance Terms unless it is within a section marked "Optional" that is not exercised or CMTA agrees to an alternative. •The final column entitled "Test #" shall be used during the Develop Phase when the Contractor will update the Compliance Matrix with the test number that responds with each line. 							
#	Compliance Matrix Term	Proposer Questions	CMTA Responses	Compliance	Contractor Comments	CMTA Response	Test #
1	Contractor shall provide all hardware, software, services, integrations and licenses necessary to replace the existing DMS with a solar DMS solution for the MetroRapid, MetroBus and MetroRail stations, and to provide additional solar DMS on an Indefinite Delivery / Indefinite Quantity (IDIQ) basis.						
2	Solar solution shall use a fully hosted and maintained, n-tiered software solution accessed through a secure web client.						
3	Display CMTA's real-time feed. Capital Metro will provide the HaCon Traveler Tool API to the Contractor after contract award which provides real-time next departures for assigned stop ID. The production trip planner with real-time data is available at https://capmetro.hafas.cloud . See Appendix A for a sample of the API fields.						
4	CMTA desires a 5-10 second data refresh rate because the CapMetro App traveler tools will refresh every ten (10) seconds, and the information on the solar DMS should be in synch with the CapMetro App to the extent possible so that riders are not confused if they look at the solar DMS simultaneously with the CapMetro App while waiting at a station. The current DMS and CapMetro App have the tendency not to match departure times largely due to the data sources differing. This has led to a number of customer complaints and confusion. The solar DMS will use the same data source as the CapMetro App which offers an opportunity to provide customers with consistent information. Please indicate in the Comments column the refresh rate and the impact of a 5-10 second refresh rate on solar batteries.						
5	DMS displays shall include: <ul style="list-style-type: none"> • ADA compliant text size (2-inch height characters) •Ability to display special messages •Minimum 2 lines of text to show the next two buses or next bus and special message •Sufficient number of "pages" to rotate through the lines of text a minimum of 15 routes •Ability to display route number, route name and departure time •Ability to display current date and time •Sufficient font size and brightness/contrast to be read from 6 feet in direct sunlight, dawn, dusk or at night •Readable at all times by sidelight, backlit or built-in screen illumination 						
6	Natural language text-to-speech (TTS) capability for the annunciation of the display information: <ul style="list-style-type: none"> • Automatically adjust volume to be audible with road noise present, but not audible outside a 15-foot radius of the sign (self-adjusting sounds based on detectable surrounding noise if available) •Be activated by push button (for Fixed Route and Rapid stops only) •Be configurable to announce the next bus and special message •Support English and Spanish initial default to English (needs to recognize 99% of vocabulary) 						
7	Physical Installation. Vendor shall be responsible for physical installation of the solar DMS for the replacement of the existing DMS. (This Compliance Matrix term is not applicable to IDIQ solar signs.) Contractor shall provide: <ul style="list-style-type: none"> • An electronic set of installation instructions • Mounting brackets, if necessary • Cantilever bracket to angle display (e.g. MetroRail stations) • Provide technical assistance during the installation as needed 						
8	Back office management system shall include: <ul style="list-style-type: none"> •Remote update of current display of the sign •Remote update of special messages •Health monitoring •Battery/power levels •Communication status •Display of rotating messaging •Ability to adjust the time between when data is displayed through a rotation cycle •Ability to remotely view what is being displayed on the signs (not just configuration) •Solar voltage reporting 						
9	Diagnostics. The DMS shall generate error logs and reports that will facilitate predictive maintenance; rapid and accurate root cause analysis for efficient resolution; logs shall be available remotely, through the backend, and exportable to PDF, CSV and Excel. At a minimum, error logs shall contain: error number, date, time, severity code (High/Med/Low), error description, unique DMS Identifier, location						
10	Contractor must provide all needed connectivity for DMS to function remotely. The DMS(s) must be equipped for cellular service (4G LTE SIMs must be provided). Contractor must supply network connectivity via cellular service for the life of the contract.						
11	Solar capability. DMS shall exclusively rely upon solar power. The solar panels shall have the following characteristics: <ul style="list-style-type: none"> •Rechargeable battery pack •Quickly charges in 4-6 hours of full sunlight •Fully charged battery provides minimum seven (7) days of autonomy due to poor charging conditions (minimal daylight) •5+ year battery life 						

Exhibit H-2 - Compliance Matrix
SOLAR ePaper Replacement

#	Compliance Matrix Term	Proposer Questions	CMTA Responses	Compliance	Contractor Comments	CMTA Response	Test #
12	Outdoor elements. The DMS shall: <ul style="list-style-type: none"> •Operate in Austin, Texas weather conditions which includes high heat and humidity, flash floods, wind-driven rain, snow; relative humidity up to 95% over the ambient temperature range; use NEMA-4 industrial grade material; capable of operating outdoors over an ambient temperature range of 0°F to 160°F •Be vandal resistant and easy to clean with typical cleaning products; quality of materials used will not degrade over the life because of environmental conditions 						
13	Solar DMS shall meet or exceed CMTA's required system fully functioning and displaying messages uptime of 99.99%						
14	Maintenance and Support. - Minimum Requirements: <ul style="list-style-type: none"> •A Preventative Maintenance and Inspection Plan •24x7x365 phone, email and incident management response, including all time necessary for the support of software and equipment for all stations •Return Merchandise Authorization (RMA) Repair Services •Documentation for system administration and repair •Service Level Agreement (SLA) to include incident priority and escalation process 						
15	Adhere to the CMTA change management process of completing and submitting the change request form timely for CMTA review and timely notification of CMTA staff of any system change.						

EPPM Phase Tasks and Deliverables. The Contractor shall perform the following phase tasks and provide the associated deliverables required to deploy all hardware, software, updates and configurations resulting in a fully functional and tested system. Contractor shall obtain CMTA review of all deliverables and make changes and updates to deliverables per CMTA review as needed. CMTA acceptance of all deliverables for each phase as evidenced by a signed phase acceptance certificate is required prior to invoicing. Each phase is closed by (1) Contractor's Phase Completion Notification with Proof of Deliverables; (2) CMTA's Acceptance Certificate Signoff and Authorizatin to Invoice; and (3) Invoice upon Receipt of CMTA Authorization to Invoice

<p>1.0</p>	<p>Plan. Meet with CMTA project manager and business area stakeholders for project planning, including review of proposed schedule, roles and responsibilities, as well as conduct a complete review of functionality to be delivered, and other project activities. Plan Deliverables:</p> <ol style="list-style-type: none"> 1. Project organization chart 2. Project schedule (draft) 3. Action Items and Issues log (AIL) 4. Review and comment on CMTA Project Management Plan 5. Infrastructure and Integration Audit 6. Initiate Risk Register 7. System Implementation Plan (draft) 8. Compliance Matrix Review and Update 9. Kick-off meeting and base product demo with stakeholders to review and clarify requirements including confirmation of any required updates to CMTA's environment
<p>2.0</p>	<p>Design. Contractor's technical requirements gathering and detailed design, beginning with on-site assessment and discussion with affected CMTA departments. This phase will determine how the system will be installed, product wireframe presentation to the customer, and how it will be managed in the back end. The Contractor will work with CMTA to develop materials that will provide a basis to help instruct CMTA stakeholders in the easiest and most efficient way to use the system to their utmost advantage. Design Deliverables:</p> <ol style="list-style-type: none"> 1. On-Site Assessment; Documentation of Findings 2. Configuration Management Document ("CMD" - Draft) 3. Shop Drawings that reflect the planned station installation (Draft) 4. System Implementation Plan (Final) 5. Disaster Recovery Plan (Draft) 6. Quality Assurance Plan (Draft) CMTA only <i>confirms</i> QA/QC; Plan shall clearly delineate that the Contractor performs QA/QC process 7. Risk Management Plan participation (Final) 8. Data dictionary and Entity Relationship Diagram (ERD) 9. Project Schedule (Baseline) with Resource Loading 10. Network architecture diagram (Draft) 11. Electrical and communication connection designs (Draft) 12. Installation Plan (Draft): equipment installation design, procedures, schedule, CMTA support required; detailed so CMTA can perform installation & deinstallation if desired post-implementation 13. Deinstallation Plan (Draft - Required only for Solar) 14. Review of Design and System Implementation Plan with Stakeholders 15. Update of Design based on review 16. Review and Acceptance of CMTA Project Management Plan 17. <u>Compliance Matrix Review and Update</u>
<p>3.0</p>	<p>Develop. Development, configuration and installation of the solution and integration as well as installation within a development and a test environment so configuration and testing of the required functionality can be started. This task will include setting the initial configuration values by the Contractor so they can be tested and changed if needed. During this phase, the rollout of the system must be worked on to include training all IT and Operational staff who will use or have on-going support roles. Develop Deliverables:</p> <ol style="list-style-type: none"> 1. Quality Assurance Plan Including QA/QC Checklist (Final) 2. Test Environment Installation that provides CMTA full access throughout the project and the life of the system 3. Supporting Infrastructure Implemented 4. Application and Functionality Development 5. Test Procedure/Plan including test Scripts, use cases, acceptance test criteria demonstrating each Compliance Matrix term is developed and meets requirement (Draft) 6. Update Compliance Matrix with Test Number(s) 7. CMD Values Test and Update 8. High-level Training of CMTA Staff to Prepare for Test Phase 9. Warranty and Maintenance Plan Review (Required only for Solar) 10. Review and Feedback of CMTA Support Responsibility Matrix 11.a. Training - Solar only - Role-based, On-site Training Plan for all User Types (Draft): <ul style="list-style-type: none"> • Training schedule and course outlines for review a minimum of three weeks prior to the scheduled classes • Separate training sessions for revenue, customer service maintenance and system administrator roles • Provide all materials necessary to train participants (CMTA will provide space and laptops) • Schedule the training staff to be on site timely to ensure equipment, materials, student accounts and classroom are fully ready for when class begins • Arrange for an instructor(s) with thorough knowledge of the material covered in the course(s) and the ability to effectively lead the knowledge transfer • Provide customized training manuals specific to CMTA's environment in Microsoft Word and PDF. Contractor shall provide the agreed-to number of hard copies 11.b. Training Plan - Upgrade only - for any changes to diagnostics, maintenance and repairs (Draft)
<p>4.0</p>	<p>Test. Integration and testing by Contractor and CMTA to determine that all functionality required of the installed TVM solution, software, off board validators and integrations into the existing environment is in place and working. The testing phase shall not be deemed complete until all functional requirements of the newly implemented system have been fully tested and approved by the project team. The Contractor shall provide a Test Procedure document with test scripts, use cases and acceptance test criteria for review and acceptance by CMTA for all phases. Only CMTA data is to be used for testing. Before CMTA performs any testing, the Contractor shall provide the written test results of the full test procedure/plan demonstrating no Class 1 or Class 2 failures. Test Deliverables:</p> <ol style="list-style-type: none"> 1. Document Procedures and Migrate Environment from development to test, stage and production 2. Contractor's Successfully Test Procedure/Plan Results 3. Documentation including User, System Admin, Maintenance, Installation and Training Manuals, (Draft) 4. Test Procedure/Plan including Test Scripts, Use Cases and Acceptance Test Criteria (Final) 5. System Acceptance Test (SAT) Plan Developed (Subset to Use to Determine Go, No-Go before Go Live) 6. Security Penetration Test 7. Disaster Recovery Test – End-to-End 8. Installation and Deinstallation Plans (Final) 9. System Acceptance Test (SAT) 10. Introduction to Contractor's Support Manager and Team 11. Detailed Processes and Contact Information for Post Go Live Support 12. Test Failure Log & Remediation Plan. Contractor shall lead testing of the solution including integrations and resolve all Significant (Class 1) and Severe (Class 2) Test Failure Results (TFRs). Contractor shall endeavor to resolve Minor (Class 3) TFRs during this phase; however, the requirement for Class 3 resolution is during the Closeout phase. Definition for each class are as follows: <ul style="list-style-type: none"> • Severe - A Class 1 test failure is a severe defect that prevents, inhibits, or significantly impairs further testing or operation of the system. • Significant - A Class 2 test failure is a significant defect that does not prevent further testing or has a minimal effect on normal operations of the system. • Minor – A Class 3 test failure is a minor or isolated defect that does not impact or invalidate the testing or normal operations of the system. 13. Regression Testing of the Entire Test Plan for Any Class 1 and Class 2 Failures 14. Compliance Matrix Review and Update

EPPM Phase Tasks and Deliverables. The Contractor shall perform the following phase tasks and provide the associated deliverables required to deploy all hardware, software, updates and configurations resulting in a fully functional and tested system. Contractor shall obtain CMTA review of all deliverables and make changes and updates to deliverables per CMTA review as needed. CMTA acceptance of all deliverables for each phase as evidenced by a signed phase acceptance certificate is required prior to invoicing. Each phase is closed by (1) Contractor's Phase Completion Notification with Proof of Deliverables; (2) CMTA's Acceptance Certificate Signoff and Authorizatin to Invoice; and (3) Invoice upon Receipt of CMTA Authorization to Invoice

<p>5.0</p>	<p>Deploy/Go Live: Deploy: once all the test failures have been corrected, the Contractor shall install and configure the software and incorporate it into the live environment. Go Live: the system shall go live and be monitored for the first 30 days of operation. If Severe (Class 1) or Significant (Class 2) issues arise, the Go-Live period may be cancelled, extended or restarted. The Contractor shall be required to participate in the monitoring of the system and respond to issues so they are quickly resolved. Deploy/Go Live Deliverables:</p> <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top; width: 50%;"> <ol style="list-style-type: none"> 1. Conduct Training 2. Document Procedures and Migrate Environment from Test to Production 3. QA/QC checklist Sign off 4. Delivery and Inventory of Spares (e.g. optional hand-held devices) 5. Update to Disaster Recovery Plan 6. Delivery of all Documentation including User, System Admin, Maintenance, Installation and Training Manuals, (Revise Draft) 7. Deinstall existing hardware for the immediate removal and safe disposal, in a manner that does not interrupt passenger service (Required for Solar only) 8. Deployment, implementation, configuration and Integration of solution </td> <td style="vertical-align: top; width: 50%;"> <ol style="list-style-type: none"> 9. During contract period, Contractor shall provide a storage container for equipment storage and CMTA will provide space for container 10. System Acceptance Test (SAT) 11. Resolution of SAT TFRs 12. Go Live Schedule and Transition Plan 13. System Go Live 14. Technical Lead On-site During First Week of Go Live, or Longer if System Issues are Experienced 15. Revised (final) Copies of all Required Documentation including User and Training Manuals 16. Compliance Matrix Review and Update </td> </tr> </table>	<ol style="list-style-type: none"> 1. Conduct Training 2. Document Procedures and Migrate Environment from Test to Production 3. QA/QC checklist Sign off 4. Delivery and Inventory of Spares (e.g. optional hand-held devices) 5. Update to Disaster Recovery Plan 6. Delivery of all Documentation including User, System Admin, Maintenance, Installation and Training Manuals, (Revise Draft) 7. Deinstall existing hardware for the immediate removal and safe disposal, in a manner that does not interrupt passenger service (Required for Solar only) 8. Deployment, implementation, configuration and Integration of solution 	<ol style="list-style-type: none"> 9. During contract period, Contractor shall provide a storage container for equipment storage and CMTA will provide space for container 10. System Acceptance Test (SAT) 11. Resolution of SAT TFRs 12. Go Live Schedule and Transition Plan 13. System Go Live 14. Technical Lead On-site During First Week of Go Live, or Longer if System Issues are Experienced 15. Revised (final) Copies of all Required Documentation including User and Training Manuals 16. Compliance Matrix Review and Update
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<p>6.0</p>	<p>Close. Obtain acceptance by CMTA to formally close the project. Apply appropriate updates to project documents. Close out all procurement activities ensuring termination of all relevant agreements. Close Deliverables:</p> <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top; width: 50%;"> <ol style="list-style-type: none"> 1. Follow-up training on areas identified during Go Live and Training Documentation (Final) 2. Data dictionary and Entity Relationship Diagram (Final) 3. As built (Final) 4. Communication connection designs (Final) 5. All AIL items closed 6. Resolution of all Minor (Class 3) TFRs </td> <td style="vertical-align: top; width: 50%;"> <ol style="list-style-type: none"> 7. Final Documentation for Environment Refresh (Develop-Test-Stage-Production) 8. Disaster Recovery Plan (Final) 9. Configuration Management Documents (CMD – Final) 10. APIs and all documentation related to all integrations (Final) 11. Warranty and Maintenance Procedure Review and Forms 12. As-builts: updates to any documentation including design document changes </td> </tr> </table>	<ol style="list-style-type: none"> 1. Follow-up training on areas identified during Go Live and Training Documentation (Final) 2. Data dictionary and Entity Relationship Diagram (Final) 3. As built (Final) 4. Communication connection designs (Final) 5. All AIL items closed 6. Resolution of all Minor (Class 3) TFRs 	<ol style="list-style-type: none"> 7. Final Documentation for Environment Refresh (Develop-Test-Stage-Production) 8. Disaster Recovery Plan (Final) 9. Configuration Management Documents (CMD – Final) 10. APIs and all documentation related to all integrations (Final) 11. Warranty and Maintenance Procedure Review and Forms 12. As-builts: updates to any documentation including design document changes
<ol style="list-style-type: none"> 1. Follow-up training on areas identified during Go Live and Training Documentation (Final) 2. Data dictionary and Entity Relationship Diagram (Final) 3. As built (Final) 4. Communication connection designs (Final) 5. All AIL items closed 6. Resolution of all Minor (Class 3) TFRs 	<ol style="list-style-type: none"> 7. Final Documentation for Environment Refresh (Develop-Test-Stage-Production) 8. Disaster Recovery Plan (Final) 9. Configuration Management Documents (CMD – Final) 10. APIs and all documentation related to all integrations (Final) 11. Warranty and Maintenance Procedure Review and Forms 12. As-builts: updates to any documentation including design document changes 		

Project Management. The Contractor shall manage the project continuously beginning with the Notice to Proceed through Close, and shall lead the project and is expected to drive and manage all aspects of the project including the management of any subcontractors. CMTA shall manage and coordinate all its resources. A full-time Project manager or technical lead is required to be onsite at least two weeks per month during each phase of the project. A PMP is preferred and shall be approved by CMTA. Project Management Deliverables:

<p>7.0</p>	<table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top; width: 50%;"> <ol style="list-style-type: none"> 1. Active Partnership with CMTA in assuring Project Success 2. Onsite At Least Once a Month During Each Project Phase (May Be Performed by Technical Lead Depending Upon Scheduled Activities By Agreement with CMTA) 3. Single Point of Contact for All Communication Regarding Work Under This Contract 4. Task Coordination with The Designated CMTA project manager 5. Regular Communication with The Project Manager and any other staff designated to discuss progress, critical risk factors, schedule, or unique issues that may surface. 6. Specification of CMTA's staff resources needed for project success with at least two weeks notice in advance within the project updated in the CMTA SharePoint site schedule. 7. Support Responsibility Matrix Review and Updates as Needed </td> <td style="vertical-align: top; width: 50%;"> <ol style="list-style-type: none"> 8. Semi-monthly Status Meetings with Updated Schedule and AIL 9. Review and Feedback of Change Requests as Needed 10. Monthly Risk Registry Updates 11. Monthly Management Review Meetings 12. Monthly Project Status Report 13. Semi-annual attendance and Status Presentation at Steering Committee Meetings 14. Responsible for ensuring all project documentation, including meeting minutes, AIL updates, project schedule and plans are kept </td> </tr> </table>	<ol style="list-style-type: none"> 1. Active Partnership with CMTA in assuring Project Success 2. Onsite At Least Once a Month During Each Project Phase (May Be Performed by Technical Lead Depending Upon Scheduled Activities By Agreement with CMTA) 3. Single Point of Contact for All Communication Regarding Work Under This Contract 4. Task Coordination with The Designated CMTA project manager 5. Regular Communication with The Project Manager and any other staff designated to discuss progress, critical risk factors, schedule, or unique issues that may surface. 6. Specification of CMTA's staff resources needed for project success with at least two weeks notice in advance within the project updated in the CMTA SharePoint site schedule. 7. Support Responsibility Matrix Review and Updates as Needed 	<ol style="list-style-type: none"> 8. Semi-monthly Status Meetings with Updated Schedule and AIL 9. Review and Feedback of Change Requests as Needed 10. Monthly Risk Registry Updates 11. Monthly Management Review Meetings 12. Monthly Project Status Report 13. Semi-annual attendance and Status Presentation at Steering Committee Meetings 14. Responsible for ensuring all project documentation, including meeting minutes, AIL updates, project schedule and plans are kept
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1.0 Hosted Environment - Answer the following questions in the "Answer" column:	Answer
1.1 Is this application hosted via a public cloud such as Amazon, an infrastructure as a service (IaaS), or is it self-hosted?	
1.2 Does the Contractor manage this or does a hosting provider manage it?	
1.3 Data security - Where and how is the data secured? Is it encrypted? Who 'owns' the data?	
1.4 Network security - firewalls, intrusion detection systems:	
1.4.1 •Do you have IDS/IPS? Who manages these devices?	
1.4.2 •Are these shared resources between the vendor and other hosted customers?	
1.4.3 •Are they shared between all of this vendor's customers or are they specific to an individual customer?	
1.4.4 Audit and logging trails, and system logging:	
1.4.5 •What information is logged?	
1.4.6 •Are logs reviewed and if so, by whom? Can we access these logs if necessary?	
1.5 Data segregation - How do you ensure data security and prevent unauthorized access to data of one tenant by other tenant users?	
1.5.1 •Who has access to our data and servers? How is it controlled?	
1.5.2 Availability - How do you mitigate the effect of potential DDoS attacks?	
1.5.3 •What is the bandwidth and what is the percentage of use? What is the percent of peak time use?	
1.5.4 •Performance management system - uptime, availability, response, delay, etc. Do you provide scheduled reports to their customers?	
1.5.5 •Backups - What is the backup and restoration plan? Is there an SLAs for recovery?	
1.5.6 •Identity management and sign-on process - How is identity management handled?	
1.5.7 •Do you support '2 factor authentication'?	
1.5.8 •Does the system provide limits on the number of invalid access attempts allowed?	
1.5.9 •If so, is the user locked out of the system indefinitely or for a specified timeframe?	
1.5.10 •Vulnerability patching - Server OS updates - What is their process, patching schedule, etc.? Will we incur downtime during patching? What is their notification process?	
1.5.11 •Disaster Recovery - How often do they test? Is the customer notified?	
1.5.12 •IT security - Can the vendor provide an overview of its' IT security program?	
1.5.13 •Is there a dedicated IT security team?	
1.5.14 •Do they have a formal security incident response plan?	
1.5.15 •If there is a breach, how quickly do you respond to remedy the problem? Is there a documented customer notification plan? Are there SLAs for notification?	
1.5.16 •Do you perform vulnerability scans, security assessments, or penetration testing? If so, how often?	
1.5.17 •Is the application designed and reviewed for the OWASP Top Ten security risks?	
1.5.18 •Provide power, for at least one hour, to the TVM systems required to detect a TVM intrusion, activate and power the local alarm, and transmit a continuous intrusion alarm to CMTA	
1.6 Can you provide a data flow diagram? If so, please attach.	
1.7 Can you provide a detailed description of secure connection? If so, please attach.	
1.8 What daily steps are taken to ensure the system is up and all features available?	
1.9 Please describe the source for date and time capabilities / synching	
2.0 Network - Answer the following questions in the "Answer" column:	
2.1 What protocols are used? (Please be very detailed and specific, to include port numbers)	
2.2 How much bandwidth is required per client?	
2.3 What is the frequency for security patches and anti-virus updates? (Contractor or CMTA?)	
3.0 Help Desk / Desktop - Answer the following questions in the "Answer" column:	
3.1 Are there special printer/printing requirements?	
3.2 What Client side software or services are needed (assume workstation has nothing on it)?	
3.3 Is there a specific drive mapping(s) required?	
3.4 Can the workstation use a DNS name to reference the server or devices?	
3.5 Can the workstation use a UNC name to reference the server or devices?	
4.0 Manuals - The manuals shall be customized specific to CMTA's environment, provided in Microsoft Word and PDF, and be updated when new releases are provided. include but are not limited to the list below. In the Answer column, indicate the manual to be provided and what it covers	Answer
4.1 Operating Instruction Manual	
4.2 System Administrator Manual	

EXHIBIT I

**ADDITIONAL TERMS AND CONDITIONS FOR THE PERFORMANCE
OF INFORMATION TECHNOLOGY (IT) SERVICES**

- 1.1 Definitions. Unless otherwise specified in this Contract (or an Exhibit hereto), the following definitions shall apply, if applicable:
- 1.1.1 “Acceptance” shall have the meaning set forth in Section 1.4 of this Exhibit.
 - 1.1.2 “Applicable Laws” means any and all applicable statutes, laws, treaties, rules, codes, ordinances, regulations, permits, interpretations, or orders of any Federal, state, or local governmental authority having jurisdiction over the Project, this Contract, and the parties all as in effect as of the date of this Contract and as amended during the Service Term of this Contract.
 - 1.1.3 “Authority Data” means all data, content and information (i) submitted by or on behalf of the Authority or Customers to the Contractor, (ii) obtained, developed, produced or processed by the Contractor in connection with this Contract, or (iii) to which the Contractor has access in connection with this Contract, and all derivative versions of such data, content and information, and any derivative versions thereof, in any form or format.
 - 1.1.4 “Authority Electronic Property” means (i) any websites, servers, hardware, equipment, routers and other system components, software or networks owned or controlled by the Authority, (ii) any Authority mobile device apps, (iii) any interfaces to the Authority’s information technology systems, (iv) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by the Authority, and (v) versions and successors of the foregoing, any form or format now known or later developed, that may be used by Customers.
 - 1.1.5 “Confidential Information” shall have the meaning set forth in Section 2.2 of this Exhibit.
 - 1.1.6 “Contractor’s Certification” shall have the meaning set forth in Section 1.4.3 of this Exhibit.
 - 1.1.7 “Contractor Technology” means all software and hardware as applicable, and any technology, information, content and data, together with Intellectual Property Rights related thereto, owned or used by the Contractor in the performance of the Services.
 - 1.1.8 “Deliverable(s)” means all information, data, materials, devices (including equipment and hardware), software, systems, integrations with any software and hardware, interfaces to any software and hardware, system or operating environment (including Authority Electronic Property) and other items to be delivered by the Contractor to the Authority as part of the Services, as specified in the Project Plan.
 - 1.1.9 “Documentation” means the documentation provided to the Authority including, but not limited to, user manuals, system administration manuals, maintenance manuals, diagrams and operator instructions related to the Services furnished by the Contractor to the Authority in any format, including paper and electronic.
 - 1.1.10 “Intellectual Property Rights” means any and all intellectual property rights, including without limitation, invention, patents, patent and patent applications (including all reissues, divisions, renewals, continuations, continuations-in-part, extensions, provisionals, and reexaminations) and all rights therein provided by international treaties or conventions and all improvements to the inventions disclosed in each such registration, patent or application, trademarks, service marks, trade dress, logos, slogans, configurations, trade names, corporate names, and business names, whether or not registered, including all common law rights, and registrations and applications for registration thereof, and all rights therein provided by international treaties or conventions, works of authorship and copyrights (registered or otherwise) and registrations and applications for registration thereof, and all rights therein provided by international treaties or conventions, all internet uniform resource locators, and domain names, including any domain name application or registration, all industrial designs and any registration or application thereof anywhere in the world, data and database rights, trade secrets, proprietary know-how and show-how, whether or not reduced, all rights to obtain and

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rights to apply for patents, and to register trademarks and copyrights, and any similar or equivalent rights to any of the foregoing anywhere in the world.

- 1.1.11 “Malware” means any malicious data, code, script, active content, program, or other malicious software that could damage, destroy, alter or disrupt any computer program, data, firmware or hardware.
- 1.1.12 “Project” means the project from pre-production launch to pre-final notice related to any Deliverables and Services as described in more detail in this Exhibit.
- 1.1.13 “Project Plan” means the project plan for the delivery, implementation, customization, configuration and/or installation of any software, hardware and any Deliverables and Services required for the Project, as provided or approved by the Authority.
- 1.1.14 “Remediation Efforts” means, with respect to any Security Incident, activities designed to remedy a Security Incident, which may be required by Applicable Law or by the Authority’s or the Contractor’s policies or procedures or under the Security Requirements, or which may otherwise be necessary, reasonable or appropriate under the circumstances, commensurate with the nature of such Security Incident.
- 1.1.15 “Security Incident(s)” means: (i) the loss or misuse of Authority Data; (ii) the inadvertent, unauthorized, or unlawful processing, alteration, corruption, sale, rental, or destruction of Authority Data; (iii) unauthorized access to internal resources; (iv) programmatic manipulation of a system or network to attack a third party; (v) elevation of system privileges without authorization; (vi) unauthorized use of system resources; (vii) denial of service to a system or network; or (viii) any potential or confirmed exposure (which may stem from an act or omission to act) that would result in any of the events described in (i) through (viii).
- 1.1.16 “Security Requirements” means industry best practices and other reasonable physical, technical and administrative safeguards, procedures, protocols, requirements and obligations related to facility and network security in order to protect Authority Data from unauthorized access, processing, destruction, modification, distribution and use, as approved in writing by the Authority.
- 1.1.17 “Service Term” means the term of the contract as set forth in Exhibit A to the Contract.
- 1.1.18 “Services” means collectively all services to be performed by the Contractor for or on behalf of the Authority, as described in the Project Plan and this Exhibit.
- 1.1.19 “Technical Specifications” means the technical specifications, functional specifications, descriptions, designs, standards, instructions, and business requirements of the Authority related to the S, as may be further described in this Contract. Unless otherwise agreed upon in writing by the Authority, the Technical Specifications shall be outlined in detail in Exhibit H to this Contract.
- 1.1.20 “Updates” means all bug fixes, error corrections, patches, updates, upgrades or new releases or version of any software created or acquired by the Contractor and used in provision of the Services during the Service Term.

1.2 Contractor Requirements.

- 1.2.1 Unless specified in the applicable Project Plan, the Contractor will shall furnish, at its own expense, all resources, personnel, equipment, tools, and supplies necessary for the timely performance of the Services and the Deliverables. The Contractor may use any means necessary and appropriate to perform the Services and the Deliverables under this Contract; provided, however, that in no event shall the Contractor take any action that may subject either it or the Authority to civil or criminal liability.
- 1.2.2 The parties agree that the Contractor will not be tasked or responsible for establishing and managing Security Requirements necessary to protect Authority Data integrity in performance of the Services. The Authority agrees that it will be solely responsible for and ensure that all desired Security Requirements necessary to protect Authority Data integrity are established, implemented and managed internally. If requested, however, by the Authority, the Contractor will reasonably cooperate with and assist the Authority and the Authority’s other Product contractors to implement

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security protocols (e.g., firewalls, SSI, McAfee anti-virus, configuring the system for Cisco ICE, configuring the system for the NetScaler application firewall, monthly Microsoft security patches, etc.) and take appropriate actions with respect to any software, hardware and all Authority Data and Authority Electronic Property disclosed or provided to the Contractor so as to enable the Contractor to satisfy its obligations under this Contract and to help prevent the loss, alteration or unauthorized use of the Authority Data and the Authority Electronic Property, to the extent within the Contractor's access, possession or control. The Contractor agrees that it will, and it will cause its personnel and contractors to timely comply with the Authority's privacy policies and safety and network security policies, as the same may be provided to the Contractor's, at all times while on-site at the Authority's facilities or remotely accessing the Authority's systems or facilities. In event that the Contractor utilizes computers, laptops or other devices comprising development software, applications or tools in its performance of the Services, Contractor is required to consult in advance of use thereof with Authority and review security measures installed on such computers or devices and sign-off that it will ensure its computers and devices are consistently maintained during the term of this Agreement per Authority with all patches and upgrades at all times to minimize potential induced security issues from such Contractor devices.

- 1.2.3 The Contractor will perform formal classroom training and provide necessary related documentation, equipment, tools, training aids and other materials, required or requested for the operation and use of the Deliverables and any software and/or hardware, upon initial deployment and during the Service Term, as reasonably requested by the Authority. Such training will be performed on the operating environment at the Authority's facilities (unless otherwise agreed upon by the parties in the Project Plan).
- 1.2.4 The Contractor and/or its designated third party auditor(s) will perform all audits necessary to ensure data integrity and adherence to the requirements of the Project. As part of its routine audits, the Contractor will, on a regular basis, test the integrity of Authority Data backed up by the Authority's or its Project contractors.
- 1.2.5 The Contractor will use commercially reasonable efforts to reasonably assist the Authority, if requested, to adopt and implement all facility and network security, disaster recovery plans and back-up plans as to protect against theft and unauthorized access, disclosure and use of the Authority Data, the Authority Electronic Property and the Authority's Confidential Information, to the extent within the Contractor's access, possession or control, and to ensure the integrity and continuity of the performance of Services and the Project under this Contract and consult and cooperate with the Authority and any contactors it designates, in its performance of these obligations.
- 1.2.6 The Contractor, as well as its agents, representatives, and employees, shall comply with all of the Authority rules, regulations, and guidelines then in effect when on-site at the Authority and all Applicable Laws.
- 1.2.7 The Contractor will promptly notify the Authority upon discovering or otherwise learning of any Security Incident involving Authority Data. Following any Security Incident the Contractor will consult in good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable.
- 1.2.8 Any notifications to Customers or any employees of the Authority regarding Security Incidents will be handled exclusively by the Authority and the Contractor may not under any circumstances contact Customers or employees of the Authority relating to such Security Incident unless the Contractor is under a legal obligation to do so, in which event (i) the Contractor must notify the Authority in writing promptly after concluding that the Contractor has the legal obligation to notify such Customers or employees and explain in such notice to the Authority the basis for the legal obligation and (ii) the Contractor will limit the notices to such Customers and employees to those required by the legal obligation or as pre-approved by the Authority. The Contractor will reasonably cooperate in connection with notices to Customers and any employees of the Authority regarding a Security Incident and the Contractor will assist with sending such notices if so requested by the Authority.

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1.3 Project Plan and Milestone Deadlines.

- 1.3.1 The Contractor shall provide Services necessary to assess and evaluate the Authority's business requirements and information technology systems in order to create, deploy, configure, customize, migrate, deliver and/or implement the Services and any software and/or hardware and, if required by the Authority, any Authority Data to be migrated, interfaced to or used in conjunction with the Deliverables. Unless otherwise provided or specified by the Authority, the Contractor will prepare for the Authority's review and approval a Project Plan setting forth in detail (i) the scope of the Project and the Services required to complete the Project, (ii) the milestones and schedule for completing all tasks and requirements for the Project (including the creation, deployment, configuration, customization, migration, delivery and/or implementation of any software, hardware, systems and any Authority Data), (iii) all Authority Electronic Property required for the Contractor to perform the Services, if any, (iv) all Deliverables, and (v) all acceptance criteria, testing and post-implementation tasks. No Project Plan will be effective until approved in writing by the Authority's designated project manager.
- 1.3.2 This is a fast track Project with completion deadlines that cannot reasonably be extended. For this reason, it is the desire of the Authority to recognize any likely budget overruns as soon as possible, and by this Contract it is employing the Contractor to perform design monitoring, estimating, value analysis and other functions to help the Authority meet the Project budget. At any time that the Contractor develops concerns about the integrity of the budget for the Project, the Contractor shall promptly advise the Authority of the concerns through a variance report, which shall, at a minimum, state: (i) the Contractor's concern; (ii) the apparent cause of the concern, delay, or budgetary issue; (iii) in the event of a concern about a delay, specifically demonstrate the negative impact of the delay to the critical path for the Project Plan; (iv) define any cost impacts to the Project; and (v) provide the Contractor's proposed resolution to the concern. If any estimate submitted to the Authority exceeds previously approved estimates or the Authority's budget, the Contractor shall make appropriate recommendations to the Authority.
- 1.3.3 If, using reasonable project monitoring techniques, the Contractor determines that it is unlikely or fails to meet a completion date or a cost estimate due under the Project Plan for any reason regardless of which party is at fault, in addition to any other rights and remedies that may be available to the Authority, at no additional cost to the Authority and at the Authority's option, the Contractor shall provide all necessary additional personnel at its own cost to accelerate performance as may be required or necessary to complete the activities required under the Project Plan within a re-adjusted time frame agreed to by both parties in a Change Order. The completion date shall be considered met if completed in accordance with the terms of this Contract within ten (10) working days of the originally estimated completion date. The Contractor will provide the Authority with prior written notice for any delays impacting delivery or other Services completion under the Project Plan in the form of a proposed Change Order.
- 1.3.4 The Contractor shall use its best efforts, after obtaining explicit consent from the Authority, to re-sequence the Services to overcome and/or mitigate, to the greatest practicable extent, the effect of any delays regardless of the cause of such delays. Without limiting the foregoing, the Contractor shall diligently prosecute its Services in order to meet the proposed start date despite a dispute with the Authority relating in any way to this Contract including, without limitation, any and all the Contractor's claims for modifications to the payments due to the Contractor. The Contractor and the Authority shall cooperate to resolve all disputes and to adjust the Project Plan accordingly by Contract modification in a timely manner (not to exceed two (2) weeks from the date of notice).
- 1.3.5 Should the Contractor not progress in its performance of Services at a rate commensurate with the Service Term of this Contract, or fail to meet any scheduled date under the Project Plan, the Authority may, in its sole discretion, direct the Contractor to accelerate the Services by employing additional personnel and equipment or providing overtime to existing personnel as is necessary to complete by the start date. Notwithstanding any dispute, controversy, or question that might arise in the interpretation of any provision of this Contract, the performance of any Services, the delivery of any material, the payment of any monies to the Contractor, or otherwise, the Contractor agrees that it will not directly or indirectly stop or delay any Services or part thereof on its part required to be performed,

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nor will it stop or delay the delivery of any materials on its part required to be furnished for the Deliverables, pending the determination of such dispute or controversy so long as the Authority pays the Contractor for undisputed amounts in accordance with the Contract.

1.4 Acceptance.

- 1.4.1 Unless otherwise defined or specified in an Exhibit to this Contract, the provisions set forth in this Section 1.4 shall apply to determine the Authority's Acceptance of the Services performed and associated Deliverables.
- 1.4.2 Implementation shall be completed in a timely manner and appropriate tests conducted by the Authority to facilitate Acceptance of each Deliverable as more fully set forth in this Exhibit and the Project Plan; provided, however, that the Authority may upon written request require that the Contractor perform testing with cooperation of the Authority.
- 1.4.3 Unless otherwise specified in the Project Plan, within thirty (30) days after installation and testing are completed, the Contractor shall certify in writing that any software, hardware, integration and implementation related to the Services conforms to the Technical Specifications and is capable of being put into full commercial productive use in accordance with the Technical Specifications and otherwise meets the functional and business requirements set forth in this Contract (the "Contractor's Certification"). The Contractor Certification shall not be issued by the Contractor unless the Contractor has completed all tasks required for the delivery, installation, configuration, deployment (including Authority Data migration) and operational testing of any Deliverables, as applicable, and such items are ready for final testing and launch for production use by the Authority.
- 1.4.4 The Deliverables shall be finally accepted by the Authority when all action items opened from the beginning of the Project through the Warranty Period are closed and each component is fully installed and operational on the Authority's facilities, network, transportation vehicles or operating environment properly configured by the Contractor, and in conformity with the requirements outlined in this Contract ("Acceptance"). The final invoice will not be issued by the Contractor until final Acceptance by the Authority. The Authority reserves the right to modify the Acceptance plan during the implementation process if it is evident that anything related to Acceptance has been missed or are not appropriate for the successful provisioning of any solution.
- 1.4.5 If there is any objection to Acceptance, the Authority will provide the Contractor with a written notice (the "Defect Notice") reasonably identifying any claimed discrepancies between the actual performance and the requirements set forth in this Contract within reasonable time after the issuance of the Contractor's Certification.
- 1.4.6 Upon receiving a Defect Notice from the Authority, the Contractor shall confer with the Authority and jointly review each asserted discrepancy to determine if the claimed discrepancy is valid. The Contractor shall promptly correct the discrepancy and resubmit for Acceptance by the Authority for review and testing on the same basis as initially submitted. If, in the reasonable professional judgment of the Contractor such discrepancy is not valid, the Contractor shall so notify the Authority in writing.
- 1.4.7 In the event that the Authority, upon final review, does not accept the Deliverables or any hardware or software or only makes a partial acceptance thereof, the Authority may elect to: (i) accept delivery of the Deliverables "AS IS" at a negotiated equitable reduction in the price and payment schedule for the Services and any Deliverables; or (ii) terminate the Project and receive a refund of all fees paid in advance to the Contractor, which in such event. The Contractor shall immediately repay all fee advances paid by the Authority under the Project Plan and the Authority may retain all holdbacks.

1.5 Additional Representations and Warranties. In addition to all other representations, warranties, and covenants included in this Contract, Contractor represents, warrants, and covenants, for itself, its employees, subcontractors and agents that:

- 1.5.1 it is not contractually prohibited from engaging in the Services or providing the Deliverables, and that it is not a party to any contract or under any obligation which conflicts with the terms of this Contract or which prohibits Contractor from carrying out its responsibilities under this Contract;

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- 1.5.2 it is fully able to furnish the Services as contemplated by this Contract;
 - 1.5.3 there are no contracts to which it is a party which would prevent its timely and complete performance of the terms and conditions of the Contract, and the Contractor agrees not to enter into any such contract during the pendency of this Contract;
 - 1.5.4 it is experienced in the type of engineering necessary for completion of the Project, and it understands the complexity involved in this type of project and the necessity of coordination of its Services Authority project stakeholders within which the Project will be performed;
 - 1.5.5 any software provided or utilized in the Services will not contain any Malware;
 - 1.5.6 the Services and all Deliverables will comply with all Applicable Laws at all times from the date of Acceptance; and
 - 1.5.7 with respect to the Services and all Deliverables there is, and on the date of Acceptance will be, no claim, litigation or proceeding pending or threatened against the Contractor with respect such Services or Deliverables, or any component thereof, alleging infringement or misappropriation of any patent, copyright, trade secret, trademark or any other personal or proprietary right of any third party in any country.
- 1.6 Additional Warranty Remedies. The Authority is entitled to all warranties implied by law or regulation. These warranties shall survive any inspection, testing, acceptance and payment by the Authority for the Services and are in addition to, and shall not be construed as restricting or limiting the warranties of the Contractor, express or implied, that are provided by law or exist by operation of law. For any breach of the warranties contained in this Section, the Authority's remedy, in addition to all remedies available at law or in equity, shall be:
- 1.6.1 For the Services. The satisfactory re-performance of the Services within ten (10) days (or such other reasonable period of time approved by the parties in writing) following the Authority's notice to the Contractor that the Services were not performed satisfactorily in accordance with the Project Plan.
 - 1.6.2 For the Deliverables. The correction of errors or otherwise in the Deliverables that cause breach of the warranty. If the Contractor is unable to provide such error corrections or otherwise make the Deliverables operate as warranted within the periods specified in this Contract, the Authority shall be entitled to terminate this Contract with respect to the affected feature and recover a prorated amount paid to the Contractor based on each feature, which prorated amount will be calculated based on a useful life of five years from the date of final Acceptance. If, however, the loss of functionality cause by such error impacts the overall performance of any Deliverables, then the Authority shall be entitled to terminate this Contract and recover all amounts paid to the Contractor by the Authority.
- 1.7 Intellectual Property Rights.
- 1.7.1 As between the Contractor and the Authority (i.e., without addressing rights of third parties), the Authority is the sole owner of all rights, title and interest in and to any Authority Data and Authority Electronic Property and all Deliverables (excluding the Contractor Technology included in or embodied in the Deliverables), together with all improvements, derivative works or enhancements to any of the foregoing and all Intellectual Property Rights related thereto ("Authority IP"). Except as expressly authorized in this Exhibit in the performance of the Services solely for the benefit of the Authority or Customers, the Contractor may not use, edit, modify, create derivatives, combinations or compilations of, combine, associate, synthesize, re-identify, reverse engineer, reproduce, display, distribute, disclose, sell or Process any Authority Data or Authority Electronic Property. The Contractor will not use any Authority Data or Authority Electronic Property in a manner that is harmful to the Authority. To the extent possible, the Deliverables (excluding any Contractor Technology embodied therein) shall be a work made for hire specifically commissioned for the Authority. In order to protect and preserve the Authority's rights, the Contractor hereby irrevocably and unconditionally assigns and transfers to the Authority all right, title and interest in and to the Authority IP that the Contractor may acquire without further consideration.

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- 1.7.2 The Contractor grants to the Authority a non-exclusive, perpetual, royalty free, fully paid up, irrevocable, and transferable license, with the right to sublicense, in and to any Contractor Technology embodied in the Deliverables for the Authority and service providers to exercise and exploit its and their ownership rights in the Deliverables in any manner. The foregoing license does not authorize the Authority to separate any Contractor Technology from the Deliverable in which it is incorporated for creating a standalone product for marketing to others.
2. Proprietary Information and Non-Disclosure.
- 2.1 The Contractor acknowledges and agrees that this Contract creates a relationship of confidence and trust on the part of the Contractor for the benefit of the Authority. During the Term of this Contract, the Contractor may acquire certain "Confidential Information" (as defined herein) from or regarding the Authority employees, agents and representatives or documents, or otherwise as a result of performing the Services of the Contractor hereunder.
- 2.2 "Confidential Information" as used herein, shall mean and include, without limitation:
- 2.2.1 Any information concerning the Authority or the Project, which is provided by the Authority or any Project team members to the Contractor, such as accounting and financial data, product, marketing, development, pricing and related business plans and budgets, and all of the information and plans related to the Project, which are not published;
- 2.2.2 All Authority Data and Authority Electronic Property; and
- 2.2.3 All Deliverables (including without limitation all work in progress) and any Contractor Technology included or embodied therein.
- 2.3 The Contractor acknowledges and agrees that all such Confidential Information is and shall be deemed the sole, exclusive, confidential and proprietary property and trade secrets of the Authority at all times during the Service Term of this Contract and following any expiration or termination hereof. The Contractor agrees to hold in confidence without disclosing or otherwise using any Confidential Information, except as such disclosure or use may be required in connection with and limited to the Services of the Contractor hereunder.
- 2.4 The Contractor acknowledges and agrees that the Authority would not have entered into this Contract unless the Authority was assured that all such Confidential Information would be held in confidence by the Contractor in trust for the sole benefit of the Authority.
- 2.5 The Contractor shall not improperly use or disclose any proprietary information or trade secrets of any third party and will not bring on to the premises of the Authority any unpublished documents or any property belonging to any third party unless consented to in writing by the third party.
- 2.6 The Contractor's obligation of confidentiality hereunder shall not apply to information that: (i) is already in the Contractor's possession without an obligation of confidentiality; (ii) is rightfully disclosed to the Contractor's by a third party with no obligation of confidentiality; or (iii) is required to be disclosed by court or regulatory order, provided the Contractor's gives the Authority prompt notice of any such order.
- 2.7 The Authority shall have the perpetual and unrestricted right to use, copy, and incorporate into other works all reports, materials, presentations and other work product prepared by the Contractor and delivered to the Authority.
- 2.8 Upon any termination or expiration of this Contract, the Contractor agrees to deliver to the Authority any and all Confidential Information except that the Contractor may keep one file copy of any Confidential Information pertinent to its rights and obligations surviving the expiration or termination of this Contract, which copy shall be held in confidence in accordance with this Section.
3. Use of Authority's Name. The Contractor agrees not to make any written use of or reference to the Authority's name for any marketing, public relation, advertising, display or other business purpose or make any use of the Authority Data or Authority Electronic Property for any activity unrelated to the express business purposes and interests of the Authority under this Contract, without the prior written consent of the Authority.

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

4. Specific Performance. The Contractor acknowledges and agrees that the remedy at law for the breach of provisions of this Contract (particularly with respect to ownership of intellectual property and Confidential Information) may be inadequate and that the Authority may be entitled to injunctive relief without bond, in addition to any other rights or remedies which the Authority may have for such breach.
5. **INDEMNIFICATION. IN ADDITION TO GENERAL INDEMNIFICATION SET FORTH ELSEWHERE IN THE CONTRACT, THE FOLLOWING INDEMNIFICATION OBLIGATIONS SHALL APPLY:**
 - 5.1 **THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE AUTHORITY AND ITS AFFILIATES AND THEIR TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, CUSTOMERS AND AGENTS FROM AND AGAINST ANY AND ALL DAMAGES OF ANY NATURE OR KIND TO THE EXTENT ARISING OUT OF, CAUSED BY, OR RESULTING FROM: (I) ANY BODILY INJURY OR DEATH OF ANY PERSON INCURRED BY THE AUTHORITY OR ANY THIRD PARTY RESULTING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CONTRACTOR OR ITS EMPLOYEES, CONTRACTORS OR REPRESENTATIVES; (II) ANY FAILURE OF THE SERVICES OR DELIVERABLES TO CONFORM WITH APPLICABLE LAWS OR THE TECHNICAL SPECIFICATIONS OR OTHER REQUIREMENTS SET FORTH IN THIS CONTRACT; (III) ANY SECURITY INCIDENT; AND (IV) ANY ACTUAL OR ALLEGED VIOLATION, INFRINGEMENT OR MISAPPROPRIATION OF ANY COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, PRODUCT NAME, RIGHT OF PRIVACY OR PERSONA OR OTHER INTELLECTUAL PROPERTY RIGHT AND PROPRIETARY RIGHT OF A THIRD PARTY RELATED TO THE SERVICES AND DELIVERABLES REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY ANY INDEMNITEE. IN PARTICULAR, THE CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR'S OBLIGATION TO INDEMNIFY THE AUTHORITY EXTENDS TO ANY LIABILITY ARISING OUT OF ANY ACTUAL NEGLIGENCE BY THE CONTRACTOR IN THE DELIVERY OF ANY PRODUCTS OR SERVICES UNDER THIS CONTRACT. NOTWITHSTANDING THE FOREGOING, THE CONTRACTOR SHALL NOT BE LIABLE TO AN INDEMNITEE FOR ANY LOSSES INCURRED BY SUCH INDEMNITEE TO THE EXTENT SUCH CLAIM IS ATTRIBUTABLE SOLELY TO THAT INDEMNITEE'S SOLE NEGLIGENCE.**
 - 5.2 **IF THE DELIVERABLES ARE HELD TO INFRINGE OR IT IS BELIEVED BY THE AUTHORITY TO INFRINGE THE RIGHTS OF OTHERS, THE CONTRACTOR'S WILL, AT ITS EXPENSE AND UPON THE AUTHORITY'S REQUEST, TO: (I) MODIFY THE INFRINGING ITEM TO BE NON-INFRINGING SO LONG AS THE UTILITY OR PERFORMANCE OF THE DELIVERABLES ARE NOT MATERIALLY IMPAIRED AND THE DELIVERABLES CONTINUE TO CONFORM TO THE TECHNICAL SPECIFICATIONS AND THE AUTHORITY'S ORIGINAL REQUIREMENTS IN ALL RESPECTS, SUBJECT TO THE AUTHORITY'S APPROVAL; OR (II) OBTAIN FOR THE AUTHORITY A LICENSE TO CONTINUE USING THE INFRINGING ITEM.**
 - 5.3 **THE INDEMNITY OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION, SUSPENSION, ABANDONMENT AND/OR COMPLETION OF THIS CONTRACT.**
6. Approval. Any approval given by the Authority shall not relieve the Contractor of its obligations and other duties under this Contract or be construed as an assumption or waiver by the Authority.
7. Waivers. No failure by the Authority to insist upon the performance by the Contractor of any provision of this Contract, and no failure of the Authority to exercise any right or remedy consequent upon a breach or other default, and no payment by the Authority or its use of the Project during the continuance of any breach or other default, shall constitute a waiver of the Contractor's breach or default or of any provision of this Contract.
8. UCITA. Neither the Uniform Computer Information Transactions Act nor any state laws incorporating such Act apply to this Contract or the transactions contemplated hereunder.