

CONTRACT MODIFICATION

1. CONTRACT NO: 200609 Customer Payment System Upgrade	2. CONTRACT MODIFICATION NO.: 3	3. EFFECTIVE DATE OF MODIFICATION: See Block 9 below.	4. CONTRACTOR NAME: Bytemark
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5. AGREEMENT TO MODIFY CONTRACT:

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

6. AMOUNT OF THIS AGREEMENT	(NO CHANGE)
PRIOR TOTAL PRICE (not to exceed):	\$3,217,579.00
NEW TOTAL PRICE (not to exceed):	\$3,217,579.00

7. TERMS OR PERIOD OF PERFORMANCE:	(INCREASE – 6 months)
PRIOR DATE:	December 31, 2021
NEW DATE:	June 30, 2022

8. CONTRACTOR'S EXECUTION
(Bytemark):

E-SIGNED by Eric Reese
on 2021-08-13 15:20:11 GMT

Name & Title: Eric Reese, Chief Executive Officer

Signature: _____

August 13, 2021
Date: _____

9. CONTRACTING OFFICER'S EXECUTION
(Capital Metro):

E-SIGNED by Muhammad Abdullah
on 2021-08-13 15:23:48 GMT

Name & Title: Muhammad Abdullah, Chief Contracting Officer

Signature: _____

August 13, 2021
Date: _____

10. DESCRIPTION OF CONTRACT MODIFICATION :

This modification is being issued in accordance with Exhibit E-Revised-2, Contractual Terms and Conditions, Section 20, entitled **CHANGES**, to be made a part hereof for all pertinent purposes.

Modification Summary

1. Refer to Exhibit E-Revised-2, Contractual Terms and Conditions. Exhibit E-Revised-2 shall be replaced in its entirety with **Exhibit E-Revised-3, Contractual Terms and Conditions**, attached hereto and made a part hereof for all pertinent purposes.
 - Section 3, TERM has been revised to extend the base period from December 31, 2021, to **June 30, 2022**. The changes are reflected by highlighted text with line in the margin.
2. Refer to Exhibit F-Revised-4, Scope of Services. Exhibit F-Revised-4 shall be replaced in its' entirety with **Exhibit F-Revised-5, Scope of Services**, attached hereto and made a part hereof for all pertinent purposes.
 - Item 1.3, has been revised. Changes are reflected by highlighted text with strikethrough/red font.
3. Refer to **Capital Metro Executive Briefing CPS Release 3 Schedule dated August 6, 2021**, attached hereto and made a part hereof for all pertinent purposes.

Contractor shall adhere to the revised schedule as detailed herein enabling Capital Metro to release the Account Based system functionality and Fare Capping (Go Live / Ready for Public Release) no later than January 1, 2022.

Contractor hereby agrees to the following schedule:

Release	Description	Due Date
Release 3 – Production Release Candidate 1	First Release 3 production release as described in August 6, 2021 Executive Briefing presentation with Release 3 Schedule.	Commence Pilot group testing by December 3, 2021 Go Live / ready for public release by January 1, 2022
Release 3 – Production Release Candidate 2	Post go-live release candidate 1 fixes with Anthrotech third-party testing feedback as described in August 6, 2021 Executive Briefing presentation with Release 3 Schedule	February 9, 2022
Release 3 – Production Release Candidate 3	Full Release 3 scope as described in August 6, 2021 Executive Briefing presentation with Release 3 Schedule	March 21, 2022
Release 4	Open Payments	(current is 9/24/2021 but this will be moved out TBD)

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

END OF MODIFICATION #3

EXHIBIT E-Revised-3
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. FIXED PRICE CONTRACT

This is a fixed price Contract for the Services specified and stated elsewhere in the Contract.

3. TERM

The term of the Contract shall be from the Contract notice to proceed to **June 30, 2022** ~~December 31, 2021~~. No Services shall be performed under this Contract prior to issuance of a Notice to Proceed.

4. OPTION TO EXTEND CONTRACT TERM

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

5. ADDITIONAL OPTION TO EXTEND CONTRACT PERFORMANCE

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

6. INVOICING AND PAYMENT

(a) Invoices may be submitted once per month for work completed and accepted by the Authority, and marked "Original" to:

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

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

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) 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) The Contractor shall provide a Performance Bond in an amount equal to one-hundred (100%) of the contract amount. The Contractor shall be required to submit the required bond to the Contracting Officer within ten (10) days from the date of Contract Award Date. The surety company providing the bond must be listed in the latest United States Treasury Department Circular 570, be authorized to do business in Texas and have an underwriting limitation equal to or greater than the penal sum of the bond. If any surety upon any bond furnished in connection with the Contract becomes insolvent, or otherwise not authorized to do business in the State, the Contractor shall promptly furnish equivalent security to protect the interest of the Authority and of persons supplying labor, materials and/or equipment in the prosecution of the Work.

(b) The bond shall be accompanied by a valid Power-of-Attorney, issued by the surety company and attached, signed and sealed, with the corporate embossed seal, to the bond, authorizing the agent who signs the bond to commit the surety company to the terms of the bond, and stating on the face of the Power-of-Attorney the limit, if any, in the total amount for which he/she is empowered to issue a single bond.

(c) A surety bond rider increasing the dollar amount of any payment and performance bond will be required for any Change that increases the contract amount.

(d) In addition, the Authority may request a surety bond increasing the dollar amount if:

- (1) any surety upon any bond furnished with this Contract becomes unacceptable to the Authority;
- or
- (2) any surety fails to furnish reports on its financial condition as required by the Authority.

8. PAYMENT MILESTONES

Payment for each of the project phases shall be paid in the following percentages of the total contract amount:

Project Phase	Percentage
Plan	5%
Design	10%
Develop	15%
Test	15%
Deploy/Go Live	45%
Closeout	10%

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, Scope & Compliance Matrix 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+ 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) **Workers' Compensation Insurance** coverage in the State of Texas 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)

(3) **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.~~

(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

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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
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

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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)
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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 Ethics, 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 Ethics.

(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 Ethics) in a business entity or real property.

(c) The Contractor agrees to ensure that the Code of Ethics 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 Ethics 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 – Pricing Schedule
2. Exhibit A-1 – Pricing Supplement
3. Exhibit E – Contractual Terms and Conditions
4. Exhibit F – Scope of Services and Compliance Matrix
5. Exhibit B – Representations and Certifications
6. 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. ACCESS REQUIREMENTS TO INDIVIDUALS WITH DISABILITIES

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq. and 49 U.S.C. § 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. 1612; and the following regulations and any amendments thereto:

- (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (c) U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 39;
- (d) Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 36;
- (e) DOJ Regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (f) General Services Administration regulations, "Construction and Alteration of Public Buildings," "Accommodations for the Physically Handicapped," 41 C.F.R. Parts 101-10;
- (g) Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (h) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (i) FTA regulations, "Transportation for Elderly and Handicapped Persons", 49 C.F.R. Part 609.

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: Sr. Director/Chief Contracting Officer
2910 E. 5th Street
Austin, Texas 78702

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

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

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

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

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

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

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

- (i) The Contractor shall not assign the whole or any part of this Contract or any monies due hereunder without the prior written consent of the Contracting Officer. No assignment shall relieve the Contractor from any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void.
- (j) The failure of the Authority to insist upon strict adherence to any term of this Contract on any occasion shall not be considered a waiver or deprive the Authority thereafter to insist upon strict adherence to that term or other terms of this Contract. Furthermore, the Authority is a governmental entity and nothing contained in this Contract shall be deemed a waiver of any rights, remedies or privileges available by law.
- (k) This Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any dispute arising with respect to this Contract shall be resolved in the state or federal courts of the State of Texas, sitting in Travis County, Texas and the Contractor expressly consents to the personal jurisdiction of these courts.
- (l) This Contract is subject to the Texas Public Information Act, Tex. 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. 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.

57. PERFORMANCE MANAGEMENT DISINCENTIVES

Severity Level	Acknowledgement Time	Target Workaround Time	Target Resolution Time	Disincentive Assessed
1 -Blocker	15 minutes	6 hours	24 hours	\$500/event / \$1000 per 24- hour day it remains out of service.
2 - Major	15 minutes	12 hours	Current Planned release	\$250 per event / \$500 per 24-hour day it remains out of service.

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3 - Medium	1 hour	5 business days	Scheduled as part of next release	\$100 per event / \$200 per 24-hour day it remains out of service.
4 - Minor	2 hours	N/A	Incorporated into future release	N/A

*The disincentive assessed per an event is defined as every reported incident that exceeds the target resolution time. An additional assessment is issued for every 24-hour day that passes from when the incident was reported.

- (a) Service hours for Blocker and Major severity levels are defined as 24x7x365.
- (b) In addition, for Blocker and Major severity level issues, Contractor shall provide Client regular updates every thirty (30) minutes until a Workaround has been implemented.
- (c) Medium and Minor severity level issues are handled during normal business hours: 8 a.m. to 5 p.m. Central Time, Monday-Friday, excluding U.S. National Holidays.
- (d) The contents contained in the service level objectives table in columns "Target Workaround Time" and "Target Resolution Time" do not include third-party delays outside the control of Contractor (e.g. iOS & Android App release times are subject to the respective store's app approval before publishing to the App Store) such as AWS, Apple App Store, Google Play Store, payment processors, etc.

Acknowledgement Time	The time period in which Contractor is required to respond to Client Users of reported issues.
Target Workaround Time	The amount of time in which Contractor will use commercially reasonable efforts to provide a Workaround starting from the time the issue was reported and Contractor was able to successfully reproduce the issue. If a Workaround is not available, Contractor will create a plan with Client input to minimize impact to business operations.
Target Resolution Time	The amount of time in which Contractor will use commercially reasonable efforts to provide a final resolution starting from the time the issue was reported and Contractor was able to successfully reproduce the issue. Availability of functional Workaround may result in the reclassification of the issue's severity level.

Severity Level Definitions

Issues Impacting System

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<p>1 – Blocker*</p>	<ul style="list-style-type: none"> *End Users cannot use or purchase fare media *Issue preventing validation of active fare media *Inability for End Users to plan a trip from A to B using a scheduled time *Significant percentage (more than 10%) of End Users are affected (e.g. cannot use or purchase fare media) *The financial impact of the incident is likely to be high (greater than \$10,000) *The damage to the reputation of the business is likely to be high
<p>2 – Major</p>	<ul style="list-style-type: none"> *End Users cannot create an account or login *Trip planning tools no longer provide real time information *Ability to lookup End Users *Current product configuration issues *Prevents Client User from recording fare evasion citations *Prevents Client User from distributing inventory to partner organization. *The financial impact of the incident is likely to be high (more than \$1,000 but not greater than \$10,000) *The damage to the reputation of the business is likely to be moderate
<p>3 - Medium</p>	<ul style="list-style-type: none"> *Ticket activation and purchasing issues affecting minority percentage of End Users. *Financial reporting inaccuracies *Client User unable to issue refunds *Errors – incorrect billing and settlement *Client or End User App settings screen issues *Future schedule inaccuracies or errors *Prevents Client User from creating and managing notifications *Prevents Client User from creating and listing orders *Prevents Client User from modifying End User details *Prevents Client User from managing and creating products *Prevents Client User from managing and creating campaigns *Prevents Client User from Client User App features *Prevents Client User from managing partner organization related features *Prevents Client User accessing stock reports *Reporting inaccuracies *Existing data export process fails to execute *Device management and monitoring issues *Clients account user management *Impacts third-party access of Contractor systems
<p>4 - Minor</p>	<ul style="list-style-type: none"> *Value add functions are not accessible or result in errors *Cosmetic defects *Feature functions but fails on data variation *Multi/intermodal third-party API's or errors *Statistic tool *Backend Error Messages: GTFS upload information tool *Real Time cockpit

*Issue affects greater than 10% of End Users on supported operating systems and software.

58. DATA PRIVACY

The Contractor may have access to personally identifiable information ("PII") in connection with the performance of the Agreement. PII is any information that identifies or describes a person or can be directly linked to a specific individual, including ridership and usage data. Examples of PII include, but are not limited to, name, address, phone or fax number, signature, date of birth, e-mail address, method of payment, ridership and travel pattern data. Customer Personally Identifiable Information, or Customer PII, means any PII relating to the Authority's customers. The Contractor shall take reasonable steps to maintain the confidentiality, security, safety, and integrity of all Customer PII. Notwithstanding the above, the Parties hereby expressly acknowledge and agree that Contractor shall not be responsible for any security for the transmission of data over the internet, payment processing or credit or debit card transactions or the data security or data privacy associated with the services of third-party vendors performing payment processing, hosting, or cloud vendor services. Notwithstanding the foregoing, Contractor will adhere to the following requirements concerning Customer PII:

- (a) The Contractor shall take reasonable steps to maintain the confidentiality of and will not reveal or divulge to any person or entity any Customer PII that becomes known to it during the term of this Agreement.
- (b) The Contractor must maintain policies and programs that prohibit unauthorized disclosure of Customer PII by its employees and sub-Contractors and promote training and awareness of information security policies and practices. The Contractor must comply, and must cause its employees, representatives, agents, and sub-Contractors to comply, with such commercially and operationally reasonable directions as the Authority may make to promote the safeguarding or confidentiality of Customer PII.
- (c) The Contractor must conduct background checks for employees or sub-Contractors that have access to Customer PII or systems hosting Customer PII.
- (d) The Contractor must limit access to computers and networks that host Customer PII, including without limitation through user credentials and strong passwords, data encryption both during transmission and at rest, fire-wall rules, and network-based intrusion detection systems.
- (e) This Section will survive termination or expiration of this Agreement.

59. DATA SECURITY

Contractor shall take reasonable steps to maintain the confidentiality, security, safety, and integrity of the Authority's data. Notwithstanding the above, the Parties hereby expressly acknowledge and agree that Contractor shall not be responsible for any security for the transmission of data over the internet, payment processing or credit or debit card transactions or the data security or data privacy associated with the services of third-party vendors performing payment processing, hosting, or cloud vendor services. This section will survive the termination of this Agreement.

#	Compliance Term	Comply	Release	Bytemark Comments	Capital Metro Response	Test #
2.1	Project Approach - Project Management					
2.1-1	Bytemark shall provide a robust project management team and project management plan to support upgrade of the System. Bytemark's plan for managing the project shall clearly demonstrate an appropriate allocation of project management resources that have the ability and experience to ensure that system design and implementation will be properly coordinated and managed, and will be completed on schedule and within budget. Bytemark shall provide tools to manage tasks, schedule, risk, change, and the other items listed in this section that are required to manage the project.					
2.1-2	EPPM Phase Tasks and Deliverables, Project Management and Payment Milestones. The Contractor shall comply with all requirements of "Appendix A - EPPM Phases" which define deliverables within phases, project management requirements, and payment milestones for the project.					
2.1.1	Project Approach - Project Management Plan					
2.1.1-1	Bytemark shall submit a comprehensive Project Management Plan (PMP) within 2-weeks following Notice to Proceed (NTP) that details at a minimum project organization; master schedule; and how project scope, cost, risk, quality, project changes, safety, and other key aspects of the project will be managed by Bytemark.					
2.1.1-2	The project Management Plan (PMP) will include but is not limited to the following elements: <ul style="list-style-type: none"> • Organization chart identifying key project personnel and contact information. • Master schedule, identifying key project milestones and activities in Microsoft Projects format. • Schedule for all project design and development elements that require Capital Metro approval. • Project meetings and schedule for recurring meetings. • Methodology to control project schedule, scope, cost, and risk. • Risk management plan and risk register, including identified project risks and actions required to mitigate them. • Transition and change management processes and procedures. • Safety processes and procedures. • Quality assurance processes and procedures to confirm that the requirements of the contract are being met. • Subcontractor management and communications. • Document naming conventions and Action Items and Issues List (AIL) control processes and procedures, including version and traceability controls. • Change management plan and procedures for all deliverables and subsequent revisions. • Cost management. • Communication Plan. 					
2.1.2	Project Approach - Project Management: Design Review					
2.1.2-1	Bytemark shall provide a robust project management team and project management plan to support the upgrade of the System. Bytemark's plan for managing the project shall clearly demonstrate an appropriate allocation of project management resources that have the ability and experience to ensure that system design and implementation will be properly coordinated and managed, and will be completed on schedule and within budget. Bytemark shall provide tools to manage tasks, schedule, risk, change, and the other items listed in this section that are required to manage the project.					
2.1.2-2	The objectives of the Preliminary Design Review (PDR) are to review progress of the System design and evaluate compliance with the requirements of this Statement of Services (SOS). PDR will represent approximately 75% completion of the total technical and operational system design. At PDR, Capital Metro needs Bytemark to demonstrate programmatic adequacy of design in meeting the requirements in this SOS. Bytemark is encouraged to categorize PDR information into logical topics for organized review and discussion.					
2.1.2-3	The objective of Final Design Review (FDR) is to finalize the detailed system design that satisfies all of the requirements in this SOS. FDR will represent 100% completion of the detailed system design with production specifications and drawings ready for release.					
2.1.2-4	Bytemark Capital Metro will perform third-party user functionality, user experience, and user accessibility testing as part of the design phase using prototype designs from the PDR and/or FDR. The third-party testing organization shall be approved provided by Capital Metro with Bytemark providing the design materials such as a mockup applications to perform the tests. Testing will be conducted in a lab with Capital Metro customers and non-customers for each of the products in each of the phases. Findings from the testing shall be reviewed with the third-party test provider, Capital Metro, and Bytemark to be incorporated into the design.					

2.2	Project Approach - Installation & Transition Plans				
2.2-1	Bytemark shall provide a detailed Installation and Transition Plan for Capital Metro review and approval at FDR, and a final version no later than 60 calendar days after notice to proceed for all releases prior to the first delivery of equipment.				
2.2-2	The Installation and Transition Plan will describe detailed installation and configuration of all software systems, including the back office, systems, interfaces and web applications, and their respective schedules.				
2.2-3	Bytemark shall provide a detailed Upgrade Migration Plan which will detail how riders and accounts will be migrated for each phase of the project. The Plan will be reviewed during design review and updated as needed throughout the project.				
2.2-3	Bytemark shall follow a defined quality change control and testing process (e.g. ITIL Service Management) with established baselines, testing and release standards which focus on system availability, confidentiality and integrity of systems and services.				
2.3	Project Approach - Testing: General Requirements				
2.3-1	Bytemark shall provide all labor and materials required for system testing, including but not limited to closed-loop fare media and bank cards, and all support services and facilities required to stage, inspect and test all hardware and software being supplied.				
2.3-2	Prior to the start of all formal testing activities that are to be witnessed and approved by Capital Metro, Bytemark shall conduct "dry-run" testing to identify and resolve any issues and avoid unexpected results during the formal testing.				
2.3-3	Bytemark shall provide Capital Metro with scripts to test all API endpoints.				
2.3-4	Bytemark shall test and verify that they can successfully utilize Capital Metro-provided and local				
2.3.1	Project Approach - Testing: Test Documentation				
2.3.1-1	Bytemark shall submit a draft inspection and test plan for Capital Metro review and approval during				
2.3.1-2	The Test Plan will include volume or stress testing for applicable devices and systems that simulates				
2.3.1-3	Detailed test procedures will include mapping to the design documents and the requirements in the				
2.3.2	Project Approach - Testing: Capital Metro Test Facility				
2.3.2-1	Bytemark shall upgrade the test facility on Capital Metro property for both Bytemark and Capital				
2.3.2-2	Beginning with SIT, all formal testing to be approved by Capital Metro prior to and following public				
2.3.2-3	Bytemark shall update Capital Metro test facility software as necessary throughout the term of the				
2.3.2-4	The test facility will be configurable to utilize one or more of the back office environments				
2.3.3	Project Approach - Testing: FUT (Functional Unit Test)				
2.3.3-1	Capital Metro shall complete functional tests for the back office applications, mobile apps, websites,				
2.3.3-2	Successful completion of the development of back office applications, mobile apps, and website				
2.3.3-3	Bytemark Capital Metro will perform third-party user functionality, user experience, and user				
2.3.4	Project Approach - Testing: SIT (System Integration Test)				
2.3.4-1	For SIT, the test system will be provisioned with test data simulating the system's operational				
2.3.4-2	At a minimum, SIT will include:				
2.3.4-3	Bytemark shall conduct data transmission testing during SIT to demonstrate, exercise, and verify				
2.3.4-4	SIT will include database accuracy testing, which will demonstrate the accuracy between the AUT				
2.3.4-5	SIT will include a full system audit and settlement test, which will demonstrate the flow of all				
2.3.4-6	With successful completion and approval of SIT, all software and configuration files will be "frozen."				
2.3.4-7	The automated failover process will be exercised in multiple failover scenarios during systems				
2.3.5	Project Approach - Testing: FIT (Field Integration Testing)				
2.3.5-1	FIT is essentially a duplication of SIT in the field in which all devices, back office applications,				
2.3.5-2	A 30-day settling period will commence upon approval of the FIT test reports. Capital Metro may, at				
2.3.6	Project Approach - Testing: Pilot				
2.3.6-1	At least 90 calendar days prior to the scheduled start of the pilot, Bytemark shall submit an				
2.3.6-2	The pilot will not commence until FIT has been approved, the subsequent 30-day settling period has				
2.3.6-3	The pilot will continue for its scheduled duration unless a critical failure or failures cause suspension				
2.3.7	Project Approach - Testing: SAT (System Acceptance Test)				
2.3.7-1	SAT will commence upon successful completion of the pilot. SAT will be comprised of three				
2.3.7-2	If the performance requirements defined in these specifications are not attained during any one of				
2.3.8	Project Approach - Testing: Final System Acceptance				
2.3.8-1	Bytemark shall submit a request for Final System Acceptance upon successful completion of SAT				
2.3.8-2	Capital Metro may grant Final System Acceptance only when:				
2.4	Project Approach - Training				
2.4-1	Bytemark shall provide a comprehensive program to educate and train personnel in all details of the				
2.4-2	Bytemark shall develop and submit for Capital Metro review and approval a Training Plan that				
2.4-3	The course curriculum will include instruction of personnel in at least the following broad categories				
2.4-4	The Training Plan will include a schedule for delivery of the training courses. The schedule will				
2.4-5	Bytemark shall provide all necessary training materials and equipment for the delivery of each				
2.5	Project Approach - Manuals				
2.5-1	Bytemark shall provide instruction manuals that describe and illustrate in detail how to manage,				
2.5-2	Disaster recovery procedures will be clearly specified in sufficient detail to consider all possible				
3.1	System Design & Architecture - Common Design Requirements and Guidelines				
3.1-1	Bytemark shall upgrade their existing customer account based fare system (listed below including but				
3.1-2	The System will be sized such that the total number of possible accounts, and total concurrent use of				
3.1-3	Bytemark shall follow a defined quality change control and testing process (e.g. ITIL Service				

3.1.1	System Design & Architecture - Maintainability and Serviceability				
3.1.1-1	Software upgrades will be centrally managed and fully tested prior to installation. The System shall				
3.1.2	System Design & Architecture - Licensing and Ownership				
3.1.2-1	Capital Metro shall continue to own all data that is generated from the System as described in Exhibit				
3.1.2-2	All open architecture APIs, licensing, libraries, and Intellectual Property (IP), including data exchange				
3.1.3	System Design & Architecture - Accessibility and ADA Compliance				
3.1.3-1	Bytemark shall design the System to be compliant with current accessibility standards, laws, and				
3.1.4	System Design & Architecture - Code and Regulation Compliance				
3.1.4-1	Bytemark shall design the System to be compliant with applicable standards, laws, and regulations to				
3.1.4-2	• Americans with Disabilities Act (ADA)				
3.1.4-3	In the case of conflict between the provisions of codes, laws, ordinances, statutes, standards, rules,				
3.1.5	System Design & Architecture - Information Security				
3.1.5-1	Bytemark shall upgrade the plan for the processes that will be used to resume operations in the				
3.1.5-2	Bytemark shall propose a physical and logical architecture (e.g. virtualized servers, spare load				
3.1.5-3	The System will support fraud prevention policies, including the ability to automatically identify				
3.1.5-4	The System will be designed to include the appropriate elements and processes to manage, monitor,				
3.1.5-5	In accordance with Exhibit E section 59 "Data Security", Exhibit G section 11 "Data Security", all fare				
3.1.5-6	In accordance with Exhibit E section 58 "Data Privacy", Exhibit G section 10 "Data Privacy", physical				
3.1.5-7	In accordance with Mobile Maintenance & Services Contract (200473), Exhibit J Warranty				
3.1.5-8	In accordance with Mobile Maintenance & Services Contract (200473), Exhibit J Warranty				
3.1.5-9	Bytemark shall ensure that Capital Metro data is isolated from any other customer data. Additionally,				
3.1.5-10	Bytemark shall prioritize identified application vulnerability/bug fixes. Security fixes must have higher				
3.1.5-11	Customer sensitive data such as passwords and credit card numbers shall be encrypted at rest and				
3.1.5-12	Key Management - Policies and procedures shall be established, and supporting business processes				
3.1.5-13	Bytemark shall provide secure coding training for developers. Provide CapMetro with a description of				
3.1.5-14	Code review - Bytemark shall provide an overview of their software development lifecycle showing				
3.1.5-15	Application security testing – Bytemark shall provide an overview of their application testing including				
3.1.5-16	Bytemark shall provide CapMetro with their method of detecting customer account compromises and				
3.1.5-17	Bytemark shall provide an opt-in 2Factor authentication solution for all customer accounts.				
3.2	System Design & Architecture - System Architecture				
3.2-1	The System will be upgraded to a full account-based system built on a central back office designed				
3.3	System Design & Architecture - System Integration Services				
3.3-1	The System will support the addition of new agencies, including fare rules that are part of the existing				
3.3-2	Capital Metro will be able to add new transportation connections, modes and products (e.g., parking)				
3.3-3	The System will integrate with Capital Metro's GTFS-RT feed and, as required, the existing and new				
3.3-4	Integrations with third-party products including, but not limited to: Ticket Vending Machine, Onboard				
3.3.1	System Design & Architecture - APIs				
3.3.1-1	Bytemark shall upgrade the system using Hypertext Transfer Protocol Secure (HTTPS), or Capital				
3.3.1-2	Bytemark shall develop, publish specifications for, and implement the use of APIs to support critical				
3.3.1-3	The APIs will include the ability for third party vendors to add value to customer accounts and to				
3.3.1-4	The system will have the ability to read and validate bar codes provided by third parties e.g. Austin				
3.3.1-5	The API and Interface Control Documentations (ICD) will be fully owned by or licensed to Capital				
3.3.1-6	Bytemark shall update the API and Interface Control Documentation (ICD) specifications as				
3.3.1-7	Bytemark shall implement strong security controls to prevent fraudulent use of the APIs and				
3.3.1-8	Applications and programming interfaces (APIs) shall be designed, developed, deployed and tested				
4	System Components				
4.1	System Components - Customer Service Terminals				
4.1-1	Bytemark shall upgrade or replace all necessary peripherals and associated software to deploy in a				
4.1-2	CSTs will be used by Capital Metro to assist customers with a wide variety of activities related to				
4.1-3	The CST modules and key functions may include:				
4.1-4	The CST will conduct a variety of functions. At a minimum, these functions include:				
4.1-5	In a future optional year within the contract Bytemark shall perform an upgrade of their MBO system				
4.2	System Components - Mobile Applications				
4.2-1	Bytemark shall upgrade the customer mobile app to include a closed-loop fare payment credential				
4.2-2	The customer mobile app will be tested and support the two most recent major versions of operating				
4.2-3	The customer mobile app will be available in the app stores, offered and maintained by Bytemark.				
4.3	System Components - Customer Web Portal and Capital Metro Website				
4.3-1	The Customer Web Portal website shall be upgraded to allow all customers to access and control				
4.3-2	Capital Metro will continue to use their enterprise CMS to manage website content. Bytemark's				
4.3-3	Users will access the customer website and mobile app using the same user login.				

4.4	System Components - Account-Based Transaction Processor				
4.4-1	The back office will manage the automatic reloading of value or fare products that are configured for				
4.4-2	The autoloading feature will support both threshold-based triggers (i.e. reloading when the stored value balance, remaining trip balance, or remaining validity period falls below a configurable threshold), and calendar-based triggers (i.e. reloading on a configurable date every month).				
4.4-3	The System will have the ability to segregate any value load using pre-tax dollars, including the				
4.4-4	The System will have the ability to restrict the use of pre-tax and tax-free funds to qualified services				
4.4-5	The System will allow after-tax stored value to be used on all services, including transportation				
4.4-6	The System will be upgraded to enable Capital Metro to initiate acceptance of open payments; that				
4.4-7	The System will have the ability to maintain an audit trail from the original transaction postings, to the				
4.4-8	The back office system will provide access to no less than seven (7) years of historical data. Deletion				
4.4-9	The back office will retain detailed active transactions for at least 25 months.				
4.5	System Components - Central Payment Application				
4.5-1	Bank funding via credit cards, debit cards, and ACH will be processed through a Central Payment				
4.6	System Components - Customer Relationship Management Application				
4.6-1	Capital Metro will be implementing an enterprise customer relationship management system in a				
4.6-2	Bytemark shall upgrade the system to integrate with Capital Metro's selected CRM application. The				
4.6-3	Customer Service Representatives will be able to access and manage transit and customer accounts				
4.6-4	Customer service records will be created automatically based on customer-initiated actions				
4.6-5	Customer service staff will be able to manually create or update (e.g., add notes) a customer service				
4.6-6	The integration with Capital Metro's CRM application will support the management of customer				
4.7	System Components - Fare Inspection and Citation Management				
4.7-1	Bytemark shall upgrade the mobile inspection app to continue to support inspection, citation				
4.8	System Components - Retail Network				
4.8-1	Capital Metro may be partnering with a retail smart card network and integrated into their system in a				
4.8-2	Bytemark shall contract and integrate with a virtual stored value retail network service provider for				
4.8-3	Bytemark and its retail network service provider shall work with Capital Metro to identify an extensive				
4.8-4	All merchants in the retail network shall accept cash (at a minimum) as a form of payment for stored				
4.8-5	All fees for payment processing, including interchange and acquirer fees shall be borne by the				
4.8-6	Bytemark shall guarantee payment of funds to Capital Metro for all completed System stored value				
4.8-7	Bytemark shall settle funds to the Capital Metro-designated bank account(s) as frequently as				
4.9	System Components - Media Inventory Management				
4.9-1	Bytemark shall upgrade the back office system to include Fare Media Management (FMM) as part of				
4.9-2	Media inventory shall be kept in a single system of record and updated for each transaction including				
4.1	System Components - Tariff Management				
4.10-1	Bytemark will be responsible for upgrading the back office Tariff Management capabilities of the				
4.10-2	The fare tables will be easy to view, review, and test when entering during creation of initial tables				
4.10-3	The System will allow Capital Metro to view and compare draft fare sets and changes to active and				
4.10-4	The System will have the ability to roll back to a previously used fare set.				
4.10-5	All fare product configurations will be able to be performed by Capital Metro, as well as by Bytemark				
4.10-6	The System will allow fare set changes on a frequent, including daily, basis without regard to				
4.10-7	The System will be able to manage, store, and deploy an active fare set and at least two (2) pending				
4.11	System Components - Financial and Enterprise Resource Planning (ERP) Application				
4.11-1	Capital Metro will be implementing a financial and enterprise resource planning (ERP) system in a				
4.11-2	Bytemark will upgrade the System to support a daily export of the following journal entries:				
4.11-3	The back office will have the ability to make sure that total debits equal total credits for a single				
4.12	System Components - Reporting and Data Warehouse				
4.12-1	Capital Metro will be implementing an enterprise data warehouse system in a future fiscal year.				
4.12-2	Bytemark will upgrade the System to support reporting to meet all requirements of the fare system				
4.12-3	Bytemark shall upgrade and provide Capital Metro with user level analytics of customer facing				
4.12-4	Bytemark will upgrade the System to support integration with Capital Metro's enterprise data				
4.13	System Components - Integration with Cash Farebox and Vaulting System				
4.13-1	Capital Metro will be upgrading or replacing the cash farebox and vaulting system in a future fiscal				
4.13-2	Bytemark will upgrade the System to support integration of reconciliation functions of Capital Metro's				
4.14	System Components - Traveler Tools				
4.14-1	Capital Metro will be implementing or integrating with a mobility-as-a-service platform in a future				
4.15	System Components - Parking				
4.15-1	Capital Metro will be implementing a parking system in a future fiscal year. Bytemark shall include				
5	Fare Policy				
5.1	Fare Policy - General Requirements				
5.1-1	The System will support the current fare structure as a foundation. Fare structure includes the				
5.1-2	The tariff will be configurable in such a way that Capital Metro may implement different fare policies				
5.1-3	The tariff fare capping program shall offer the ability to specify the customers with eligible access to				

5.2	Fare Policy - Fare Structure				
5.2-1	Fare policy business rules will be used to determine the fare charged to the rider on the basis of				
5.2-2	The System will be upgraded to support a variety of fare policies and products, including stored value				
5.2-3	The System will support stored value, which will serve as an electronic cash-equivalent, and will be				
5.2-4	The system will be upgraded to support fare capping. If fare capping is enabled, riders will pay per boarding up until a capping threshold; at this point, riders will no longer be charged for their boardings for the remainder of the specified time period. Product-based fare capping will be available in Release 1 and continued to be available after the migration to Bytemark Connect account-based system in Release 3.				
5.2-5	The system will support the setting of multiple fare cap time periods, each with their own capped				
5.2-6	The system will be capable of issuing time-based passes as the base fare. These passes will be				
5.2-7	The system will support separate fare cap price thresholds for different services and different rider				
5.2-8	The system will support calendar products that are valid for unlimited rides during a predefined				
5.2-9	The System will support date-based and promotional pricing that offers discounted fares on a				
5.3	Fare Policy - Fare Products				
5.3-1	The System will continue to support fare products and pricing for business accounts, school pass				
5.3-2	Accounts will be able to contain multiple fare products simultaneously (e.g., stored value and a pass				
5.3-3	The configurable service day may be longer than 24 hours, and service day hours may overlap. Pass				
5.3-4	Unused rolling period pass products (e.g. day passes) can expire. Expiration will be configurable.				
5.3-5	Day passes and short-term products (e.g., convention passes) will activate upon first tap, and the				
5.4	Fare Policy - Passenger Types				
5.4-1	A passenger type must be defined for each account. The default passenger type that will be				
5.4-2	An account may only have one passenger type associated with it.				
5.4-3	Adult full fare customers will have the option of associating an account with a customer account or				
5.4-4	Certain reduced fare passenger types will require association to a customer account.				
5.4-5	Passenger types will be able to be modified and configured manually, or automatically based on				
5.5	Fare Policy - Loading Fare				
5.5-1	The System will be upgraded to enable customers to use stored value wallet to purchase fare				
5.5-2	The System will enable a customer to set up autoloading to reload stored value wallet and/or fare				
5.5-3	Customers will be able to define threshold and calendar-based autoloading for accounts based on				
5.5-4	The loading of stored value will be restricted based on configurable parameters, including the				
5.5-5	All parameters governing threshold and calendar-based autoloading will be fully configurable by				
5.5-6	The capability to load a particular fare product to an account will be configurable based on the fare				
6.1	Fare Media - General Requirements				
6.1-1	Fare media and applications will be designed for use in an account-based system, and serve as				
6.1-2	All System electronic fare media will be ISO/IEC-14443 compliant for secure communication with				
6.1-3	The System will be upgraded to accept the following closed-loop media for fare payment:				
6.1-4	Each closed-loop fare card, virtual fare card and QR-code ticket will be associated with a unique				
6.1-5	For smart card fare media and QR-code tickets, each customer will be required to have and present				
6.1-6	The System will be upgraded to accept the following open payment media, for direct payment of				
6.1-7	Nothing in this contract shall prevent Capital Metro from procuring supplies of fare cards using				
6.2	Fare Media - Capital Metro-Issued Fare Cards				
6.2-1	The transit payment application will be upgraded to be compatible with the following MIFARE				
6.2-2	All Capital Metro-issued EU fare cards will be reloadable at designated retailers participating in the				
6.2-3	The System will support the printing of personalized and customized EU fare cards using the CST				
6.2-4	Capital Metro-issued EU fare cards will be printed with a unique non-sequential 16-digit serial				
6.2-5	EU fare cards will be worthless until activated at time of sale.				
6.2-6	LU fare cards will be worthless until distributed by Capital Metro to social services agencies for issue				
6.2-7	EU fare cards will have the ability to be managed within the mobile app and customer web app.				
7.1	Operations and Maintenance Services - Operations and Maintenance Model				
7.1-1	The System will be operated as follows:				
7.1-2	Working with Capital Metro, Bytemark will execute updates to amend the				
7.1-3	Bytemark will update as necessary and execute the Software Licensing Agreement				
7.2	Operations and Maintenance Services - Performance Measurement				
7.2-1	Update the Warranty and Maintenance Agreement with the following components:				
7.2-2	Back office accuracy shall be based on the number of incidents where a device or back office				
7.3	Operations and Maintenance Services - Credit Assessment				
7.3-1	Bytemark and Capital Metro shall revise as necessary and execute the Software Licensing				

7.3-2	Credits will be determined as a percentage of the operations payments made to Bytemark. The credit				
7.3-3	The credit will be assessed if a KPI fails to meet the specified performance requirement (or				
7.3-4	Bytemark shall be responsible for reporting on credits in the System performance reports and will				
8.1	Marketing Strategy, Campaign, & Customer Outreach				
8.1-1	Bytemark shall subcontract with a marketing firm approved by Capital Metro to develop and				