

**CONTRACT MODIFICATION**

<b>1. CONTRACT NO: 200743</b> Electric Buses and Chargers	<b>2. CONTRACT MODIFICATION NO: 2</b>	<b>3. EFFECTIVE DATE OF C.M.</b> See Block 9. below	<b>4. CONTRACTOR NAME:</b> New Flyer of America
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**5. AGREEMENT TO MODIFY CONTRACT:**

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

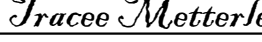
**6. AMOUNT OF THIS CONTRACT MODIFICATION: (NO CHANGE)**

**7. TERM OR PERIOD OF PERFORMANCE: (NO CHANGE)**

**8. CONTRACTOR'S EXECUTION:**

Name & Title: Jennifer McNeill Vice President, Sales & Marketing Signature:   
(Print or type) Date Executed: April 6, 2022

**9. CONTRACTING OFFICER'S EXECUTION:**

Name & Title: Tracee Metterle, Contracting Officer Signature:   
(Print or type) Date Executed: April 21, 2022

**10. DESCRIPTION OF CONTRACT MODIFICATION:**

This modification is made in accordance with Exhibit E - Revised-1, Contractual Terms and Conditions, Section 12, CHANGES, to be made a part hereof for all pertinent purposes.

1. Refer to Exhibit B, Representations and Certifications. Exhibit B shall be replaced in its entirety with **Exhibit B, Revised-1**, attached hereto and made a part hereof for all pertinent purposes.
2. Refer to Exhibit E-1, Addendum to Contractual Terms and Conditions Federally Assisted Supply or Service Contract. Exhibit E-1 shall be replaced in its entirety with **Exhibit E-1 - Revised-1**, attached hereto and made a part hereof for all pertinent purposes.

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

**END OF MODIFICATION 2**

**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:

North Dakota

**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:

NFI Group  
711 Kernaghan Avenue  
Winnipeg, Manitoba  
R2C 3T4  
204-224-1251  
[REDACTED]

**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 Jennifer McNeill, Vice President Sales & Marketing [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 and part 1200, subpart C, the offeror certifies to the best of the offeror's knowledge and belief, that it and its principals for this covered transaction:

(1) are not presently excluded or disqualified (which may include being 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 (i) the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; (ii) violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; (iii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or (iv) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility.

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

(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 its offer/bid/quote/qualifications statement.

(c) For any proposed subcontractor at any tier where the subcontract is expected to equal or exceed \$25,000:

(1) The offeror certifies that it has obtained a certification identical to (a) from such subcontractor.

(2) Where the prospective lower tier participant is unable to certify to (a), 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:

Table with 2 columns: Individual's Name, Date/Subject of Communication. Rows include Tracee Metterle with dates 05/19/2021 and 05/26/2021 regarding submitted questions and requests for extension.

(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 a period of two (2) years 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**

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 Executive Order 11246 and its related regulations; 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):

745

(b) The offeror:

**has** developed an Affirmative Action Plan at each establishment 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 establishment 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. RESERVED**

**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 Civil Rights and 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 and subcontractors 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](http://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. VERIFICATION REGARDING FIREARM ENTITIES AND FIREARM TRADE ASSOCIATIONS**

As applicable and in accordance with Section 2274.002 of the Texas Government Code, Contractor verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the Contract against a firearm entity or firearm trade association.

**18. BOYCOTT OF ENERGY COMPANIES PROHIBITED**

Pursuant to Chapter 2274 of Texas Government Code, Contractor verifies that:

(a) it does not, and will not for the duration of the Contract, boycott energy companies, as defined in Section 2274.002 of the Texas Government Code, or

(b) the verification required by Section 2274.002 of the Texas Government Code does not apply to Contractor and this Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify the Authority.

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**19. CRITICAL INFRASTRUCTURE PROHIBITION**

Pursuant to Chapter 2274 of Texas Government Code, Contractor certifies that, if this Contract or any contract between Contractor and Capital Metro relates to critical infrastructure, as defined in Chapter 2274 of the Texas Government Code, Contractor is not owned by or the majority of stock or other ownership interest of its firm is not held or controlled by:

- (a) individuals who are citizens of China, Iran, North Korea, Russia, or a Governor-designated country; or
- (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a Governor-designated country; or
- (c) headquartered in China, Iran, North Korea, Russia, or a Governor-designated country.

**20. 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.

**21. REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

(a) *Prohibition.* This Contract is subject to the Public Law 115-232, Section 889, and 2 Code of Federal Regulations (CFR) Part 200, including §200.216 and §200.471 related to the prohibition of certain "covered telecommunications equipment and services", which includes:

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)

(2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(3) Telecommunications or video surveillance services provided by such entities or using such equipment.

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(c) *Representation.* The Offeror represents that—

(1) It

- will
- will not

provide covered telecommunications equipment or services to the Authority in the performance of any contract, sub-contract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

- does
- does not

use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(d) *Disclosures.*

(1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);



(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

## **22. CERTIFICATION OF NO ORGANIZATIONAL CONFLICT OF INTEREST**

(a) Offeror certifies that there is no real or apparent organizational conflict of interest (“Organizational Conflict”). An Organizational Conflict exists when (a) the Offeror is unable, or potentially unable, to provide impartial and objective assistance or advice to the Authority due to other activities, relationships, contracts, or circumstances; (b) the Offeror has an unfair competitive advantage through receipt of or obtaining access to nonpublic information; or (c) during the performance of an earlier contract or the conduct of a procurement, the Offeror has established the ground rules for this procurement by developing specifications, evaluation factors, or similar documents.

(b) If the Offeror is unable to certify to the above (in (a)), the Offeror, certifies that it has attached an explanation disclosing any real or apparent Organizational Conflict. Such attachment includes all relevant facts concerning any past, present, or currently planned interests that may present an Organizational Conflict.

## **23. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

(a) Offeror certifies that it:

(1) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(2) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

(b) If the Offeror is unable to certify to the above (in (a)), the Offeror certifies that it has attached an explanation stating to what part of (a) the Offeror is unable to certify.

(c) The Offeror certifies that it has required any subcontractors identified in its offer to certify to (a) or has attached a statement explaining why such identified subcontractor is unable to certify to (a).

## **24. LIMITATION ON CERTAIN ROLLING STOCK PROCUREMENTS**

(a) *Prohibition.* This Contract is subject to Section 7613 of the National Defense Authorization Act for Fiscal Year 2020 (NDAA 2020), Public Law 116-92 (Dec. 20, 2019) and 49 U.S.C. § 5323(u) which prohibit using financial assistance made available under Chapter 53 of Title 49 U.S. Code to award a contract or subcontract to an entity for the procurement of rolling stock for use in public transportation if the manufacturer of the rolling stock:

(1) is incorporated in or has manufacturing facilities in the United States; and

(2) is owned or controlled by, is a subsidiary of, or is otherwise related legally or financially to a corporation based in a country that -

(i) is identified as a nonmarket economy country (as defined in section 771(18) of the Tariff Act of 1930 (19 U.S.C. 1677(18))) as of the date of enactment of this subsection;

(ii) was identified by the United States Trade Representative in the most recent report required by section 182 of the Trade Act of 1974 (19 U.S.C. 2242) as a foreign country included on the priority watch list defined in subsection (g)(3) of that section; and

(iii) is subject to monitoring by the Trade Representative under section 306 of the Trade Act of 1974 (19 U.S.C. 2416).

(a “Restricted Manufacturer”). For purposes of this provision, the term “otherwise related legally or financially” does not include a minority relationship or investment.

(b) *Procedures.* The Offeror shall review the relevant statutes to ascertain if the Offeror or any subcontractor or supplier is a Restricted Manufacturer.

(c) *Representation.* The Offeror represents that—

(1) It

is  
 is not

a Restricted Manufacturer; and

(2) It has obtained representations from all relevant subcontractors or suppliers, and that the subcontractors or suppliers—

are  
 are not

Restricted Manufacturers.

(d) *Disclosures.* Disclosure for the representation in paragraph (c) of this provision: If the Offeror has responded “is” in the representation in paragraph (c)(1) of this provision, the Offeror shall provide a statement providing all information reflecting the basis for its certification. If the Offeror has responded “are” in the representation in paragraph (c)(2) of this provision, the Offeror shall provide a statement identifying the subcontractor(s) or supplier(s) and all information reflecting the basis for the certification.

**25. 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.

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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(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:

New Flyer of America Inc.


Type/Print Name of Signatory:

Jennifer McNeill

Title of Signatory:

Vice President, Sales & Marketing

Signature:



Date:

April 6, 2022

**EXHIBIT B**  
**REPRESENTATIONS AND CERTIFICATIONS**

**5. COMMUNICATIONS**

(b) continued:

Individual's Name	Date/Subject of Communication
Tracee Metterle	06/01/2021/Submitted request via email for an unlocked version of form Ex-A-Pricing-Sched-Fill-Rev-1, Pricing Schedule
Tracee Metterle	06/04/2021/Our RSM followed up via email and left a voice mail with a second request to unlock the form Ex-A-Pricing-Sched-Fill-Rev-1, Pricing Schedule
Tracee Metterle	06/10/2021/Our RSM sent an email to confirm we are aware of the addendum which includes information related to the form Ex-A-Pricing-Sched-Fill-Rev-1, Pricing Schedule

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

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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. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

(a) It is the policy of the Authority and the U.S. Department of Transportation (“DOT” or “U.S. DOT”) 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 apply to this Contract and all subcontracts awarded under this Contract.

(b) The Contractor and its subcontractors 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, and the Authority’s DOT approved Disadvantaged Business Enterprise (DBE) program in the award of subcontracts and administration of this Contract. 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, including but not limited to:

- (i) Withholding monthly progress payments,
- (ii) Assessing sanctions,
- (iii) Liquidating damages, and/or
- (iv) Disqualifying Contractor or subcontractor from future bidding as non-responsible.

(c) Contractor shall pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Authority makes to the Contractor.

(d) If this Contract contains a defined DBE goal, the Contractor shall use the specific DBEs listed in its bid/proposal/offer to perform the work and supply the materials for which each is listed unless the Contractor obtains the Authority’s written consent. Accordingly, the Contractor may not terminate a DBE subcontractor listed in its bid/proposal/offer without the Authority’s prior written consent. Contractor actions covered by this subsection include, but are not limited to, instances in which the Contractor seeks to perform work originally designated for a DBE subcontractor with: (i) its own forces or those of an affiliate; (ii) a non-DBE firm; or (iii) another DBE firm. Unless the Authority’s consent is provided under this clause, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. If the Authority provides its written consent, the Contractor shall comply with 49 C.F.R. 26.53(f) in executing the termination; the Contractor shall also comply with 49 C.F.R. 26.53(g) and use the delineated good-faith efforts to find another DBE subcontractor to substitute for the original DBE subcontractor and maintain and provide relevant documentation regarding such efforts.

(e) Contractor shall make available upon request a copy of all DBE subcontracts.

(f) Contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower-tier subcontractors be performed in accordance with this clause.

(g) If subcontracts will be let, Contractor shall take the affirmative steps listed in 2 C.F.R. 200.321, which addresses contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms.

**2. 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 laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 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 \$29 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 its 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 Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the 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 29 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, the Federal Transit Administration (FTA), 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.

### **3. CIVIL RIGHTS AND EQUAL OPPORTUNITY**

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

(a) Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965,

42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(d) Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § A-27 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(e) 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.

(f) Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the 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.

(g) Incorporation of Provisions. The Contractor shall include the provisions of paragraph (a) through (f) of this clause in every subcontract or procurement, including subcontracts or procurements for materials and leases of equipment, unless exempt by the applicable law or 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 noncompliance: 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.

#### **4. 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 Clean Air Standards and Clean Water Standards.

(2) that no portion of the work required by the 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) that it will report all violations to FTA and the Regional Office of the Environmental Protection Agency;

(4) 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

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

## **5. ENERGY POLICY AND CONSERVATION ACT**

The Contractor agrees to comply with 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.).

## **6. 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.

**7. BUY AMERICA PROVISION**

(a) The Contractor agrees to comply with 49 U.S.C. 5323(j) and the FTA's implementing regulations found at 49 C.F.R. Part 661, which require that all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless FTA has granted a waiver or the product is subject to a general waiver. The provisions of that Act and its implementing regulations are hereby incorporated by reference into this Contract. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid.

(b) If applicable, the Contractor also agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. Part 663.

**8. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS**

This clause only applies to contracts in which materials, equipment, or commodities may be transported by ocean vessel in carrying out the terms of the contract. As required by 46 C.F.R. Part 381, the Contractor agrees:

(a) to utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates of United States flag commercial vessels; and

(b) to furnish within twenty (20) days following the date of loading for shipments originating with the United States, or within thirty (30) working days following the date of loading for shipments originating outside of the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to the Authority, (through the prime Contractor in the case of a Subcontractor's bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590, marked with appropriate identification of the project; and

(c) to insert the substance of the provisions of this clause in all Subcontracts issued pursuant to this Contract.

**9. FLY AMERICA**

The Contractor agrees that if Federal funds are used to fund international air transportation of any persons (and their personal effects) involved in or property acquired for the Contract, the transportation 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.

**10. 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 complete and readily accessible records and shall permit the Authority, the U.S. Department of Transportation, and the Comptroller General of the United States or any of their duly authorized representatives 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. Such access requires the Contractor to provide timely and reasonable access for the purpose of interview and discussion related to such documents.

(c) The Contractor agrees to comply with the record-retention requirements in 2 C.F.R. 200.334 (previously 2 C.F.R. 200.333). Under such requirements, the Contractor shall maintain all books, documents, papers, and records required under the Contract for a period of at least three years after the date of termination or expiration of the Contract, or the disposition of all litigation, appeals, claims, or exceptions related to this Contract (whichever is later).

The rights of access in this clause are not limited to the required retention period(s) but last as long as the records are retained.

(d) The Contractor further agrees to include in all subcontracts a clause that requires the subcontractor:

(1) To maintain complete and readily accessible records and to permit the Authority, the U.S. Department of Transportation, and the Comptroller General of the United States or any of their duly authorized representatives access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the Contract, for the purpose of making audit, examination, excerpts, and transcriptions. The clause shall also require the subcontractor to provide timely and reasonable access for the purpose of interview and discussion related to such documents.

(2) To comply with the record-retention requirements in 2 C.F.R. 200.334 (previously 2 C.F.R. 200.333), the subcontractor shall maintain all books, documents, papers, and records required under the Contract for a period of at least three years after the date of termination or expiration of the Contract, or the disposition of all litigation, appeals, claims, or exceptions related to this Contract (whichever is later). The clause shall note that the rights of access in the clause are not limited to the required retention period(s) but last as long as the records are retained.

#### **11. 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.

#### **12. 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; the Architectural Barriers Act of 1968, as amended 42 U.S.C. § 4151, et seq.; Federal Transit law, specifically 49 U.S.C. § 5332; 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, "Transportation for Individuals with Disabilities: Passenger Vessels," 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 35;

(e) DOJ Regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(f) Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(g) 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;

(h) FTA regulations, "Transportation for Elderly and Handicapped Persons", 49 C.F.R. Part 609;

- (i) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
- (j) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (k) FTA Circular 4710.1, "Americans with Disabilities Act: Guidance;" and
- (l) Other Federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.

### **13. OPERATIONS SERVICE CONTRACTS**

If this is an operational service contract, the Contractor agrees to the following and agrees to include the substance of this clause in each subcontract that may involve operating public transit services:

- (a) Charter Service Operations. The Contractor agrees to comply with 49 U.S.C. § 5323(d), 5323(r), and 49 C.F.R. Part 604. The Contractor is prohibited from providing charter service using federally funded equipment or facilities if there is at least one (1) private charter operator willing and able to provide the service, except under one of the specified exceptions. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation; and
- (b) School Bus Operations. Pursuant to 69 U.S.C. § 5323(f) and 49 C.F.R. Part 605, the Contractor may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, the Contractor may not use federally funded equipment, vehicles, or facilities.

### **14. 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. Chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) 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.

### **15. 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.

**16. 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.

(b) 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.

**17. NOTICE OF FEDERAL REQUIREMENTS**

(a) The Contractor shall at all times comply with all applicable 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 and subcontracts at all tiers.

**18. INCORPORATION OF FTA TERMS – FTA CIRCULAR 4220.1F**

The preceding provisions include, in part, certain Standard Terms and Conditions required by the 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 Authority requests, which would cause the Authority to be in violation of the FTA terms and conditions.

**19. SEISMIC SAFETY REGULATIONS**

To the extent applicable to Contractor's work, the Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**20. DRUG-FREE WORKPLACE PROGRAM**

(a) As used in this clause:

(1) "Alcohol" means ethyl alcohol and any beverage containing ethyl alcohol.

(2) "Controlled substance(s)" means a substance, including a drug and an immediate precursor listed in Schedules I through V of Subchapter A of the Texas Controlled Substances Act, Tex. Rev. Civ. Stat. Ann. Articles 481.032 - 481.036. These substances include, but are not limited to, marijuana, heroin, LSD, concentrated cannabis or cannabinoids, hashish or hash oil, morphine or its derivatives, mescaline, peyote, phencyclidine (PCP, Angel Dust), opium, opiates, methadone, cocaine, Quaaludes, amphetamines, "exotic/designer" drugs, benzodiazepines, Seconal, codeine, barbiturates, Phenobarbital, or Valium.



(3) "Safety sensitive task" means each category of work performed at a construction workplace which, if performed by a person impaired by the effects of alcohol or a controlled substance:

- (i) would pose a serious risk of death or personal injury to the employee or others in the vicinity; or
- (ii) could compromise the quality of the construction in such manner as would impose a significant public safety risk in the operation of the Authority's public transportation system.

(4) "Drug-free workplace" means a site for the performance of work done in connection with the Authority's construction contract at which employees are prohibited from using alcohol or from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

(5) "Employee" means an employee of a Contractor or Subcontractor who may be directly engaged in the performance of work under the Authority's construction contract.

(6) "Reasonable suspicion" means the presence or absence of specific criteria identified in the Contractor's drug-free workplace program (indicating the possibility that a person is under the influence of alcohol or a controlled substance) as observed by the Contractor's supervisory personnel with reasonable training in the identification of such criteria.

(b) The program shall provide for mandatory drug testing of employees who are to perform safety sensitive tasks under the following circumstances:

(1) All employees will be tested prior to assignment to the Authority's construction project to ascertain the use of controlled substances if the employee will be performing safety sensitive tasks; and

(2) When there is a reasonable suspicion that an employee is under the influence of alcohol or a controlled substance at the workplace; and

(3) When an employee has been involved in an accident or unsafe practice (as defined in the Contractor's safety program) at the workplace.

(c) The program may, at the Contractor's discretion, include mandatory employee drug testing under the following circumstances:

(1) As part of or as a follow-up to counseling or rehabilitation for controlled substance use; or

(2) As part of a voluntary employee drug testing program.

(d) A random testing procedure to detect the use of alcohol or a controlled substance by employees performing safety sensitive tasks is required as part of the Contractor's program for the purpose of preventing or deterring hazardous performance. The procedure shall require that, at a minimum, five percent (5%) of the Contractor's employees will be randomly tested within the Contract period or within each year of the Contract period, whichever period is shorter.

(e) All testing by or on behalf of the Contractor because of a requirement in the Authority's Contract shall be conducted only for employees engaged (or to be engaged) in safety sensitive tasks and only for use of alcohol or a controlled substance and shall be conducted in a manner and under written policies that minimize the intrusion on the employee's privacy and personal dignity. This provision shall not preclude the Contractor from adding its own additional testing requirements.

(f) The Contractor shall publish a statement notifying employees that the use of alcohol at the workplace or the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance by employees at any time is prohibited and specifying the actions that will be taken against employees for violations of such prohibition.

(g) The program must require each employee who will perform a safety sensitive task, prior to working under the Authority's Contract to:

(1) Acknowledge in writing the Contractor's drug-free workplace program; and

(2) Give advance written consent to any drug testing that may be conducted under the Contractor's program and the use of test results for decisions related to employment, disciplinary action, or continued employment. The Contractor will agree, in connection with the employee's consent that the results of testing for alcohol and controlled substances will not be voluntarily referred to any law enforcement agency. If the Contractor is subject to a collective

bargaining agreement:

(i) the procedure for obtaining the individual employee's acknowledgment and consent must be consistent with the Contractor's obligations under the collective bargaining agreement; and

(ii) employees shall have the right to be accompanied by a union representative when any specimen is obtained for testing.

(h) The Contractor will establish a drug-free awareness program to inform its employees about:

(1) The dangers of drug abuse in the workplace;

(2) The Contractor's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees who refuse to submit to required testing and for other violations of the drug-free workplace program including, but not limited to, being unable to remain employed at the workplace until approval to return is obtained from the Authority.

(i) The Contractor's drug-free workplace program shall, at a minimum, include:

(1) Policies and procedures for specimen collection, chain of custody for specimens, laboratory qualification standards, laboratory analysis procedures, quality control requirements, and test result reporting procedures which substantially conform to the material requirements of the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by the U.S. Department of Health and Human Services in effect on the date of award of the Authority's construction contract.

(2) Procedures for the Contractor's employees to report their use of prescription drugs used in the course of medical treatment or which have been prescribed and authorized for use by a licensed medical practitioner.

(3) The criteria the Contractor will use for "reasonable suspicion" testing.

(4) The levels of alcohol or controlled substances which will be used in conjunction with a determination that an employee is "under the influence" or is "impaired by the effects of" alcohol or controlled substance(s).

(j) The Contractor shall display a notice, prominently placed near each entrance to the workplace, stating that, by entering the premises, persons are consenting to an inspection of themselves and their property including, but not limited to, their clothing, vehicles, briefcases, lunch boxes, tool boxes, purses, and packages.

(k) The Contractor agrees to use its best efforts to establish and maintain a work environment free of use by employees of alcohol or controlled substances through implementation of paragraph (b) through (j) of this clause. The Contractor shall prepare and maintain records in sufficient detail to demonstrate compliance with the requirements of this clause including, but not limited to, certifications from Subcontractors and records of drug or alcohol tests conducted during performance of the Contract. Such records shall be subject to inspection and audit by the Authority, and the Contractor's noncompliance may authorize the Authority to withhold all or any portion of any payments due the Contractor until the Contractor demonstrates compliance.

(l) As applicable, the Contractor also agrees to establish and implement a drug and alcohol testing program that complies with 49 U.S.C. § 5331, 49 C.F.R. Part 655, and 49 C.F.R. Part 40, produce any documentation necessary to establish its compliance with such requirements, and permit any authorized representative of the U.S. DOT or its operating administrations, any state oversight agency, and/or the Authority, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program and review the testing process. The Contractor agrees further to certify annually its compliance with Part 655 before issuance of the Notice to Proceed and annually thereafter and to submit, by March 1 of each year of the term of the Contract, a Management Information System (MIS) report covering the previous calendar year to Capital Metro, Attn: Senior Director/Chief Contracting Officer of Procurement, 2910 East 5<sup>th</sup> Street, Austin, Texas 78702. To certify compliance the Contractor shall use the "Alcohol and Controlled Substances Testing" certification in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

(m) A Drug-Free Workplace Program clause identical to this clause (except for changes appropriate for designation of the parties), including this subparagraph (l) will be included in every Subcontract entered into in connection with



this Contract.

**21. RECYCLED PRODUCTS; 42 U.S.C. § 6962, 40 C.F.R. Part 247, Executive Order 12873, 2 C.F.R. 200.322**

(a) Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or Contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

(b) Flow Down

These requirements flow down to all contractor and Subcontractor tiers.

(c) Recovered Materials

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

**22. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS; 49 U.S.C. § 5310, § 5311, and § 5333, 29 C.F.R. Part 215**

(a) Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

(b) Flow Down

These provisions are applicable to all contracts and Subcontracts at every tier.

(c) Transit Employee Protective Provisions

(1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(i) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying Contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying Contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(ii) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in

part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying Contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying Contract in compliance with the conditions stated in that U.S. DOL letter.

(iii) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each Subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

(d) The Authority encourages the Contractor, to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies that bar text messaging while driving company-owned or –rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official Authority business or when performing any work for or on behalf of the Authority. See Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving”, Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm> ) and DOT Order 3902.10 “Text Messaging While Driving”, Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP-2010-01, February 2, 2010, available at [https://www.transportation.gov/sites/dot.dev/files/docs/FAPL\\_2010-01.pdf](https://www.transportation.gov/sites/dot.dev/files/docs/FAPL_2010-01.pdf)). This includes, but is not limited to:

(1) Considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;

(2) Conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and

(3) Encouraging voluntary compliance with the agency's text messaging policy while off duty.

(e) The Contractor is encouraged to insert the substance of this clause in all tier Subcontract awards.

### **23. 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.

(b) 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.

#### **24. VETERANS EMPLOYMENT**

Capital Metro is a recipient of Federal financial assistance on this Contract. The Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of Title 5 C.F.R.) who have the requisite skills and abilities to perform the construction work required under the Contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

#### **25. 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.

#### **26. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

(a) Pursuant to Public Law 115-232, Section 889, and 2 C.F.R. Part 200, including §200.216 and §200.471, the Authority is prohibited from using federal funds to:

- (1) Procure or obtain,
- (2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use "Covered Telecommunications Equipment or Services" as a substantial or essential component of any system, or as critical technology as part of any system.

(b) As described in Public Law 115-232, section 889, "Covered Telecommunications Equipment or Services" is:

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)

(2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(3) Telecommunications or video surveillance services provided by such entities or using such equipment.

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(c) Contractor shall not use or provide to the Authority Covered Telecommunications Equipment or Services in the performance of this Contract.

(d) Contractor shall insert the substance of this Paragraph in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(e) Contractor shall notify the Authority immediately if Contractor cannot comply with the prohibition during the performance of this Contract.

**27. BUS TESTING**

(a) The following applies to purchases or leases of any new bus model or any bus model with a major change in configuration or components to be acquired or leased with FTA funds.

(b) Contractor agrees to comply with the Bus Testing requirements under 49 U.S.C. § 5318(e) and FTA's implementing regulation at 49 C.F.R. Part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the Authority.

**28. TRAFFICKING IN PERSONS**

The Contractor agrees that it and its employees shall not, at any time during the performance of this Contract, do any of the following:

(a) Engage in severe forms of trafficking in persons, as defined Section 103 of the Trafficking Victims Protection Act of 2000 ("TVPA"), as amended, 22 U.S.C. § 7102;

(b) Procure a commercial sex act, as defined Section 103 of the TVPA, as amended, 22 U.S.C. § 7102; or

(c) Use forced labor, defined as labor obtained by recruitment, harboring, transportation, provision, or other means of obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection

to involuntary servitude, peonage, debt bondage, or slavery, in the performance of the Contract or permit the use of forced labor in the performance of any subcontract hereunder.

**29. GOVERNMENT-WIDE SUSPENSION AND DEBARMENT**

(a) Contractor shall comply with the following requirements of 2 C.F.R. Part 180, Subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. Part 1200.

(b) Contractor shall not enter into any “covered transaction” (as defined in the above-referenced regulations) that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by

(i) U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200;

(ii) U.S. OMB regulatory guidance, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180; and

(iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants.

(c) Contractor shall review the U.S.GSA “System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by U.S. DOT regulations, 2 C.F.R. Part 1200.

(d) Contractor will ensure that all subcontracts include a provision necessary to flow down these suspension and debarment provisions to all lower-tier covered transactions.

**30. PATENT RIGHTS AND RIGHTS IN DATA**

If the Federal award meets the definition of “funding agreement” under 37 C.F.R. 401.2 (a) and Contractor is a small business firm or nonprofit organization performing experimental, developmental, or research work under that “funding agreement,” the Contractor agrees that the use of any data produced or delivered under the terms of the Contract including, but not limited to, engineering drawings and associated lists, specifications, process sheets and technical reports, shall be governed by the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA. In addition, the Contractor agrees that it will not publish such data without the written consent of the Authority and, if appropriate, the Federal Government.

**31. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS STANDARDS**

The Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless the Authority has obtained an exemption from the requirements and provided Contractor information regarding the exemption. The Contractor further agrees to follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455, January 8, 2001, and all other applicable Federal guidance.

**32. NOTIFICATION OF LEGAL MATTERS**

Contractor shall notify the Authority of any and all matters that Contractor knows or reasonably should know may affect the Federal Government’s interests. This notification requirement includes, but is not limited to, current or prospective legal matters such as an actual or potential major dispute, breach, default, litigation, naming of the Authority or the Federal Government as a party to litigation, or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include but are not limited to, the Federal Government’s interests in the Contract, the underlying Authority/FTA Agreement, and any amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements. Contractor agrees to include this clause in every subcontract awarded at every tier. Contractor shall further notify the Authority of any potential fraud, waste, or abuse occurring on the contract or Project.

**33. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTION**

Contractor agrees that, prior to entering into any subcontract, Contractor will require the subcontractor to provide a certification on Federal Tax Liability and Recent Felony Convictions, which should be identical to the certification that Contractor provided the Authority. If the prospective subcontractor cannot certify as to the statements, Contractor shall not enter into the subcontract absent Authority and FTA approval. Contractor agrees to include this clause in every subcontract awarded at every tier.

**34. COVID-19 SAFETY REQUIREMENTS**

The Contractor agrees to comply with the Centers for Disease Control and Prevention (“CDC”) Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (“CDC Mask Order”), as has been and may later be amended, and any other subsequent orders that may be issued. In addition, the Contractor shall comply with all applicable Authority policies and procedures, including those of the Authority’s service contractors. The Contractor agrees to include this clause in each subcontract to this Contract and to require subcontractors to include the clause in all lower-tier subcontracts.

**35. LIMITATION ON CERTAIN ROLLING STOCK PROCUREMENTS**

(a) Pursuant to Section 7613 of the National Defense Authorization Act for Fiscal Year 2020 (NDAA 2020), Public Law 116-92 (Dec. 20, 2019) and 49 U.S.C. § 5323(u), the Authority is prohibited from using financial assistance under Chapter 53 of title 49 U.S. Code to award a contract or subcontract to an entity for the procurement of rolling stock for use in public transportation if the manufacturer of the rolling stock:

(1) is incorporated in or has manufacturing facilities in the United States; and

(2) is owned or controlled by, is a subsidiary of, or is otherwise related legally or financially to a corporation based in a country that -

(i) is identified as a nonmarket economy country (as defined in section 771(18) of the Tariff Act of 1930 (19 U.S.C. 1677(18))) as of the date of enactment of this subsection;

(ii) was identified by the United States Trade Representative in the most recent report required by section 182 of the Trade Act of 1974 (19 U.S.C. 2242) as a foreign country included on the priority watch list defined in subsection (g)(3) of that section; and

(iii) is subject to monitoring by the Trade Representative under section 306 of the Trade Act of 1974 (19 U.S.C. 2416)

(a “Restricted Manufacturer”).

(b) For purposes of this provision, the term “otherwise related legally or financially” does not include a minority relationship or investment.

(c) Contractor shall not provide the Authority with rolling stock under this Contract if the rolling stock is from a Restricted Manufacturer or otherwise in violation of this prohibition.

(d) Contractor shall insert this provision in all applicable subcontracts and other contractual instruments.

(e) Contractor shall notify the Authority immediately if Contractor or any of its subcontractors cannot comply with this provision during the performance of this Contract.