



**CONTRACT 200639
MARKETING SERVICES
(RFP 306351)**

CONTRACTOR:

Sherry Matthews, Inc.
200 South Congress Avenue
Austin, Texas 78704
Phone: 512-478-4397
Fax: 512-478-4978

E-Mail: wbelvin@sherrymatthews.com

AWARD DATE:

December 4, 2020

CONTRACT TERM:

12 months from Notice to Proceed

PRICE:

The total contract amount shall be determined by the cumulative total of the task orders issued. The total amount of all task orders shall not exceed \$2,239,740.00 for two (2) contracts awarded for this service under RFP 306351.

DBE GOAL:

12%

PROJECT MANAGER:

Cynthia Lucas
512-369-6078
cynthia.lucas@capmetro.org

CONTRACT ADMINISTRATOR:

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

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

**CONTRACT 200639
(RFP 306351)
TABLE OF CONTENTS
MARKETING SERVICES**

| ITEM | DESCRIPTION |
|-------------|---|
| 1 | AWARD CONTRACT FORM |
| 2 | EXHIBIT A-REVISED-1 – SCHEDULE - DATED AUGUST 25, 2020 |
| 3 | EXHIBIT A-1-REVISED-1 - PRICING – DATED OCTOBER 1, 2020 |
| 4 | EXHIBIT B-REVISED-1 - REPRESENTATIONS AND CERTIFICATIONS |
| 5 | EXHIBIT D - DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM AND SCHEDULE C FORMS |
| 6 | EXHIBIT E-REVISED-1 - CONTRACTUAL TERMS AND CONDITIONS |
| 7 | EXHIBIT E-1 ADDENDUM TO CONTRACTUAL TERMS AND CONDITIONS FEDERALLY ASSISTED CONTRACTS |
| 8 | EXHIBIT-E-2 INVOICE REQUIREMENTS |
| 9 | EXHIBIT F-REVISED-1 - SCOPE OF SERVICES |
| 10 | EXHIBIT IT - PROPRIETARY RIGHTS AND DATA SECURITY ADDENDUM |
| 11 | CONTRACTOR'S SECOND FINAL PROPOSAL REVISION, DATED NOVEMBER 2, 2020, DOCUMENT INCORPORATED BY REFERENCE |
| 12 | CONTRACTOR'S FINAL PROPOSAL REVISION, DATED OCTOBER 1, 2020, DOCUMENT INCORPORATED BY REFERENCE |
| 13 | CONTRACTOR'S INITIAL PROPOSAL, DATED AUGUST 25, 2020, DOCUMENT INCORPORATED BY REFERENCE |
| 14 | AMENDMENTS 1, 2, AND 3 |

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
AUSTIN, TEXAS

AWARD/CONTRACT

| | | |
|---------------------------------------|--------------------------------|---------------------------|
| 1. SOLICITATION NO: RFP 306351 | 2. CONTRACT NO.: 200639 | 3. EFFECTIVE DATE: |
| | | Upon Execution |

4. CONTRACT ADMINISTRATOR

| | |
|-------------------------|------------------------------|
| NAME: Denny Ross | PHONE: (512) 369-7724 |
|-------------------------|------------------------------|

5. SHIP TO ADDRESS:

Capital Metro
2910 East 5th Street
Austin, Texas 78702

6. DELIVERY TERMS:

FOB Destination

7. DISCOUNTS FOR PROMPT PAYMENT: N/A

8. CONTRACTOR NAME & ADDRESS:

Sherry Matthews, Inc.
200 South Congress Avenue
Austin, Texas 78704

9. REMITTANCE ADDRESS:

(If different
from Item 8)

PHONE: 512-478-4397

EMAIL: wbelvin@sherrymatthews.com

10. DBE GOAL: 12%

CONTRACT EXECUTION

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

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

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

SIGNATURE OF CONTRACTOR:

Name/Title: Wardaleen Belvin, CFO Signature: [Signature] Date: 12, 02, 2020

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

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

ALTERATIONS IN CONTRACT:

Refer to Exhibit B. Exhibit B shall be replaced in its entirety with Exhibit B-Revised-1, Representations And Certifications (Federally Assisted Supply/Service/Construction Contracts), attached hereto and made a part hereof for all pertinent purposes.

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

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

Refer to Exhibit IT - Proprietary Rights And Data Security Addendum. Exhibit IT - Proprietary Rights And Data Security Addendum, shall be incorporated by reference and attached hereto and made a part hereof for all pertinent purposes.

ACCEPTED AS TO: Exhibit A-1-Revised-1 Pricing:

Module 2, Base Year 1, at the fully burdened hourly rates, Page 1, Items 1-27 and Page 2 Items 1-27 inclusive.

Module 3, Base Year 1, at the fully burdened hourly rates, Items 1-19 inclusive.

Module 4, Exhibit A-1-Revised-2, Base Year 1, at the fully burdened hourly rates, Items 1-27 inclusive.

Amount of the awarded contracts for all Task Orders shall not exceed \$2,239,740.00 for the two (2) contracts awarded for this service under RFP 306351.

SIGNATURE OF CONTRACTING OFFICER:

Typed Name:
Muhammad Abdullah, CTCM, C.P.M.
Sr. Director, Chief Contracting & Compliance
Officer

E-SIGNED by Muhammad Abdullah
on 2020-12-23 21:28:46 GMT Date: December 23, 2020

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

EXHIBIT A-Revised-1

SCHEDULE

RFP 306351

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

1. IDENTIFICATION OF OFFEROR AND SIGNATURE OF AUTHORIZED AGENT

| | | | |
|--|---|--------------|----------------------------|
| Company Name (Printed) | SHERRY MATTHEWS, INC. | | |
| Address | 200 SOUTH CONGRESS AVENUE | | |
| City, State, Zip | AUSTIN, TEXAS 78704 | | |
| Phone, Fax, Email | 512-478-4397 | 512-478-4978 | wbelvin@sherrymatthews.com |
| The undersigned agrees, if this offer is accepted within the period specified, to furnish any or all supplies and/or services specified in the Schedule at the prices offered therein. | | | |
| Authorized Agent Name and Title (Printed) | Karen Purcell Scott, Executive Vice President | | |
| Signature and Date | <i>Karen Purcell Scott</i> | | 7.30.20 |

2. ACKNOWLEDGEMENT OF AMENDMENTS

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

| Amendment # | Date | Amendment # | Date |
|-------------|---------|-------------|------|
| 1 | 7/30/20 | | |
| | | | |
| | | | |

3. PROMPT PAYMENT DISCOUNT

| | | | |
|-----------|--|------------|---|
| # of Days | | Percentage | % |
|-----------|--|------------|---|

Note, payment terms are specified in Exhibit E, Contractual Terms and Conditions.

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

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

| |
|-----|
| 12% |
|-----|

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

The Authority hereby accepts this offer.

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

6. DOCUMENTS ENCLOSED WITH THE PROPOSAL AND # OF COPIES

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

For further information regarding Exhibit A, you may:

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

OR

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

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

EXHIBIT B-REVISED-1
REPRESENTATIONS AND CERTIFICATIONS
(FEDERALLY ASSISTED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)
MUST BE RETURNED WITH THE OFFER

1. TYPE OF BUSINESS

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

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

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

Texas

2. PARENT COMPANY AND IDENTIFYING DATA

(a) The offeror (mark one):

- ☐ is
☒ is not

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

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

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

██████████

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

N/A

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

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

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

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

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

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

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

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

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

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

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

4. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

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

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

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

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

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

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

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

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

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

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

5. COMMUNICATIONS

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

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

| Individual's Name | Date/Subject of Communication |
|-------------------|-------------------------------|
| N/A | N/A |
| | |
| | |

(Attach continuation form, if necessary.)

6. CONTINGENT FEE

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

☐ has
☒ has not

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

☐ has
☒ has not

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

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

7. CODE OF ETHICS

(a) Statement of Purpose

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

(b) Applicability

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

(c) Standards of Ethical Conduct

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

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

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

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

(d) Roles and Responsibilities

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

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

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

(1) Anonymous Fraud Hotline – Internal Audit

(2) Anonymous Online Ethics Reporting System

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

(4) Safety Hotline

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

(e) Ethical Business Transactions

Section 1. Impartiality and Official Position

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

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

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

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

(2) No Board Member or employee shall:

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

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

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

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

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

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

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

Section 2. Employment and Representation

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

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

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

Section 3. Gifts

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

No Board Member or employee shall:

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

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

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

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

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

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

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

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

Section 4. Business Meals and Functions

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

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

Section 5. Confidential Information

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

No Board Member or employee shall:

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

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

Section 6. Financial Accountability and Record Keeping

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

A Board Member or employee shall:

- (1) Not falsify a document or distort the true nature of a transaction.
- (2) Properly disclose risks and potential liabilities to appropriate Capital Metro staff.
- (3) Cooperate with audits of financial records.

- (4) Ensure that all transactions are supported by accurate documentation.
- (5) Ensure that all reports made to government authorities are full, fair, accurate and timely.
- (6) Ensure all accruals and estimates are based on documentation and good faith judgment.

Section 7. Conflict of Interest

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

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

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

Disclosure

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

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

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

Definitions

(1) A Local Government Officer is defined by Tex. Loc. Govt. Code § 176.001(4). A Local Government Officer is:

- (i) A member of the Board of Directors;
- (ii) The President/CEO; or
- (iii) A third party agent of Capital Metro, including an employee, who exercises discretion in the planning, recommending, selecting or contracting of a vendor.

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

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

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

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

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

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

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

Section 9. Duty to Report and Prohibition on Retaliation

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

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

Section 10. Penalties for Violation of the Code of Ethics

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

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

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

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

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

Section 11. Miscellaneous Provisions

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

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

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

8. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

(a) The offeror represents as part of its offer that it (mark one):

☒ has
☐ has not

participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 301, Part 2 of Executive Order Number 11114;

and it (mark one):

☒ has
☐ has not

filed all required compliance reports.

9. AFFIRMATIVE ACTION COMPLIANCE

(a) The offeror represents as part of its offer that it has a workforce of (indicate below the number of employees including temporary, full-time, or part-time employees):

51

(b) The offeror:

☒ **has** developed an Affirmative Action Plan at each establish as required by the rules and regulations of the Secretary of Labor (41 C.F.R. parts 60-1 and 60-2) and **has on file**. The offeror will submit the Affirmative Action Plan to the Authority within ten (10) days of the date of the Notice of Award (NOA).

☐ **has not** developed an Affirmative Action Plan at each establish as required by the rules and regulations of the Secretary of Labor (41 C.F.R. parts 60-1 and 60-2) and **does not have on file**. The offeror will submit the Affirmative Action Plan to the Authority within one hundred and twenty (120) days of the date of the Notice to Proceed (NTP).

(c) The offeror:

☒ has
☐ has not

previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

10. DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOALS

The goal established for this solicitation must be met or the offeror must submit clear evidence of a "good faith effort" along with the offeror's completed Schedule C of Subcontractor Participation form (listing all proposed subcontractors, DBE and non-DBE) and an executed Intent to Perform as a DBE Subcontractor form for each DBE subcontractor listed on the Schedule C as part of the proposal or sealed bid. By submission of this offer, the offeror certifies that it will comply with the provisions of Exhibit D attached to this solicitation entitled "Disadvantaged Business Enterprise Program" and will meet the goal as established in any ensuing contract.

11. CLEAN AIR AND WATER CERTIFICATION

Applicable if the offer exceeds \$150,000, or the Authority believes that orders under an indefinite contract in any year will exceed \$150,000 or a facility to be used has been the subject of a conviction under the Air Act [42 U.S.C. § 7413(c)(1)] or the Water Act [33 U.S.C. § 1319(c)] and is listed by the Environmental Protection Agency (EPA) as a violating facility, and the acquisition is not otherwise exempt.

By submission of this offer, the offeror certifies that:

(a) any facility to be used in the performance of this proposed contract (mark one):

☐ is
☒ is not

listed on the EPA List of Violating Facilities;

(b) it will immediately notify the Authority, before award, of the receipt of any communication from the EPA Administrator, or a designee of the EPA, indicating that any facility which it proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(c) it will include a certification substantially the same as this certification, including this paragraph (c), in every subcontract not otherwise exempt by law.

12. CERTIFICATION OF NON-SEGREGATED FACILITIES

(a) By the submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained.

(b) The offeror agrees that a breach of this certification is a violation of the Equal Opportunity Clause in Exhibit E of the contract.

(c) Definitions: For the purpose of this Certification of Non-Segregated Facilities, the following definitions shall apply:

(1) "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin, because of written or oral policies or employee custom. The term does not include separate or single-user restrooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(2) "gender identity" refers to one's internal sense of one's own gender; it may or may not correspond to the sex assigned to a person at birth, and may or may not be made visible to others.

(3) "sexual orientation" refers to an individual's physical, romantic, and/or emotional attraction to people of the same and/or opposite gender; examples of sexual orientations include "straight" (or heterosexual), lesbian, gay, and bisexual.

(d) It further certifies that (except where it has obtained identical certifications from proposed subcontracts for specific time periods) it will:

(1) obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity provision in Exhibit E of the contract; and

(2) retain such certifications in its files.

13. CERTIFICATION OF RESTRICTIONS ON LOBBYING

This Certification is applicable if the offer exceeds \$100,000.

(a) By submission of this offer, the offeror certifies to the best of the offeror's knowledge or belief that no Federal appropriated funds have been paid, or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

(d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 or not more than \$100,000 for each such failure.

14. TEXAS ETHICS COMMISSION CERTIFICATION

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

15. CERTIFICATION REGARDING ISRAEL

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

16. CERTIFICATION REGARDING FOREIGN TERRORIST ORGANIZATIONS

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

17. CERTIFICATION OF PRIME CONTRACTOR PARTICIPATION

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

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

(c) The offeror hereby certifies that the **Schedule C of Subcontractor Participation** form submitted with the Exhibit D, Disadvantaged Business Enterprise (DBE) portion of this offer represents no more than seventy percent (70%) of the work will be done by subcontractors.

18. SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS

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

(b) The offeror shall provide immediate written notice to the Authority if, at any time prior to contract award, the offeror learns that the offeror's certification was, or a subsequent communication makes, the certification erroneous.

(c) Offerors must set forth full, accurate and complete information as required by this solicitation (including this attachment). Failure of an offeror to do so may render the offer nonresponsive.

(d) I understand that a false statement on this certification may be grounds for rejection of this submittal or termination of the awarded contract.

(e) A false statement in any offer submitted to the Authority may be a criminal offense in violation of Section 37.10 of the Texas Penal Code. In addition, under 18 U.S.C. §. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to five (5) years, or both.

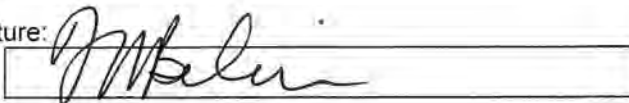
Name of Offeror:

Sherry Matthews, Inc.

Type/Print Name of Signatory:

Wardaleen Belvin

Signature:



Date:

12-8-2020

EXHIBIT D
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
DBE Federal Funds

It is the policy of the Authority and the Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 C.F.R. part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract. It is also the policy of the Authority to (1) ensure nondiscrimination in the award and administration of DOT-assisted contracts; (3) ensure that the DBE program is narrowly tailored in accordance with applicable law; (4) ensure that only firms that fully meet the 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's; (5) help remove barriers to the participation of DBE's in DOT assisted contracts and procurement activities; and, (7) assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

Consequently, the DBE requirements of 49 C.F.R. part 26 apply to this contract. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The requirements of 49 C.F.R. part 26, and the Authority's DOT approved Disadvantaged Business Enterprise (DBE) program are incorporated in this contract by reference.

1. DEFINITIONS

(a) Disadvantaged business enterprise or DBE means a for-profit small business concern (1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(b) Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act P.L. 112-239 and Small Business Administration regulations implementing it (13 C.F.R. part 121) that also does not exceed the cap on average annual gross receipts specified in 13 C.F.R. Section 121.402.

(c) Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is: (1) any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis; (2) any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(5) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(6) Women;

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

(7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

2. CONTRACTOR ASSURANCE

As required by Federal law, the Contractor makes the following assurance:

"The contractor [sub recipient or subcontractor] shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Authority [recipient] deems appropriate, which may include, but is not limited to: (1) withholding monthly (or periodic payments); (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible."

The Contractor agrees to include the above clause in each subcontract associated with this contract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. SUBMISSION OF DBE FORMS

(a) The contractor shall submit with its response to the solicitation a completed Schedule C of Subcontractor Participation form (listing all proposed subcontractors, DBE and non-DBE) and an executed Intent to Perform as a DBE Subcontractor form for each DBE subcontractor listed on the Schedule C. As required in Section 5 of this Exhibit, adequate good faith effort documentation (if necessary) must be submitted at this same time. If the contractor does not submit this information by the time the response is due, Capital Metro may deem the contractor non-responsive and such decision is non-appealable. Instead, the contractor may follow the Authority's protest procedure set forth in the Authority's Procurement Policy and Procedures Manual.

(b) The listing of a DBE by contractor shall constitute a representation by the contractor to the Authority that it believes such DBE firm to be technically and financially qualified and available to perform the work. It shall also represent a commitment by the contractor that if it is awarded the contract it will enter into a subcontract with such DBE (provided that the DBE is certified as provided herein) for the work described and at the price set forth in both the Schedule C of Subcontractor Participation and the Intent to Perform as a DBE Subcontractor forms. If the price changes after the form has been submitted but prior to award of the contract, the contractor will immediately notify the Authority's Contracting Officer of the changed amount and the reason(s) for the change.

(c) In the event that the contractor wishes to modify its Schedule C of Subcontractor Participation after its offer is submitted and/or a contract awarded, the contractor must notify the Authority in writing and request approval of the modification. This will include any changes to items of work, material, services or DBE firms which differ from those identified on the Schedule C of Subcontractor Participation on file. The contractor must cooperate in supplying the Authority with additional information with respect to the requested modification. No changes may be affected without the Authority's prior written approval.

4. CREDIT TOWARDS GOALS

(a) No credit toward meeting DBE goals will be allowed unless the DBE is determined to be eligible by the Authority's Office of Diversity. The contractor is strongly encouraged to contact the Authority's Office of Diversity well in advance of the date set for submission of offers in order to enable review of the proposed DBEs eligibility to participate in the Authority's DBE Program. The dollar value of work performed under a contract with a firm after it has ceased to be certified cannot count toward a contract goal. Participation of a DBE subcontractor cannot count toward the contractor's DBE achievements until the amount being counted has been paid to the DBE.

(b) Only expenditures to DBEs that perform a Commercially Useful Function may be counted towards goals. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved; and it furnishes the supervision, labor, and equipment necessary to perform its work. To perform a commercially useful function, the

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. If a DBE does not perform or exercise responsibility for at least thirty (30%) percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is not performing a commercially useful function.

(c) The contractor may count only the value of the work actually performed by the DBE toward DBE goals. Count the entire amount of that portion of a contract that is performed by a DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate). Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(d) When a DBE performs as a participant in a joint venture, the Contractor may count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(e) The contractor may credit towards the DBE goal the full expenditures for materials and supplies provided that the DBE is a manufacturer. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. (also, produces materials from raw materials, or substantially alters materials before resale).

(f) The contractor may credit towards the DBE goal only sixty (60%) percent of the total dollar cost for material and supplies purchased from DBEs that are regular dealers and not manufacturers. A regular dealer is an established firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.

(g) The Contractor may count toward its DBE goals the following expenditures to DBE firms that are not manufacturers or regular dealers.

(1) The fees or commissions charged for bona fide services such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment materials or supplies required for performance of the contract, provided that the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(2) The fees charges for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in, the materials and supplies.

(3) The fees charged for providing any bonds or insurance specifically required for the performance of the contract.

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

(4) The fees charged for assistance in the procurement of the materials and supplies provided that the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

(h) If the contractor is a DBE and wishes to count its participation on the project towards the goal, it is required to perform that portion with its own work force.

5. DEMONSTRATION OF GOOD FAITH EFFORT

(a) If the contractor does not meet the DBE goals, it shall nevertheless be eligible for award of the contract if it can demonstrate to the satisfaction of the Authority that it has made a good faith effort to meet the DBE goals. In evaluating a contractor's good faith effort submission, the Authority will only consider those documented efforts that occurred prior to receipt of competitive sealed bids (IFB) or competitive sealed proposals (RFP).

(1) Possible subcontracting opportunities include, but are not limited to:

| | |
|--|--------------------------|
| Public Relations Agencies | 541820 |
| Marketing and Advertising Services | 541613 / 541810 |
| Marketing Research | 541910 / 541511 / 561410 |
| Web/Digital Content Development Services | 541611 |

(2) The DBE goal for this solicitation is 12%. DBE goal will apply on all work areas except Media Buys.

(b) In the event that a firm submitted by the contractor is not able to become certified by one of the certifying agencies under the Texas Unified Certification Program (see Section 6), the contractor will be notified and given an opportunity to substitute that firm with another DBE firm. The Contractor will be given a deadline to accomplish the substitution. In the event the contractor is unable to contract with another substitute DBE firm, the good faith efforts that contractor made in attempting to contract with the substitute DBE firm must be documented to the Authority's Office of Diversity. Documentation submitted in accordance with this subparagraph is the only exception to the requirements in subparagraph (a) above pertaining to the good faith efforts that the Authority will consider in determining whether the contractor shall be otherwise eligible for award of the contract.

(c) In making a determination that the contractor has made a good faith effort to meet the DBE goals, the Authority shall consider among other things it deems relevant, the criteria set forth below. Additionally, in determining whether the contractor has made good faith efforts, the Authority will take into account the performance of other bidders in meeting the contract goal. The Contractor shall furnish as part of its DBE utilization information provided under this Section 5 such specific documentation concerning the steps it has taken to obtain DBE participation, with a consideration of, by way of illustration and not limitation the following:

(1) Whether the contractor solicited through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

(2) Whether the contractor selected portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

(3) Whether the contractor provided interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

(4) Whether the contractor negotiated in good faith with interested DBEs. It is the contractor's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered;

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. A contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a contractor's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the contractor of the responsibility to make good faith efforts. A contractor is not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

(5) Whether the contractor rejected DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

(6) Whether the contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

(7) Whether the contractor made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

(8) Whether the contractor effectively used the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

(d) In determining whether the contractor has demonstrated good faith, the Authority will look not only at the different kinds of efforts that the contractor has made, but also the quantity and intensity of those efforts. Efforts that are mere pro forma are not good faith efforts to meet the goals (even if they are sincerely motivated) if, given all relevant circumstances, the contractor's efforts could not reasonably be expected to produce a level of DBE participation sufficient to meet the goals.

(e) If the contractor does not meet the DBE goal or make adequate good faith efforts to do so, the Authority will so notify the contractor in writing. The contractor may appeal the decision within five (5) days of the date of the notice of decision by filing a written appeal for reconsideration. As part of this appeal, the contractor has the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The reconsideration will be made by the DBE appeals officer, an individual who did not take part in the original determination that the contractor failed to meet the goal or make adequate good faith efforts to do so. The contractor will have the opportunity to meet with the DBE appeals officer to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The result of the reconsideration process is final and not administratively appealable to the Department of Transportation.

6. CERTIFICATION OF DBEs

(a) The Authority is a participating entity under the Texas Unified Certification Program (TUCP). This means that the Authority will accept certifications from any of the certifying agencies that have agreed to perform the certification of DBEs within the state of Texas under the Texas Unified Certification Program (TUCP). The participating agencies are:

- **Texas Department of Transportation**
- **North Central Texas Regional Certification Agency**
- **South Central Texas Regional Certification Agency**
- **City of Houston**
- **City of Austin**
- **Corpus Christi Regional Transportation Authority**

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

(b) The City of Austin will serve as the certifying agency for the Austin region, which includes the counties of Bastrop, Caldwell, Hays, Travis and Williamson County. All prospective DBEs must submit appropriate forms, available through the City of Austin Certification Department, to prove actual ownership and control by DBEs. All such firms shall cooperate in supplying additional information as requested by the City of Austin DBE Certification Department, which will determine the certification of eligible DBEs. Blank forms may be obtained by contacting the City of Austin Certification Department, 4201 Ed Bluestein Blvd., Austin, TX 78721, (512) 974-7645, fax: (512) 974-7609. Contractors may also contact the Authority at (512) 389-7441 or officeofdiversity@capmetro.org to obtain information.

(c) In the event the Authority determines that a firm identified by the contractor as a potential DBE does not qualify as a DBE, the contractor shall be informed and will be provided with an opportunity to substitute firms meeting the certifying agency's DBE eligibility criteria for the Authority's consideration.

(d) Only certified DBEs may participate in Authority contracts in such capacities. Information concerning DBEs currently certified can be obtained by contacting the Authority's Office of Diversity. Contractors may access the DBE directory at <https://txdot.txdotcms.com/>.

(e) **If a Contractor proposes using a DBE not currently certified with any of the other recipients in the Texas Unified Certification Program (TUCP), the DBE Application must be approved by the City of Austin Certification Department no later than the date and time established for the receipt of proposals.** Any extensions to the due date by amendment to the solicitation shall automatically extend the due date of the application. If contractor proposes using a DBE from another state, the firm must produce evidence that it is DBE certified in the state in which the business is headquartered.

7. DBE PROGRAM REQUIREMENTS

(a) The Contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed in Schedule C of Subcontractor Participation form unless the contractor obtains the prior written consent of the Authority upon a showing of good cause as established by 49 C.F.R. Section 26.53 (f)(3). Contractor will not be entitled to payment for any work or materials unless it is supplied by the listed DBE.

(b) Unless such consent is obtained, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

(c) At no time will the contractor invoice the Authority for amounts pertaining to subcontractors terminated or substituted without prior approval of the Authority.

8. TERMINATION OR REPLACEMENT OF DBE SUBCONTRACTORS

(a) The contractor must notify the Authority's Office of Diversity immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation thereof.

(b) The contractor may not terminate a listed DBE subcontractor (or approved substitute), replace a subcontractor previously listed, permit a subcontract to be assigned or transferred, or allow that portion of the work to be performed by anyone other than the listed subcontractor, without the prior written consent of the Authority. For termination of a SBE subcontractor, prior written consent will only be provided where there is a "good cause" for termination as established by 49 C.F.R. Section 26.53(f)(3). This includes, but is not limited to, instances in which a contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(c) Before transmitting to the Authority its request to terminate, the contractor must give the DBE subcontractor notice of its intent to terminate. A copy of this notice must be provided to the Authority prior to consideration of the request to terminate. The DBE subcontractor shall have five (5) days to respond to the contractor's notice and advise the Authority the reasons, if any, why it objects to the proposed termination. If required in a particular case as a matter of public necessity (e.g., safety), the response period can be shorter than five (5) days.

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

(d) When a DBE subcontractor is terminated, the Authority will require the contractor to make good faith efforts to replace a DBE subcontractor that is terminated with another certified DBE, to the extent needed to meet the contract goal. These good faith efforts shall be directed at finding another certified DBE to perform at least the same amount of work under the contract as the DBE that was terminated. Documentation of good faith efforts must be maintained and provided to the Authority.

(e) Any DBE that has been approved by Capital Metro to be replaced has the right to appeal the decision directly to Authority's DBE Officer. Appeals should be sent to:

DBE Officer
Capital Metropolitan Transportation Authority
Office of Diversity
2910 E. 5th Street
Austin, TX 78702

If the DBE Officer concurs with the prime contractor, the DBE may use the "Administrative Reconsideration" process noted in Paragraph 5(e) and submit an appeal to the Agency's reconsideration official.

(f) If the contractor fails or refuses to comply with the requirements of this Section 8 in the time specified, the Authority will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor fails still fails to comply, the Authority may institute a termination for default proceeding under Exhibit E.

(g) When a DBE is terminated or fails to complete its work on the contract for any reason, the contractor shall make good faith efforts to find another DBE contractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent need to meet the DBE goal for this procurement.

9. SUBCONTRACTS

(a) Upon request, contractor shall furnish the Authority with all subcontracts associated with this contract.

(b) The contractor shall ensure that all subcontracts or an agreement with the DBE's to supply labor or materials require that the subcontract and all lower-tier subcontractors be performed in accordance with 49 C.F.R. part 26.

10. PAYMENT DOCUMENTATION

For every month that the contractor gets paid under the contract the contractor shall complete and submit a Vendor Payment Report in a form approved by the in accordance with submittal instructions provided by the Authority. As provided elsewhere in this contract, the Authority may withhold all or part of any progress payment otherwise due the contractor if the contractor fails to submit the Vendor Payment Report Form and make prompt payment to its sub-contractors, suppliers and laborers.

11. PROMPT PAYMENT OF SUBCONTRACTORS

(a) The contractor agrees to pay each subcontractor under this contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the contractor receives from the Authority. The contractor further agrees to return retainage payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval from the Authority.

(b) Failure by the contractor to pay subcontractors within ten (10) days as provided in subparagraph (a) and/or failure to submit appropriate certification of subcontractor payment will be considered in the review of contractor's performance of the contract and may result in the withholding of payment to the contractor.

(c) The contractor agrees to include the above clauses in each subcontract associated with this contract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

12. PAYMENT DISPUTES

If a payment dispute arises between the contractor and any subcontractor or supplier related to this contract, the contractor shall provide a written response to the subcontractor or supplier, with a copy to the Contracting Officer, specifically addressing any disputed amounts. The contractor should resolve all disputed invoices at the earliest time to avoid a delay in the submission of required subcontractor/supplier payment certifications that could delay payment to the contractor. In the event that the contractor cannot resolve a subcontractor or supplier disputed invoice, the contractor shall bring the matter to the attention of the Contracting Officer at the time of submitting the contractor's invoice for payment. The Contracting Officer will investigate the situation and make a determination whether the contractor's invoice should be processed for payment without the required subcontractor or supplier certification. The Contracting Officer will not mediate the dispute between the contractor and any subcontractor or supplier in the resolution of disputed invoices. At no time will the contractor invoice the Authority for amounts in dispute without prior notification to the Contracting Officer.

13. SANCTIONS FOR NONCOMPLIANCE WITH THE AUTHORITY'S DBE PROGRAM REQUIREMENTS

Failure by the contractor to carry out the Authority's DBE Program Requirements is a material breach of the contract, which may result in the termination of this contract or such other remedy, as the Authority deems appropriate, which may include, but is not limited to: (1) withholding monthly (or periodic payments); (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible. The willful making of false statements or providing incorrect information will be referred for appropriate legal action.

14. BANKS AND FINANCIAL INSTITUTIONS

The contractor is encouraged to utilize the services of disadvantaged, minority and woman-owned banks and financial institutions.

CAPITAL METRO
Schedule C of Subcontractor Participation

Instructions: The Offeror shall complete this form by listing 1) Names of all proposed subcontractors. 2) Contact information, 3) Description of work to be performed/product to be provided, 4) Status as a DBE or non-DBE, 5) Ethnic Code of firm, 6) Age of the firm, 7) Annual gross receipts of the firm, 8) % or \$ amount of Total Contract. Those subcontractors which are listed on this form as DBEs must have current certification as a DBE with a participating TUCP certifying agency (see Exhibit D paragraph 6). The DBE certification must be complete by the time the proposals are submitted. Additionally, those subcontractors which are listed on this form as DBEs must complete an Intent to Perform as a DBE Subcontractor agreeing to the information listed here.

Name of Prime Contractor (Offeror): SHERRY MATTHEWS, INC.

Project Name: MARKETING SERVICES

IFB/RFP Number: RFP NO. 306351

Ethnic Code: **A)** African-American Male **B)** African American Female **C)** Asian- Indian Male **D)** Asian- Indian Female **E)** Asian –Pacific Male **G)** Asian-Pacific Female **H)** Hispanic Male **I)** Hispanic Female **J)** Native American Male **K)** Native American Female **L)** White Female **M)** Other

| 1) Name of Subcontractor | 2) Address, Telephone # of DBE Firm (Including name of contact person) | 3) Description of Work, Services Provided. Where applicable, specify "supply" or "Install" or both. | 4) DBE or non- DBE | 5) Ethnic Code | 6) Age of Firm | 7) Annual Gross Receipts | 8) DBE % or \$ amount of Total Contract |
|---|--|---|-----------------------|-------------------|-------------------|--------------------------------|---|
| Competitive Creations, LLC, DBA Brand Besties | 4301 W. William Cannon, Suite B150 #120, Austin, Texas 78749, 512-814-8807, Corina Frankie | Event marketing, outreach, street teams, event staffing | DBE | I | 11 | \$600,000 | 12% |
| Creative Consumer Research | 3945 Greenbriar, Stafford, Texas 77477, 281-295-1629, BJ Gerjes | Research | Non-DBE | L | 44 | \$2.85 million | 0% |
| Alpha Vu | 1725 DeSales Street NW, Suite 806, Washington, DC 20036, Scott Wilkinson | Data mining, data analytics, public opinion, and sentiment capture | Non-DBE | M | 11 | \$5.9 million | 0% |
| Hahn Public | 4200 Marathon Blvd, Suite 300, Austin, Texas 78756, 512-344-2017, Jeff Hahn | Communications, public relations, and social media services | Non-DBE | M | 46 | \$7,798,000 | 0% |
| Baselice & Associates, Inc. | PO Box 50238, Austin, Texas 78763-0238, 512-345-9720, Matt Gamble | Supply public opinion research | Non-DBE | M | 23 | \$3.1 million | 0% |
| Chocolate Milk & Donuts LLC | 701 Brazos Street, #1616, Austin, Texas 78704, 206-817-5179, Ricky Holm | Virtual and augmented reality design and development | Non-DBE | M | 4.5 | \$500,000 | 0% |
| fd2s, inc | 1634 East Cesar Chavez, Austin, Texas 78702, 512-476-7733, Steven L. Stamper | Customer experience research | Non-DBE | M | 34 | \$1.6 million | 0% |
| Progress User Experience Research, LLC | 611 E 50th Street, Austin, Texas 78751, 512-765-5302, Jon-Eric Steinbomer | User experience research and usability consulting | Non-DBE | M | 14 | \$310,224 | 0% |

This schedule must be completed as instructed above and include every subcontractor proposed on this project.

The undersigned will enter into a formal agreement with DBE contractors for work listed in this schedule upon execution of a contract with Capital Metro. The contractor agrees to the terms of this schedule by signing below and submitting the Intent to Perform as completed by the DBE subcontractors. The contractor also certifies that no more than 70% of the work for this project will be subcontracted.



Signature of Authorized Representative of Offeror

8/25/2020

Date Signed

CAPITAL METRO
Schedule C of Subcontractor Participation

Instructions: The Offeror shall complete this form by listing 1) Names of all proposed subcontractors. 2) Contact information, 3) Description of work to be performed/product to be provided, 4) Status as a DBE or non-DBE, 5) Ethnic Code of firm, 6) Age of the firm, 7) Annual gross receipts of the firm, 8) % or \$ amount of Total Contract. Those subcontractors which are listed on this form as DBEs must have current certification as a DBE with a participating TUCP certifying agency (see Exhibit D paragraph 6). The DBE certification must be complete by the time the proposals are submitted. Additionally, those subcontractors which are listed on this form as DBEs must complete an Intent to Perform as a DBE Subcontractor agreeing to the information listed here.

Name of Prime Contractor (Offeror): -SHERRY MATTHEWS, INC.

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IFB/RFP Number: RFP NO. 306351

Ethnic Code: **A)** African-American Male **B)** African American Female **C)** Asian- Indian Male **D)** Asian- Indian Female **E)** Asian –Pacific Male **G)** Asian-Pacific Female **H)** Hispanic Male **I)** Hispanic Female **J)** Native American Male **K)** Native American Female **L)** White Female **M)** Other

| 1) Name of Subcontractor | 2) Address, Telephone # of DBE Firm (Including name of contact person) | 3) Description of Work, Services Provided. Where applicable, specify "supply" or "install" or both. | 4) DBE or non- DBE | 5) Ethnic Code | 6) Age of Firm | 7) Annual Gross Receipts | 8) DBE % or \$ amount of Total Contract |
|--------------------------|--|---|-----------------------|----------------------|-------------------|--------------------------------|---|
| Clarity Venture Inc | 6805 North Capital of Texas Hwy, Suite 312, Austin, Texas 78731, 512-497-4499, Jeremy Howell | Sitefinity development and integration services | Non-DBE | M | 14 | \$3.5 million | 0% |
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This schedule must be completed as instructed above and include every subcontractor proposed on this project.

The undersigned will enter into a formal agreement with DBE contractors for work listed in this schedule upon execution of a contract with Capital Metro. The contractor agrees to the terms of this schedule by signing below and submitting the Intent to Perform as completed by the DBE subcontractors. The contractor also certifies that no more than 70% of the work for this project will be subcontracted.

Karen Purcell Scott

8/25/2020

CAPITAL METRO
Intent to Perform as a DBE Contractor/DBE Subcontractor
RFP # 306351

(Note: In accordance with 49 CFR (Code of Federal Regulations) Part 26 and Board policy, DBE firms participating in Capital Metro's DBE Program must have "current" certification status with a TUCP Certifying Agency (see Exhibit D Paragraph 6) by the due date established for this IFB/RFP/SOQ.

1. TO: (name of Offeror/Prime Contractor) **SHERRY MATTHEWS, INC.**
2. The undersigned is either currently certified under the Texas Unified Certification Program (TUCP) as a DBE or will be at the time this solicitation is due.
 The undersigned is prepared to perform the following described work with their own workforce and/or supply the material listed in connection with the above project
 (where applicable specify "supply" or "install" or both) **event marketing, outreach, street teams, event staffing**

and at the following price \$_____ and/or 12 % of the total contract amount (should be the same \$ or % found on Schedule C).

With respect to the proposed subcontract described above, the undersigned DBE anticipates that 0 % of the dollar value of this subcontract will be sublet and/or awarded to other contractors. Any and all subcontractors that a DBE subcontractor uses must be listed in Schedule C-1 and must also be DBE certified. (The DBE subcontractor should complete this section only if the DBE is subcontracting any portion of its subcontract.)

COMPETITIVE CREATIONS, LLC
 (Name of DBE Firm)

Corina Frankie
 (Signature of Authorized Representative)

512-814-8807
 (Phone Number)

09/03/2020
 (Date Signed)

SHERRY MATTHEWS, INC.
 (Name of Offeror/Prime Contractor)

Karen Duane Scott
 (Signature of Authorized Representative)

512-478-4397
 (Phone Number)

09/03/2020
 (Date Signed)

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

1. DEFINITIONS

- (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 work 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) "Task Order" means a request for Services issued under this Contract.
- (aa) "Works" means any tangible or intangible items or things that have been or will be specifically, generated, prepared, created, or developed 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 the exclusive use of, and ownership by, 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, and (vi) all documentation and materials related to any of the foregoing.

2. CONTRACT TYPE

This is an indefinite quantity, indefinite delivery (IDIQ) type Contract for services with multiple pricing arrangements available for use in pricing individual Task Orders available to The Authority. The work required on the referenced contract will be placed through the issuance of task orders. Due to the variety of services required under the contract and the circumstances that affect their duration, the Authority anticipates using a variety of task orders at the Con-

tracting Officer's (CO) discretion consistent with the guidelines provided in Part 16 of the Federal Acquisition Regulations (FAR) to include Firm Fixed-Price (FFP), Cost-Plus-Fixed-Fee (CPFF) Completion and Cost-Plus-Fixed-Fee (CPFF).

(a) This indefinite quantity, indefinite delivery Contract is subject to the following minimum/maximum paragraph:

(1) Minimum order. The Authority will order a minimum of \$15,000 in Services under this Contract (for all awardees combined).

(2) Maximum order. The maximum value of the contract(s) is \$10,000,000.00 for the Base term and all renewal options. The cumulative amount of all task orders shall not exceed \$10,000,000.00 for the entire lifecycle of these contracts (for all awardees, combined). The ordering procedures to issue task orders are addressed under Section 6 "Ordering and Pricing Limitations" in this Exhibit E-Rev-1. The sum of all task orders awarded will be tracked by the Authority to ensure they do not exceed the total maximum value

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

(d) There is no guaranteed Contract Sum for the Contract, except for the minimum order specified in (b)(1) of this paragraph.

3. TERM

The term of the Contract shall be one (1) year from the Contract Notice to Proceed Date. No work shall be performed under this Contract prior to issuance of a written Task Order.

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 and A-1 - Pricing Schedule upon written notice to 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. ORDERING AND PRICING LIMITATIONS

(a) Work to be performed under this Contract shall be ordered through issuance of written Task Orders. There is no limitation to the number of Task Orders issued under this Contract.

(b) Prior to issuance of a written Task Order the Authority shall provide notification to the Contractor of the services required by the Task Order, which shall include a required date to submit pricing for this task..

(c) The Contractor shall return a complete and itemized cost breakdown, inclusive of labor hours, material/travel/other reimbursable costs, etc., and a timeline with milestones for the completion of work within the time stated in the request. Failure to timely respond may result in award of the Task Order to the next contractor in rotation, if applicable. Fully Burdened Labor Hour Rates shall be those specified in the Contract. If the Authority does not agree with the proposed labor disciplines, number of labor hours, material/travel/other costs or timelines, the Authority reserves the right to negotiate with the Contractor so as to arrive at a final agreement for the task. Following final agreement, a written Task Order may be issued.

(d) Services under this Contract shall commence upon the issuance of each fully executed Task Order. Completion of all requirements under each and every Task Order shall correlate to an expeditious prosecution of the milestones that are not dependent upon factors beyond the direct control of the Contractor.

(e) The Authority will reimburse actual travel expenses up to the not to exceed amount provided detailed travel expense records are provided with copies of receipts. The Authority will not pay travel expenses for local travel within the Austin metropolitan area, and all air fare cannot be reimbursed at a rate higher than coach fare. Fair and reasonable car rental rates are deemed to be \$50 per day. Any travel conducted pursuant to this Contract shall not be billed in excess of the maximum per diem rates for lodging and meals as established by the U.S. General Services Administration. First and Last Day of travel is limited to seventy-five percent (75%) of meals and incidental expenses. Please see GSA Domestic Per Diem Rates at <http://www.gsa.gov/portal/category/100120>.

(f) Reimbursable expenses are limited to direct pass-through of all fees paid. All material/travel/other reimbursable costs (including Subcontractor costs) shall be reimbursed to the Contractor by task and at actual cost with no administrative or other mark-ups (including Subcontractor costs). In no event may the total of these costs by task exceed the total in the Task Order. In the event the Contractor believes material/other costs will be exceeded, the Contractor shall immediately notify the Authority and submit a revised estimate for these costs by task. The Contractor shall not proceed with work in excess of that described in the written Task Order unless the Task Order is modified in writing by the Authority.

(g) Proposals must represent a complete cost projection, including Fully Burdened Hourly Labor Rates by job classification, reimbursable expenses, and other activities associated with the proposed Task Order. All Subcontractor costs must also be included and shall not be singled out as separate tasks in of themselves.

(h) Written Task Orders shall contain a complete description of the work, an itemization of the estimated material/travel and other costs and the fixed labor fee agreed to by the parties.

(i) Labor hours shall not be billed as reimbursable expenses.

(j) No payment for costs incurred prior to issuance of a written Task Order shall be payable to the Contractor.

(k) Any order issued during the effective period of this Contract and not completed within that period shall be completed by the Contractor within the time specified in the order, except that no Task Order shall be issued if the performance period in the Task Order would extend more than one hundred twenty (120) days past the Contract completion date. The Contract shall govern the Contractor's and the Authority's rights and obligations with respect to that order to the same extent as if the order was completed during the Contract's effective period.

7. INVOICING AND PAYMENT

(a) Invoices may be submitted once per month for work completed and accepted by the Authority, or if indicated in the Task Order, upon completion of milestones, electronically to:

AP_invoices@capmetro.org

or via mail marked "Original" to the attention of:

Accounts Payable
CMTA
P.O. Box 6308
Austin, Texas 78762-6308

(b) Payment shall be made within the time period allowed by law through the Texas Prompt Payment Act - Texas Government Code 2251.021(b). A prompt payment discount may be taken if offered and determined to be advantageous by the Authority.

(c) The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Authority when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either \$1,000 or 50% of the total amount of this Contract.

(d) For each billing cycle, whether monthly or milestone, the Contractor shall provide detailed individual invoices for each Task Order with a Summary of Invoices. The required format is shown in Exhibit E-2, Invoicing Requirements.

(1) Summary of Invoices shall include the Contract number, summaries of all Task Orders issued against the Contract whether open or closed, invoice number, Capital Metro Project Manager name, Task Order number, project description, Task Order authorized amount, percent of Task Order complete, percent of invoicing complete, previous amount billed, current amount due and the Task Order balance. In the case that a Task Order is one hundred percent (100%) complete, but invoicing is less than one hundred percent (100%) complete, an itemization of the outstanding invoices shall be included.

(2) Individual Task Order Invoices shall include the Contract number, purchase order number, invoice number, Task Order number, project description, and for each staff position assigned to the Task Order: title and contracted fully-burdened rate. Each title line shall include a breakdown of hours, cost and percent of total for the Task Order contractual amount, previously billed, current invoice and total. Reimbursable expenses shall be itemized by Task Order contractual amount and must be accompanied by supporting documentation.

(3) The final invoice for Task Order Services will include a fixed price adjustment line if the total invoiced for Services is not equal to the contractual Task Order total for Services. This adjustment could be positive or negative to bring the actual invoice equal to the Task Order contractual amount. The Task Orders are negotiated fixed price for Services; Capital Metro will not pay greater than the fixed price unless a scope change is ordered.

(4) Reimbursable expenses will not exceed the reimbursable expenses authorized by the Task Order and are subject to the terms specified in the paragraph entitled "Process for Awarding Task Orders".

(e) In the event an overpayment is made to the Contractor under this Contract or the Authority discovers that the Authority has paid any invoices or charges not authorized under this Contract, the Authority may offset the amount of such overpayment or unauthorized charges against any indebtedness owed by the Authority to the Contractor, whether arising under this Contract or otherwise, including withholding payment of an invoice, in whole or in part, or the Authority may deduct such amounts from future invoices. If an overpayment is made to the Contractor 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.

8. INSURANCE

(a) The Contractor shall furnish proof of Capital Metro-stipulated insurance requirements specified below. All insurance policies shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to the Authority and shall contain a contract waiver of subrogation in favor of the Authority. The Contractor shall furnish to the Authority certificate(s) of insurance evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Prior to the expiration of a certificate of insurance, a new certificate of insurance shall be furnished to the Authority showing continued coverage. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to the Authority and the Authority shall be named as an Additional Insured under each policy, Professional Liability insurance if required by this Contract. All insurance policies shall be written by reputable insurance company or companies acceptable to the Authority with a current Best's Insurance Guide Rating of A+ and Class XIII or better. All insurance companies shall be authorized to transact business in the State of Texas. The Contractor shall notify the Authority in writing of any material alteration of such policies, including any change in the retroactive date in any "claims-made" policy or substantial reduction of aggregate limits, if such limits apply or cancellation thereof at least thirty (30) days prior thereto. The below requirements only represent the minimum coverage acceptable to the Authority and these requirements are not intended to represent the maximum risk or the maximum liability of the Contractor. The Contractor shall be responsible for setting its own insurance requirements, if any, for the kind and amounts of insurance to be carried by its Subcontractors in excess of the insurance required by the Authority.

The Contractor shall carry and pay the premiums for insurance of the types and in the amounts stated below.

CAPITAL METRO MINIMUM COVERAGE REQUIREMENTS

(1) Commercial General Liability Insurance Coverage with limits of not less than One Million Dollars and No/100 Dollars (\$1,000,000) per occurrence Combined Single Limit of Liability for Bodily Injury and Property Damage with an aggregate of Two Million Dollars and No/100 Dollars (\$2,000,000) with coverage that includes:

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

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

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

(4) Technology Errors & Omissions Insurance: Combined Technology & Omissions Policy with a minimum One Million and No/100 Dollars (\$1,000,000) claim limit, including

(i) **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 (a) Privacy, Security and Media Liability Insurance providing liability for unauthorized access or disclosure, security breaches or system attacks.

(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 Contract 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.

9. 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.

10. 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.

11. 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.

12. 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 Contract 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.

13. 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.

14. 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.

15. 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.

16. PERSONNEL ASSIGNMENTS

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

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

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

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

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

(3) National Sex Offender Registry

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

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

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

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

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

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

(1) The nature and gravity of the offense or conduct;

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

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

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

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

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

17. 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.

18. 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 subparagraph (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.

19. TERMINATION FOR DEFAULT

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

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

(d) If this Contract is terminated as provided in subparagraph (a), the Authority, in addition to any other rights provided in this 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.

20. 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.

21. 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.

22. INTELLECTUAL PROPERTY; DATA PRIVACY 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 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. Further, the Contractor agrees that any and all Authority data or compilations thereof produced under this Contract shall be and remain the sole property of the Authority. Upon the request of the Authority, but in any event upon termination of this Contract, the Contractor shall surrender to the Authority all such data and compilations.

(1) Subject to the above, Works and Intellectual Property Rights provided by or prepared by Contractor (including without limitation Contractor's pre-existing software, customizations, modifications, updates or upgrades thereof) shall remain the exclusive property of Contractor, and Contractor shall supply to the Authority a non-exclusive, non-transferable license to the extent required for the use by the Authority of the Services provided pursuant to this Contract for the time that the Services are provided solely for the purposes of the Contract. The Authority acknowledges that, in respect of any third party Intellectual Property Rights, the Authority's use of such rights is conditional upon Contractor obtaining a written license from the relevant licensor on such terms as will entitle Contractor to license such rights to the Authority.

(2) For the avoidance of doubt, it is understood that Contractor may use its own previously developed data, documentation, software, ideas, concepts, materials, or information, in whatever form, in performing its obligations hereunder (collectively "Contractor Pre-existing Works"). All Contractor Preexisting Works shall remain the sole, exclusive and unrestricted property of Contractor. It is understood that in performing its obligations under the Contract, Contractor may develop new and unique products that will aid Contractor in performing its services to Authority as it relates solely to this Contract.

(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 Contractor Works 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.

(c) 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.**

(d) 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.

(e) 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.

(f) 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 subparagraph 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.

(g) The Contractor may have access to personally identifiable information ("PII") in connection with the performance of the Contract. PII shall be 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. Unless otherwise agreed to by the Authority in writing, Contractor will adhere to the following requirements concerning Customer PII:

(1) 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.

(2) The Contractor must maintain policies and programs that prohibit unauthorized disclosure of Customer PII by its employees and subcontractors 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.

(3) The Contractor must conduct background checks for employees or sub-Contractors that have access to Customer PII or systems hosting Customer PII.

(4) 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.

Notwithstanding the above, the Parties hereby expressly acknowledge and agree that:

(1) Contractor may disclose, divulge, or reveal PII and Customer PII in a manner approved by the Authority to the extent necessary to fulfill the requirements of this Contract or as otherwise approved in writing by the Authority; and

(2) Unless provided otherwise in the Contract, 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 22(g) will survive termination or expiration of this Agreement.

23. 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.

24. 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.

25. SUSPENSION OF SERVICES

(a) The Authority may order the Contractor in writing to suspend all or any part of the Services for such period of time as the Authority determines to be appropriate for the convenience of the Authority.

(b) If the performance of all or any part of the Services is, for an unreasonable period of time, suspended or delayed by an act of the Authority in the administration of this Contract, or by the Authority's failure to act within the time specified in this Contract (or, if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension or delay, and the Contract modified in writing accordingly. However, no adjustment shall be made under this paragraph for any suspension or delay to the extent (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.

(c) No claim under this paragraph shall be allowed (1) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Authority in writing of the act or failure to act involved (but this requirement shall not apply to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this paragraph shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this paragraph.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. PUBLICATIONS

All published material and written reports submitted under this Contract must be originally developed material unless otherwise specifically provided in the Contract document. When material, not originally developed, is included in a report, it shall have the source identified. This provision is applicable when the material is in a verbatim or extensive paraphrased format.

33. REQUEST FOR INFORMATION

(a) The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract 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 shall be referred to the Authority.

(d) The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

(1) The requirement of Subchapter J, Chapter 552, Government Code as amended currently applies to expenditures of at least \$1 million in public funds for the purchase of goods or services.

34. 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.

35. LIMITATION OF LIABILITY

In no event shall the Authority or its officers, directors, agents or employees be liable in contract or tort, to the Contractor or its Subcontractors for special, indirect, incidental or consequential damages, resulting from the Authority's performance, nonperformance, or delay in performance of its obligations under this Contract, or the Authority's termination of the Contract with or without cause, or the Authority's suspension of the Services. This limitation of liability shall not apply to intentional tort or fraud. The Contractor shall include similar liability provisions in all its Subcontracts.

36. LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS

The Contractor agrees that it shall be in compliance with all laws, statutes, and other governmental provisions, regulations or standards prevailing during the term of this Contract.

37. CLAIMS

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

38. LICENSES AND PERMITS

The Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses, permits, and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to the performance of work or to the products or Services to be provided under this Contract including, but not limited to, any laws or regulations requiring the use of licensed Subcontractors to perform parts of the work.

39. NOTICE OF LABOR DISPUTES

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor immediately shall give notice, including all relevant information, to the Authority.

(b) The Contractor agrees to insert the substance of this paragraph, including this subparagraph (b), in any Subcontract under which a labor dispute may delay the timely performance of this Contract; except that each Subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

40. PUBLICITY RELEASES

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this Contract or the Services hereunder which the Contractor or any of its Subcontractors desires to make for the purposes of publication in whole or in part, shall be subject to approval by the Authority prior to release.

41. 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,**

FICATION (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.

42. 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.

43. 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.

44. 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 employee is on the premises of the Authority as an employee of the Contractor or Subcontractor.

45. 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.

46. 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.

47. 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.

48. 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 the Work Site or 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.

49. 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. Exhibits A/A-1 – Pricing Schedule
2. Exhibit E – Contractual Terms and Conditions
3. Exhibit E-1 – Addendum to Contractual Terms and Conditions, Federally Assisted
4. Exhibit F – Scope of Services
5. Exhibit IT - Proprietary Rights And Data Security Addendum
6. Exhibit B – Representations and Certifications
7. Exhibit D – Disadvantaged Business Enterprise Program, Schedule C Forms
8. Other provisions or attachments to the Contract

50. 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.

51. 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.

52. 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.

53. 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.

54. COOPERATIVE CONTRACT

- A. The Authority has entered into a master cooperative purchasing agreement with other governmental entities (with the Authority, the "Cooperative Members") to form the Texas Interlocal Purchase Cooperative, under which the Cooperative Members grant access and make available to one another certain contracts of the Cooperative Members, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Chapter 271 of the Local Government Code. The Contractor agrees to offer to other eligible Cooperative Members the goods and services provided under this Contract with the same prices, and under terms and conditions, of this Contract.
- B. The Authority does not accept any responsibility or liability arising from or related to a separate contract between another Cooperative Member and Contractor based on this Contract or for any purchases made thereunder.

EXHIBIT E-1
ADDENDUM TO CONTRACTUAL TERMS AND CONDITIONS
FEDERALLY ASSISTED SUPPLY OR SERVICE CONTRACT

The Contractor clauses and provisions of this Exhibit apply to all Federally assisted supply and service contracts. These provisions supersede and take precedence over any other clause or provision contained within this contract which may be in conflict therewith.

1. EQUAL EMPLOYMENT OPPORTUNITY

This clause applies to all contracts, except contracts for standard commercial supplies or raw materials and construction. During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. This shall include, but not be limited to: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (c) The Contractor shall include the provisions of paragraphs (a) and (b) of this clause in every Subcontract or purchase order except for standard commercial supplies or raw materials and construction.

2. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- (a) It is the policy of the Authority and the Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 C.F.R. Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Contract. Consequently, the DBE requirements of 49 C.F.R Part 26 applies to this Contract.
- (b) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The requirements of 49 C.F.R. Part 26, and the Authority's DOT approved Disadvantaged Business Enterprise (DBE) program are incorporated in this Contract by reference. Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in the termination of this Contract or such other remedy, as the Authority deems appropriate.

3. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION

- (a) Overtime Requirements. No Contractor or Subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess for forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- (b) Violation, Liability for Unpaid Wages, Liquidated Damages. In the event of any violation of the provisions set forth in paragraph (a) above, the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under the Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the provisions set forth in paragraph (a) above.

(c) Withholding for Unpaid and Liquidated Damages. The Authority shall upon the Authority's own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payroll and Basic Records.

(1) The Contractor or Subcontractor shall maintain payroll records during the course of Contract work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 209 C.F.R. 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the Authority or the Department of Labor. The Contractor or Subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the provisions set forth in paragraphs (a) through (d) above, and also a provision requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the provisions set forth in paragraphs (a) through (d) above.

4. TITLE VI CIVIL RIGHTS ACT OF 1964

During the performance of this Contract, the Contractor for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

(a) Compliance with Regulations. The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter referred to as "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations)), which are herein incorporated by reference and made a part of this Contract.

(b) Nondiscrimination. The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

(c) Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a Subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.

(d) Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directive issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Authority or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Authority, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the Authority shall impose such Contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

- (1) withholding of payments to the Contractor under the Contract until the Contractor complies; and/or
- (2) cancellation, termination or suspension of the Contract, in whole or in part.

(f) Incorporation of Provisions. The Contractor shall include the provisions of paragraph (1) through (f) above in every Subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any Subcontract or procurement as the Authority or FTA may direct as a means of enforcing such revisions including sanctions for non-compliance: provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the Authority, and, in addition, the United States to enter into such litigation to protect the interests of the Authority and the United States.

5. CLEAN AIR AND WATER ACT

(a) Definitions:

(1) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. § 7401 et seq.).

(2) "Clean air standards," as used in this clause means:

(i) any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738.

(ii) an applicable implementation plan as described in Section 110(d) of the Air Act [42 U.S.C. § 7410(d)]; or

(iii) an approved implementation procedure under Section 112(d) of the Air Act [42 U.S.C. § 7412(d)].

(3) "Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. § 1342), or by local government to ensure compliance with pre-treatment regulations as required by Section 307 of the Water Act (33 U.S.C. § 1317).

(4) "Compliance," as used in this clause, means compliance with:

(i) clean air or water standards; or

(ii) a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

(5) "Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised, by a Contractor or Subcontractor, sued in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee of the Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

(6) "Water Act," as used in this clause, means Clean Water Act (33 U.S.C. § 1251 et seq.).

(b) The Contractor agrees:

(1) to comply with all the requirements of Section 114 of the Clean Air Act (42 U.S.C. § 7414) and Section 308 of the Clean Water Act (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this Contract.

(2) that no portion of the work required by the prime Contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) to use best efforts to comply with clean air standards and clean water standards at the facility in which the Contract is being performed; and

(4) to insert the substance of this clause into any nonexempt Subcontract, including this paragraph (b)(4).

6. ENERGY POLICY AND CONSERVATION ACT

The Contractor shall recognize mandatory standards and policies relating to energy efficiency contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321 et seq.).

7. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Contract or to any benefit arising from it. However, this clause does not apply to this Contract to the extent that this Contract is made with a corporation for the corporation's general benefit.

8. BUY AMERICA PROVISION

This Contract is subject to the Buy America provisions of the Surface Transportation Assistance Act of 1982, as amended, and the Federal Transit Administration's implementing regulations found at 49 C.F.R. Part 661. The provisions of that Act and its implementing regulations are hereby incorporated by reference into this Contract.

9. RESERVED

10. FLY AMERICA

The Contractor agrees that international air transportation of any persons involved in or property acquired for the Contract must be provided by U.S. flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, in accordance with U.S. GAO regulations, "Uniform Standards and Procedures for Transportation Transactions," 4 C.F.R. Part 52, and U.S. GAO Guidelines for Implementation of the "Fly America Act" B-138942, 1981 U.S. Comp. Gen. LEXIS 2166. March 31, 1981.

11. AUDIT AND INSPECTION OF RECORDS

(a) This clause is applicable if this Contract was entered into by means of negotiation and shall become operative with respect to any modification to this Contract whether this Contract was initially entered into by means of negotiation or by means of formal advertising.

(b) The Contractor shall maintain records, and the Authority, the U.S. Department of Transportation, and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such Contractor, involving transactions related to the Contract, for the purpose of making audit, examination, excerpts and transcriptions.

(c) The Contractor further agrees to include in all Subcontracts hereunder a provision to the effect that the Subcontractor agrees that the Authority, the U.S. Department of Transportation, and the Comptroller General of the

United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of such Subcontractor, involving transactions related to the Subcontract, for the purpose of making audit, examination, excerpts and transactions.

12. RESTRICTIONS ON LOBBYING

(a) The Contractor shall timely comply with the requirements of the lobbying restrictions set forth in Section 319 of Public Law 101-121, as implemented by the Department of Transportation in 49 C.F.R. Part 20, and as those authorities may be hereafter amended.

(b) If a Standard Form LLL, "Disclosure Form to Report Lobbying," is required to be completed by the Contractor or Subcontractor at any tier, such disclosure form shall be furnished to the Authority.

13. 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.

14. RESERVED

15. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

(a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim,

statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(c) The Contractor agrees to include the above two clauses in each Subcontract associated with this Contract. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

16. PRIVACY ACT

(a) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restriction and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the Contract.

(b) The Contractor agrees to include the above clause in each Subcontract associated with this Contract. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

17. NO OBLIGATION BY THE FEDERAL GOVERNMENT

(a) Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

The Contractor agrees to include the above clause in each Subcontract associated with this Contract. The clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

18. NOTICE OF FEDERAL REQUIREMENTS

(a) The Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in Capital Metro's Master Agreement with the FTA, as they may be amended or promulgated from time to time during the term of this Contract. The Contractor's failure to so comply shall constitute a material breach of this Contract.

(b) The Contractor is advised that Federal requirements applicable to this Contract as set forth in federal law, regulations, policies, and related administrative practices may change during the performance of this Contract. Any such changes shall also apply to this Contract.

19. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS – FTA CIRCULAR 4220.1F

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Capital Metropolitan Transportation Authority (Capital Metro) requests, which would cause Capital Metro to be in violation of the FTA terms and conditions.

20. **RESERVED**

21. **RESERVED**

22. **RESERVED**

23. **RESERVED**

24. **DISTRACTED DRIVING, INCLUDING TEXT MESSAGING WHILE DRIVING**

(a) The Contractor agrees to comply with:

(1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);

(2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and:

(i) Adopt and enforce policies that ban text messaging while driving in Contractor-owned or rented vehicles or, if applicable, Authority-owned vehicles; or while driving privately-owned vehicles when performing any Work for or on behalf of the Authority.

(ii) Conduct initiatives in a manner commensurate with the size of the business, such as,

(A) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(B) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(3) The following U.S. DOT Special Provision pertaining to Distracted Driving:

(i) *Safety.* The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Contract, or when performing any work for or on behalf of the Contract;

(ii) *Contractor Size.* The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and

(iii) *Extension of Provision.* The Contractor agrees to include these Special Provisions of this Contract in its sub-contract agreements, and encourage its sub-contractors to comply with this Special Provision.

For purposes of this paragraph, the phrase "text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise; it does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

25. **RESERVED**

26. SEAT BELT

Seat Belt Use. The Contractor agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- (a) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and
- (b) Including a "Seat Belt Use" provision in each of its sub-contractor agreements related to the Contract.

EXHIBIT E-2
INVOICING REQUIREMENTS

SAMPLE Environmental Engineering Contract **12345**Date 1/1/2020

SUMMARY OF INVOICES
SAMPLE DOCUMENT

| Date | Invoice # | Cap Metro Project Manager | Task Order | Description | Task Order Authorized Amount | Task % Complete | Invoice % Complete | Previous Amount Billed | Current Amount Due | Task Order Balance |
|------|-----------|---------------------------|------------|-------------------|------------------------------|-----------------|--------------------|------------------------|--------------------|--------------------|
| | | John Doe | 1 | Park and Ride ABC | \$ 3,700.00 | 100% | 100% | \$ 3,700.00 | \$ - | \$ - |
| | | Pooja Kumar | 2 | Park and Ride DEF | \$ 5,980.00 | 100% | 100% | \$ 5,980.00 | \$ - | \$ - |
| 1/31 | 1234 | Jane Doe | 3 | Railstation TUV | \$ 16,260.00 | 33% | 33% | \$ 2,500.00 | \$ 2,350.00 | \$11,410.00 |
| 1/31 | 6789 | John Doe | 4 | Park and Ride WXY | \$ 47,523.00 | 100% | 98% | \$ 44,277.00 | \$ 3,050.00 | \$ 196.00 |
| | | | | | \$ 73,463.00 | | | \$ 56,457.00 | \$ 5,400.00 | \$11,606.00 |

Task Order 100% / Invoicing Less than 100% Complete: Itemization of Outstanding Invoices

| Task Order | Item Outstanding | Date to be Submitted | Amount |
|------------|--|----------------------|-----------|
| | Invoice from Title Company Not Received Prior to | | |
| 4 | Billing Cycle | 2/28/2008 | \$ 196.00 |

**EXHIBIT E-2
INVOICING REQUIREMENTS**

SAMPLE Engineering Contract **12345**Date 1/31/2008Invoice # 1234

**INVOICE FOR TASK ORDER 3
SAMPLE DOCUMENT**

Project Description **Rail Station TUV**Cap Metro Project Manager **John Doe**

| Description | Rate | Task Order | | | Previously Billed | | | Current Invoice | | | Total | |
|--------------------|-----------|------------|--------------|------|-------------------|------------|------|-----------------|------------------------|------|-------------|------|
| | | Hours | Fixed Cost | % | Hours | Billed | % | Hours | Invoice | % | Billed | % |
| Principal | \$ 175.00 | 12 | \$ 2,100.00 | 13% | 2 | \$ 350.00 | 14% | 2 | | 0% | \$ 350.00 | 8% |
| Project Manager | \$ 150.00 | 30 | \$ 4,500.00 | 28% | 4 | \$ 600.00 | 24% | 5 | \$ 750.00 | 35% | \$ 1,350.00 | 29% |
| Sr Engineer | \$ 135.00 | 15 | \$ 2,025.00 | 13% | 3 | \$ 405.00 | 16% | 1 | \$ 135.00 | 6% | \$ 540.00 | 12% |
| Engineer | \$ 115.00 | 45 | \$ 5,175.00 | 33% | 7 | \$ 805.00 | 33% | 8 | \$ 920.00 | 43% | \$ 1,725.00 | 37% |
| Sr Technician | \$ 50.00 | 40 | \$ 2,000.00 | 13% | 6 | \$ 300.00 | 12% | 7 | \$ 350.00 | 16% | \$ 650.00 | 14% |
| Services Subtotal | | 142 | \$ 15,800.00 | 100% | 22 | \$2,460.00 | 100% | 23 | \$ 2,155.00 | 100% | \$ 4,615.00 | 100% |
| Reimbursables: | | | | | | | | | | | | |
| Courier Service | | | \$ 120.00 | | | | | | \$ 70.00 | | \$ 70.00 | |
| Title Company Docs | | | \$ 340.00 | | | \$ 40.00 | | | \$ 125.00 | | \$ 165.00 | |
| NTE Subtotal | | | \$ 460.00 | | | \$ 40.00 | | | \$ 195.00 | | \$ 235.00 | |
| TOTAL | | | \$ 16,260.00 | | | \$2,500.00 | | | \$ 2,350.00 | | \$ 4,850.00 | |
| | | | | | | | | | Due \$ 2,350.00 | | | |

Total Billed \$ 4,850.00
Balance on Task Order \$ 11,410.00

**EXHIBIT E-2
INVOICING REQUIREMENTS**

SAMPLE Environmental Engineering Contract **12345**Date 1/31/2008Invoice # 6789

**INVOICE FOR TASK ORDER 4
SAMPLE DOCUMENT**

Project Description **Park and Ride WXY**Cap Metro Project Manager **John Doe**

| Description | Rate | Task Order | | | Previously Billed | | | Current Invoice | | | Total | |
|-------------------------|-----------|------------|--------------|------|-------------------|--------------|------|-----------------|-------------|-----|--------------|-----|
| | | Hours | Fixed Cost | % | Hours | Billed | % | Hours | Invoice | % | Billed | % |
| Principal | \$ 175.00 | 36 | \$ 6,300.00 | 13% | 30 | \$ 5,250.00 | 12% | 3 | | 0% | \$ 5,250.00 | 11% |
| Project Manager | \$ 150.00 | 78 | \$ 11,700.00 | 25% | 70 | \$ 10,500.00 | 24% | 5 | \$ 750.00 | 25% | \$ 11,250.00 | 24% |
| Sr Engineer | \$ 135.00 | 83 | \$ 11,205.00 | 24% | 83 | \$ 11,205.00 | 25% | 10 | \$ 1,350.00 | 44% | \$ 12,555.00 | 27% |
| Engineer | \$ 115.00 | 110 | \$ 12,650.00 | 27% | 100 | \$ 11,500.00 | 26% | - | \$ - | 0% | \$ 11,500.00 | 24% |
| Sr Technician | \$ 50.00 | 108 | \$ 5,400.00 | 11% | 115 | \$ 5,750.00 | 13% | - | \$ - | 0% | \$ 5,750.00 | 12% |
| | | | | | | | | | | | | |
| Fixed Price Adjustment* | | | | | | | | | \$ 950.00 | | \$ 950.00 | |
| | | | | | | | | | | | | |
| Services Subtotal | | 415 | \$ 47,255.00 | 100% | 398 | \$ 44,205.00 | 100% | 18 | \$ 3,050.00 | 69% | \$ 47,255.00 | 98% |
| \$ 47,255.00 | | | | | | | | | | | | |
| Reimbursables**: | | | | | | | | | | | | |
| Courier Service | | | \$ 72.00 | | | 72 | | | \$ - | | \$ 72.00 | |
| Title Company Docs | | | \$ 196.00 | | | - | | | \$ - | | \$ - | |
| NTE Subtotal | | | \$ 268.00 | | | \$ 72.00 | | | \$ - | | \$ 72.00 | |
| TOTAL | | | \$ 47,523.00 | | | \$ 44,277.00 | | | \$ 3,050.00 | | \$ 47,327.00 | |
| | | | | | | | | Due \$ 3,050.00 | | | | |

| Item Outstanding | Date to be Submitted | Amount |
|-----------------------|----------------------|-----------|
| Title Company Invoice | 2/28/2008 | \$ 196.00 |

Total Billed \$ 47,327.00
Balance on Task Order \$ 196.00

*Fixed price adjustment would be negative figure if total invoiced exceeded fixed price; Task Orders are negotiated fixed price for services.
Capital Metro will not pay greater than the fixed price unless a Scope Change is ordered.

**Reimbursable expenses will not exceed the reimbursable expenses authorized by the task order. Reimbursable costs (including subcontractor costs) shall be reimbursed to the Contractor by task and at actual cost with no administrative or other mark-ups (including subcontractor costs).

EXHIBIT F-REVISED-1
SCOPE OF SERVICES
MARKETING SERVICES

1. BACKGROUND AND PURPOSE OF CONTRACT

(a) Capital Metropolitan Transportation Authority (“Capital Metro” or “the Authority”) is a public agency responsible for providing mass transit service within the City of Austin and the surrounding communities of Leander, Round Rock, Lago Vista, Jonestown, Manor, Point Venture, San Leanna, as well as the unincorporated area of Travis County within Commissioner Precinct 2 and the Anderson Mill area of Williamson County. Capital Metro services include bus, rail, on-demand transit, rideshare programs, curbside services for the mobility impaired and transit educational services.

(b) Capital Metro requires a variety of contractor expertise to carry out its marketing, advertising, communications, social media, public relations, research, and web services. To fulfill these needs this contract is developed in modules specific to those areas of expertise. Those modules include:

Module 1: Communications, public relations and social media services

Module 2: Multimedia marketing and advertising services

Module 3: Consumer, market, customer experience and user experience research

Module 4: Web strategy, design, SEO, UX and content development.

Capital Metro recognizes that contractors may specialize in only one of these service types. Therefore, Capital Metro will accept proposals on any one or more modules outlined above.

Contractors will collaborate with Capital Metro’s in-house creative and communications team and work within the brand and message guidelines.

(c) The Authority’s objectives with this contract(s) include but are not limited to:

(i) Provide ongoing marketing and communications consultation to the Authority that improves reputation and builds the customer base;

(ii) Provide strategic and creative planning services;

(iii) Creatively tell the story of Capital Metro using a variety of communication channels.

(iv) Provide expertise and support with public relations, media relations, special events and social media programs.

(v) Develop campaigns and programs that support Capital Metro’s strategic plan (Attachment A).

(vi) Provide market and digital research services that provide qualitative and quantitative measures on customer satisfaction, public perception, customer experience and the user experience.

(vii) Create and implement promotional and educational campaigns using a full range of marketing and communications channels and tools.

(viii) Develop and manage website content, design and structure to improve the user experience, search engine optimization and accessibility.

(ix) Work with diverse audiences and provide insights, assets and content that reaches these audiences in the formats and languages, including but not limited to Spanish, most appropriate to those audiences.

(d) Module 1: Communications, public relations, and social media services

The contractor may collaborate with Capital Metro staff, teams, and other outside contractors to:

- Provide strategic campaign support, including planning, development and execution using multi-channel outreach, securing interviews and media attention

- Develop and implement storytelling approach to communicating complicated initiatives in a manner that can be easily understood in social and other media.
- Provide social media services that guide and track the efficacy of these communications.
- Develop and implement public events that mark key milestones in the Capital Metro story.
- Measure and improve brand reputation.

The contractor must have strong ties to and experience with Central Texas media and the City of Austin. Contractor must have staff available in-person at Capital Metro with 24-hour notice. Due to the need for a consistent strategic approach for these services, Capital Metro will award this module of the contract to a single contractor.

(e) Module 2: Multimedia marketing and advertising services

The contractor may collaborate with Capital Metro staff, teams and other outside contractors to:

- Develop multimedia campaigns that advance Capital Metro initiatives, educate customers, and inform stakeholders.
- Prepare strategies, tactics, and success metrics for marketing projects.
- Place, purchase, and track performance of paid advertising.
- Design branding for new products, programs, and customer-facing spaces.
- Provide graphics, motion graphics, animations, video, photography, point-of-sale design, power-point presentations, radio recordings and AR/VR.
- Utilize CRM, direct mail, out-of-home and non-traditional channels to promote Capital Metro projects and programs.
- Work to define and evolve the Capital Metro brand to reflect changes in its mission, vision and products to better serve our customers and stakeholders, while providing quantifiable, positive measurements on return on investment.
- Due to the need for a consistent strategic approach for these services, Capital Metro will award this module of the contract to a single contractor.

(f) Module 3: Consumer, market, customer experience and user experience research

The contractor may collaborate with Capital Metro staff, teams and other outside contractors to:

- Determine levels of customer satisfaction, community perception and other key service offerings using high-quality quantitative methods.
- Test service and operational improvements, concepts, and customer preferences using qualitative testing methods and channels appropriate to the audience and initiative.
- Develop survey instruments that may be administered by Capital Metro staff and contractors using common digital tools (i.e. Survey Monkey, Doodle Polls, etc.)
- Map the customer experience through testing that defines the customer journey, identifies barriers, and determines priorities.
- Test the digital user experience on capmetro.org, the CapMetro app and other digital tools.
- Provide detailed analysis and reporting of results and recommendations based on findings.
- Coordinate and manage focus groups and provide a report on findings.
- Due to the need for a consistent strategic approach for these services, Capital Metro will award this module of the contract to a single contractor.

(g) Module 4: Web strategy, design, SEO, UX and content development.

Capital Metro uses the Sitefinity CMS. The contractor will have expertise on the platform and provide insight, strategy and implementation skills to ensure Capital Metro is using these tools to provide the best possible customer experience.

The contractor may collaborate with Capital Metro staff, teams and other outside contractors to:

- Develop a consistent content strategy.
- Review and refine site architecture.
- Provide analytics strategy and monthly analysis of trends.
- Develop strategy and implementation of Search Engine Optimization practices.
- Analyze and implement best applications within Sitefinity to provide the best customer experience.
- Train internal Sitefinity users as new applications are developed.
- Integrate CRM and the CapMetro blog into the Sitefinity CMS.

(h) The Contractor shall prepare materials or campaigns as noted below for Capital Metro upon the Authority's request, initiated by the Authority by means of a written fixed price task order during the contract term. The execution

of these programs will be performed within a mutually agreed upon time schedule. Due to the need for a consistent strategic approach for these services, Capital Metro will award this module of the contract to a single contractor.

2. SCOPE OF SERVICES

2.1. MODULE 1: COMMUNICATIONS, PUBLIC RELATIONS AND SOCIAL MEDIA SERVICES

As directed by task order, the Contractor shall:

- (a) Develop and implement comprehensive public relations strategies and tactics related to Authority campaigns and initiatives.
- (b) Consult on key message development and talking points.
- (c) Write, edit, and proof materials.
- (d) Develop, maintain, and/or implement editorial calendars.
- (e) Provide media relations strategies based on sound and comprehensive knowledge of the Central Texas market.
- (f) Develop and implement social media strategies and tactics, including messaging, videos, infographics, and other media;
- (g) Provide social media services to improve audience identification and expand audiences through targeting and engagement.
- (h) Develop and collaborate on social media content within the Agency social media management tool of choice.
- (i) Consult, develop and/or implement crisis communications and emergency plans.

2.2. MODULE 2: MULTIMEDIA MARKETING AND ADVERTISING SERVICES

As directed by task order, the Contractor shall develop and initiate programs to increase ridership and revenue, as well as the understanding of the Authority's role, operations, system/service plans and economic impact in the community. This includes targeted marketing to both current and potential riders and all stakeholders. These programs will adhere to Capital Metro's brand standards and ensure that institutional branding remains consistent across the brand touchpoints.

2.2.1 RIDERSHIP INITIATIVES

As directed by task order, the Contractor shall:

- (a) Develop and initiate programs to increase ridership.
- (b) Develop programs to explain changes to routes, fares or schedules.
- (c) Develop and initiate programs to inform key markets of benefits and services available.
- (d) Develop and initiate programs that increase the first and last mile options for potential riders and reframe the transportation options in the area.
- (e) Develop web and digital products that target and influence current and potential customers in ways that are both effective and measurable.

2.2.2 SHORT AND LONG-RANGE PLANNING INITIATIVES

As directed by task order, the Contractor shall:

- (a) Plan develop and initiate campaigns to educate and inform the community on issues, progress and timelines of key future planning initiatives that may include Project Connect, electrification, and additional programs.

(b) Assist in the development educational materials, videos, motion graphics and power points to communicate future plans in a manner that is easy to understand and makes the information accessible to the public

2.2.3 SUPPORT AND OTHER SERVICES

As directed by task order, the Contractor shall:

- (a) Assist Capital Metro's internal departments with advertising and marketing services.
- (b) Interact with mapping, way finding, public relations, architects, developers, research, and other contractors on projects.
- (c) Work with Capital Metro's internal creative team in a support role on a variety of marketing and advertising efforts.

2.2.4 STRATEGIC MARKETING PLANS

As directed by task order, the Contractor shall identify marketing challenges and opportunities for the Authority and its services. The Contractor shall recommend marketing objectives and suggest strategies and tactics which are necessary to achieve the agreed upon marketing objectives.

2.2.5 DEVELOP AND EXECUTE MARKETING & ADVERTISING MATERIALS

When directed by task order, it shall be the Contractor's responsibility to develop and execute marketing and advertising materials which will include print, broadcast, out-of-home, static advertising, point of sale materials, interactive, collateral pieces and infographics, digital and social media assets, motion graphics and videos to tell the stories for the programs described herein.

2.2.6 MEDIA PLANNING AND BUYING

- (a) When directed by task order, the Contractor shall select what it considers to be the best media for the target market, submit the selections for the Authority's approval, then negotiate and purchase media on behalf of the Authority. All cost for media such as for space, time, production (completed by a vendor other than the Contractor) and supplier costs will be a direct pass through to the Authority and must be without markup or any other fees or charges. The Contractor will be compensated in accordance with the Media Planning Services price stated in (TBD), the Schedule.
- (b) The Authority reserves the right to perform this function with the Authority's internal resources.

2.2.7 PRINT, COLLATERAL AND BROADCAST

When directed by task orders, the Contractor shall arrange and supervise the conversion of artwork and copy used to produce the finished advertisement directly or through the use of printers, videographers, photographers, recording studios and developers. In some instances, the Authority will arrange for printing of point-of-purchase or collateral materials; in these cases the Contractor may be required to provide quality control and press checks to ensure a correct final product as approved by the Authority in pre-production.

2.2.8 PROMOTIONS DEVELOPMENT

When directed by task orders, the Contractor shall identify and develop joint promotions and marketing ventures between the Authority and the media, or corporate sponsors or stakeholders.

2.2.9 TRAFFIC CONTROL

When directed by task orders, the Contractor shall develop and utilize an effective traffic plan to see that copy, artwork, interactive, radio and television, etc. are prepared on schedule, that the Authority approvals have been obtained in writing, and that final materials to be utilized by each medium are issued to reach the medium on or before the required deadlines. All traffic plans will be coordinated with the Authority.

2.3 MODULE 3: CONSUMER, MARKET AND USER EXPERIENCE RESEARCH

When directed by task orders, the Contractor shall develop and execute surveys, focus groups, user experience testing for digital and system design, customer experience testing, evaluations and other research projects that allow the Authority to better understand its customers and stakeholders, their preferences and their satisfaction.

2.3.1 QUANTITATIVE RESEARCH

When directed by task orders the contractor shall develop, execute and evaluate quantitative research. Tasks may include but are not limited to:

- Developing survey plans
- Developing and maintaining detailed project plans and timelines.
- Developing the survey instrument.
- Producing detailed deliverable documentation to support completion status of each project phase.
- Providing written status reports
- Providing all recruitment, background checks, hiring, training, supervision and planning for surveyors
- Providing targeted contact lists, emails, telephone resources, websites, or other tools to contact and gather responses
- Providing all equipment, transportation (other than transit passes), identifying clothing and all other items necessary to physically complete the survey.
- Maintaining databases for the purposes of cross-tabulation requests.
- Providing detailed analysis, final report(s) and recommendations.

2.3.2 QUALITATIVE RESEARCH

When directed by task orders the contractor shall:

- Develop plans for gathering qualitative research
- Develop discussion guides for focus groups
- Develop survey questions for small group surveys
- Provide resources for data gathering
- Provide focus group recruitment
- Provide space for observable focus groups
- Provide qualified focus group facilitators
- Provide personnel for intercept surveys
- Document, evaluate and make recommendations based on the research efforts.

2.3.3 USER EXPERIENCE (UX)

When directed by task orders the contractor shall:

- Plan, implement, conduct, and report on User Experience testing.
 - Provide lab and intercept services for the testing of web, app, and digital tools
 - Provide testing services that measure the effectiveness of customer information and user experience design throughout Capital Metro's system
 - Provide testing of ADA accessibility and measure the relative user experience as well as adherence to WCAG 2.0 AA
- Provide heuristic evaluations in conjunction with user testing.

2.3.4 CUSTOMER EXPERIENCE

When directed by task orders the contractor shall:

- Plan implement and conduct Customer Experience by testing a range of digital and physical products as well as services that span multiple online and offline points thought the customer's journey.
- Provide moderated and unmoderated testing options as appropriate to the project objectives.
- Provide testing that develops a map of the customer journey, personas and the tools and messaging that support positive experiences for them.

2.4 MODULE 4: WEB STRATEGY, DESIGN, SEO, UX and CONTENT DEVELOPMENT

When directed by task orders the contractor shall:

- Work with other contractors to make recommendations on user testing methodologies, analyze testing and make recommendations for site improvements, develop, implement and test site improvements.
- Develop strategy for Sitefinity tools implementation, support implementation of the tools, train content managers of Sitefinity tools and/or analyze effectiveness of these applications.
- Develop content strategy, content style guides, SEO copywriting and/or content management.
- Improve site architecture through analysis and content development.
- Assist in the front-end integration of CRM tools.
- Develop a strategy for Google Analytics, run reports, provide analysis, make recommendations and/or implement changes to improve performance.
- Work with contractors and staff to improve brand fidelity and implement new initiatives into the website.
- Provide mobile and desktop versions of all web designs while adhering to Capital Metro's brand guidelines and Bootstrap's 12-column-grid system.
- Using Site Improve, provide analysis of Capital Metro compliance with WCAG 2.0 AA standards, develop and implement solutions to problems.

3. ACCOUNTING

The Contractor shall develop and maintain a method to accurately account for billings. The Authority requires each billing to include the task order number, contract number and an itemized list of all pass through costs and the receipts for those pass through costs. For interactive, radio and television advertising Capital Metro requires a certified account for all times that an ad has appeared. For online advertising, the Authority may require detailed conversion analysis. For print media the Authority requires tear sheets for each publication date.

4. DOCUMENTATION

As part of each task order, as appropriate, the Contractor shall document each marketing/advertising program for the Authority. Documentation will include sample materials, photos, summary of all direct and media costs and a written report on the strategies, deployment and timing of the program, as well as market reaction to the program.

5. APPROVAL OF KEY PERSONNEL

The Authority reserves the right to approve the key personnel that will work on any of the Authority's efforts and any subsequent replacement personnel. The Authority will not unreasonably withhold this approval.

6. REPORTING REQUIREMENTS

The Contractor shall provide briefings in person or by phone as requested by the Authority, on the status of all marketing, advertising and promotional projects as determined by project and task order.

7. MEDIA ALLOWANCE

Media Allowance is defined as the estimated cost of media space/time that the Authority will purchase over the course of the contract year, which includes TV, radio, print, interactive and outdoor advertising. These are purely pass through costs negotiated by the Contractor and as such are not subject to overhead, profit, nor markup.

8. AUSTIN TRANSIT PARTNERSHIP

As directed by task order, the services provided under this Scope of Services may be performed in connection with projects, initiatives, and proposals of the Austin Transit Partnership.

EXHIBIT IT

PROPRIETARY RIGHTS AND DATA SECURITY ADDENDUM

Capital Metro Transportation Authority (“the Authority”) has invested extensive time, money and specialized resources into developing, collecting and establishing its tangible and intangible proprietary assets. This Proprietary Rights and Data Security Addendum (this “Addendum”) identifies and acknowledges the Authority’s proprietary rights, establishes baseline commitments regarding data security and represents a set of standard terms applicable to service providers and business partners when they enter into contracts with the Authority. Capitalized terms used in this Addendum have the meanings set forth in the Agreement, unless differently defined in this Addendum. The Contractor is responsible for ensuring compliance with the terms of this Addendum by the Contractor’s employees, agents and contractors and all of the restrictions and obligations in this Addendum that apply to the Contractor also apply to the Contractor’s employees, agents and contractors. The term “including” or “includes” means including without limiting the generality of any description to which such term relates.

1. Definitions. The following terms will have the meanings described below in this Addendum.

“Authority Data” means all data, content or information, in any form or format, including interim, Processed, compiled, summarized, or derivative versions of such data, content or information, and any insights that may be learned from such data, content or information, that may exist in any system, database, or record that is either (i) provided by or on behalf of the Authority or its customers to the Contractor, or (ii) is obtained, developed, produced or Processed by the Contractor or its systems, in each of (i) and (ii) in connection with the relationship or arrangements established by the Agreement, but excluding any data or information that is expressly defined as owned by the Contractor in the Agreement.

“Authority Electronic Property” means (i) any websites controlled by the Authority, (ii) any Authority mobile device apps, (iii) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by the Authority, and (iv) versions and successors of the foregoing, any form or format now known or later developed, that may be used by the Authority’s customers.

“Data Law” means, as in effect from time to time, any law, rule, regulation, declaration, decree, directive, statute or other enactment, order, mandate or resolution, which is applicable to either the Contractor or the Authority, issued or enacted by any national, state, county, municipal, local, or other government or bureau, court, commission, board, authority, or agency, relating to data security, data protection and/or privacy. Data Laws also include ISO 27001 and ISO 27002, the most current Payment Card Industry Data Security Standard (the **“PCI DSS”**); and other industry standard practices.

“Personal Identifying Information” means any data that identifies or could be used to identify a natural person, including name, mailing address, phone number, fax number, email address, Social Security number, credit card or other payment data, date of birth, driver’s license number, account number or user ID, PIN, or password.

“Process” or **“Processing”** means, with respect to Authority Data, to collect, access, use, process, modify, copy, analyze, disclose, transmit, transfer, sell, rent, store, or retain or destroy such data in any form. For the avoidance of doubt, “Process” includes the compilation or correlation of Authority Data with information from other sources and the application of algorithmic analysis to create new or derivative data sets from Authority Data.

“Remediation Efforts” means, with respect to any Security Incident, activities designed to remedy a Security Incident which may be required by a Data Law or by the Authority’s or the Contractor’s policies or procedures, or which may otherwise be necessary, reasonable or appropriate under the circumstances, commensurate with the nature of such Security Incident. Remediation Efforts may include: (i) development and delivery of legal notices to affected individuals or other third parties; (ii) establishment and operation of

toll-free telephone numbers for affected individuals to receive specific information and assistance; (iii) procurement of credit monitoring, credit or identity repair services and identity theft insurance from third parties that provide such services for affected individuals; (iv) provision of identity theft insurance for affected individuals; (v) cooperation with and response to regulatory, government and/or law enforcement inquiries and other similar actions; (vi) undertaking of investigations (internal or in cooperation with a governmental body) of such Security Incident, including forensics; (vii) public relations and other crisis management services; and (viii) cooperation with and response to litigation with respect to such Security Incident (including, but not limited to, class action suits or similar proceedings); and in each case of examples (i) through (viii), payment of legal costs, disbursements, fines, settlements and damages.

“Security Policies” means statements of direction for Security Requirements and mandating compliance with applicable Data Laws. Typically, Security Policies are high level instructions to management on how an organization is to be run with respect to Security Requirements.

“Security Procedures” means statements of the step-by-step actions taken to achieve and maintain compliance with Security Requirements.

“Security Requirements” means the security requirements set forth below in Section 7 of this Addendum.

“Security Technical Controls” means any specific hardware, software or administrative mechanisms necessary to implement, maintain, comply with and enforce the Security Requirements. Security Technical Controls specify technologies, methodologies, implementation procedures, and other detailed factors or other processes to be used to implement and maintain Security Policies and Procedures relevant to specific groups, individuals, or technologies.

2. Authority Marks, Patents and Copyrights. The Contractor will not: (i) use or register any domain name that is identical to or confusingly similar to any of trademarks, service marks, logos or other source identifiers owned or used by the Authority (the “Authority Marks”); or (ii) create, acquire, license, or support any internet keyword or search term that contains any Authority Marks or other intellectual property rights owned or licensed by the Authority.

3. Authority Data. As between the Contractor and the Authority (*i.e.*, without addressing rights of third parties), the Authority is the sole owner of all rights, title and interest in and to Authority Data. Except as expressly authorized in the Agreement, the Contractor may not use, edit, modify, create derivatives, combinations or compilations of, combine, associate, synthesize, re-identify, reverse engineer, reproduce, display, distribute, disclose, sell or Process any Authority Data. The Contractor will not use Authority Data in a manner that is harmful to the Authority.

4. Personal Identifying Information. The Contractor will comply with any Data Laws relating to the use, safeguarding, or Processing of any Personal Identifying Information, including any requirement to give notice to or obtain consent of the individual. In Processing any Personal Identifying Information, the Contractor will at all times comply with any posted privacy policy or other representations made to the person to whom the information is identifiable, and to communicate any limitations required thereby to any authorized receiving party (including any modifications thereto) in compliance with all Data Laws. The Contractor will ensure that any such receiving party abides by any such limitations, in addition to the requirements of the Agreement. Notwithstanding the foregoing, the Contractor represents and warrants that Personal Identifying Information will not be Processed, transmitted, or stored outside of the U.S.

5. No Implied Rights. No right, license, permission, or ownership or other interest of any kind in or to any Authority Data or other intellectual property rights owned or licensed by the Authority is or is intended to be given or transferred to or acquired by the Contractor except as expressly stated in writing in the Agreement.

6. Prohibited Internet Practices. The Contractor will not, and will not authorize or encourage any third party to, directly or indirectly: (i) use any automated, deceptive or fraudulent means to generate

impressions, click-throughs, or any other actions in relation to advertisements or Internet promotions on Authority Electronic Property or in relation to advertisements or Internet promotions of the Authority (or its products or services) on third party websites; or (ii) collect or Process data from an Authority Electronic Property other than as has been expressly authorized by the Authority in the Agreement or another written agreement with the Authority. Except as expressly allowed in the Agreement, the Contractor will not “screen-scrape” Authority Electronic Property or conduct any automated extraction of data from Authority Electronic Property or tracking of activity on Authority Electronic Property.

7. Security Requirements. The Contractor will apply reasonable physical, technical and administrative safeguards for Authority Data that is in the Contractor’s possession or control in order to protect the same from unauthorized Processing, destruction, modification, or use that would violate the Agreement or any Data Law. The Contractor represents and warrants that the Security Policies, Security Procedures and Security Technical Controls as they pertain to the services being rendered to the Authority by the Contractor or its subcontractors and any Processing of Authority Data by the Contractor or its subcontractors will at all times be in material compliance with all Data Laws. In addition, the Contractor will require any of its employees, agents or contractors with access to Authority Data to adhere to any applicable Data Laws, and the Contractor represents and warrants that such employees, agents and contractors have not been involved in any violation of applicable Data Laws in the twenty-four months before the Effective Date. The Contractor will take into account the sensitivity of any Authority Data in the Contractor’s possession in determining reasonable controls used to safeguard such Authority Data.

8. Data Segregation and Access. The Contractor will physically or logically segregate stored Authority Data from other data and will ensure that access to Authority Data is restricted to only authorized personnel through security measures. The Contractor will establish and maintain appropriate internal policies, procedures and systems that are reasonably designed to prevent the inappropriate use or disclosure of Authority Data.

9. PCI Compliance. If the Contractor Processes payment card data, cardholder data, or sensitive authentication data on behalf of the Authority or if the Contractor otherwise can impact the security of said data belonging to the Authority, the Contractor is responsible for the security of said data. The Contractor represents and warrants that it has performed an assessment to confirm that the material aspects of the Contractor’s Security Policies, Security Procedures and Security Technical Controls (as they pertain to the services being rendered to the Authority by the Contractor or its subcontractors and any Processing of Authority Data by the Contractor or its subcontractors) comply with the PCI DSS and the Contractor will repeat this assessment each year during the Term. The Contractor will provide certification of compliance with this requirement upon request from the Authority.

10. Security Reviews and Audits. The Contractor will, upon request, provide the Authority with reports of any audits performed on the Contractor’s Security Policies, Security Procedures or Security Technical Controls. At a minimum, such reports will include any certifications of the Contractor’s agents and contractors. Additionally, the Contractor will respond within a reasonable time period to any inquiries from the Authority relating to the Contractor’s and its agents’ and contractors’ Security Policies, Security Procedures and Security Technical Controls. The Contractor will, upon the Authority’s request, provide the Authority or its representatives access to the Contractor’s and its agents’ and contractors’ systems, records, processes and practices that involve Processing of Authority Data so that an audit may be conducted. the Authority will not exercise such audit right more frequently than once per twelve (12) month period and the Authority will bear the full cost and expense of any such audit, unless such audit discloses a Security Incident or a breach of this Addendum or the Agreement, in which case the Contractor will bear the full cost and expense of such audit and a further audit may be conducted by the Authority or its representatives within the current twelve (12) month period.

11. Security Incidents. The Contractor will promptly notify the Authority upon discovering or otherwise learning of a Security Incident. Following any Security Incident, the Contractor will consult in good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable. The Contractor will (i) at the Authority’s direction undertake Remediation Efforts at the Contractor’s sole expense and

reimburse the Authority for its reasonable costs and expenses in connection with any Remediation Efforts it elects to undertake, (ii) ensure that such Remediation Efforts provide for, without limitation, prevention of the recurrence of the same type of Security Incident, and (iii) reasonably cooperate with any Remediation Efforts undertaken by the Authority.

12. Liability for Security Incidents and/or Data Misuse. The Contractor will indemnify, defend and hold harmless the Authority and its officers, directors, employees, agents and contractors (each an "Authority Indemnitee") from and against any Losses incurred by such Authority Indemnitee as a result of any claim, demand, suit, action, investigation, allegation or any other proceeding (collectively, "**Claims**") arising out of or relating to: (i) any Security Incident and/or (ii) the Contractor's or its employees', agents' or contractors' breach of any of the terms, conditions or obligations relating to data security, privacy, or Authority Data set forth in the Agreement or this Addendum. However, if the Contractor can demonstrate through clear and convincing evidence that the Authority was the sole cause of a Security Incident and the Contractor was fully compliant with its obligations, then this Section will not apply to such Security Incident. For the purposes of this Section, Losses will include, without limitation, the cost of Remediation Efforts. The Contractor's obligations in this Section are in addition to any indemnification or similar obligations that the Contractor may have under the Agreement. The rights and remedies of the Authority under this Addendum will not be subject to any limitation or exclusion of actions or remedies or any other similar limiting provisions stated in the Agreement. Without limiting the foregoing: (a) there will be no limitations or exclusions on the Contractor's liability arising under this Addendum, the Agreement or otherwise relating to Claims pertaining to privacy, security, or confidentiality or relating to unauthorized use of Authority Data, and (b) the Contractor will be liable for all obligations under this Section and for reimbursement of Losses for Remediation Efforts regardless of whether such amounts are characterized by any person, court or other third party as direct, indirect, consequential, special, or punitive damages.

13. Notice to the Authority Customers and Employees. Any notifications to any of the Authority's customers or employees regarding Security Incidents will be handled exclusively by the Authority and the Contractor may not under any circumstances contact the Authority's customers or employees relating to such Security Incident unless the Contractor is under a legal obligation to do so, in which event (i) the Contractor must notify the Authority in writing promptly after concluding that the Contractor has the legal obligation to notify such customers or employees and explain in such notice to the Authority the basis for the legal obligation and (ii) the Contractor will limit the notices to any of the Authority's customers and employees to those required by the legal obligation or as pre-approved by the Authority. The Contractor will reasonably cooperate in connection with notices to the Authority's customers and employees regarding a Security Incident and the Contractor will assist with sending such notices if so requested by the Authority.

14. Equitable Relief. The Contractor acknowledges that the Authority may have no adequate remedy at law if there is a breach or threatened breach of any of the obligations set forth in this Addendum and, accordingly, that the Authority may, in addition to any legal or other remedies available to the Authority, seek injunctive or other equitable relief to prevent or remedy such breach without requirement of a bond or notice. The Contractor will not object or defend against such action on the basis that monetary damages would provide an adequate remedy.