

**\*NOTICE\***

**THIS CONTRACT CANNOT BE UTILIZED AS A  
COOPERATIVE CONTRACT**



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**CONTRACT NO. 200806**

**(RFP 306944)**

**Positive Train Control (PTC) Optimization,  
Engineering, Construction and Support Services**

**CONTRACTOR:** Modern Railway Systems  
8201 Southpark Lane, Suite 200  
Littleton, CO 80120  
720-542-3325  
[bmartinez@modrailsystems.com](mailto:bmartinez@modrailsystems.com)

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**AWARD DATE:** April 25, 2022

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**CONTRACT PERIOD OF PERFORMANCE:** Five (5) Years from Notice of Award

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**PRICE:** Not to Exceed \$6,000,000

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**DBE GOAL:** 11%

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**PROJECT MANAGER:** Ted Uwague  
512-852-7232 or 512-539-7877  
[ted.uwague@capmetro.org](mailto:ted.uwague@capmetro.org)

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**CONTRACT ADMINISTRATOR:** Kirk Perry, CPSM  
512-389-7528  
[kirk.perry@capmetro.org](mailto:kirk.perry@capmetro.org)

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

**CONTRACT 200806**  
**Positive Train Control (PTC) Optimization, Engineering, Construction**  
**and Support Services**

(RFP 306944)

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**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
AUSTIN, TEXAS**

**AWARD/CONTRACT FORM**

**1. SOLICITATION NO:** RFP 306944      **2. CONTRACT NO:** 200806      **3. EFFECTIVE DATE:** Upon Execution

**4. CONTRACTS ADMINISTRATOR:** Kirk Perry      **PHONE:** 512-389-7528

|  |   |
|--|---|
| <b>5. SHIP TO ADDRESS:</b><br>Capital Metro<br>2910 East 5 <sup>th</sup> Street<br>Austin, Texas 78702 | <b>6. DELIVERY TERMS:</b><br>F.O.B. Destination |
|  | <b>7. DISCOUNTS FOR PROMPT PAYMENT:</b>         |

|   |                               |                                   |
|---|-------------------------------|-----------------------------------|
| <b>8. CONTRACTOR NAME &amp; ADDRESS:</b><br>Modern Railway Systems<br>8201 Southpark Lane, Suite 200<br>Littleton, CO 80120 | <b>9. REMITTANCE ADDRESS:</b> | <b>(If different from Item 8)</b> |
|---|-------------------------------|-----------------------------------|

|                            |  |
|----------------------------|--|
| <b>PHONE:</b> 720-542-3325 | <b>EMAIL:</b> <a href="mailto:bmartinez@modrailsystems.com">bmartinez@modrailsystems.com</a> |
|----------------------------|--|

**10. DBE GOAL:** 11%

**CONTRACT EXECUTION**

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

|                                     |                              |   |
|-------------------------------------|------------------------------|---|
| <input checked="" type="checkbox"/> | <b>NEGOTIATED AGREEMENT:</b> | (Contractor is required to sign below and return to the Contracting Officer within three (3) calendar days of receipt.) |
|-------------------------------------|------------------------------|---|

Contractor agrees to perform, furnish and deliver all the services set forth or otherwise identified in Contractor's Initial Proposal dated March 1, 2022, Exhibit A (Pricing Schedule), Exhibit E – Revised-1 (Contractual Terms and Conditions), Exhibit F (Scope of Services) and all relevant attachments and addenda for the base and option years. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this Award/Contract, (b) the solicitation, as amended, and (c), such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein.

**SIGNATURE OF CONTRACTOR:**

Name/Title: Ben Martinez      Director of Business Development      Signature: Ben Martinez      Date: 3-29-2022

|                                     |               |   |
|-------------------------------------|---------------|---|
| <input checked="" type="checkbox"/> | <b>AWARD:</b> | Items listed below are changes from the original offer and solicitation as submitted. |
|-------------------------------------|---------------|---|

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

**ALTERATIONS IN CONTRACT:**

Refer to Exhibit B, Representations 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.

Refer to Exhibit B-1, Buy America. Exhibit B-1 shall be replaced in its entirety with **Exhibit B-1-Revised-1**, attached hereto and made a part hereof for all pertinent purposes.

Refer to Exhibit D, Disadvantaged Business Enterprise Program. Exhibit D shall be replaced in its entirety with **Exhibit D-Revised-1**, attached hereto and made a part hereof for all pertinent purposes.

Refer to Exhibit E-1 Addendum to Contractual Terms and Conditions Federally Assisted Construction/Repair 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.

**11. ACCEPTED AS TO:** Exhibit A (Pricing Schedule): Section 7A through 7E, all Items, for a Total Not-to-Exceed Amount of \$6,000,000.

**SIGNATURE OF CONTRACTING OFFICER:**

Muhammad Abdullah, CTCM, C.P.M.  
Chief Contracting Officer

Signature: E-SIGNED by Muhammad Abdullah      Date: May 04, 2022  
on 2022-05-04 16:55:06 GMT

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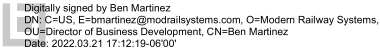
**EXHIBIT A**

**PRICING SCHEDULE**

**RFP 306944**

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

**1. IDENTIFICATION OF OFFEROR AND SIGNATURE OF AUTHORIZED AGENT**

|  |   |  |  |
|--|---|--|--|
| <b>Company Name (Printed)</b>  | Modern Railway Systems                          |  |  |
| <b>Address</b>   | 8201 Southpark Lane; Suite 200                  |  |  |
| <b>City, State, Zip</b>  | Littleton, Colorado, 80120                      |  |  |
| <b>Phone, Fax, Email</b>   | 720-542-3325                                    | 720-287-2649   | <a href="mailto:bmartinez@modrailsystems.com">bmartinez@modrailsystems.com</a> |
| The undersigned agrees, if this offer is accepted within the period specified, to furnish any or all supplies and/or services specified in the Schedule at the prices offered therein. |   |  |  |
| <b>Authorized Agent Name and Title (Printed)</b>   | Ben Martinez (Director of Business Development) |  |  |
| <b>Signature and Date</b>  | Ben Martinez                                    |  | 3/21/2022  |

**2. ACKNOWLEDGEMENT OF AMENDMENTS**

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

| Amendment # | Date    | Amendment # | Date    |
|-------------|---------|-------------|---------|
| 1           | 2/3/22  | 4           | 3/18/22 |
| 2           | 2/22/22 |             |         |
| 3           | 2/23/22 |             |         |

**3. PROMPT PAYMENT DISCOUNT**

|           |     |            |       |
|-----------|-----|------------|-------|
| # of Days | N/A | Percentage | 0.00% |
|-----------|-----|------------|-------|

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

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

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

|    |   |
|----|---|
| 11 | % |
|----|---|

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

The Authority hereby accepts this offer.

|  |  |
|--|--|
| <b>Authorized Agent Name and Title (Printed)</b> | Muhammad Abdullah, CTCM, C.P.M., Chief Contracting Officer                     |
| <b>Signature and Date</b>                        |  |
| <b>Accepted as to:</b>                           | Exhibit A Revised-1, Sect. 7a Base Year One, all Items. Total NTE \$6,000,000. |

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

**For further information regarding Exhibit A, you may:**

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

**OR**

- Submit a public information request directly to [PIR@capmetro.org](mailto:PIR@capmetro.org).

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

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

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**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:

California

**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:

Stacy and Witbeck, Inc.  
2800 Harbor Bay Parkway  
Alameda, CA 94502  
\_\_\_\_\_



**3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**

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

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

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

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

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

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

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

Ben Martinez, Dir. of Business Development

(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**

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(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:

| Individual's Name | Date/Subject of Communication |
|-------------------|-------------------------------|
| See documents     | in proposal submission        |
|                   |                               |
|                   |                               |

(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):

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(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. DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOALS**

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

**11. CLEAN AIR AND WATER CERTIFICATION**

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

By submission of this offer, the offeror certifies that:

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

- is  
 is not

listed on the EPA List of Violating Facilities;

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

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

**12. CERTIFICATION OF NON-SEGREGATED FACILITIES**

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

(b) The offeror agrees that a breach of this certification is a violation of the 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.

**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.

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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- (b) The offeror shall provide immediate written notice to the Authority if, at any time prior to contract award, the offeror learns that the offeror's certification was, or a subsequent communication makes, the certification erroneous.
- (c) Offerors must set forth full, accurate and complete information as required by this solicitation (including this attachment). Failure of an offeror to do so may render the offer nonresponsive.
- (d) I understand that a false statement on this certification may be grounds for rejection of this submittal or termination of the awarded contract.
- (e) A false statement in any offer submitted to the Authority may be a criminal offense in violation of Section 37.10 of the Texas Penal Code. In addition, under 18 U.S.C. §. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to five (5) years, or both.

Name of Offeror:

Modern Railway Systems

Type/Print Name of Signatory:

Ben Martinez

Title of Signatory:

Director of Business Development

Signature:

Ben Martinez



Digitally signed by Ben Martinez  
DN: c=US, E=benmartinez@modernrailwaysystems.com, O=Modern Railway Systems,  
OU=Director of Business Development, CN=Ben Martinez  
Date: 2022.03.28 15:44:08-08'00'

Date:

03/28/2022



**EXHIBIT B-1 REVISED-1  
BUY AMERICA**

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The Buy America regulations require that all manufactured products used in FTA-funded projects be produced in the United States. A manufactured product is considered domestic if all of the manufacturing processes for the product take place in the United States and all of the components of the product are of U.S. origin as set forth in 49 C.F.R. § 661.5(d)(1). A component of a manufactured product "is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents." 49 C.F.R. § 661.5(d)(2).

The contractor must agree to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The offeror must submit the appropriate Buy America certification with its offer to reflect that it will comply with such applicable law, regulations, and contractual obligation. Offers that are not accompanied by a completed Buy America certification may be rejected as nonresponsive.

In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.

[THIS SPACE INTENTIONALLY LEFT BLANK]

**BUY AMERICA CERTIFICATION – PRODUCTS/CONSTRUCTION**  
**REQUIRED PRICING PROPOSAL SUBMITTAL**

FAILURE OF OFFEROR / BIDDER TO FURNISH THIS EXECUTED DOCUMENT WITH ITS PROPOSAL/ BID MAY BE CONSTRUED BY CAPITAL METRO AS A NEGATIVE RESPONSE AND THE OFFER WILL NOT BE CONSIDERED.

**BUY AMERICA CERTIFICATE FOR PROCUREMENTS OF  
STEEL, IRON, AND MANUFACTURED PRODUCTS OVER \$150,000.00**

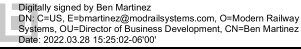
This procurement is subject to the Federal Transit Administration (FTA) Buy America Requirements in 49 C.F.R. § 661.5. Bidder/offeror must complete and submit the appropriate certification as set forth below.

Section 165(a) of the Surface Transportation Act of 1982 permits FTA participation on this contract only if all iron, steel, cement, and manufactured products used in the contract are produced in the United States.

A waiver from the Buy America Provision may be sought by Capital Metro if grounds for the waiver exist. In such event, Bidder/Offeror shall submit pertinent data as required by Capital Metro.

**Certificate of Compliance with Buy America Requirements**

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: March 28, 2022  
Signature: Ben Martinez   
Company: Modern Railway Systems  
Name: Ben Martinez  
Title: Director of Business Development

**OR**

**Certificate of Non-Compliance with Buy America Requirements**

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Company: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT D Revised-1**

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

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It is the policy of the Authority that Disadvantaged Business Enterprises (“DBEs”), as defined in U.S. Department of Transportation (“DOT”) regulations 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. It is also the policy of the Authority to (1) ensure nondiscrimination in the award and administration of DOT-assisted contracts; (2) to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts; (3) ensure that the DBE program is narrowly tailored in accordance with applicable law; (4) ensure that only firms that fully meet the 49 C.F.R. part 26 eligibility standards are permitted to participate as DBEs; (5) help remove barriers to the participation of DBEs in DOT-assisted contracts and procurement activities; and (6) assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

The Contractor is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code or Title I, II, and V of the Teas-21, Pub. L. 105-178. Consequently, the DBE requirements of 49 C.F.R. Part 26 apply to this contract. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The requirements of 49 C.F.R. Part 26 and the Authority's DOT-approved Disadvantaged Business Enterprise (DBE) program are incorporated into this Contract by reference.

**1. DEFINITIONS**

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

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

(c) *Socially and economically disadvantaged individual* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is: (1) any individual who Capital Metro finds to be a socially and economically disadvantaged individual on a case-by-case basis; (2) any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged as defined in CFR Part 26.5:

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

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

(3) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

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

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

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(6) Women;

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

(d) For the purposes of this Exhibit, "Capital Metro" and "the Authority" refer to Capital Metropolitan Transportation Authority.

### **2. SUBMISSION OF DBE FORMS**

(a) The Contractor shall submit along with its response to this solicitation a completed Schedule C of Subcontractor Participation form ("**Schedule C**") listing all proposed subcontractors, DBE and non-DBE, and an executed Intent to Perform as a DBE Subcontractor form ("**Intent to Perform**") for each individual DBE subcontractor listed on the Schedule C. As required in Section 5 of this Exhibit, adequate good faith effort documentation (if necessary) must be submitted at this same time. If a prime or proposed subcontractor is in process of DBE certification at the time of submission, then the contractor must provide proof of application for Texas DBE certification with its response to this solicitation, and must provide an approved DBE certificate. If the contractor does not submit this information by the time the solicitation response is due, Capital Metro may deem the contractor non-responsive and such decision is non-appealable. The contractor may protest the decision in accordance with the Authority's protest procedure set forth in Exhibit C of this solicitation.

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

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

### **3. CREDIT TOWARDS GOALS**

(a) Only work performed by DBE firms certified to work in the state of Texas by the six (6) Texas Unified Certification Program (TUCP) recognized agencies listed in Section 6 herein, will count towards the overall contract goal. Out-of-state entities must register for certification through the Texas Department of Transportation to be deemed eligible to participate in Authority contracts in such capacities and receive credit for work performed.

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

(c) Only expenditures to DBEs that perform a Commercially Useful Function may be counted towards goals. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved and is responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Authority's Office of Diversity will evaluate the amount of work

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subcontracted, industry practices, whether the amount the subcontractor is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. If a DBE does not perform or exercise responsibility for at least thirty (30%) percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is not performing a commercially useful function.

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

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

(f) The Contractor may count one hundred percent (100%) of the cost of the materials and supplies towards the DBE goal provided that the DBE is a manufacturer. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

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

(h) The Contractor may count towards its DBE goals the following costs of materials or supplies purchased from DBE firms that are not manufacturers or regular dealers:

(1) The entire amount of fees or commissions charged by a DBE for providing bona fide services, such as professional, technical, consultant, or for providing bonds or insurance specifically required for the performance of the contract, provided the Authority determines that the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

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

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

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

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

#### **4. DBE GOAL AND SUBCONTRACTING OPPORTUNITIES**

(a) The DBE goal for this solicitation is 11%.

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

| <b><u>Industry</u></b>           | <b><u>NAICS Code</u></b> |
|----------------------------------|--------------------------|
| Engineering Services             | 541330                   |
| Construction Consulting Services | 541690                   |

#### **5. DEMONSTRATION OF GOOD FAITH EFFORT**

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

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

(c) In making a determination that the Contractor has made a good faith effort to meet the DBE goals, the Authority shall consider, among other things it deems relevant, the criteria set forth below. Additionally, in determining whether the Contractor has made good faith efforts, the Authority will take into account the performance of other bidders in meeting the contract goal. The Contractor shall furnish as part of its DBE utilization information provided under this Section such specific documentation concerning the steps it has taken to obtain DBE participation, with a consideration of, by way of illustration and not limited to the following as required by *Appendix A to Part 26 – Guidance Concerning Good Faith Efforts*, as amended:

(1) Whether the Contractor conducted market research to identify small business contractors and suppliers and solicited through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The Contractor must solicit this interest early in the acquisition process within sufficient time to allow the DBEs to respond to the solicitation. The Contractor must determine with certainty if the DBEs are interested by taking appropriate steps to follow up on initial solicitations.

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

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

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(4) Whether the Contractor negotiated in good faith with interested DBEs. It is the Contractor's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

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

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

(7) Whether the Contractor rejected the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the Contractor to accept unreasonable quotes in order to satisfy contract goals.

(8) A Contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the Contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the Contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

(9) Whether the Contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by Capital Metro or the Contractor.

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

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

(d) In determining whether a Contractor has made good faith efforts, Authority will scrutinize its documented efforts. At a minimum, Authority will review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, the Authority may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, the Authority may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

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

(f) A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

**6. APPEALS**

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

**7. CERTIFICATION OF DBES**

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

- \* **Texas Department of Transportation**
- \* **North Central Texas Regional Certification Agency**
- \* **South Central Texas Regional Certification Agency**
- \* **City of Houston, Office of Business Opportunity**
- \* **City of Austin, Small and Minority Business Resources Department**
- \* **Corpus Christi Regional Transportation Authority**

(b) The City of Austin will serve as the certifying agency for the Austin region, which includes the counties of Bastrop, Caldwell, Hays, Travis and Williamson. All prospective DBEs must submit appropriate forms, available through the City of Austin Certification Department, to prove actual ownership and control by DBEs. All such firms shall cooperate in supplying additional information as requested by the [City of Austin DBE Certification Department](#), which will determine the certification of eligible DBEs. Contractors may also contact the Authority at (512) 389-7557 or [officeofdiversity@capmetro.org](mailto:officeofdiversity@capmetro.org) to obtain information.

(c) In the event the Authority determines that a firm identified by the Contractor as a potential DBE does not qualify as a DBE, the Contractor shall be informed and will be provided with an opportunity to substitute firms meeting the certifying agency's DBE eligibility criteria for the Authority's consideration. Information concerning DBEs currently certified can be obtained by contacting the Authority's Office of Diversity. Contractors may access the DBE directory at <https://txdot.txdotcms.com/>.

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

**8. DBE PROGRAM REQUIREMENTS**

(a) The Contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed in Schedule C of Subcontractor Participation and Intent to Perform as a DBE Subcontractor forms unless the contractor obtains the prior written consent of the Authority upon a showing of good cause as set forth in 49 C.F.R. Section 26.53 (f)(3).

(b) The Contractor may not terminate a DBE subcontractor without the Authority's prior written consent. This includes, but is not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE



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subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. Unless the Authority provides prior written consent to terminate the DBE contract based on a showing of good cause to terminate the DBE firm, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

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

### **9. TERMINATION OR REPLACEMENT OF DBE SUBCONTRACTORS**

(a) The Contractor must notify the Authority's Office of Diversity immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation thereof to seek prior written consent for termination or replacement of a DBE.

(b) The contractor may not terminate a listed DBE subcontractor (or approved substitute), replace a subcontractor previously listed, permit a subcontract to be assigned or transferred, or allow that portion of the work to be performed by anyone other than the listed subcontractor, without the prior written consent of the Authority. For termination of a DBE subcontractor, prior written consent will only be provided where there is a "good cause" for termination as established by 49 C.F.R. Section 26.53(f)(3). Good cause includes the following circumstances:

- The listed DBE fails or refuses to execute a written contract.
- The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards; provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor.
- The listed DBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
- The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
- The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law.
- The Authority has determined that the listed DBE subcontractor is not a responsible contractor.
- The listed DBE subcontractor voluntarily withdraws from the project and provides to the prime contractor written notice of its withdrawal.
- The listed DBE is ineligible to receive DBE credit for the type of work required.
- A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract.
- Other documented good cause that the Authority determines compels the termination of the DBE subcontractor, provided that good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE contractor was engaged or so that the Contractor can substitute another DBE or non-DBE contractor after Contract award.

(c) Before transmitting its request to terminate and/or substitute to the Authority, the Contractor must give the DBE subcontractor written notice of its intent to terminate with a copy to the Authority, of the Contractor's intent to request to terminate and/or substitute, and the reason for the request. The DBE subcontractor shall have five (5) business days to respond to the Contractor's notice and advise the Authority and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Authority should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the Authority may allow for a response period shorter than five (5) business days.

(d) When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, the Contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another certified DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. Documentation of good faith efforts must be maintained and provided to the Authority within 7 days of a request, which may be extended for an additional 7 days if necessary at the request of the Contractor. The Authority will provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.

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

Kerri Butcher  
DBE Reconsideration Officer  
Capital Metropolitan Transportation Authority  
2910 E. 5th Street  
Austin, TX 78702

(f) Failure of the Contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract as set forth in Exhibit E or such other remedies, including an order stopping all or part of payment/work until satisfactory action has been taken.

### **10. PAYMENT DOCUMENTATION**

The DBE program regulation 49 CFR § 26.37 requires that Capital Metro's DBE Program track and monitor every contract on which DBE participation is claimed to ensure that the work is actually performed by the DBEs to which the work was committed. Capital Metro must have written certification that it has reviewed contracting records and monitored work sites located in Texas. Capital Metro utilizes the B2Gnow compliance monitoring program to ensure that it has developed a monitoring process to comply with this regulation.

For each DBE contract, the Contractor is required to update payment and payment information on each subcontractor or vendor monthly to document in written or electronic format their compliance with the DBE participation and prompt payment regulations. Contractors are required to report, monitor and maintain their subcontractor participation through monthly contract audits that require confirmation from the subcontractor representative in the B2Gnow program.

### **11. SUBCONTRACT AGREEMENT**

The Contractor is required to submit a signed subcontractor agreement between the Contractor and each proposed subcontractor within fifteen (15) days of the Notice to Proceed (NTP). This agreement must include the following flow-down DBE federal clauses:

- a nondiscrimination clause.
- a prompt payment and return of retainage clause.
- a clause identifying options for legal remedies.

Any agreement reached between the Contractor and subcontractors may not modify or nullify federal regulations or it will be considered a breach of the contract between Capital Metro and the Contractor. The agreement must be signed by both the Contractor and subcontractor to be considered valid. The prime contractor must incorporate the following federal clauses into the subcontract agreement:

#### **(a) Non-Discrimination.**

"The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26."

A finding by Capital Metro of discrimination by the contractor or subcontractor or a failure by the contractor to include the non-discrimination clause in its subcontract agreement is a material breach of this Contract which may result in the termination of this Contract or such other remedy as Capital Metro deems appropriate. Such remedies may include, but are not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;

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- (3) Liquidated damages; and/or
- (4) Disqualifying the Contractor from future bidding as non-responsible.

(b) **Prompt Payment and Return of Retainage.**

(1) The Contractor must pay DBE subcontractors for satisfactory performance of their contracts no later than ten (10) days from receipt of each payment the Authority makes to the Contractor. In addition, each contract the Contractor signs with a subcontractor must include a clause to require the Contractor to pay the subcontractor for satisfactory performance under the contract no later than ten (10) days from receipt of each payment Capital Metro makes to the prime contractor.

(2) Capital Metro will ensure prompt and full payment of retainage from the Contractor to the subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. Capital Metro must use one of the following methods to ensure compliance with this requirement:

(i) Capital Metro may decline to hold retainage from the Contractors and prohibit the Contractor from holding retainage from subcontractors;

(ii) Capital Metro may decline to hold retainage from the Contractor and require a contract clause obligating the Contractor to make prompt and full payment of any retainage kept by the Contractor to the subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed; or

(iii) Capital Metro may hold retainage from the Contractor and provide for prompt and regular incremental acceptance of portions of the prime contract, pay retainage to the Contractor based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within ten (10) days after Capital Metro's payment to the Contractor.

(3) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by Capital Metro. When Capital Metro has accepted an incremental portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed. Any delay or postponement of payment among the parties may take place only for good cause, with Capital Metro's prior written approval.

(4) Capital Metro may require any or all of the following additional mechanisms to ensure prompt payment:

(i) A contract clause that requires the Contractor to include language in their subcontract providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms as outlined in the Payment Disputes section of this Exhibit to resolve payment disputes;

(ii) A contract clause providing that the Contractor will not be reimbursed for any work performed unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed; or

(iii) Other mechanisms, consistent with this Part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

(c) **Legal Remedies**

Capital Metro will implement appropriate mechanisms to ensure compliance with 49 CFR Part 26 by all program participants by applying legal and contract remedies available under Federal, state and local law. As required in 49 CFR Part 26.37, Prime contractors must include notice of Capital Metro's legal remedies in all FTA-funded subcontracts, including, but not limited to, the following:

- Breach of contract action, pursuant to the terms of the contract;
- Breach of contract reporting to the Office of Inspector General;

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- Breach of contract reporting to the USDOT's Office of Civil Rights;
- Rescission of contract awards (in whole or in part);
- Administrative fines;
- Forfeiture of profits;
- Debarment from bidder's list; and
- Suspensions from awards and other applicable sanctions.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, including, but not limited to, the following:

- Suspension or debarment proceedings pursuant to 49 CFR Part 29;
- Enforcement action pursuant to 49 CFR Part 31;
- Prosecution pursuant to 18 USC 1001.

Failure of the Contractor to carry out the Authority's DBE program provisions shall constitute a breach of contract and may result in termination of the Contractor for default or such remedy as the Authority may deem appropriate. The Authority reserves the right to apply legal and contract remedies listed above.

### **12. POST SOLICITATION: DBE CONTRACT COMPLIANCE**

#### **(a) Subcontractor Use Plan**

The Contractor must provide the subcontractor the maximum allowable opportunities to participate and perform on the contract the subcontractor has committed to. At its discretion, Capital Metro may require the Contractor to set forth a cohesive subcontractor utilization plan for each subcontractor or vendor that clearly identifies, outlines and defines any requirements, including but not limited to:

- (1) Each party's responsibilities and authorities;
- (2) The minimum percentage or total dollar amount pledged to the certified DBE firm towards the overall contract goal;
- (3) A list of supplies, services and/or work areas the subcontractor is responsible for to fulfill their commitment;
- (4) A description of deliverables or criteria of work performed by the subcontractor to be deemed satisfactory;
- (5) A schedule for subcontractor usage and a timeframe of availability for the subcontractor to perform its required tasks;
- (6) Any other appropriate and applicable terms and conditions.

The subcontractor utilization plan, if required, must be made available to the Authority no later than fifteen (15) days following the receipt of the Notice to Proceed (NTP).

#### **(b) DBE Kick-off Meeting**

Capital Metro may require a conference meeting to discuss DBE contractual requirements with the contractor and all DBE certified subcontractors of the awarded contract. This conference will be held before the Notice to Proceed has been issued. Attendees will include Capital Metro personnel from different points of service that will be involved with

## CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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the satisfactory performance and completion of the contract. External attendees of both the Contractor and subcontractors should include but not be limited to designated representatives, points of contact and/or contract compliance officers.

The conference will cover the following:

- (1) Capital Metro staff and role on contract;
- (2) Capital Metro's DBE program's requirements, guidelines and regulations;
- (3) The contractor and subcontractors' roles and responsibilities;
- (4) Introduction and use of B2Gnow vendor management system, user set-up, vendor payments, auditing requirements, and contract reporting;
- (5) Capital Metro's requirements and procedures for monitoring and enforcement of DBE contracts; and
- (6) Definition and standards of Commercially Useful Function (CUF) requirements.

### **(c) Commercially Useful Function (CUF) Certification**

(1) Capital Metro's DBE program also includes a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism includes a written certification that Capital Metro has reviewed contracting records and monitored work sites for this purpose. The monitoring to which this paragraph refers will be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

(2) This mechanism provides for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In its reports of DBE participation, Capital Metro will display both commitments and attainments.

### **13. PAYMENT DISPUTES**

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

### **14. SANCTIONS FOR NONCOMPLIANCE WITH THE AUTHORITY'S DBE PROGRAM REQUIREMENTS**

Failure by the Contractor to carry out the Authority's DBE Program Requirements is a material breach of the Contract, which may result in the termination of this Contract or such other remedy as the Authority deems appropriate. The willful making of false statements or providing incorrect information will be referred for appropriate legal action.

If legal remedies are deemed necessary, the Office of Diversity shall notify the Contractor of the findings and justification for the applied sanctions in writing. If the Contractor believes the sanction(s) is not just, the Contractor will be allowed a five-day appeal period from the time of the notification to submit a written appeal with supporting documents

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

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to the DBE Reconsideration Officer at 2910 E 5<sup>th</sup> Street, Austin, TX 78660 or via email at [officeofdiversity@cap-metro.org](mailto:officeofdiversity@cap-metro.org). The DBE Reconsideration Officer will evaluate documents and the Office of Diversity will inform the contractor of the decision within 10 days from the receipt of appeal.

**REQUIRED SUBMITTAL**

**CAPITAL METRO  
Schedule C of Subcontractor Participation**

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

**Name of Prime Contractor (Offeror):** Modern Railway Systems

**Project Name:** PTC Optimization, Engineering, Construction & Support Svcs.

**RFP Number:** 306944

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

| 1) Name of Subcontractor      | 2) Address, Telephone # of DBE Firm (Including name of contact person)                    | 3) Description of Work, Services Provided. Where applicable, specify "supply" or "Install" or both. | 4) DBE or non-DBE | 5) Ethnic Code | 6) Age of Firm | 7) Annual Gross Receipts | 8) DBE % or \$ amount of Total Contract |
|-------------------------------|---|---|-------------------|----------------|----------------|--------------------------|---|
| Hafoo Services Inc.           | 11411 Bristle Oak Trl<br>Austin, TX 78750<br>512-925-1193 Humberto Friede                 | Furnish / Install Track Material  | DBE               | H              | 15 Years       | ██████████               | 1 %                                     |
| Generation Cable Corp.        | 5028 S. Atlanta Road, Suite 128<br>Atlanta, GA 30339 — Dana E. Dabruzzo -<br>404-226-7884 | Electrical Wire, Cable, Material Supply   | DBE               | L              | 7 Years        | ██████████               | 2 . 5 %                                 |
| McAllen Signal & Boring LLC.  | 2821 Hawk Ct.<br>McAllen, TX<br>Joni Mars - 956-662-9418                                  | Install Signal System   | DBE               | I              | 6 Years        | ██████████               | 2 . 5 %                                 |
| JLM Strategic Talent Partners | 3748 Bayer Ave. Suite 203 Long<br>Beach, CA 90808(Karolina Olamendi<br>(562)440-3516)     | Supply- Personnel Staffing,<br>administrative assistance  | DBE               | B              | 11 Years       | ██████████               | 1 . 5 %                                 |
| Eagle Barricade               | 2162 Country LN<br>McKinney, TX<br>214-455-0288   | Traffic Control   | DBE               | A              | 7 Years        | ██████████               | . 5 0 %                                 |
| QN Management Solutions Inc.  | 6220 Campbell Rd.<br>Suite 202 Dallas , Texas 75248                                       | equipment procurement,scheduling,<br>critical path review, time impact<br>analysis                  | DBE               | E              | 16 Years       | ██████████               | 3 %                                     |
|                               |   |   |                   |                |                |                          |   |
|                               |   |   |                   |                |                |                          |   |

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

The undersigned will enter into a formal agreement with DBE contractors for work listed in this schedule upon execution of a contract **task order** with Capital Metro **under which the scope of services defined in the task order has opportunities to utilize a DBE firm listed above**. The contractor agrees to the terms of this schedule by signing below and submitting the Intent to Perform as completed by the DBE subcontractors. The contractor also certifies that no more than 70% of the work for this project will be subcontracted.

**Ben Martinez**

Digitally signed by Ben Martinez  
DN: cn=Ben Martinez, o=Modern Railway Systems,  
ou=Director of Business Development, cn=Ben Martinez  
Date: 2022.03.01 16:21:13 -0700

**3 - 1 - 2022**

Signature of Authorized Representative of Offeror

Date Signed

REQUIRED SUBMITTAL

CAPITAL METRO  
Intent to Perform as a DBE Contractor/ DBE Subcontractor  
RFP # 306944

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

1. TO: (name of Offeror/Prime Contractor) Modern Railway Systems
2. The undersigned is either currently certified under the Texas Unified Certification Program (TUCP) as a DBE or will be at the time this solicitation is due. The undersigned is prepared to perform the following described work with their own workforce and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both) Furnish / Install Track Material

and at the following price \$ N/A and/or 1 % of the total contract amount (should be the same \$ or % found on Schedule C).

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

Hafco Services Inc.  
(Name of DBE Firm)

[Signature]  
(Signature of Authorized Representative)

512-925-1193  
(Phone Number)

2/23/2022  
(Date Signed)

Modern Railway Systems  
(Name of Offeror/Prime Contractor)

Ben Martinez  
(Signature of Authorized Representative)

(720) 726-2420  
(Phone Number)

3-1-2022  
(Date Signed)



REQUIRED SUBMITTAL


**CAPITAL METRO**  
**Intent to Perform as a DBE Contractor/ DBE Subcontractor**  
**RFP # 306944**

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

1. TO: (name of Offeror/Prime Contractor) Modern Railway Systems
2. The undersigned is either currently certified under the Texas Unified Certification Program (TUCP) as a DBE or will be at the time this solicitation is due.  
The undersigned is prepared to perform the following described work with their own workforce and/or supply the material listed in connection with the above project  
(where applicable specify "supply" or "install" or both) Electrical Wire, Cable, Material Supply

and at the following price \$ N/A and/or 2.5 % of the total contract amount (should be the same \$ or % found on Schedule C).

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

|   |   |   |                                   |
|---|---|---|-----------------------------------|
| <u>Generation Cable Corp.</u><br>(Name of DBE Firm)                 | <br>(Signature of Authorized Representative) | <u>404-226-7884</u><br>(Phone Number)   | <u>2/23/2022</u><br>(Date Signed) |
| <u>Modern Railway Systems</u><br>(Name of Offeror/Prime Contractor) | <u>Ben Martinez</u><br>(Signature of Authorized Representative)   | <u>(720) 726-2420</u><br>(Phone Number) | <u>3-1-2022</u><br>(Date Signed)  |

Digitally signed by Ben Martinez  
DN: cn=Ben Martinez, o=Modern Railway Systems, ou=Director of Business Development, cn=Ben Martinez  
Date: 2022.03.01 16:21:43 -0700

REQUIRED SUBMITTAL

CAPITAL METRO  
Intent to Perform as a DBE Contractor/ DBE Subcontractor  
RFP # 306944

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

1. TO: (name of Offeror/Prime Contractor) Modern Railway Systems

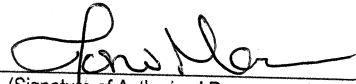
2. The undersigned is either currently certified under the Texas Unified Certification Program (TUCP) as a DBE or will be at the time this solicitation is due.

The undersigned is prepared to perform the following described work with their own workforce and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both) Install Signal System

and at the following price \$ N/A and/or 2.5 % of the total contract amount (should be the same \$ or % found on Schedule C).

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

McAllen Signal & Boring LLC.  
(Name of DBE Firm)

  
(Signature of Authorized Representative)

9510-662-9418  
(Phone Number)

2/23/2022  
(Date Signed)

Modern Railway Systems  
(Name of Offeror/Prime Contractor)

Ben Martinez  
(Signature of Authorized Representative)

Digitally signed by Ben Martinez  
DN: c=US, E=benmartinez@modernrailwaysystems.com, O=Modern Railway Systems, OU=Director of Business Development, CN=Ben Martinez  
Date: 2022.03.01 16:21:48-0700'

(720) 726-2420  
(Phone Number)

3-1-2022  
(Date Signed)

R E Q U I R E D   S U B M I T T A L

**CAPITAL METRO  
Intent to Perform as a DBE Contractor/ DBE Subcontractor  
RFP # 306944**

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

1. TO: (name of Offeror/Prime Contractor) Modern Railway Systems
2. The undersigned is either currently certified under the Texas Unified Certification Program (TUCP) as a DBE or will be at the time this solicitation is due.  
The undersigned is prepared to perform the following described work with their own workforce and/or supply the material listed in connection with the above project  
(where applicable specify "supply" or "install" or both) Supply- Personnel Staffing, administrative assistance

and at the following price \$ N/A and/or 1.5 % of the total contract amount (should be the same \$ or % found on Schedule C).

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

|   |  |  |  |
|---|--|--|--|
| <p>JLM Strategic Talent<br/>Partners</p> <hr/> <p>(Name of DBE Firm)</p>      | <p><i>Kenya Olorundi</i></p> <hr/> <p>(Signature of Authorized Representative)</p> | <p>8662408607 ext. 107</p> <hr/> <p>(Phone Number)</p> | <p>3/1/2022</p> <hr/> <p>(Date Signed)</p> |
| <p>Modern Railway Systems</p> <hr/> <p>(Name of Offeror/Prime Contractor)</p> | <p><b>Ben Martinez</b></p> <hr/> <p>(Signature of Authorized Representative)</p>   | <p>(720) 726-2420</p> <hr/> <p>(Phone Number)</p>      | <p>3/1/2022</p> <hr/> <p>(Date Signed)</p> |

REQUIRED SUBMITTAL

CAPITAL METRO
Intent to Perform as a DBE Contractor/ DBE Subcontractor
RFP # 306944

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

- 1. TO: (name of Offeror/Prime Contractor) Modern Railway Systems
2. The undersigned is either currently certified under the Texas Unified Certification Program (TUCP) as a DBE or will be at the time this solicitation is due. The undersigned is prepared to perform the following described work with their own workforce and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both) Traffic Control

and at the following price \$ N/A and/or .5 % of the total contract amount (should be the same \$ or % found on Schedule C).

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

Eagle Barricade (Name of DBE Firm) Brenda Chastain (Signature of Authorized Representative) 214-644-2444 (Phone Number) 02/22/2022 (Date Signed)
Modern Railway Systems (Name of Offeror/Prime Contractor) Ben Martinez (Signature of Authorized Representative) (720) 726-2420 (Phone Number) 3-1-2022 (Date Signed)

REQUIRED SUBMITTAL

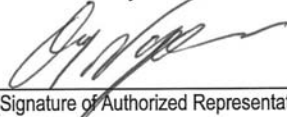
CAPITAL METRO  
Intent to Perform as a DBE Contractor/ DBE Subcontractor  
RFP # 306944

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

1. TO: (name of Offeror/Prime Contractor) Modern Railway Systems
2. The undersigned is either currently certified under the Texas Unified Certification Program (TUCP) as a DBE or will be at the time this solicitation is due. The undersigned is prepared to perform the following described work with their own workforce and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both) equipment procurement, scheduling, critical path review, time impact analysis

and at the following price \$ N/A and/or 3 % of the total contract amount (should be the same \$ or % found on Schedule C).

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

|   |   |   |                                   |
|---|---|---|-----------------------------------|
| <u>QN Management Solutions Inc.</u><br>(Name of DBE Firm)           | <br>(Signature of Authorized Representative) | <u>469-223-1010</u><br>(Phone Number)   | <u>2-22-2022</u><br>(Date Signed) |
| <u>Modern Railway Systems</u><br>(Name of Offeror/Prime Contractor) | <u>Ben Martinez</u><br>(Signature of Authorized Representative)   | <u>(720) 726-2420</u><br>(Phone Number) | <u>3-1-2022</u><br>(Date Signed)  |

**EXHIBIT E**  
**CONTRACTUAL TERMS AND CONDITIONS**  
**(DESIGN BUILD TASK ORDER CONTRACT)**

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**1. DEFINITIONS**

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

(a) “Applicable Anti-Corruption and Bribery Laws” means international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the Contractor’s provision of goods and/or services to Authority, including without limitation “FCPA” or any applicable laws and regulations, including in the jurisdiction in which Contractor operates and/or manufactures goods for the Authority, relating to anti-corruption and bribery.

(b) “Architect/Engineer” (A/E) means a person registered as an Architect pursuant to Tex. Occ. Code § 1051.001 et seq, as a Landscape Architect pursuant to Tex. Occ. Code § 1052.003 et seq, and/or a person licensed as a Professional Engineer pursuant to Tex. Occ. Code § 1001.001, et seq or firm employed to provide professional architectural or engineering services and having overall responsibility for the design of a Project or a significant portion thereof, if applicable.

(c) “As-Built Drawings” means drawings that show Construction of a particular structure or Work as actually completed under the Contract.

(d) “Authority,” “Capital Metro,” “Cap Metro,” “CMTA” means Capital Metropolitan Transportation Authority.

(e) “Authority Data” means all data, content and information (i) submitted by or on behalf of the Authority or its customers to the Contractor or loaded into the System, (ii) obtained, developed, produced or processed by the Contractor or by the Application or System in connection with the Contract, or (iii) to which the Contractor has access in connection with the Contract, and all derivative versions of such data, content and information, and any derivative versions thereof, in any form or format.

(f) “Authority Electronic Property” means (i) any websites controlled by the Authority, (ii) any Authority mobile device apps, (iii) any application programming interfaces (API) to the Authority’s information technology systems, (iv) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by the Authority, and (v) versions and successors of the foregoing, any form or format now known or later developed, that may be used by customers obtaining products or services from the Authority.

(g) “Bid” means the offer of the bidder, submitted on the prescribed form, stating prices for performing the Work described in the Plans and Specifications.

(h) “Bid Guarantee” or “Bid Bond” means a form of security assuring that the bidder will not withdraw a Bid within the bid acceptance period and will execute a contract and furnish required bonds and insurance within the time specified in the bid.

(i) “Change Order” means a written order to the Contractor signed by the Contracting Officer and the Architect/Engineer, if an Architect/Engineer is assigned to the Project, issued after execution of the Contract, authorizing a change in the term or scope of the Contract.

(j) “Construction” means the building, alteration, or repair (including dredging, excavating and painting) of structures, or other real property improvement.

- (k) "Contract" or "Contract Documents" means this written agreement between the parties comprised of all the documents listed in the Table of Contents and any emergency field orders, Change Orders and/or Contract Modifications that may be entered into by the parties.
- (l) "Contract Award Date" means the date of the Contract award notice, which may take the form of a purchase order, signed Contract or Notice of Award, issued by the Authority.
- (m) "Contract Modification" means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.
- (n) "Contract Sum" means the total compensation payable to the Contractor for performing the Work as originally contracted for or as subsequently adjusted by Contract Modification.
- (o) "Contract Term" means period of performance set forth in the paragraph entitled "Period of Performance" contained in Exhibit E.
- (p) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and finding on behalf of the Authority. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (q) "Contractor" or "Prime Contractor" means the entity that has assumed the legal obligation to perform the Work as identified in the Contract.
- (r) "Days" means calendar days. In computing any period of time established under this Contract, the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or State of Texas holiday, in which event the period shall run to the end of the next business day.
- (s) "Design Criteria Package" means the set of documents in Volume II of Request for Qualifications No. 306944, Request for Proposal No. 306944 and the Contract as well as the information provided in "Exhibit F" of the Contract that provide information regarding the intent, goals, criteria and objectives of the Project.
- (t) "FAR" means the Federal Acquisition Regulations codified in 48 C.F.R. Title 48.
- (u) "FCPA" means the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., as amended.
- (v) "Force Majeure Event" means strikes, lockouts, or other industrial disputes; explosions, epidemics, civil disturbances, acts of domestic or foreign terrorism, wars within the continental United States, riots or insurrections; embargos, natural disasters, including but not limited to landslides, earthquakes, floods or washouts; interruptions by government or court orders; declarations of emergencies by applicable federal, state or local authorities; and present or future orders of any regulatory body having proper jurisdiction.
- (w) "FTA" means the Federal Transit Administration.
- (x) "Fully Burdened Hourly Labor Rate" means an hourly rate that includes all salary, overhead costs, general and administrative expenses, and profit.
- (y) "Good Industry Practice" means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor, operator or maintenance provider seeking in good faith to comply with its contractual obligations, complying with all applicable laws and engaged in the same type of undertaking in the United States under similar circumstances and conditions.

(z) “Intellectual Property Rights” means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, software, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights, and any derivative works thereto; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

(aa) “Manufacturing Materials” mean any completed or partially completed supplies and materials, parts, dies, jigs, fixtures, Plans, drawings, information, and contract rights specifically produced or specially acquired by the Contractor for the performance of the Work.

(bb) “Minor Informality” or “Minor Irregularity” means immaterial defects or variations from the exact requirements of a solicitation that can be corrected or waived without prejudice to other bidders.

(cc) “Notice of Award” means formal notice of award of the Contract to Contractor issued by the Contracting Officer.

(dd) “Notice to Proceed” means written authorization for the Contractor to start the Work.

(ee) “Plans” and “Specifications” mean drawings, specifications, and other formal data that describes the Work to be performed if Plans and Specifications are required for the Work.

(ff) “Project” means the Work as defined by the Contract Documents.

(gg) “Project Manager” means the designated individual to act on behalf of Capital Metro, to monitor and certify the technical progress of the Contractor’s Work under the terms of this Contract.

(hh) “Services” means the services to be performed by the Contractor under this Contract, and includes services performed, workmanship, and supplies furnished or utilized in the performance of the Services, including all “professional services” as defined by Chapter 2254 of the Texas Government Code.

(ii) “Shop Drawings” means drawings describing in detail (1) the proposed fabrication and assembly of structural elements, (2) the installation (i.e., form, fit, and attachment details) of materials or equipment, (3) both, including drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the Work required by the Contract.

(jj) “Statement of Work” means the detailed scope of work set forth in “Exhibit F” of this Contract, and which may or not reference Plans and Specifications.

(kk) “Subcontract” means the contract between the Contractor and its Subcontractors.

(ll) “Subcontractor” means subcontractors of any tier.

(mm) “Substantial Completion” means that the Work is sufficiently complete, in accordance with the terms of this Contract, so that the Authority may use or occupy the Work, or Contractor’s designated portion of the overall Project, for the intended purpose, as determined by the Authority in its sole discretion.

(nn) “Work” means all labor, plant, materials, manufacture and fabrication of components, facilities, and all other things, which are required by the Statement of Work and/or the Plans and Specifications to be performed by the Contractor under this Contract.

(oo) “Work Site” means the location of the premises where the Work is being performed.



(pp) "Works" means any tangible or intangible items or things that have been or will be specifically, generated, prepared, created, or developed by the Contractor (or such third parties as the Contractor may be permitted to engage) at any time following the effective date of the Contract, for the exclusive use of, and ownership by, Authority under the Contract, including but not limited to any (i) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes but is not limited to manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object code, source code or other programming code, HTML code, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, and (vi) all documentation and materials related to any of the foregoing.

## **2. TYPE OF CONTRACT - INDEFINITE QUANTITY, INDEFINITE DELIVERY CONTRACT**

(a) This is an indefinite quantity, indefinite delivery contract for the supplies or services specified elsewhere in the Contract, and effective for the period stated in Section 3 of this Exhibit E.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Authority, when and if ordered, the supplies or services specified in the Exhibit F up to and including the quantity designated in (e) of this paragraph as the "maximum". The Authority shall order at least the quantity of supplies or services designated in Exhibit E of this paragraph as the "minimum".

(c) Except for any limitations on quantities in the Order Limitations clause, there is no limit on the number of order that may be issued. The Authority may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Authority's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after contract end date.

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

(1) Minimum order. The Authority will order a minimum of \$10,000 in Construction Services under this Contract. This minimum order amount shall apply to each contract awarded. The minimum order amount shall apply to the first year of the contract. Contractor is not guaranteed work in excess of the minimum guarantee specified herein.

(2) Maximum order. The Authority will order a maximum of a total not-to-exceed amount of \$6,000,000.

## **3. TERM**

The term of the Contract shall be Five (5) years from the Contract Award Date. No work shall be performed under this Contract prior to issuance of a written Task Order.

## **4. OPTION TO EXTEND CONTRACT TERM**

The Authority shall have the unilateral right and option to extend the Contract for up to (1) option period for a twelve (12) month duration at the option prices set forth in Exhibit A - Pricing Schedule upon written notice

to Contractor.

## **5. ADDITIONAL OPTION TO EXTEND CONTRACT PERFORMANCE**

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

## **6. ORDERING AND PRICING LIMITATIONS**

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

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

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

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

## **7. PERFORMANCE AND PAYMENT BONDS**

(a) **Performance Bond.** If the Task Order exceeds \$100,000.00, the Contractor shall provide a Performance Bond to ensure the faithful performance of all Contractor's obligations under the Contract Documents in an amount equal to the Contract Sum.

(b) **Payment Bond.** If the Task Order exceeds \$25,000.00, the Contractor shall provide a Payment Bond to guarantee the Subcontractors and material suppliers on the Project will be paid in an amount of the Contract Sum.

(c) The Contractor shall be required to submit all required bonds to the Contracting Officer within ten (10) days from the date of Contract Award Date. Upon receipt of the payment and/or performance bond, the Bid Guarantee, if applicable, shall be returned to the Contractor.

(d) Performance and Payment Bonds shall be issued in an amount of one hundred percent (100%) of the Contract Sum by a surety company listed in the latest United States Treasury Department Circular 570, be authorized to do business in Texas and have an underwriting limitation equal to or greater than the penal sum of the bond. If any surety upon any bond furnished in connection with the Contract becomes insolvent, or otherwise not authorized to do business in the State, the Contractor shall promptly furnish equivalent security to protect the interest of the Authority and of persons supplying labor, materials and/or equipment in the prosecution of the Work.

(e) Each bond shall be accompanied by a valid Power-of-Attorney, issued by the surety company and attached, signed and sealed, with the corporate embossed seal, to the bond, authorizing the agent who

signs the bond to commit the surety company to the terms of the bond, and stating on the face of the Power-of-Attorney the limit, if any, in the total amount for which he/she is empowered to issue a single bond.

(f) A surety bond rider increasing the dollar amount of any payment and performance bond will be required for any Change Order that increases the Contract Sum.

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

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

(h) Any performance bond submitted to the Authority in connection with this Contract shall remain in effect until the expiration of any warranty period.

## **8. INSURANCE**

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

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

### CAPITAL METRO MINIMUM COVERAGE REQUIREMENTS

#### Comprehensive General Liability Insurance:

(1) **Comprehensive General Liability** Insurance coverage with limits of not less than One Million Dollars and No/100 Dollars (\$1,000,000) with an aggregate of Two Million Dollars and No/100 Dollars (\$2,000,000) with coverage that includes:

- Products and Completed Operations Liability
- Independent contractors
- Personal Injury Liability extended to claims arising from employees of Contractor and the Authority.
- Contractual Liability pertaining to the liabilities assumed in the agreement.

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

Workers' Compensation Insurance

(3) **Statutory Workers' Compensation** coverage providing statutory limits in accordance with the Texas Workers' Compensation Act and/or other State or Federal law as may be applicable to the Services being performed under this Contract.

(4) Employers Liability Insurance with minimum limits of liability of One Million Dollars\_ and No/100 Dollars (\$1,000,000)

Other Insurance:

(5) **Railroad Protective** Liability coverage with limits not less than Five Million Dollars and No/100 Dollars (\$5,000,000).

(6) **Builders Risk/Equipment Installation Insurance** covering the full value of equipment being installed. Insurance should provide coverage for all peril and provide Replacement Cost for the equipment in the event of a loss.

(7) **Professional Liability Insurance** covering negligent acts, errors and omissions arising from the Contractor's work and the Services to pay damages for which the Contractor may become legally obligated. Minimum limits of liability shall be not less than One Million Dollars and No/100 Dollars (\$1,000,000) on an annual aggregate basis.

(8) **Technology Error's & Omissions Insurance:** Combined Technology & Omissions Policy with a minimum One Million and No/100 Dollars (\$1,000,000) claim limit, including (a) Professional Liability Insurance covering negligent acts, errors and omissions arising from the Contractor's work to pay damages for which the Contractor may become legally obligated (such coverage to be maintained for at least two (2) years after termination of this contract, which obligation shall expressly survive termination of this contract; and (b) Privacy, Security and Media Liability Insurance providing liability for unauthorized access or disclosure, security breaches or system attacks.

(9) All policies shall include coverage for Terrorism.

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

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

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

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

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

(g) All insurance required to be maintained or provided by the Contractor shall be with companies and through policies approved by the Authority. The Authority reserves the right to inspect in person, prior to the commencement of the Contract work or the Services, all of the Contractor's insurance policies required under this Contract.

(h) If the Contractor has procured insurance at the time of the Contractor's submission of the Contractor's bid, proof of the required insurance should be submitted with the Contractor's bid or proposal. Alternatively, the Contractor is requested to submit evidence of a commitment from an insurance company or companies, or a duly licensed agent, that the Contractor has made arrangements for the required insurance. If the bid or proposal is considered for award, and the Contractor has not previously furnished either the proof of insurance or evidence of commitment, the Contractor will be required to provide proof of the insurance or evidence of a commitment within five (5) days of request. If the Contractor is awarded the bid, and has submitted evidence of commitment rather than proof of the required insurance, the Contractor must furnish proof of the required insurance within five (5) days of the award of the contract. The Certificate of Insurance must indicate the Contract number and description. The insurance certificate should be furnished to the attention of the Contracting Officer.

(i) The Contractor and its lower tier Subcontractors are required to cooperate with the Authority and report all potential claims (workers' compensation, general liability and automobile liability) pertaining to this Contract to the Authority's Risk Management Department at (512) 389-7549 within two (2) days of the incident.

## **9. DESIGN CRITERIA PACKAGE AND PLANS AND SPECIFICATIONS**

(a) The Contractor shall perform the Work in accordance with the Design Criteria Package and the Plans and Specifications. The Contractor shall keep on the Work Site a copy of the building permit and Plans and Specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the Specifications and not shown on the drawings, or shown on the drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and Specifications, the Specifications shall govern. In case of a discrepancy in the figures, in the drawings, or in the Specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Absent such submission, the most restrictive, greatest quantity, or highest standard shall govern. Any action or adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the Specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of the Contracting Officer is intended; and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this Contract unless stated otherwise.

The word "provided" as used herein shall be understood to mean, "provide complete in place" (that is, "furnished and installed").

(d) If this Contract requires Shop Drawings, the Contractor shall coordinate all such drawings and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop Drawings submitted to the Authority without evidence of the Contractor's approval may be returned for re-submission. The Authority will indicate an approval or disapproval of the Shop Drawings and, if not approved as submitted, shall indicate the Authority's reasons therefor. Any Work done before such approval shall be at the Contractor's risk. Approval by the Authority shall not relieve the Contractor from responsibility for any errors or omissions in such drawings or from responsibility for complying with the requirements of this Contract, except with respect to variations described and approved in accordance with subparagraph (i) below.

(e) If Shop Drawings show variations from the Contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Authority approves any such variation, the Contracting Officer shall issue an appropriate Contract Modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(f) The Contractor shall submit to the Authority for approval four (4) copies and an electronic copy (unless otherwise indicated) of all Shop Drawings as called for under the various headings of the Specifications. Three (3) sets (unless otherwise indicated) of all Shop Drawings will be retained by the Authority, and one set will be returned to the Contractor.

(g) The Contractor will be furnished, free of charge, five (5) complete sets of the Contract Drawings and Specifications. The Authority may duplicate, use, and disclose in any manner and for any purpose Shop Drawings delivered under this Contract.

(h) All [Design Criteria Package materials and Plans](#) and/or Specifications and copies thereof furnished by the Authority are, and shall remain, the Authority's property.

(i) Should the Shop Drawings disagree one with another, or with the Specifications, the better quality or greater quantity of Work or materials shall be performed or furnished. Figures given on Shop Drawings govern small scale drawings.

(j) The "Scope of Work," where applicable, placed in the front part of each paragraph of the Specifications, is intended to designate the scope and locations of all items of the Work included therein, either generally or specifically. It is not intended to limit the Scope of Work should Plans, Schedules or notes indicate an increased scope. Inadvertent omission of an item from its proper paragraph of the Specifications and its inclusion in another paragraph shall not relieve the Contractor of responsibilities for the item specified.

(k) The provisions of this Paragraph "Design Criteria Package and Plans and Specifications" shall be included in all Subcontracts at any tier.

## **10. PERFORMANCE OF WORK BY THE CONTRACTOR**

(a) Except as otherwise provided herein, the Contractor shall perform no less than thirty percent (30%) of the Work with its own organization. The on-site production of materials produced by other than the Contractor's forces shall be considered as being subcontracted. If, during the progress of Work hereunder, the Contractor requests a reduction in such performance percentage and the Authority determines that it would be to the Authority's advantage, the percentage of the Work required to be performed by the Contractor may be reduced; provided, written approval of such reduction is obtained by the Contractor from the Authority.

(b) The organization of the Specifications into divisions, paragraphs, and articles, and the arrangement

and titles of Project drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

#### **11. INDEPENDENT CONTRACTOR**

The Contractor's relationship to the Authority in the performance of this Contract is that of an independent contractor. The personnel performing the Services or Work under this Contract shall at all times be under the Contractor's exclusive direction and control and shall be employees of the Contractor and not employees of the Authority. The Contractor shall be fully liable for all acts and omissions of its employees, Subcontractors, and their suppliers and shall be specifically responsible for sufficient supervision and inspection to assure compliance in every respect with Contract requirements. There shall be no contractual relationship between any Subcontractor or supplier of the Contractor and the Authority by virtue of this Contract. The Contractor shall pay wages, salaries and other amounts due its employees in connection with this Contract and shall be responsible for all reports and obligations respecting them, such as Social Security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

#### **12. COMPOSITION OF CONTRACTOR**

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

#### **13. SUBCONTRACTORS AND OUTSIDE CONSULTANTS**

Any Subcontractors and outside associates or consultants required by the Contractor in connection with the Services or the Work covered by the Contract will be limited to such individuals or firms as were specifically identified and agreed to by the Authority in connection with the award of this Contract. Any substitution in such Subcontractors, associates, or consultants will be subject to the prior approval of the Authority.

#### **14. INTELLECTUAL PROPERTY; DATA PRIVACY PROVISIONS**

(a) Ownership of Instruments of Services and Intellectual Property Rights. Unless otherwise specified in otherwise in this Contract, the Authority shall own all instruments of service including without limitation architectural plans, technical drawings, specifications, layouts, surveys, and design plans and drawings (including concept designs, development plans, schematic designs, site plans, elevation plans, engineer plans, shop drawings, and specifications), models, machetes, BIM and CAD files, cost estimates, fabrications, presentations, bill of materials, samples, construction documents and works of authorship conceived or created by the Contractor and its subcontractors and their respective architects, engineers, personnel and employees (each an "**Architect**") in connection with the Project, together with all intellectual property rights, including without limitation trade secrets and copyrights, related to any of the foregoing, in any and all media whether now known or hereafter developed, from the date of inception or creation (collectively, the "**Instruments of Service**"). The Contractor acknowledges that all Instruments of Service shall be considered "works made for hire" under applicable copyright law to the greatest extent possible. To perfect the Authority's ownership of such Instruments of Service, the Contractor and each Architect irrevocably and unconditionally assigns, transfers and conveys to the Authority any and all right, title and interest that they may have or acquire in such Instruments of Service, including without limitation the right to modify such Instruments of Service, and all proceeds related thereto, without accounting to the Contractor or each Architect. The Contractor and each Architect may retain a reasonable number of sets of reproducible copies of the Instruments of Service and such copies shall be for use as part of their respective architectural portfolios or as otherwise may be required to provide services on the Project pursuant to this Contract. The Contractor and each Architect agrees not to challenge at any time, directly or indirectly, the Instruments of Service or any derivative work or improvement thereof and any intellectual property rights including copyrights in the Instruments of Service owned by the Authority or the validity thereof. The Contractor, upon request and without further consideration, shall perform any acts that may be deemed necessary or desirable by the Authority to evidence more fully the transfer of ownership of all

Instruments of Service to the Authority to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by the Authority. In the event the Authority shall be unable for any reason to obtain the Contractor's or each Architect's signature on any document necessary for any purpose set forth in the foregoing sentence, the Contractor and each Architect irrevocably designates and appoints the Authority and its duly authorized officers and agents as the Contractor's and each Architect's agent and the Contractor's and each Architect's attorney-in-fact to act for and in their behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by the Contractor and each Architect. Upon the request of the Authority, but in any event upon termination of this Contract, the Contractor and each Architect shall surrender to the Authority a complete builders set of the Instruments of Service and all documents and things pertaining to the Instruments of Service, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) in their possession or control. Nothing in this Contract shall be construed to convey or grant any right to use any documentation, plans or intellectual property rights owned by the Authority to the Contractor or each Architect, except as necessary or required to perform the services on the Project or other expressly agreed upon in writing by the Authority.

(b) The Contractor and each Architect retains the right to reuse general design elements and standard details contained in the Instruments of Services and any pre-existing technical drawings, layouts and design plans owned or licensed by the Contractor incorporated into the Instruments of Service to the extent specifically identified in writing by the Parties (the "**Pre-Existing Plans**"), together with the copyrights related to any of the foregoing. The Contractor and each Architect irrevocably and unconditionally grants to the Authority under and to the extent of its copyrights a non-exclusive, royalty-free, fully paid, worldwide and transferrable right and license (with the right to sublicense) to copy, distribute, publicly display, use and create derivative works of the Pre-Existing Plans in connection with the use or exercise of the rights in and to the Instruments of Service, including the design, construction, operation and maintenance of the Project and any construction projects using the Instruments of Service undertaken by or for the Authority. The foregoing rights set forth in this Section 14(b) shall be collectively referred to as the "License." The Authority will identify the Pre-Existing Plans as pre-existing materials in any application for copyright or claim of copyright ownership in the Instruments of Service. Submission or distribution of Instruments of Service and/or the Pre-Existing Plans to meet official regulatory requirements or for similar purposes in connection with the Project or any construction project undertaken by or for the Authority is not to be construed as publication in derogation of the reserved rights of the Contractor and each Architect.

(c) The Contractor and each Architect grants to the Authority the right to use their respective name and/or trade name for attribution as the design architect of the Project in conjunction with any signage, advertisements, publications, public announcements, promotional materials and marketing related to the Project. Each Architect may instruct the Authority to cease use of, and remove his or her name from, any signage or promotional materials attributing the Architect as design architect for the Project if he or she believes that any distortion, mutilation or other material and substantial modification will be prejudicial to their honor or reputation. Without limiting any of the foregoing, the Contractor and each Architect expressly permits the Authority to authorize other similarly credentialed design professionals to reproduce and, where required by law, to make changes, corrections, public disclosures, additions and create derivative works to the Instruments of Services and/or the Pre-Existing Plans for purposes of completing, using, obtaining permits or other legal requirements and maintaining the Project or any other construction projects using the Instruments of Services undertaken by or for the Authority. The Contractor and each Architect irrevocably and unconditionally releases the Authority and its authorized representatives, contractors and licensees from any claims, demands, causes of action, suits, damages or losses, arising from or attributable to any improper modification to or reuse for other projects by or for the Authority of the Instruments of Service and the Pre-Existing Plan prepared by the Contractor and each Architect. Except as specifically provided in this Section 14, the Contractor and each Architect irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Instruments of Service and the Pre-Existing Plans which the Contractor and each Architect may now have or which may accrue to their respective benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of



paternity or integrity of the Instruments of Service and the Pre-Existing Plans and the right to object to any modification, translation or use of the Instruments of Services and the Pre-Existing Plans, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a Moral Right.

(d) The Contractor and each Architect represents and warrants to the Authority that (i) the Instruments of Service and the Pre-Existing Plans are original to the Contractor and each Architect and that the Authority's use of the Instruments of Service and the Pre-Existing Plans, as contemplated under this Contract, will not violate, misappropriate or infringe upon the intellectual property rights (including copyrights) of any other person or entity, and no third party materials will be incorporated or included in the Instruments of Service without the Authority's prior written consent, and (ii) each Architect shall prepare the Instruments of Service consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances, and in accordance with laws, codes, rules, and standards applicable for the location of the Project. THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD THE AUTHORITY HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, REGULATORY PROCEEDINGS AND/OR CAUSES OF ACTION, AND ALL LOSSES, DAMAGES, AND COSTS (INCLUDING ATTORNEYS' FEES AND SETTLEMENT COSTS) ARISING FROM OR RELATING TO, DIRECTLY OR INDIRECTLY, ANY CLAIM OR ASSERTION BY AN ARCHITECT OR ANY THIRD PARTY RELATING TO THE INSTRUMENTS OF SERVICE AND/OR THE PRE-EXISTING PLANS.

(e) The Contractor and its subcontractors and their respective employees and personnel may have access to the Authority Data (including without limitation, personally identifiable information ("PII")) in connection with the performance of the Contract. PII shall be any information that identifies or describes a person or can be directly linked to a specific individual, including ridership and usage data. Examples of PII include, but are not limited to, name, address, phone or fax number, signature, date of birth, e-mail address, method of payment, ridership and travel pattern data. Customer Personally Identifiable Information, or Customer PII, means any PII relating to the Authority's customers. To the extent any Authority Data (including PII) is made available to the Contractor under the Contract, the Contractor shall take reasonable steps maintain the confidentiality, security, safety, and integrity of all PII and other Authority Data in accordance with the Authority's Proprietary Rights and Data Security Addendum, which will be attached as an addendum to the Contract, as applicable.

(f) The Contractor and its subcontractors, employees and consultants may have require access to the Authority Electronic Property and related Authority Data in connection with the performance of services under the Contract. In such event, the Contractor agrees that it will, and it will cause its subcontractors and any of their respective employees and personnel to execute the Authority's Access and Use Agreement, which will be attached as an addendum to the Contract, as applicable.

## **15. STANDARD OF PERFORMANCE**

(a) The Contractor shall supervise and direct the Work using its best skills and attention in accordance with Good Industry Practice.

(b) The Contractor shall be solely responsible for all Construction means, methods, techniques, safety, sequences and procedures, and for coordinating all portions of the Work under the Contract.

## **16. PERSONNEL ASSIGNMENTS**

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

(b) The Contractor certifies that the Contractor, and each Subcontractor, have established a criminal history background policy that complies with guidance issued by the U.S. Equal Employment Opportunity Commission and that the Contractor and each Subcontractor conducts criminal history checks on its

assigned personnel in accordance with such policy to identify, hire and assign personnel to work on this Contract whose criminal backgrounds are appropriate for the Services or the Work being performed, considering the risk and liability to the Contractor and the Authority. The Authority reserves the right to require the Contractor and any Subcontractor to disclose any criminal or military criminal convictions of assigned personnel and the right to disapprove the use of assigned personnel with criminal or military convictions.

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

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

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

(3) **National Sex Offender Registry.**

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

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

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

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

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

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

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

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

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

(16) The person's statement of the circumstances surrounding the offense and conviction and relevant factors is consistent with publicly available record related to the crime and conviction; and

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

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

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

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

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

#### **17. REMOVAL OF ASSIGNED PERSONNEL**

The Authority may require, in writing, that the Contractor remove from the Services and the Work any employee or Subcontractor of Contractor that the Authority deems inappropriate for the assignment.

#### **18. BADGES AND ACCESS CONTROL DEVICES**

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

(b) Access Control Devices will be issued to employees of Contractor and to each Subcontractor of any tier and any worker working on behalf of Subcontractor as necessary to perform the Services or the Work.

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

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

## **19. SUBCONTRACTORS**

(a) In addition to any other requirements under this Contract for the submission of any Subcontract agreement, the Contractor shall provide upon request to the Contracting Officer one (1) copy of all executed Subcontracts associated with this Contract, including any changes or modifications to Subcontracts, within three (3) days of their execution.

(b) No Subcontractor shall be permitted to perform work associated with the Subcontract until the Subcontractor (or the Contractor on the Subcontractor's behalf) is in compliance with the insurance requirements specified elsewhere in this Contract, and has furnished satisfactory evidence of insurance to the Authority.

(c) It is expressly understood and agreed that Contractor shall be liable for any default or failure to perform any provision of this Contract by any Subcontractor engaged by Contractor except for Force Majeure Events.

## **20. ADMINISTRATIVE CONTROL OF DOCUMENTS**

All correspondence related to this Contract shall refer to the Contract number identified on the cover sheet of this Contract. Correspondence shall be addressed to the appropriate Authority representative, and if it is addressed to any other individual other than the Contracting Officer, the Contractor shall also provide a copy of the correspondence to the Contracting Officer.

## **21. WORK SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK**

(a) By submission of a bid, the Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work Site and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including, but not limited to,

- (1) conditions bearing upon transportation, disposal, handling, and storage of materials;
- (2) the availability of labor, water, electric power, and roads;
- (3) uncertainties of weather, flooding patterns and water drainage, or similar physical conditions at the site;
- (4) the conformation and conditions of the ground; and
- (5) the character of equipment and facilities needed preliminary to and during work performance.

(b) The Contractor acknowledges that its undertaking to complete the Contract within the Contract Term includes an allowance for the number of days in which Contract work may be partially or totally delayed because of weather and at the location the Contract will be performed and that the Contractor shall not be entitled to excusable delays or compensation for such delays. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Work Site, access to the Work Site, and territory surrounding the Work Site, including any exploratory work done by the Authority as well as from the drawings and Specifications made a part of this Contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work or for proceeding to perform the Work successfully without additional expense to the Authority.

(c) The Authority assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Authority, nor does the Authority assume responsibility for any understanding reached or representation made concerning conditions, which can affect the Work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

(d) Weather conditions shall be considered and included in the planning and scheduling of all work influenced by high and low ambient temperatures, precipitation and/or saturates soil ensure completion of all Work within the Contract Time based on the average climatic conditions for the preceding ten (10) years as published by the National Oceanographic and Atmospheric Administration (“NOAA”) and entitled, “Local Climatological Data – Austin/Central, Texas.”

## **22. LAYOUT OF WORK**

The Contractor shall lay out its work from Authority-established base lines and benchmarks indicated on the Design Criteria Package and the Plans and Specifications, as applicable, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. The Contractor shall be responsible for executing the Work to the lines and grades that may be established or indicated by the Project Manager. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Project Manager until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Authority may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

## **23. PROTECTION OF AUTHORITY PROPERTY**

(a) The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on or about premises owned by, or under the control of, the Authority. If the Contractor causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Authority as the Contracting Officer directs. If the Authority directs that the Contractor make the repair and Contractor fails or refuses to promptly make such repair or replacement, the Contractor shall be liable to the Authority for the cost, plus an administrative fee of ten percent (10%), which may be deducted from any invoice due and owing Contractor. If the Authority elects to make such repair or replacement, then the Contractor shall be liable for the cost, plus an administrative fee of ten percent (10%), which may be deducted from any invoice due and owing to the Contractor or on demand if the Contract is terminated. This provision shall survive termination of the Contract.

(b) The Contractor also shall be responsible for all materials delivered and work performed until completion and acceptance of the entire Work, except by any completed unit of Work that may have been accepted by the Authority under the Contract.

**24. PROTECTION OF EXISTING SITE CONDITIONS**

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the Work Site which are not to be removed and which do not unreasonably interfere with the Work required under this Contract. The Contractor shall promptly remove trees only when specifically authorized to do so and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during Contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the Work Site and (2) on adjacent property of a third party.

(c) If Contractor damages any such existing improvements or utilities, the Contractor shall promptly repair the damage at no expense to the Authority as the Contracting Officer directs. If the Authority directs that the Contractor make the repair and the Contractor fails or refuses to promptly make such repair, the Authority may make the repair and the Contractor shall be liable to the Authority for the cost, plus an administrative fee of ten (10%) percent, which may be deducted from any amounts due and owing Contractor or on demand if the Contract is terminated. If the Authority elects to make such repair or replacement, then the Contractor shall be liable to the Authority for the cost of such repair(s), plus an administrative fee of ten (10%) percent, which may be deducted from any invoice due and owing Contractor or on demand if the Contract is terminated.

(d) This provision shall survive the termination of the Contract.

**25. WORK BY THE AUTHORITY; OTHER CONTRACTS**

(a) The Authority may undertake, or award other contracts for, additional work at or near the Work Site. The Contractor shall fully cooperate with the other contractors and with employees of the Authority and shall carefully adapt scheduling and performing the Work under this Contract to accommodate the additional work, heeding any direction that may be provided by the Authority.

(b) The Contractor shall afford the Authority and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with their as required by the Contract Documents.

(c) If part of the Contractor's Work depends for proper execution or results upon the design, construction or operations by the Authority or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work promptly report to the Authority apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgement that the Authority's or separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not reasonably discoverable.

(d) The Authority shall be reimbursed by the Contractor for costs incurred by the Authority which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Authority shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the work or defective construction of a separate contractor.

(e) The Contractor shall promptly remedy damage caused by the Contractor to completed or partially completed construction or to property of the Authority or separate contractors.

## **26. CONSTRUCTION SCHEDULE**

(a) Promptly after Contract award, the Contractor shall meet with the Contracting Officer to discuss Project scheduling and, at that meeting, shall submit a schedule showing the order in which the Contractor proposes to perform the Work and the dates on which the Contractor contemplates starting and completing the several milestone tasks of the Work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a network analysis of suitable scale to indicate appropriately the percentage of the Contractor's work breakdown schedule which will be completed by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the schedule as directed by the Contracting Officer and, upon doing so, immediately shall deliver a copy of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Authority. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this paragraph shall be grounds for a determination by the Contracting Officer that the Contractor is not performing the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the Work, or any separable part thereof and/or pursue default remedies under this Contract.

## **27. OPERATIONS AND STORAGE AREAS**

(a) The Contractor shall confine all operations (including storage of materials) on the Worksite to areas authorized or approved by the Contracting Officer.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Authority. The temporary buildings and utilities shall remain the property of the Contractor and shall be promptly removed by the Contractor at its expense upon completion of the Work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in performing the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation.

(d) When it is necessary to cross curbs or sidewalks, the Contractor shall protect the materials from damage. The Contractor shall promptly repair any damaged curbs, sidewalks, or roads at its sole cost, as the Contractor Officer directs or the Authority may elect to make the repairs, at Contractor's expense. If the Contractor fails to promptly make such repair or replacement or if the Authority elects to make such repair or replacement, then the Contractor shall be liable to the Authority for the cost of such repair(s), plus an administrative fee of ten percent (10%), which may be deducted from any invoice due and owing Contractor or on demand if the Contract is terminated. This provision shall survive termination of the Contract.

## **28. DIFFERING WORK SITE CONDITIONS**

(a) Pursuant to Paragraph entitled "Work Site Investigation and Conditions Affecting the Work," the



Contractor acknowledge that it had inspected the Work Site and satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered while performing the Work insofar as this information is reasonably ascertainable from an inspection of the Work Site. If the Contract encounters differing Work Site conditions from those identified under Paragraph entitled "Work Site Investigation and Conditions Affecting the Work," the Contractor shall within five (5) days, and before the conditions are disturbed, give written notice to the Contracting Officer of one (1) subsurface or latent physical conditions at the Work Site, which differ materially from those ascertainable from an inspection of the Work Site under Paragraph entitled "Work Site Investigations and Conditions Affecting the Work," or (2) unknown physical conditions at the Work Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract.

(b) The Project Manager shall investigate the Work Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made and the Contract modified in writing provided the Contractor complies with Paragraph entitled "Equitable Adjustments."

(c) No request by the Contractor for an equitable adjustment to the Contract under this subparagraph shall be allowed unless the Contractor has given the written notice required; provided, that the time prescribed in (a), above, for giving written notice may be extended by the Contracting Officer in his or her discretion

(d) No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

## **29. LICENSES AND PERMITS**

Unless the applicable law requires the Authority to be responsible for the costs and risks for regulatory permitting, the Contractor shall, without additional expense to the Authority, be responsible for obtaining any and all necessary licenses and permits and for complying with any federal, state, county, and municipal laws, codes, and regulations applicable to the performance of the Services and the Work, including, but not limited to, any laws or regulations requiring the use of licensed contractors or subcontractors to perform parts of the Services or the Work.

## **30. SUPERINTENDENCE BY CONTRACTOR**

At all times during performance of this Contract and until the Work is completed and accepted, the Contractor shall directly superintend the Work or assign and have on the Work a competent superintendent. The superintendent shall be in attendance at the Project site during the progress of the Work. The superintendent shall be competent and satisfactory to the Authority and shall not be changed except with the written approval of the Authority unless he or she leaves the employment of the Contractor. The superintendent shall represent the Contractor and shall have full authority to act on Contractor's behalf. All communications given to the superintendent shall be as binding as if given to the Contractor. All oral communications affecting Contract time, cost, and interpretation will be confirmed in writing.

## **31. CONTRACTOR CONTACT/AUTHORITY DESIGNEE**

The Contractor shall provide the Authority with a telephone number to ensure immediate communication with a person (not a recording) anytime during Contract performance. Similarly, the Authority shall designate an Authority representative who shall be similarly available to the Contractor.

## **32. MATERIAL AND WORKMANSHIP**

(a) All equipment, material, and articles incorporated into the Work covered by this Contract shall be new and of the most suitable grade for the purpose intended unless otherwise specifically provided in the [Design](#)

Criteria Package, the Plans and Specifications, or this Contract. References in the Specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer is equal to that named in the Specifications, unless otherwise specifically provided in this Contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the Work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this Contract or by the Contracting Officer, the Contractor also shall obtain the Contracting Officer's approval of the material or articles, which the Contractor contemplates incorporating into the Work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this Contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the Work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

### **33. USE AND POSSESSION PRIOR TO COMPLETION**

(a) The Authority shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any completed or partially completed Work, the Contracting Officer shall furnish the Contractor a list of items of Work remaining to be performed or corrected on those portions of the Work that the Authority intends to take possession of or use. However, failure of the Contracting Officer to list any item of Work shall not relieve the Contractor of responsibility for complying with the terms of the Contract. The Authority's possession or use shall not be deemed an acceptance of any Work under the Contract.

(b) While the Authority has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from the Authority's possession or use, notwithstanding the terms of Exhibit E, Paragraph entitled "Permits." If prior possession or use by the Authority delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment shall be made in the Contract Sum or the time of completion, and the Contract shall be modified in writing accordingly.

### **34. CONDITION OF THE WORK SITE**

The Contractor shall at all times keep the Work Site, including storage areas, free from accumulations of waste materials. Before completing the Work, the Contractor shall remove from the Work any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Authority. Upon completing the Work, the Contractor shall leave the Work Site in a clean, neat, and orderly condition satisfactory to the Contracting Officer. If Contractor fails to do so, the Authority may withhold payment of the final invoice until such Work is completed.

### **35. TITLE TO SUBMITTALS**

All information, drawings, or other submittals required to be furnished by the Contractor to the Authority under this Contract shall become the property of the Authority.

### **36. ACCIDENT PREVENTION**

(a) In performing this Contract, the Contractor shall provide for protecting the lives and health of employees and other persons; preventing damage to property, materials, supplies, and equipment; and avoiding work interruptions. For these purposes, the Contractor shall: (1) provide appropriate safety barricades, signs, and signal lights; (2) comply with all safety standards required by federal, state, or local law and any additional standards customarily employed in connection with the type of work being performed or the conditions at the Work Site.

(b) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the Work Site, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to Work performed under this Contract resulting in death, traumatic/acute injury, occupational disease, or damage to property, materials, supplies or equipment. Such data shall be submitted to the Authority; provided, however, in the event of accidents resulting a death or multiple severe injuries, any such accident shall be reported to the Contractor Officer within twenty-four (24) hours of such accident.

(d) The Contractor shall be responsible for its Subcontractors' compliance with this paragraph.

### **37. SUSPENSION OF WORK OR SERVICES**

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

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

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

### **38. AUTHORITY'S RIGHT TO CARRY OUT WORK**

(a) If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Authority to commence and continue correction of such default or neglect with diligence and promptness, the Authority may, without

prejudice to other remedies the Authority may have, correct such deficiencies. In such case, an appropriate adjustment shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including the Authority's expenses and compensation for the A/E additional services made necessary by such default. If payments due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Authority.

(b) After the Work is completed, the Authority may make emergency repairs to the Work if necessary to prevent further damage of if the Contractor does not promptly respond to a notice of a condition requiring repairs. The Contractor shall be responsible to the Authority for this cost if the reason for the repairs is defects in the Contractor's Work. If payments then or thereafter due the Contractor are not sufficient to cover such costs, the Contractor shall pay the difference to the Authority.

### **39. CHANGE ORDER ACCOUNTING**

In the event that an equitable adjustment under the Paragraph entitled "Changes" cannot be agreed to in a timely manner, the Contracting Officer may issue a Change Order and require Change Order accounting. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred, segregable, direct costs (less allocable credits) of Work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an adjustment for the changes ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with Paragraph entitled "Interpretation of Contract – Disputes."

### **40. WARRANTY**

(a) Contractor warrants that the Work shall be free of patent and latent defects in design, materials, equipment, and workmanship, as measured from the requirements, criteria, Design Criteria Package and Plans and Specifications set forth in the Contract. A defect shall be considered latent only if it is not known or disclosed to the Authority prior to Substantial Completion, of the overall Work, and such defect would not normally be discovered upon reasonable inspection and investigation in accordance with Good Industry Practice during the course of design and Construction and prior to the completion of the Work. This limited warranty also does not apply to and the Contractor shall not be responsible for, repair or replacement Work needed as a result of: (a) normal wear and tear; (b) defect caused by damage; or (c) failure by Authority to maintain, repair, or operate the Work Site in accordance with Good Industry Practice, to the extent the defect is caused by same.

(b) Contractor shall correct all Construction and material defects and deficiencies (other than latent defects and deficiencies which are discussed below) which may develop within the applicable of (i) a period of one (1) year from the date when all of the Work is completed and accepted by the Authority, or (ii) such longer period for any component of the Work which may be specified in the Contract Documents, or (iii) any warranty period which may be longer than the periods specified in (i) and (ii) above as provided in any specific warranty for such item. Nothing set forth above or otherwise in this Contract shall restrict in any way or operate as any limitation on the right of Authority to seek damages or other remedies against Contractor for any other period under any legal or equitable theory with respect to any defects and deficiencies which are latent in nature and not readily ascertainable in the ordinary course of observation, subject, however, to any limitations imposed under governing law.

(c) Contractor shall, within fifteen (15) days after receipt of written notice hereof, commence to correct, repair and make good any defects in the Work for which said materials, equipment and workmanship are warranted, and also make good any damage to other work caused by the repairing of such defects. Contractor warrants to the Authority that such Work will be performed in a safe and careful manner and will conform to the requirements of the Contract Documents. None of the work performed in correcting such defects shall be the basis of a claim for additional compensation or damages.

(d) The Contractor shall issue in writing to the Authority as a condition precedent to final payment a "General Warranty" reflecting terms and conditions of this paragraph for all work under the Contract. This

warranty shall specifically provide that all defects in materials and workmanship appearing during the warranty period shall be remedied to the satisfaction of the Authority at no additional cost to the Authority.

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

#### **41. INSPECTION AND TESTING OF WORK**

(a) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work conforms to Contract requirements. The Contractor shall maintain complete inspection records and make them available to the Authority immediately upon request. All Work is subject to inspection and testing by the Authority at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.

(b) Inspections and tests by the Authority are for the sole benefit of the Authority and do not:

- (1) relieve the Contractor of responsibility for providing adequate quality control measures;
- (1) relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
- (2) constitute or imply acceptance; or
- (3) affect the continuing rights of the Authority after acceptance of the completed Work.

(c) The presence or absence of an inspector from the Authority does not relieve the Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the Specifications without the Contracting Officer's written authorization.

(d) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Authority may charge to the Contractor any additional cost of inspection or test when Work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. The Authority may perform any inspections or tests in a manner that will not unnecessarily delay the Work.

(e) The Contractor shall, without charge, replace or correct Work found by the Authority not to conform to Contract requirements, unless in the public interest the Authority consents to accept the Work with an appropriate downward adjustment in Contract Sum. The Contractor shall promptly segregate and remove rejected material from the Work Site.

(f) If the Contractor does not promptly replace or correct rejected Work, the Authority may:

- (1) by Contract or otherwise, replace or correct the Work and charge the cost to the Contractor, plus an administrative fee of ten percent (10%), or
- (2) terminate for default the Contractor's right to proceed.

(g) If, before acceptance of the entire Work, the Authority decides to examine already completed Work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its Subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet Contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction in accordance with Paragraph entitled "Equitable Adjustments" contained in this Exhibit E, including, if completion of the Work was thereby delayed, an extension of time.

(h) Unless otherwise specified in the Contract, the Authority shall accept, as promptly as practicable after

completion and inspection, all Work required by the Contract or that portion of the Work the Contracting Officer determines can be accepted separately. Subject to the provisions of Paragraph entitled "Warranty of Construction," acceptance by the Authority shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Authority's rights under any warranty or guarantee.

#### **42. PRICING OF ADJUSTMENTS**

When costs are a factor in any determination of an adjustment to the Contract Sum pursuant to Paragraph entitled "Changes" or any other provision of this Contract, such costs shall be in accordance with Cost Principles of FAR.

#### **43. CHANGES**

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a Change Order, make changes in the Work within the general scope of the Contract, including changes:

- (1) in the Specifications (including drawings and designs);
- (2) in the method or manner of performance of the Work;
- (3) in the facilities, equipment, materials, services, or site to be furnished by the Authority; or
- (4) directing acceleration in the performance of the Work.

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

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

(d) If any change under this paragraph causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the Contract in writing in accordance with the provisions in paragraph entitled, "Equitable Adjustments" contained in Exhibit E. However, except for a "proposal for adjustment" (hereafter referred to as "proposal") based on defective Specifications, no proposal for any change under paragraph (b), above, shall be allowed for any costs incurred more than twenty (20) days before the Contractor gives written notice as required. In the case of defective Specifications for which the Authority is responsible, the equitable adjustment shall include the increased cost reasonably incurred by the Contractor in attempting to comply with the defective Specifications.

(e) The Contractor must submit any proposal under this paragraph within thirty (30) days after: (1) receipt of a written Change Order under paragraph (a), above, or (2) the furnishing of a written notice under paragraph (b), above, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Authority. The proposal may be included in the notice under paragraph (b), above.

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

(g) The design-build team, including key personnel ("DB Team") proposed by Contractor in the Statement of Qualifications and response to the Request for Proposals resulting in the Contract shall remain

on Offeror's DB Team for the duration of the procurement process and, if the Offeror is awarded the Contract, the duration of the Project. The identified team members and/or personnel may be changed only if an identified company (1) is no longer in business, is unable to fulfill its legal, financial, or business obligations or can no longer meet the terms of the teaming agreement with the design-builder firm; (2) voluntarily removes itself from the team; (3) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or (4) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the project. If the design-build firm makes team changes for any reason other than those identified in this Section, any cost savings as a result of the change accrue to Capital Metro not to Contractor.

#### **44. EQUITABLE ADJUSTMENTS**

Any requests for equitable adjustments under any provision shall be governed by the following provisions:

(a) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in this Paragraph, for Work or Services involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in the request for any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:

(1) Proposals totaling \$5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of Work or Services involved to the satisfaction of the Contracting Officer, or his/her authorized representative.

(2) For proposals in excess of \$5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the Contract. The itemized breakdown shall, at the least, include the items specified in subparagraph (b), below.

(b) Calculation of Direct Costs

(1) Material quantities by trades and unit costs. Manufacturing burden associated with material fabrication performed will be considered to be part of the material costs of the fabricated item delivered to the Work Site.

(2) Labor breakdown by trades and unit costs, identified with specific item of material to be placed or operation to be performed.

(3) Construction equipment exclusively necessary for the change.

(4) Costs of preparation and/or revision to Shop Drawings resulting from the change.

(5) Employment taxes under FICA and FUTA.

(6) Bond Costs - when size of change warrants revision.

#### **45. CALCULATION OF OVERHEAD, PROFIT AND COMMISSION**

(a) The allowable overhead shall be determined in accordance with the contract cost principles and procedures in the FAR, § 31.201 et seq., but in no case shall exceed the following. The percentages for profit and commission shall be negotiated and may vary according to the nature, extent and complexity of the Work involved.

(b) The Contractor or any Subcontractor shall not be allowed any commission on the allowable profit or commission of any lower-tiered Subcontractor. Equitable adjustments for deleted Work shall include credits for overhead, profit and commission. On proposals covering both increases and decreases in the amount

of the Contract, the application of overhead and profit shall be on the net change in direct costs for the Contractor or Subcontractor performing the Work.

#### **46. TIME EXTENSIONS**

(a) The time extensions for changes in the Work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. Any Contract Modification granting the time extension may provide that the Contract completion date will be extended only for those specific elements so delayed and that the remaining Contract completion dates for all other portions of the Work will not be altered and may further provide for an equitable readjustment of liquidated damages under the new completion schedule.

(b) The Contractor may be granted an extension of time because of changes ordered in the Contract or because of any Force Majeure Event.

(c) Claims for extensions of time must be made in writing within twenty (20) calendar days after the occurrence of the delay. All time extension claims shall be supported by sufficient written evidence to justify the claim. In the case of a continuing cause of delay, only one (1) claim is necessary. Claims for extensions of time shall be stated in numbers of whole or half calendar days.

(d) In cases of claims for extension of time because of weather, such claims will only be granted if the actual lost time exceeds the average historical climatic conditions for the preceding ten (10) years are published by the National Oceanographic and Atmospheric Administration ("NOAA") and entitled, "Local Climatological Data – Austin/Central, Texas" and only because such weather prevented the execution of major critical times of Work. Time extensions granted under this subparagraph for weather are not compensable.

(e) Although the Authority may extend Contract Time for justifiable reasons, the Contractor shall bear all responsibility for financial risks, which may accrue, from various causes of delay in Construction progress. However, for delays caused by failure of the Architect/Engineer or the Authority to make timely decisions or to take timely action, a claim for additional costs will be considered.

(f) The Contract Term for the completion of Work is an essential element of the Contract. Contractor's failure to complete the Work within such time will cause damage to the Authority.

(g) Should the Contractor fail to complete the Work within the Contract Term, including all officially approved extensions thereto, the Authority may collect from the Contractor or deduct from any funds owed Contractor an amount not to exceed the actual damages caused by such delay.

(h) **NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE CONTRACTOR'S SOLE REMEDY FOR DELAY IS AN EXTENSION OF TIME TO ACHIEVE SUBSTANTIAL COMPLETION.** The Contractor will not receive any compensation or damages for delay, unless such delay is caused by acts constituting intentional interference by the Authority with the Contractor's performance of the Work and to the extent that such acts of the Authority continue after the Contractor's notice to the Authority of such interference. The Authority's exercise of any of its rights under the Contract, regardless of the extent or number of such changes or the Authority's exercise of any of its remedies of suspension of the Work or requirement of correction of any defective Work, shall not under any circumstances be construed as intentional interference with Contractor's performance of the Work.

#### **47. LIQUIDATED DAMAGES**

(a) If the Contractor fails to perform the Work within the time specified in this Contract, or any extension, for reasons other than non-compliance with mandatory OSHA training or other OSHA violations, the Contractor shall in place of actual damages, pay to the Authority an amount designated in (b) below for each calendar day of delay as liquidated damages and not as a penalty. If the Contractor fails to perform the Work within the time specified in this Contract, or any extension, due to non-compliance with (i)



mandatory OSHA training, in accordance with Section 59 of this Exhibit E of this Contract or other applicable OSHA violations, (ii) Contractor Safety and Security Plan guidance, or (iii) Capital Metro Safety written policies, plans, or rules, the Contractor shall in place of actual damages, pay to the Authority the sum of \$1,200.00 for each calendar day. It is agreed that such liquidated damages represent an estimate of actual damages and are not intended as a penalty; and that such delay will cause the Authority to incur substantial economic damage in amounts which are difficult or impossible to ascertain with certainty. Liquidated damages do not limit the Authority's right to terminate this Contract for default or otherwise as provided elsewhere in this Contract. Liquidated damages do not limit the Authority's right to terminate this Contract for default or pursue other remedies available to the Authority elsewhere in this Contract. Liquidated damages may be deducted from any amounts due and owing Contractor under this Contract.

(b) In the event the Authority terminates this Contract for Default under Exhibit E, Paragraph entitled "Termination for Default," Contractor shall be liable for liquidated damages accruing until such time as the Authority may reasonable obtain deliver of performance of similar services. The liquidated damages shall be in addition to excess cost under Exhibit E, Paragraph entitled "Termination for Default."

(c) Contractor may not be charged with liquidated damages when the delay in performance is caused by a Force Majeure Event.

(d) The Contractor shall insert the substance of this paragraph, including this subparagraph (d), altered to reflect the proper identification of the contracting parties in all Subcontracts issued pursuant to this Contract.

(e) In the event the Authority terminates this Contract for Default under this Exhibit E, the Contractor shall be liable for liquidated damages accruing until such time as the Authority may reasonably obtain delivery of performance of similar services. The liquidated damages shall be in addition to excess cost under this Exhibit E paragraph entitled "Termination for Default."

(f) For any delay caused to the project completion due to non-compliance of mandatory OSHA Training or any OSHA violation at the project site, liquidated damages will be imposed for each day of delay in the project substantial completion. A log will be maintained for any delays caused due to non-compliance of the OSHA regulations.

#### **48. FORCE MAJEURE**

(a) If the Contractor is rendered unable to carry out, in whole or in part, its obligations hereunder, the Contractor shall give notice to the Authority and the full details of such Force Majeure Event. The Contractor will use commercially reasonable efforts to remedy the force majeure condition with all reasonable dispatch and will resume performance of any suspended obligation promptly after termination of such Force Majeure Event.

(b) Any Force Majeure Event that affects the Contractor's time for performance under this Contract shall be governed by Exhibit E, paragraph entitled "Time Extensions."

(c) The failure of the Authority to perform its obligations under this Contract shall be excused to the extent, and for the period of time, such failure is caused by the occurrence of any Force Majeure Event.

#### **49. EXAMINATION OF BID DOCUMENTS**

The Authority shall have the right to examine and review the Contractor's original Bid and estimating documents used in preparing its Bid as a reference to aid in the Authority's evaluation of the Contractor's scheduling and Construction progress. A certified copy of such documents shall be submitted to the Authority if requested by the Contracting Officer. The Authority shall maintain in confidence all information contained in such Bid and estimating documents. It is the Authority's position that the Contractor's estimating documents in support of its original Bid are exempt from mandatory release prior to award of Contract under the Texas Public Information Act ("Act"). After award, the documents will require individual

review to determine whether or not an exemption from release under the Act is available.

#### **50. TERMINATION FOR DEFAULT**

(a) The Authority may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this Contract in either one of the following circumstances:

(1) if the Contractor fails to make delivery of the supplies or to perform the Services or the Work within the time specified herein or any extension thereof; or

(2) if the Contractor fails to perform any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Authority may authorize in writing) after receipt of notice from the Authority specifying such failure.

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

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

(d) If this Contract is terminated as provided in subparagraph (a), the Authority, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority any Manufacturing Materials as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and the Contractor shall, upon direction of the Authority, protect and preserve property in possession of the Contractor in which the Authority has an interest. Payment for completed Manufacturing Materials delivered to and accepted by the Authority shall be at the Contract price. The Authority may withhold from amounts otherwise due the Contractor for such completed Manufacturing Materials such sum as the Authority determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this Contract under the provisions of this paragraph, it is determined by the Authority that the Contractor was not in default or that the default was excusable under the provisions of this paragraph, the rights and obligations of the parties shall be those provided in the paragraph entitled "Termination for Convenience" contained in this Exhibit E.

(f) The rights and remedies of the Authority provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

#### **51. TERMINATION FOR CONVENIENCE**

(a) The Authority may, whenever the interests of the Authority so require, terminate this Contract, in whole or in part, for the convenience of the Authority. The Authority shall give written notice of the termination to the Contractor specifying the part of the Contract terminated and when termination becomes

effective.

(b) The Contractor shall incur no further obligations in connection with the terminated Work or Services or, and, on the date set forth in the notice of termination, the Contractor will stop Work to the extent specified. The Contractor also shall terminate outstanding orders and Subcontracts as they relate to the terminated Work or Services. The Contractor shall settle the liabilities and claims arising out of the termination of Subcontracts and orders connected with the terminated Work or Services. The Authority may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or Subcontracts to the Authority. The Contractor must still complete the Work or Services not terminated by the notice of termination and may incur such obligations as are necessary to do so.

(c) The Authority may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority: (1) any completed supplies; and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "Manufacturing Materials") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this Contract. The Contractor shall, upon direction of the Authority, protect and preserve property in the possession of the Contractor in which the Authority has an interest. If the Authority does not exercise this right, the Contractor shall use its best efforts to sell such supplies and Manufacturing Materials.

(d) The Authority shall pay the Contractor the following amounts:

(1) Contract prices for supplies or services accepted under the Contract;

(2) costs incurred in preparing to perform and performing the terminated portion of the Work or Services plus a fair and reasonable profit on such portion of the Work or Services (such profit shall not include anticipatory profit or consequential damages), less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Contractor would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(3) costs of settling and paying claims arising out of the termination of Subcontracts (these costs must not include costs paid in accordance with subparagraph (2) of this paragraph);

(4) the reasonable settlement costs of the Contractor and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination and settlement of Subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract; and

(5) the total sum to be paid the Contractor under this paragraph shall not exceed the total Contract price plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and Manufacturing Materials under this paragraph, and the Contract price of Work or Services not terminated.

## **52. NO DAMAGES FOR DELAY**

Unless otherwise specifically provided for by the Contract, the Contractor shall not be entitled to damages of any type resulting from hindrances, delays, or any other cause under this Contract except when the Work or Services is stopped or suspended by a written order signed by the Contracting Officer or by intentional interference by the Authority.

## **53. NOTICE OF LABOR DISPUTES**

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to

delay the timely performance of this Contract, the Contractor immediately shall give notice, including all relevant information, to the Contracting Officer.

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

#### **54. INTERPRETATION OF CONTRACT – DISPUTES**

All questions concerning interpretation or clarification of this Contract or the acceptable fulfillment of this Contract by the Contractor shall be immediately submitted in writing to the Authority's Contracting Officer for determination. All determinations, instructions, and clarifications of the Contracting Officer shall be final and conclusive unless the Contractor files with the Capital Metro President/CEO within two (2) weeks after the Authority notifies the Contractor of any such determination, instruction or clarification, a written protest, stating in detail the basis of the protest. The President/CEO shall consider the protest and notify the Contractor within two (2) weeks of the protest filing of his final decision. The President/CEO's decisions shall be conclusive subject to judicial review. Notwithstanding any disagreement the Contractor may have with the decisions of the President/CEO, the Contractor shall proceed with the Work or the Services in accordance with the determinations, instructions, and clarifications of the President/CEO. The Contractor shall be solely responsible for requesting instructions or interpretations and liable for any cost or expenses arising from its failure to do so. The Contractor's failure to protest the Contracting Officer's determinations, instructions, or clarifications within the two-week period shall constitute a waiver by the Contractor of all of its rights to further protest.

#### **55. INVOICING AND PAYMENTS**

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

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

Or via e-mail to [ap\\_invoices@capmetro.org](mailto:ap_invoices@capmetro.org)

and shall conform to policies or regulations adopted from time to time by the Authority. Invoices shall be legible and shall contain, as a minimum, the following information:

- (1) the Contract and order number (if any);
- (2) a complete itemization of all costs including quantities ordered and delivery order numbers (if any);
- (3) any discounts offered to the Authority under the terms of the Contract;
- (4) certified payroll report for the invoicing period;
- (5) evidence of the acceptance of the supplies or services by the Authority; and
- (6) any other information necessary to demonstrate entitlement to payment under the terms of the Contract.

Subject to the withholding regarding retainage as provided herein, all undisputed invoices shall be paid

within the time period allowed by law through the Texas Prompt Payment Act, Tex. Gov't Code § 2251.021(b).

(c) The Authority shall make progress payments monthly as the Work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the Work Site may also be taken into consideration if consideration is specifically authorized by this Contract and the Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Contract.

(d) In making these progress payments, there shall be retained five percent (5%) of the estimated amount until final completion and acceptance of the Work by the Authority. However, if the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer may authorize payment to be made in full without retention of a percentage. When the Work is Substantially Complete, the Contracting Officer shall retain an amount that the Contracting Officer considers adequate protection of the Authority and may release to the Contractor all or a portion of any excess amount, in his or her sole discretion. Also, on completion and acceptance of each separate building, public work, or other division of the Work for which the price is stated separately in the Contract, payment may be made for the completed Work without retention of a percentage.

(e) All Mechanical Materials and Work covered by progress payments made shall, at the time of the payment, become the sole property of the Authority, but this shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or waiving the right of the Authority to require the fulfillment of all of the terms of the Contract.

(f) The Authority shall, upon request, reimburse the Contractor for the entire amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor furnishes evidence of full payment to the surety. Such reimbursement shall be part of, and not in addition to, the Contract Price.

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

(h) Final payment to the Contractor shall be paid by the Authority after:

(1) completion and acceptance of all of the Work by the Authority;

(2) presentation of an undisputed invoice; and

(3) presentation of a properly executed "AFFIDAVIT OF TOTAL RELEASE AND CERTIFICATION OF ALL BILLS PAID," in the form required by the Authority.

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

such overpayment or such other period as the Authority may agree. The Authority reserves the right to withhold payment of an invoice, in whole or in part, or deduct the overpayment from future invoices to recoup the overpayment.

**56. PAYMENT TO SUBCONTRACTORS**

(a) Payments by Contractors to subcontracts associated with Authority contracts are subject to the time periods established in the Texas Prompt Payment Act, Tex. Gov't Code § 2251.

(b) A false certification to the Authority under the provisions of the paragraph entitled, "Invoicing and Payments" hereof may be a criminal offense in violation of Tex. Penal Code § 10.

**57. FEDERAL, STATE, AND LOCAL TAXES**

(a) The Contract Sum includes all applicable federal, state, and local taxes and duties. The Authority is exempt from taxes imposed by the State of Texas and local sales and use taxes, and any such taxes included on any invoice received by the Authority shall be deducted from the amount of the invoice for purposes of payment.

(b) The Authority qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of the Texas Limited Sales, Excise and Use Tax Act (Taxation – General, Article 20.04, Texas Civil Statutes). The Contractor may claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts. The Contractor bears sole and total responsibility for obtaining information pertaining to such exemption. Should the Contractor wish to take advantage of such exemption, Contractor may obtain specific information from the Texas Comptroller of Public Accounts.

**58. WAGE RATES**

**(a) FOR THIS SOLICITATION, DAVIS-BACON AND RELATED ACTS IS APPLICABLE AS STATED IN EXHIBIT G, WAGE RATES. ADDITIONALLY, THE AUTHORITY MAY REQUIRE PROPOSER TO COMPLY WITH AT LEAST A \$15 PER HOUR WAGE RATE REQUIREMENT FOR LABORERS PERFORMING WORK IN A CLASSIFICATION THAT HAS A WAGE RATE OF LESS \$15 PER HOUR IN EXHIBIT G, WAGE RATES AND PRICING SHOULD BE BASED ON THIS CONSIDERATION.**

(b) All persons employed in the performance of the Work under this Contract, or any subcontracts hereunder, shall be paid not less than the general rates of per diem, holiday, and overtime wages prevailing in the locality for Work of a similar character (which wages are specified in an attachment to this Contract). Failure to comply with this provision shall subject the Contractor to the penalties prescribed in Tex. Gov't Code § 2258.

**59. FEDERAL, STATE AND LOCAL LAWS GOVERNING CONSTRUCTION**

(a) The Contractor must comply with all applicable State and Federal laws, including but not limited to laws concerned with labor, equal employment opportunity, safety and minimum wages. The Contractor shall make itself familiar with and at all times shall observe and comply with all current Federal, State and local laws, ordinances and regulations which in any manner affect the conduct of the Work, and shall indemnify and save harmless the Authority, its officers, directors, employees, agents, representatives, successors and assigns, against any claim arising from violation of any such law, ordinance or regulation by Contractor or Subcontractor.

(b) The Contractor shall cooperate with applicable city or other governmental officials at all times where their jurisdiction prevails. The Contractor shall make application for any permits and permanent utilities, which are required for the execution of the Contract. The Authority **is not** exempt from building permits, inspections, and related City requirements. The Authority does have a General Permit from the City of Austin but such permit applies only to transit support facilities that may be located in the public right-of-way.

It is the Contractor's sole responsibility to obtain all building and related permits that may be required for the execution of this Contract, at Contractor's sole expense.

(c) The Contractor is required to pay not less than the wage scale of the various classes of labor as shown on the "Prevailing Wage Rate Schedule" provided by the Authority. The specified wage rates are minimum rates only, and the Authority will not consider any claims for additional compensation made by any Contractor because of payment by the Contractor of any wage rates in excess of the applicable minimum rate contained in the Contract.

(d) Certain Public Works require under the Prevailing Wage Rate Schedule to list not only "Building Construction" wage rates but also "Incidental Paving and Utilities" wage rates. The Contractor's attention is called to the fact that all classes of Work within the area of the building shall be paid "Building Construction" wage rates.

(e) The Prevailing Wage Rate Schedule shall be made available, upon request, to any employee of the Contractor and to any employee of its Subcontractors.

(f) Pursuant to the provisions of the Texas Prompt Payment Act, the Contractor shall forfeit as a penalty to the Authority, sixty dollars (\$60.00) for each laborer, workman or mechanic employed, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the said stipulated minimum rates for any Work done under said Contract, by him or her, or by any Subcontractor under him or her. The Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the names and occupations of all laborers, workmen and mechanics employed in connection with the Work, and showing also the actual per diem wages paid to such workers, which record shall be open at all reasonable hours for the inspection by the Authority.

(g) The Contractor shall assign to the Authority any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 U.S.C. § 1 et seq.

(h) Contractor will ensure that (i) all construction workers receive and complete a 10-hour, OSHA approved construction worker safety class no more than 2 years prior to commencing any Work and at least once every two years thereafter during the term of the Contract; and (ii) all safety supervisors receive and complete a 30-hour, OSHA approved construction worker safety class no more than 2 years prior to commencing any Work and at least once every two years thereafter during the term of the Contract. Contractor's failure to comply with the foregoing may, at Capital Metro's sole discretion, result in a partial or complete shut-down of the performance of the Work for purposes of safety, resulting in the assessment of liquidated damages in accordance with Section 47 of Exhibit E of this Contract and/or Capital Metro seeking any other available remedy under law or this Contract. A log will be maintained for any delays caused due to non-compliance with the foregoing requirements or any applicable OSHA regulations.

(i) Contractor's compliance with worker protections required under this Contract and/or applicable law will be subject to on-site monitoring independent of Contractor and its affiliates.

## **60. INDEMNIFICATION**

(a) **CONTRACTOR HEREBY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE AUTHORITY AND EACH OF ITS AFFILIATES AND EACH OF THE AUTHORITY'S AND SUCH AFFILIATES' OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS, ASSIGNS, CUSTOMERS, INVITEES AND GUESTS (THE AUTHORITY AND EACH SUCH PERSON OR ENTITY IS AN "INDEMNIFIED PARTY") AGAINST ANY AND ALL DAMAGES DIRECTLY OR INDIRECTLY RESULTING FROM, RELATED TO, ARISING OUT OF OR ATTRIBUTABLE TO ANY ACTION, INACTION, BREACH, INACCURACY, FAILURE TO PERFORM, FAILURE TO COMPLY, DEFAULT, VIOLATION, INTERFERENCE WITH, TERMINATION OR CANCELLATION BY OR THROUGH THE CONTRACTOR OR ANY SUBCONTRACTOR, OFFICER, DIRECTOR, EMPLOYEE, AGENT, REPRESENTATIVE, SUCCESSOR, ASSIGNEE, CUSTOMER,**

INVITEE, OR GUEST OF THE CONTRACTOR OR ANY SUBCONTRACTOR OF THE CONTRACTOR.

(b) FOR PURPOSES OF THIS CONTRACT:

(1) "DAMAGES" MEANS ANY AND ALL DIRECT OR INDIRECT LOSSES, DAMAGES (INCLUDING WITHOUT LIMITATION, INCIDENTAL, CONSEQUENTIAL, LOST PROFITS, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES), LIABILITIES, PAYMENTS, OBLIGATIONS, DEFICIENCIES, CLAIMS, ACTIONS, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS OR EXPENSES OF WHATEVER KIND, INCLUDING, WITHOUT LIMITATION, FEES AND EXPENSES OF ATTORNEYS, ACCOUNTANTS, AND OTHER PROFESSIONAL ADVISORS AND OF EXPERT WITNESSES AND OTHER COSTS (INCLUDING, WITHOUT LIMITATION, THE ALLOCABLE PORTION OF ANY INDEMNIFIED PARTY'S INTERNAL COSTS) RESULTING FROM, RELATED TO, ARISING OUT OF, ATTRIBUTABLE TO WITH ANY ACTION OR THREATENED ACTION OF ANY KIND OR NATURE WHATSOEVER;

(2) "LIABILITIES" MEANS ANY AND ALL LIABILITIES OR OBLIGATIONS, WHETHER KNOWN OR UNKNOWN, ASSERTED OR UNASSERTED, ABSOLUTE OR CONTINGENT, MATURED OR UNMATURED, CONDITIONAL OR UNCONDITIONAL, LATENT OR PATENT, ACCRUED OR UNACCRUED, LIQUIDATED OR UNLIQUIDATED, OR DUE OR TO BECOME DUE;

(3) "ACTION" MEANS ANY ACTION, APPEAL, PETITION, PLEAS, CHARGE, COMPLAINT, CLAIM, SUIT, DEMAND, LITIGATION, ARBITRATION, MEDIATION, HEARING, INQUIRY, INVESTIGATION OR SIMILAR EVENT, OCCURRENCE OR PROCEEDING;

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

(5) "LAW" MEANS ANY LAW (STATUTORY, COMMON, OR OTHERWISE), CONSTITUTION, TREATY, CONVENTION, ORDINANCE, EQUITABLE PRINCIPLE, CODE, RULE, REGULATION, EXECUTIVE ORDER, OR OTHER SIMILAR AUTHORITY ENACTED, ADOPTED, PROMULGATED, OR APPLIED BY ANY GOVERNMENTAL BODY, EACH AS AMENDED AND NOW AND HEREINAFTER IN EFFECT;

(6) "GOVERNMENTAL BODY" MEANS ANY LEGISLATURE, AGENCY, BUREAU, BRANCH, DEPARTMENT, DIVISION, COMMISSION, COURT, TRIBUNAL, MAGISTRATE, JUSTICE, MULTI-NATIONAL ORGANIZATION, QUASI-GOVERNMENTAL BODY, OR OTHER SIMILAR RECOGNIZED ORGANIZATION OR BODY EXERCISING SIMILAR POWERS OR AUTHORITY;

(7) "ORDER" MEANS ANY ORDER, RULING, DECISION, VERDICT, DECREE, WRIT, SUBPOENA, MANDATE, PRECEPT, COMMAND, DIRECTIVE, CONSENT, APPROVAL, AWARD, JUDGMENT, INJUNCTION, OR OTHER SIMILAR DETERMINATION OR FINDING BY, BEFORE, OR UNDER THE SUPERVISION OF ANY GOVERNMENTAL AUTHORITY, ARBITRATOR, OR MEDIATOR;

(8) "PERMIT" MEANS ANY PERMIT, LICENSE, CERTIFICATE, APPROVAL, CONSENT, NOTICE, WAIVER, FRANCHISE, REGISTRATION, FILING, ACCREDITATION, OR OTHER SIMILAR AUTHORIZATION REQUIRED BY ANY LAW, GOVERNMENTAL BODY, OR CONTRACT;

(9) ANY "PERSON" MEANS ANY INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION, ASSOCIATION, JOINT STOCK COMPANY, TRUST, ENTITY, JOINT VENTURE, LABOR ORGANIZATION, UNINCORPORATED ORGANIZATION, OR GOVERNMENTAL BODY.

(c) IF ANY ACTION IS COMMENCED THAT MAY GIVE RISE TO A CLAIM FOR INDEMNIFICATION



(AN "INDEMNIFICATION CLAIM") BY ANY INDEMNIFIED PARTY AGAINST CONTRACTOR, THEN SUCH INDEMNIFIED PARTY WILL PROMPTLY GIVE NOTICE TO CONTRACTOR AFTER SUCH INDEMNIFIED PARTY RECEIVES NOTICE OF SUCH ACTION. FAILURE TO NOTIFY CONTRACTOR WILL NOT RELIEVE CONTRACTOR OF ANY LIABILITY THAT IT MAY HAVE TO ANY INDEMNIFIED PARTY, EXCEPT TO THE EXTENT THE DEFENSE OF SUCH ACTION IS MATERIALLY AND IRREVOCABLY PREJUDICED BY THE INDEMNIFIED PARTY'S FAILURE TO GIVE SUCH NOTICE.

(d) CONTRACTOR WILL HAVE THE RIGHT TO DEFEND AGAINST AN INDEMNIFICATION CLAIM, WITH COUNSEL OF ITS CHOICE THAT IS SATISFACTORY TO THE INDEMNIFIED PARTY, IF (I) WITHIN 10 DAYS FOLLOWING THE RECEIPT OF NOTICE OF THE INDEMNIFICATION CLAIM, THE CONTRACTOR NOTIFIES THE INDEMNIFIED PARTY IN WRITING THAT THE CONTRACTOR WILL INDEMNIFY THE INDEMNIFIED PARTY IN WRITING THAT THE CONTRACTOR WILL INDEMNIFY THE INDEMNIFIED PARTY FROM AND AGAINST THE ENTIRETY OF ANY DAMAGES THE INDEMNIFIED PARTY MAY SUFFER RESULTING FROM, RELATING TO, ARISING OUT OF, OR ATTRIBUTABLE TO THE INDEMNIFICATION CLAIM, (II) THE CONTRACTOR PROVIDES THE INDEMNIFIED PARTY WITH EVIDENCE REASONABLY ACCEPTABLE TO THE INDEMNIFIED PARTY THAT THE CONTRACTOR WILL HAVE THE FINANCIAL RESOURCES TO DEFEND AGAINST THE INDEMNIFICATION CLAIM AND PAY, IN CASE, ALL DAMAGES THE INDEMNIFIED PARTY MAY SUFFER RESULTING FROM, RELATING TO, ARISING OUT OF, OR ATTRIBUTABLE TO THE INDEMNIFICATION CLAIM, (III) THE INDEMNIFICATION CLAIM INVOLVES ONLY MONEY DAMAGES AND DOES NOT SEEK AN INJUNCTION OR OTHER EQUITABLE RELIEF, (IV) SETTLEMENT OF, OR AN ADVERSE JUDGMENT WITH RESPECT TO, THE INDEMNIFICATION CLAIM IS NOT IN THE GOOD FAITH JUDGMENT OF THE INDEMNIFIED PARTY LIKELY TO ESTABLISH A PRECEDENTIAL CUSTOM OR PRACTICE MATERIALLY ADVERSE TO THE CONTINUING BUSINESS INTERESTS OF THE INDEMNIFIED PARTY, AND (V) THE CONTRACTOR CONTINUOUSLY CONDUCTS THE DEFENSE OF THE INDEMNIFICATION CLAIM ACTIVELY AND DILIGENTLY.

(e) SO LONG AS THE CONTRACTOR IS CONDUCTING THE DEFENSE OF THE INDEMNIFICATION CLAIM IN ACCORDANCE WITH THE IMMEDIATELY PRECEDING PARAGRAPH, (I) THE INDEMNIFIED PARTY MAY RETAIN SEPARATE CO-COUNSEL AT ITS SOLE COST AND EXPENSE AND PARTICIPATE IN THE DEFENSE OF THE INDEMNIFICATION CLAIM, (II) THE INDEMNIFIED PARTY WILL NOT CONSENT TO THE ENTRY OF ANY ORDER WITH RESPECT TO THE INDEMNIFICATION CLAIM WITHOUT THE PRIOR WRITTEN CONSENT OF THE CONTRACTOR (NOT TO BE WITHHELD UNREASONABLY), AND (III) THE CONTRACTOR WILL NOT CONSENT TO THE ENTRY OF ANY ORDER WITH RESPECT TO THE INDEMNIFICATION CLAIM WITHOUT THE PRIOR WRITTEN CONSENT OF THE INDEMNIFIED PARTY (NOT TO BE WITHHELD UNREASONABLY, PROVIDED THAT IT WILL NOT BE DEEMED TO BE UNREASONABLE FOR AN INDEMNIFIED PARTY TO WITHHOLD ITS CONSENT (A) WITH RESPECT TO ANY FINDING OF OR ADMISSION (1) OF ANY BREACH OR VIOLATION OF ANY LAW, ORDER OR PERMIT, (2) OF ANY VIOLATION OF THE RIGHTS OF ANY PERSON, OR (3) WHICH INDEMNIFIED PARTY BELIEVES COULD HAVE AN ADVERSE EFFECT ON ANY OTHER ACTIONS TO WHICH THE INDEMNIFIED PARTY OR ITS AFFILIATES ARE PARTY OR TO WHICH INDEMNIFIED PARTY HAS A GOOD FAITH BELIEF IT OR ANY OF ITS AFFILIATES MAY BECOME PARTY, OR (B) IF ANY PORTION OF SUCH ORDER WOULD NOT REMAIN SEALED). IF ANY CONDITION IN THE IMMEDIATELY PRECEDING PARAGRAPH IS OR BECOMES UNSATISFIED, (I) THE INDEMNIFIED PARTY MAY DEFEND AGAINST, AND CONSENT TO THE ENTRY OF, ANY ORDER WITH RESPECT TO AN INDEMNIFICATION CLAIM IN ANY MANNER IT MAY DEEM APPROPRIATE (AND THE INDEMNIFIED PARTY NEED NOT CONSULT WITH, OR OBTAIN ANY CONSENT FROM, THE CONTRACTOR IN CONNECTION THEREWITH), (II) THE CONTRACTOR WILL JOINTLY AND SEVERALLY BE OBLIGATED TO REIMBURSE THE INDEMNIFIED PARTY PROMPTLY AND PERIODICALLY FOR THE DAMAGES RELATING TO DEFENDING AGAINST THE INDEMNIFICATION CLAIM, AND (III) THE CONTRACTOR WILL REMAIN JOINTLY AND SEVERALLY LIABLE FOR ANY DAMAGES THE INDEMNIFIED PARTY MAY SUFFER RELATING TO THE INDEMNIFICATION CLAIM TO THE FULLEST EXTENT PROVIDED IN THIS INDEMNIFICATION.

(f) THE CONTRACTOR HEREBY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF ANY

GOVERNMENTAL BODY, ARBITRATOR, OR MEDIATOR IN WHICH AN ACTION IS BROUGHT AGAINST ANY INDEMNIFIED PARTY FOR PURPOSES OF ANY INDEMNIFICATION CLAIM THAT AN INDEMNIFIED PARTY MAY HAVE UNDER THIS AGREEMENT WITH RESPECT TO SUCH ACTION OR THE MATTERS ALLEGED THEREIN, AND AGREES THAT PROCESS MAY BE SERVED ON THE CONTRACTOR WITH RESPECT TO SUCH CLAIM ANYWHERE IN THE WORLD.

(g) THE INDEMNIFICATION OBLIGATIONS AND RIGHTS PROVIDED FOR IN THIS CONTRACT WILL BE AND ARE APPLICABLE WITH RESPECT TO ANY ACTION OR CLAIM (OR THREATENED ACTION OR CLAIM) AGAINST ANY INDEMNIFIED PARTY FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE CONTRACTOR, ITS AGENTS, AND/OR ITS SUBCONTRACTORS OF ANY TIER, WHETHER OR NOT THE SOLE, JOINT OR CONTRIBUTORY NEGLIGENCE OF ANY INDEMNIFIED PARTY IS ALLEGED OR PROVEN. THE CONTRACTOR AND THE AUTHORITY AGREE THAT ALL OF THE PROVISIONS OF THE IMMEDIATELY PRECEDING SENTENCE ARE CONSPICUOUS.

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

(i) THE PROVISIONS SET FORTH IN THIS PARAGRAPH WILL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS CONTRACT.

**61. LIMITATION OF LIABILITY**

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

**62. LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS**

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

**63. PUBLICITY RELEASES**

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

**64. REQUEST FOR INFORMATION**

(a) The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract to any party other than the Authority and its authorized agents except as otherwise provided by this Contract or after obtaining the prior written permission of the Authority.

(b) This Contract, all data and other information developed pursuant to this Contract shall be subject to the Texas Public Information Act. The Authority shall comply with all aspects of the Texas Public Information Act.

(c) The Contractor is instructed that any requests for information regarding this Contract and any deliverables shall be referred to the Authority.

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

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

#### **65. INTEREST OF PUBLIC OFFICIALS**

The Contractor represents and warrants that no employee, official, or member of the Board of the Authority is or will be pecuniarily interested or benefited directly or indirectly in this Contract. The Contractor further represents and warrants that it has not offered or given gratuities (in the form of entertainment, gifts or otherwise) to any employee, official, or member of the Board of the Authority with a view toward securing favorable treatment in the awarding, amending, or evaluating the performance of this Contract. For breach of any representation or warranty in this paragraph, the Authority shall have the right to terminate this Contract without liability and/or have recourse to any other remedy it may have at law or in equity.

#### **66. GRATUITIES**

The Authority may cancel this Contract, without liability to the Contractor, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative to any Authority official or employee with a view toward securing favorable treatment with respect to the performance of this Contract. In the event this Contract is canceled by the Authority pursuant to this provision, the Authority shall be entitled, in addition to any other rights and remedies, to recover from the Contractor a sum equal in amount to the cost incurred by the Contractor in providing such gratuities.

#### **67. DRUG-FREE WORKPLACE PROGRAM**

(a) Definitions. As used in this paragraph:

(1) "Controlled Substance Act" means the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 C.F.R. Paragraph 801 et seq.) or its successor statute.

(2) "Controlled Substance" means a controlled substance listed in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. § 812) and as further defined in regulation at 21 C.F.R. §§ 1308.11 - 1308.15, or listed in Schedules I through V of Subchapter AB of the Texas Controlled Substances Act, Tex Health & Safety Code, Ch. 481, which 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, methamphetamines, depressants, "exotic/designer" drugs, benzodiazepines, Seconal, codeine, barbiturates, Phenobarbital, or Valium.

(3) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

(4) "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

(5) "Drug-free workplace" means the site(s) for the performance of work done by Contractor in connection with this Contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

(6) "Employee" means an employee of Contractor directly engaged in the performance of Work under this Contract, and shall include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in Contract performance.

(7) "Individual" means a Contractor that has no more than one employee including the Contractor.

(b) The Contractor, if other than an individual, shall, within thirty (30) days after award of the Contract (unless a longer period is agreed to in writing for contracts of thirty (30) days or more performance duration), or as soon as possible for contracts of less than thirty (30) days performance duration:

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about:

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

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

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

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(3) Provide all employees engaged in performance of this Contract with a copy of the statement required by paragraph (b)(1) of this paragraph;

(4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this Contract, the employee will:

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction.

(5) Notify the Contracting Officer in writing within ten (10) days after receiving notice under subdivision (b)(4)(ii) of this paragraph, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within thirty (30) days after receiving notice under subdivision (b)(4)(ii) of this paragraph of a conviction, take one (1) of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this paragraph.

(c) The Contractor, if an individual, agrees not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this Contract.

(d) In addition to other remedies available to the Authority, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this paragraph shall constitute a default under this Contract, and if federal funds are involved, may render the Contractor subject to suspension or debarment in accordance with FAR, part 9.4.

### **68. TOBACCO FREE WORKPLACE**

Tobacco products: Tobacco products include cigarettes, cigars, pipes, snuff, snus, chewing tobacco, smokeless tobacco, dipping tobacco and any other non-FDA approved nicotine delivery device.

Capital Metro Property: The tobacco free workplace policy refers to all Capital Metro owned or leased property. Note that this includes all buildings, facilities, work areas, maintenance facilities, parking areas and all Authority owned vehicles.

(a) Tobacco use is not permitted at any time on the Work Site or Capital Metro owned or leased property, including personal vehicles parked in Capital Metro parking lots.

(b) Littering of tobacco-related products on the grounds or parking lots is also prohibited.

### **69. ORDER OF PRECEDENCE**

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

1. Exhibit A – Pricing Schedule
2. Exhibit E-1 – Addendum to Contractual Terms and Conditions Federally Assisted Construction/Repair Contract
3. Exhibit B-1 Buy America Certification
4. Exhibit F – Scope of Work
5. Exhibit E-2 – Contractual Terms and Conditions for Professional Services
6. Exhibit E – Contractual Terms and Conditions
7. Plans and Specifications
8. Exhibit B – Representations and Certifications
9. Exhibit D – Disadvantaged Business Enterprise Program
10. Other provisions or attachments to the Contract

### **70. HAZARDOUS MATERIALS**

(a) "Hazardous Materials" means any element, chemical, compound, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Environmental Laws, or any other such substances or conditions (including mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition or pose any threat to human health and safety. "Hazardous Materials" includes the following:

(1) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid or gas, including substances defined as or

included in the definition of “hazardous substance,” “hazardous waste,” “hazardous material,” “extremely hazardous waste,” “acutely hazardous waste,” “radioactive waste,” “radioactive materials,” bio-hazardous waste,” “pollutant,” “toxic pollutant,” “contaminant,” “restricted hazardous waste,” “infectious waste,” “toxic substance,” “toxic waste,” “toxic material,” or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “TCLP toxicity” or “EP toxicity” or words of similar import under any applicable Environmental Laws);

(2) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;

(3) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;

(4) Any flammable substances or explosives;

(5) Any radioactive materials;

(6) Any asbestos or asbestos-containing materials;

(7) Any lead and lead-based paint;

(8) Any radon or radon gas;

(9) Any methane gas or similar gaseous materials;

(10) Any urea formaldehyde foam insulation;

(11) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;

(12) Pesticides;

(13) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental entity or which may or could pose a hazard to the health and safety of the owners, operators, users or any persons in the vicinity of the Premises or to the indoor or outdoor environment;

(14) Those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101, as amended); and

(15) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

(b) “Release of Hazardous Materials” means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water, groundwater or environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

(c) “Best Management Practices” has the meaning set forth in Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices (EPA Document 832 R 92-005).

(d) Neither the Contractor, nor any of the Contractor’s agents, Subcontractors, employees, Contractors or invitees, shall at any time handle, use, manufacture, store or dispose of in or about the Work Site (“Premises”) any Hazardous Materials. Contractor shall notify the Authority of any Release of Hazardous Materials within six (6) hours of discovering any such Release of Hazardous Materials. Contractor agrees

to abide by Best Management Practices. Contractor shall protect, defend, indemnify and hold the Authority harmless from and against any and all loss, claims, liability or costs (including court costs and attorneys' fees) incurred by reason of any actual or asserted failure of Contractor to fully comply with all applicable Environmental Laws, or the presence, handling, use or disposition in or from the Premises of any Hazardous Materials, or by reason of any actual or asserted failure of Contractor to keep, observe, or perform any provision of this paragraph. The provisions of this paragraph shall survive termination of this Contract.

(e) No Hazardous Materials shall be kept, stored, used or discharged on the Premises. Licensee shall comply strictly with all applicable Federal, State and local laws, ordinances, rules and regulations regarding Hazardous Materials, and shall indemnify, defend and hold Licensor harmless from and against any and all liability arising from Licensee's use, storage, or discharge of Hazardous Materials on the Premises or Release of Hazardous Materials. The provisions of this paragraph shall survive termination of this Contract.

(f) Neither the Contractor, nor any of the Contractor's agents, Subcontractors, employees, or invitees shall at any time handle, use, manufacture, store or dispose of in or about the Work Site any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives, or any substance (collectively, "Hazardous Material") subject to regulation by or under any federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws or ordinances (collectively "Environmental Laws"). The Contractor shall indemnify and hold the Authority harmless from and against any and all loss, claims, liability or costs (including court costs and attorneys' fees) incurred by reason of any actual or asserted failure of the Contractor to fully comply with all applicable Environmental Laws, or the presence, handling, use or disposition in or from the Premises of any Hazardous Materials, or by reason of any actual or asserted failure of Contractor to keep, observe, or perform any provision of this paragraph. The provisions of this paragraph shall survive termination of this Contract.

## **71. ENVIRONMENTAL LAW**

"Environmental Law" means any Law applicable to Contractor or the Work regulating or imposing liability or standards of conduct that pertains to the environment. Hazardous Materials, contamination or any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the environment. Hazardous Materials, contamination or any type whatsoever, or environmental health and safety matters set forth in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to laws applicable to Contractor or the Work, as such have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof) including those related to:

- (a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation and transportation of Hazardous Materials;
- (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (c) Releases of Hazardous Materials;
- (d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- (e) The operation and closure of underground storage tanks;
- (f) Safety of employees and other persons; and
- (g) Notification, documentation and record keeping requirements relating to the foregoing.

- (h) Without limiting the above, the term “Environmental Laws” shall also include the following:
- (1) The National Environmental Policy Act (42 U.S.C. §§4321 et. seq.), as amended;
  - (2) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§9601 et. seq.), as amended;
  - (3) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et. seq.);
  - (4) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§1101 et. seq.), as amended;
  - (5) The Clean Air Act (42 U.S.C. §§7401 et. seq.), as amended;
  - (6) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§1251 et. seq.);
  - (7) The Resource Conservation and Recovery Act (42 U.S.C. §§6901, et. seq.), as amended;
  - (8) The Toxic Substances Control Act (15 U.S.C. §§2601 et. seq.), as amended;
  - (9) The Hazardous Materials Transportation Act (49 U.S.C. §§1801 et. seq.), as amended;
  - (10) The Oil Pollution Act (33 U.S.C. §§2701, et. seq.), as amended;
  - (11) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§136 et. seq.), as amended;
  - (12) The Federal Safe Drinking Water Act (42 U.S.C. et. seq.), as amended;
  - (13) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§7401 et sea.), as amended;
  - (14) The Occupational Safety and Health Act (29 U.S.C. §§651 et seq.);
  - (15) The Endangered Species Act (16 U.S.C. §§1531 et. seq.), as amended;
  - (16) The Fish and Wildlife Coordination Act (16 U.S.C. §§661 et. seq.), as amended;
  - (17) The National Historic Preservation Act (16 U.S.C. §§470 et. seq.), as amended;
  - (18) The Coastal Zone Management Act (33 U.S.C. §§1451 et. seq.), as amended;
  - (19) The Texas Health and Safety Code, including Chapter 382 (the Clean Air Act), Chapter 383 (the Clean Air Financing Act), Chapter 361 (the Texas Solid Waste Disposal Act), Chapter 362 (the Solid Waste Resource Recovery Financing Act), Chapter 363 (the Municipal Solid Waste Act), Chapter 364 (the County Solid Waste Control Act), Chapter 370 (the Texas Toxic Chemical Release Reporting Act), Chapter 371 (the Texas Used Oil Collection, Management, and Recycling Act), Chapter 401 (the Texas Radioactive Materials and Other Sources of Radiation Act), Chapter 402 (the Texas Low-Level Radioactive Waste Disposal Authority Act), Chapter 502 (the Texas Hazard Communication Act), Chapter 505 (the Texas Manufacturing Project Community Right-To-Know Act), Chapter 506 (the Texas Public Employer Community Right-To-Know Act), and Chapter 507 (the Texas Non-manufacturing Facilities Community Right-To-Know Act);
  - (20) The Texas Natural Resources Code, including Chapter 40 (the Texas Oil Spill Prevention and Response Act of 1991);



(21) The Texas Water Code;

(22) The Texas Parks and Wildlife Code;

(23) The Texas Agriculture Code, including Chapter 76 (Pesticide and Herbicide Regulation) and Chapter 125 (the Agricultural Hazard Communication Act);

(24) The Texas Asbestos Health Protection Act (Texas Occupations Code, Chapter 1954); and

(25) The Surface Coal Mining and Reclamation Act (Texas Natural Resources Act, Chapter 134).

## **72. ORGANIZATIONAL CONFLICT OF INTEREST (“OCI”)**

(a) This Contract may task the Contractor to prepare or assist in preparing work statements that directly, predictably and without delay are used in future competitive acquisitions. The parties recognize that by the Contractor providing this support a potential conflict of interest arises.

(b) For the purposes of this clause, the term “Contractor” means the Contractor, its subsidiaries and affiliates, joint ventures involving the Contractor, any entity with which the Contractor may hereafter merge or affiliate and any other successor or assignee of the Contractor.

(c) The Contractor acknowledges the full force and effect of this paragraph. It agrees to be bound by its terms and conditions and understands that violation of this clause may, in the judgment of the Contracting Officer, be cause for Termination for Default. The Contractor also acknowledges that this does not represent the sole and exclusive remedy available to the Authority in the event the Contractor breaches this or any other Organizational Conflict of Interest paragraph.

## **73. RECORD RETENTION; ACCESS TO RECORDS AND REPORTS**

(a) The Contractor will retain, and will require its Subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

(b) If this is a cost-reimbursement, incentive, time and materials, labor hour, or price determinable Contract, or any combination thereof, the Contractor shall maintain, and the Authority and its representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Contract.

(c) If the Contractor submitted certified cost or pricing data in connection with the pricing of this Contract or if the Contractor’s cost of performance is relevant to any change or modification to this Contract, the Authority and its representatives shall have the right to examine all books, records, documents, and other data of the Contractor related to the negotiation, pricing, or performance of such Contract, change, or modification for the purpose of evaluating the costs incurred and the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the costs incurred and the cost or pricing data submitted, along with the computations and projections used therein.

(d) The Contractor shall maintain all books, records, accounts and reports required under this paragraph for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

- (e) The Contractor agrees to provide sufficient access to the Authority and its contractors to inspect and audit records and information related to performance of this Contract as reasonably may be required.
- (f) The Contractor agrees to permit the Authority and its contractors access to the sites of performance under this Contract as reasonably may be required.
- (g) If an audit pursuant to this paragraph reveals that the Authority has paid any invoices or charges not authorized under this Contract, the Authority may offset or recoup such amounts against any indebtedness owed by it to the Contractor, whether arising under this Contract or otherwise, over a period of time equivalent to the time period over which such invoices or charges accrued.

This Paragraph will survive any termination or expiration of this Contract.

**74. ANTI-CORRUPTION AND BRIBERY LAWS**

The Contractor shall comply with all Applicable Anti-Corruption and Bribery Laws. The Contractor represents and warrants that it has not and shall not violate or cause the Authority to violate any such Anti-Corruption and Bribery Laws. The Contractor further represents and warrants that, in connection with supplies or services provided to the Authority or with any other business transaction involving the Authority, it shall not pay, offer, promise, or authorize the payment or transfer of anything of value, directly or indirectly to: (a) any government official or employee (including employees of government owned or controlled companies or public international organizations) or to any political party, party official, or candidate for public office or (b) any other person or entity if such payments or transfers would violate applicable laws, including Applicable Anti-Corruption and Bribery Laws. Notwithstanding anything to the contrary herein contained, the Authority may withhold payments under this Contract, and terminate this Contract immediately by way of written notice to the Contractor, if it believes, in good faith, that the Contractor has violated or caused the Authority to violate the Applicable Anti-Corruption and Bribery Laws. The Authority shall not be liable to the Contractor for any claim, losses, or damages related to its decision to exercise its rights under this provision.

**75. MISCELLANEOUS**

- (a) This Contract does not intend to, and nothing contained in this Contract shall create any partnership, joint venture or other equity type agreement between the Authority and the Contractor.
- (b) All notices, statements, demands, requests, consents or approvals required under this Contract or by law by either party to the other shall be in writing and may be given or served by depositing same in the United States mail, postage paid, registered or certified and addressed to the party to be notified, with return receipt requested; by personally delivering same to such party; an agent of such party; or by overnight courier service, postage paid and addressed to the party to be notified; or by e-mail with delivery confirmation. Notice deposited in the U.S. mail in the manner hereinabove described shall be effective upon such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified.

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

**If to the Authority:**

Capital Metropolitan Transportation Authority  
Attn: Sr. Director/Chief Contracting Officer  
2910 E. 5th Street  
Austin, Texas 78702

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

- (c) In the event the Authority finds it necessary to employ legal counsel to enforce its rights under this Contract, or to bring an action at law, or other proceeding against the Contractor to enforce any of the

terms, covenants or conditions herein, the Contractor shall pay to the Authority its reasonable attorneys' fees and expenses, regardless of whether suit is filed.

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

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

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

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

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

(i) The Contractor shall not assign the whole or any part of this Contract or any monies due hereunder without the prior written consent of the Contracting Officer. No assignment shall relieve Contractor from any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void.

(j) The failure of the Authority to insist upon strict adherence to any term of this Contract on any occasion shall not be considered a waiver or deprive the Authority thereafter to insist upon strict adherence to that term or other terms of this Contract. Furthermore, the Authority is a governmental entity and nothing contained in this Contract shall be deemed a waiver of any rights, remedies or privileges available by law.

(k) This Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any dispute arising with respect to this Contract shall be resolved in the state or federal courts of the State of Texas, sitting in Travis County, Texas and the Contractor expressly consents to the personal jurisdiction of these courts.

(l) This Contract is subject to the Texas Public Information Act, Tex. Gov't Code, Chapter 552.

(m) The Contractor represents, warrants and covenants that: (a) it has the requisite power and authority to execute, deliver and perform its obligations under this Contract; and (b) it is in compliance with all applicable laws related to such performance.

(n) The person signing on behalf of the Contractor represents for himself or herself and the Contractor that he or she is duly authorized to execute this Contract.

(o) No term or provision of this Contract is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation for a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

(p) Capital Metro is a governmental entity and nothing in this Contract shall be deemed a waiver of any rights or privileges under the law.

(q) Funding for this Contract after the current fiscal year is subject to revenue availability and appropriation of funds in the annual budget approved by the Authority's Board of Directors.

(r) Time is of the essence for all delivery, performance, submittal, and completion dates in this Contract.

## **76. DRUG AND ALCOHOL TESTING PROGRAM**

(a) The Authority and its contractors and subcontractors are required to comply with the requirements of 49 C.F.R. Part 219 with no exceptions. Contractor has established and implemented, or agrees to establish and implement, and cause its applicable subcontractors to establish and implement, a drug and alcohol testing program for regulated employees (including volunteers, employees and probationary employees) whose duties include inspection, construction, maintenance or repair of roadway track; bridges, roadway, signal and communications systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a tack and flagmen and watchmen/lookouts ("Part 219 employees") that complies with 49 C.F.R. Part 219, produce any documentation necessary to establish its compliance with Part 219, and permit any authorized representative of the United States Department of Transportation or the Federal Railroad Administration ("FRA") and the Authority to inspect the facilities and records associated with the implementation and operation of the drug and alcohol testing program as required under 49 C.F.R. Part 219, including the review of the testing process.

(b) **Prior to the performance of any work under the Contract by any Part 219 employees on or after June 12, 2017**, the Contractor shall furnish the Authority, and cause each subcontractor that provides part 219 employees to perform work under the Contract to furnish the Authority, with copies of all supporting compliance documentation including but not limited to the following:

- (1) A copy of the Contractor's 49 C.F.R. Part 219 Railroad Contractor Compliance Plan.
- (2) A copy of the Federal Railroad Administration's acceptance letter for 49 C.F.R. Part 219 Railroad Contractor Compliance Plan.
- (3) A certified list of the Contractor's Part 219 grandfathered employees (June 12, 2017).
- (4) A certified list of employees who are currently regulated by 49 C.F.R. Part 219 Railroad Contractor Compliance Plan Part 219.
- (5) Copies of the employees DOT 40-25 previous employer drug and alcohol record covered by 49 C.F.R. Part 219 Railroad Contractor Compliance Plan.
- (6) Updated list of the Contractor's employees when an employee status has changed or employee becomes ineligible, along with an updated certification required in subparagraph (4).
- (7) Rule G Observations when requested by the Authority.
- (8) Management Information System Report (MIS) each six (6) months.

Access to the work site will be prohibited to employees not named in the certified list required by subsections (4) and (6).

(c) Upon notice to the Contractor, Capital Metro may require the Contractor and any Subcontractor providing Part 219 employees to use a third-party compliance provider to track the Contractor's Part 219 compliance. If the Contractor or any of its Subcontractors fails to utilize such required compliance provider or an approved equivalent as required, then the Authority may suspend the Contractor's performance under this Contract and/or pursue default remedies under this Contract. The Authority reserves the right to change the required third-party compliance provider upon notice to the Contractor. In the event that Capital Metro

requires the Contractor to use a third-party compliance service, any costs of the required service will be reimbursed by Capital Metro provided the Contractor follows the following reimbursement procedure: the Contractor shall provide the estimated costs of the compliance service within fourteen (14) calendar days following Capital Metro's notice to the Contractor of the adoption of a third-party compliance provider requirement and Contractor shall not incur any costs until a subsequent Contract Modification is fully executed.

(d) The Contractor shall provide the Authority with a list of the names of any Subcontractors performing Part 219 services, along with a certified list of the employees assigned by the Subcontractor to perform work under the Contract, at least ten (10) calendar days prior to the time a Subcontractor or its Part 219 employees enters the work site. The Contractor and each Subcontractor shall be solely responsible for their compliance with 49 C.F.R. Part 219.

(e) The Contractor shall include the substance of subparagraphs (a)-(e) of this clause, in each applicable subcontract under this Contract.

(f) If the Authority discovers that the Contractor or any of its Subcontractors are not in compliance with the requirements of 49 C.F.R. Part 219, the Authority may suspend the Contractor's performance under this Contract and/or pursue default remedies under this Contract.

#### **77. EQUAL OPPORTUNITY**

During the performance of this Contract, the Contractor agrees that it will, in good faith, afford equal opportunity required by applicable federal, state, or local law to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability or any other characteristic protected by federal, state or local law.

#### **78. CONTRACTOR CERTIFICATION**

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

#### **79. FUNDING AVAILABILITY**

Funding after the current fiscal year of any contract resulting from this solicitation is subject to revenue availability and appropriation of funds in the annual budget approved by the Authority's Board of Directors.

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**EXHIBIT E-1 REVISED-1**  
**ADDENDUM TO CONTRACTUAL TERMS AND CONDITIONS**  
**FEDERALLY ASSISTED CONSTRUCTION/REPAIR CONTRACT**

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The Contractor clauses and provisions of this Exhibit apply to all Federally assisted construction/repair contracts. These provisions supersede and take precedence over any other clause or provision contained within this Contract that 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:

- (1) Withholding monthly progress payments,
- (2) Assessing sanctions,
- (3) Liquidating damages, and/or
- (4) 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 for forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

(b) Violation, Liability for Unpaid Wages, Liquidated Damages. In the event of any violation of the provisions set forth in paragraph (a) above, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under the Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) above, in the sum of \$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, including subcontracts 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)(5).

## **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 the statute 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). Under such requirements, 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 contract includes operational services, 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 Services 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 49 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. SEISMIC SAFETY REGULATIONS**

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 DOT 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.

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

- (a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 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.

**16. PRIVACY ACT**

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

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

**17. NO OBLIGATION BY THE FEDERAL GOVERNMENT**

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

(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.

**18. 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.

**19. 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.

**20. COPELAND ANTI-KICKBACK ACT**

The Contractor shall comply with the requirements of 40 U.S.C. § 3145 and 29 C.F.R., Part 3, which are incorporated by reference in this Contract.

**21. DAVIS-BACON ACT (40 USC § 3141-3148)**

Applicability to Contract: Construction contracts over \$2,000.00

Flow Down: Applies to third party contractors and subcontractors

Model Clause/Language: (The language in this clause is mandated under the DOL regulations at 29 C.F.R. § 5.5.)

(a) **Minimum wages**

(1) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) The Authority shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Authority shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(B) The classification is utilized in the area by the construction industry; and

(C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Authority agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Authority to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the Authority or will notify the Authority within the 30-day period that additional time is necessary.

(iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Authority do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Authority shall refer the questions, including the views of all interested parties and the recommendation of the Authority, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the Authority or will notify the Authority within the 30-day period that additional time is necessary.

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (ii) or (iii) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) **Withholding** - 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 the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(c) **Payrolls and basic records** - Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(1) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. 5.5(a)(3)(i) , except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Authority for transmission to the FTA, the Contractor, or the Wage and Hour Division of the U.S. Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for the Contractor to require a subcontractor to provide addresses and social security numbers to the Contractor for its own records, without weekly submission to the Authority.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under 29 C.F.R. 5.5(a)(3)(ii), the appropriate information is being maintained under 29 C.F.R. 5.5(a)(3)(i) and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. Part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 C.F.R. 5.5(a)(3)(ii)(B).

(4) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(i) The Contractor or subcontractor shall make the records required under 29 C.F.R. 5.5(a)(3)(i) available for inspection, copying, or transcription by authorized representatives of the FTA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

**(d) Apprentices and trainees**

(1) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.



(2) **Trainees** - Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) **Equal employment opportunity** - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.

(e) **Compliance with Copeland Act requirements** - The Contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this Contract.

(f) **Subcontracts** - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. 5.5.

(g) **Contract termination: debarment** - A breach of the contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. 5.12.

(h) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(i) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(j) **Certification of eligibility**

(1) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(2) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

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

(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.

**23. WORKPLACE SAFETY**

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:

- (a) Considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;
- (b) Conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and
- (c) Encouraging voluntary compliance with the agency’s text messaging policy while off duty.

The Contractor is encouraged to insert the substance of this clause in all tier subcontract awards.

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

(a) The Contractor agrees to comply with:

- (1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);
- (2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and:
  - (i) Adopt and enforce policies that ban text messaging while driving in Contractor-owned or rented vehicles or, if applicable, Authority-owned vehicles; or while driving privately-owned vehicles when performing any Work for or on behalf of the Authority.
  - (ii) Conduct initiatives in a manner commensurate with the size of the business, such as,

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

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

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

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

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

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

(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.

**25. VETERANS EMPLOYMENT**

The Authority is a recipient of Federal financial assistance on this Contract. The Contractor and its subcontractors shall give a hiring preference to veterans (as defined in 5 U.S.C. § 2108) 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.

**26. SEAT BELT**

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

(a) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and

(b) Including a “Seat Belt Use” provision in each of its sub-contractor agreements related to the Contract.

**27. 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.

**28. DRUG-FREE WORKPLACE PROGRAM**

(a) 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.

(b) 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.

**29. 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.

**30. 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
  - (1) U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200;
  - (2) U.S. OMB regulatory guidance, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180; and
  - (3) 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.

**31. 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.

**32. 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.

**33. 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.

**34. FLOOD INSURANCE**

(a) Contractor shall have flood insurance as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), for any building located in a special flood hazard area (100-year flood zone) throughout the term of the Contract.

(b) Each building covered by (a) above and such building’s contents will be covered by flood insurance in an amount at least equal to the Federal investment (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, 42 U.S.C. § 4001, et seq., whichever is less.

(c) Contractor shall follow FTA guidance regarding flood insurance.

**35. ENVIRONMENTAL PROTECTIONS**

Contractor agrees to comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance. Applicable laws, regulations, and requirements include those listed in Section 26 of FTA’s Master Agreement (Version 29, dated Feb. 7, 2022), as may be updated or amended.

**EXHIBIT E-2**  
**CONTRACTUAL TERMS AND CONDITIONS**  
**(PROFESSIONAL SERVICES UNDER DESIGN BUILD TASK ORDER CONTRACT)**

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**1. APPLICATION OF EXHIBIT E-2 TO PROFESSIONAL SERVICES**

The terms and conditions of this Exhibit E-2 apply only to any and all professional services (as defined by Section 2254 of the Texas Government Code) performed in accordance with the Contract.

**2. DEFINITIONS**

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

- (a) "Authority," "Capital Metro," "Cap Metro," "CMTA" means Capital Metropolitan Transportation Authority.
- (b) "Change Order" means a written order to the Contractor signed by the Contracting Officer, issued after execution of the Contract, authorizing a change in the term or scope of the Contract.
- (c) "Contract" or "Contract Documents" means this written agreement between the parties comprised of all the documents listed in the Table of Contents, Change Orders and/or Contract Modifications that may be entered into by the parties.
- (d) "Contract Modification" means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.
- (e) "Contract Sum" means the total compensation payable to the Contractor for performing the Services as originally contracted for or as subsequently adjusted by Contract Modification.
- (f) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and finding on behalf of the Authority. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (g) "Contractor" means the entity that has assumed the legal obligation to perform the Services as identified in the Contract.
- (h) "Days" means calendar days. In computing any period of time established under this Contract, the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or State of Texas holiday, in which event the period shall run to the end of the next business day.
- (i) "Proposal" means the offer of the proposer, submitted on the prescribed form, stating prices for performing the work described in the Scope of Services.
- (j) "Services" means the professional services (as defined by Section 2254 of the Texas Government Code) to be performed by the Contractor under this Contract, and includes services performed, workmanship, and supplies furnished or utilized in the performance of the Services.
- (k) "Subcontract" means the contract between the Contractor and its Subcontractors.
- (l) "Subcontractor" means subcontractors of any tier.

**3. RESERVED**

**4. RESERVED**

**5. PERFORMANCE OF SERVICES BY THE CONTRACTOR**

Except as otherwise provided herein, the Contractor shall perform no less than thirty percent (30%) of the Services with its own organization. If, during the progress of Services hereunder, the Contractor requests a reduction in such performance percentage and the Authority determines that it would be to the Authority's advantage, the percentage of the Services required to be performed by the Contractor may be reduced; provided, written approval of such reduction is obtained by the Contractor from the Authority.

**6. REPRESENTATIONS AND WARRANTIES**

The Contractor represents and warrants to the Authority, that the Services shall be performed (1) with the professional skill and care ordinarily provided by, as applicable, competent engineers or architects practicing under the same or similar circumstances and professional license; and (2) as expeditiously as is prudent considering the ordinary professional skill and care of , as applicable, a competent engineer or architect. If any breach of the representations and warranties is discovered by the Authority during the process of the work or within one year after acceptance of the work by the Authority, the Contractor shall again cause the nonconforming or inadequate work to be properly performed at the Contractor's sole expense and shall reimburse for costs directly incurred by the Authority as a result of reliance by the Authority on Services failing to comply with the representations and warranties.

**7. CHANGES**

(a) Offerors are expected to examine the Schedule, Solicitation Instructions and Conditions, Contractual Terms and Conditions, all drawings, specifications, the Statement of Work, and all other provisions of, and exhibits to, the solicitation, whether incorporated by reference or otherwise, prior to the submission of offers. Failure to do so shall be at the offeror's risk.

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

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

**8. STANDARDS OF PERFORMANCE**

The Contractor shall perform all work hereunder in compliance with all applicable federal, state, and local laws and regulations. The Contractor shall use only licensed personnel to perform work required by law to be performed by such personnel.

The Contractor will perform the Services: (1) with the professional skill and care ordinarily provided by, as applicable, competent engineers or architects practicing under the same or similar circumstances and professional license; and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as applicable.

**9. INSPECTIONS AND APPROVALS**

(a) All Services performed by the Contractor or its Subcontractors or consultants shall be subject to the inspection and approval of the Authority at all times, but such approval shall not relieve the Contractor of responsibility for the proper performance of the Services. The Contractor shall provide sufficient, safe, and proper facilities at all times for such inspection of the Services and shall furnish all information concerning the Services and give the Authority or its representatives free access at all reasonable times to the facilities where the Services are performed.



- (b) "Services," as used in this subparagraph, includes Services performed, workmanship, and material furnished or utilized in the performance of Services.
- (c) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the Services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during Contract performance and for as long afterwards and the Contract requires.
- (d) The Authority has the right to inspect and test all Services called for by this Contract, to the extent practicable, at all times and places during the term of the Contract. The Authority shall perform inspections and tests in a manner that will not unduly delay the work.
- (e) If any of the Services do not conform with Contract requirements, the Authority may require the Contractor to perform the Services again in conformity with the Contract requirements, at no increase in Contract Sum. When the defects in Services cannot be corrected by performance, the Authority may (1) require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements and (2) reduce the Contract Sum to reflect the reduced value of the Services performed.
- (f) If the Contractor fails promptly to perform the Services again or to take the necessary action to ensure future performance in conformity with Contract requirements, the Authority may (1) by contract or otherwise, perform the Services and charge to the Contractor any cost incurred by the Authority that is directly related to the performance of such service or (2) terminate the Contract for default.

#### **10. CONFLICT OF INTEREST**

- (a) Reference is made to Exhibit B, Representations and Certifications, Code of Ethics, which is incorporated herein and made a part of this Contract. Capitalized terms used in this paragraph and not otherwise defined shall have the meanings as described to them in the Code of Ethics.
- (b) The Contractor represents that no Employee has a Substantial Interest in the Contractor or this Contract, which Substantial Interest would create or give rise to a Conflict of Interest. The Contractor further represents that no person who has a Substantial Interest in the Contractor and is or has been employed by the Authority for a period of two (2) years prior to the date of this Contract has or will (1) participate, for the Contractor, in a recommendation, bid, proposal or solicitation on any Authority contract, procurement or personnel administration matter, or (2) receive any pecuniary benefit from the award of this Contract through an ownership of a Substantial Interest (as that term is defined in Paragraph II, subparagraphs (1) and (3) of the Code of Ethics) in a business entity or real property.
- (c) The Contractor agrees to ensure that the Code of Ethics is not violated as a result of the Contractor's activities in connection with this Contract. The Contractor agrees to immediately inform the Authority if it becomes aware of the existence of any such Substantial Interest or Conflict of Interest, or the existence of any violation of the Code of Ethics arising out of or in connection with this Contract.
- (d) The Authority may, in its sole discretion, require the Contractor to cause an immediate divestiture of such Substantial Interest or elimination of such Conflict of Interest, and failure of the Contractor to so comply shall render this Contract voidable by the Authority. Any willful violation of these provisions, creation of a Substantial Interest or existence of a Conflict of Interest with the express or implied knowledge of the Contractor shall render this Contract voidable by the Authority.
- (e) In accordance with paragraph 176.006, Texas Local Government Code, "vendor" is required to file a conflict of interest questionnaire within seven business days of becoming aware of a conflict of interest under Texas law. The conflict of interest questionnaire can be obtained from the Texas Ethics Commission at [www.ethics.state.tx.us](http://www.ethics.state.tx.us). The questionnaire shall be sent to the Authority's Contract Administrator.

**11. PUBLICATIONS**

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

**12. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL**

(a) All documentation related to or prepared in connection with any proposal, including the contents of any proposal contracts, responses, inquiries, correspondence, and all other material submitted in connection with the proposal shall become the property of the Authority upon receipt.

(b) All documents, reports, data, graphics and other materials produced under this Contract shall become the sole possession of the Authority upon receipt and payment, subject only to the Contractor's professional obligation to maintain copies of its work product.

**13. CLAIMS**

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

**14. INDEMNIFICATION**

(a) **THE CONTRACTOR WILL INDEMNIFY, DEFEND AND HOLD THE AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES (THE AUTHORITY AND EACH SUCH PERSON OR ENTITY IS AN "INDEMNIFIED PARTY") HARMLESS FROM AND AGAINST AND PAY ANY AND ALL DAMAGES (AS DEFINED HEREIN) DIRECTLY OR INDIRECTLY CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE CONTRACTOR OR THE CONTRACTOR'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL.**

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

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

(d) **"THREATENED" MEANS A DEMAND OR STATEMENT HAS BEEN MADE (ORALLY OR IN WRITING) OR A NOTICE HAS BEEN GIVEN (ORALLY OR IN WRITING), OR ANY OTHER EVENT HAS OCCURRED OR ANY**

OTHER CIRCUMSTANCES EXIST THAT WOULD LEAD A PRUDENT PERSON OR ENTITY TO CONCLUDE THAT AN ACTION OR OTHER MATTER IS LIKELY TO BE ASSERTED, COMMENCED, TAKEN OR OTHERWISE PURSUED IN THE FUTURE.

(e) IF ANY ACTION IS COMMENCED OR THREATENED THAT MAY GIVE RISE TO A CLAIM FOR INDEMNIFICATION (A "CLAIM") BY ANY INDEMNIFIED PARTY AGAINST THE CONTRACTOR, THEN SUCH INDEMNIFIED PARTY WILL PROMPTLY GIVE NOTICE TO THE CONTRACTOR AFTER SUCH INDEMNIFIED PARTY BECOMES AWARE OF SUCH CLAIM. FAILURE TO NOTIFY THE CONTRACTOR WILL NOT RELIEVE THE CONTRACTOR OF ANY LIABILITY THAT IT MAY HAVE TO THE INDEMNIFIED PARTY, EXCEPT TO THE EXTENT THAT THE DEFENSE OF SUCH ACTION IS MATERIALLY AND IRREVOCABLY PREJUDICED BY THE INDEMNIFIED PARTY'S FAILURE TO GIVE SUCH NOTICE. TO THE EXTENT THAT CONTRACTOR'S GENERAL LIABILITY POLICY (UNDER WHICH THE CONTRACTOR WILL NAME THE INDEMNIFIED PARTY AS AN ADDITIONAL INSURED) PROVIDES FOR THE DEFENSE OF SUCH ACTION, THE CONTRACTOR WILL ASSUME AND THEREAFTER DILIGENTLY AND CONTINUOUSLY CONDUCT THE DEFENSE WITH COUNSEL THAT IS SATISFACTORY TO THE INDEMNIFIED PARTY. THE INDEMNIFIED PARTY WILL HAVE THE RIGHT, AT ITS OWN EXPENSE, TO PARTICIPATE IN THE DEFENSE OF AN ACTION WITHOUT RELIEVING THE CONTRACTOR OF ANY OBLIGATION DESCRIBED ABOVE. IN NO EVENT WILL THE CONTRACTOR APPROVE THE ENTRY OF ANY JUDGMENT OR ENTER INTO ANY SETTLEMENT WITH RESPECT TO ANY ACTION WITHOUT THE INDEMNIFIED PARTY'S PRIOR WRITTEN APPROVAL, WHICH WILL NOT BE UNREASONABLY WITHHELD. UNTIL THE CONTRACTOR ASSUMES THE DILIGENT DEFENSE OF AN ACTION, THE INDEMNIFIED PARTY MAY DEFEND AGAINST THE ACTION IN ANY MANNER THE INDEMNIFIED PARTY REASONABLY DEEMS APPROPRIATE. UPON CONCLUSION OF AN ACTION EITHER THROUGH SETTLEMENT OR BY THE ISSUANCE OF AN ARBITRATION AWARD, JUDGMENT OR OTHER FINAL DETERMINATION OF LIABILITY, CONTRACTOR SHALL PROMPTLY REIMBURSE INDEMNITEES FOR A PROPORTIONATE SHARE OF INDEMNITEES' DEFENSE ATTORNEY'S FEES, INVESTIGATION COSTS, COURT OR ARBITRATION COSTS AND EXPENSES INCURRED IN DEFENDING THE ACTION IN AN AMOUNT PROPORTIONATE TO THE PERCENTAGE OF LIABILITY ALLOCATED TO THE CONTRACTOR IN SUCH SETTLEMENT AGREEMENT, ARBITRATION AWARD, JUDGEMENT OR OTHER FINAL DETERMINATION OF LIABILITY.

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

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

**15. RECORD RETENTION; ACCESS TO RECORDS AND REPORTS**

(a) The Contractor will retain, and will require its Subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, Subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.

(b) If this is a cost-reimbursement, incentive, time and materials, labor hour, or price determinable Contract, or any combination thereof, the Contractor shall maintain, and the Authority and its representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Contract.

(c) If the Contractor submitted certified cost or pricing data in connection with the pricing of this Contract or if the Contractor's cost of performance is relevant to any change or modification to this Contract, the Authority and its representatives shall have the right to examine all books, records, documents, and other data of the Contractor

related to the negotiation, pricing, or performance of such Contract, change, or modification for the purpose of evaluating the costs incurred and the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the costs incurred and the cost or pricing data submitted, along with the computations and projections used therein.

(d) The Contractor shall maintain all books, records, accounts and reports required under this paragraph for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

(e) The Contractor agrees to provide sufficient access to the Authority and its contractors to inspect and audit records and information related to performance of this Contract as reasonably may be required.

(f) The Contractor agrees to permit the Authority and its Contractors access to the sites of performance under this Contract as reasonably may be required.

(g) If an audit pursuant to this paragraph reveals that the Authority has paid any invoices or charges not authorized under this Contract, the Authority may offset or recoup such amounts against any indebtedness owed by it to the Contractor, whether arising under this Contract or otherwise, over a period of time equivalent to the time period over which such invoices or charges accrued.

(h) This paragraph will survive any termination or expiration of this Contract.

**16. EXCUSABLE DELAYS**

(a) Except for defaults of Subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this Contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Authority in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a Subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and Subcontractor and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless:

(1) the subcontracted supplies or services were obtainable from other sources;

(2) the Authority ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) the Contractor failed to comply reasonably with this order.

(c) Upon the request of the Contractor, the Authority shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule or period of performance shall be revised, subject to the rights of the Authority under this Contract.

**17. LOSS OR DAMAGE TO PROPERTY**

The Contractor shall be responsible for any loss or damage to property including money securities, merchandise, fixtures and equipment belonging to the Authority or to any other individual or organization, if any such loss or damage was caused by the Contractor or any Subcontractor at any tier, or any employee thereof, while such employee is on the premises of the Authority as an employee of the Contractor or Subcontractor.

**EXHIBIT F**  
**SCOPE OF SERVICES**  
**POSITIVE TRAIN CONTROL (PTC) POST-CERTIFICATION OPTIMIZATION AND EXTENSION**  
**CONTRACT**

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**1. INTRODUCTION**

Capital Metropolitan Transportation Authority (CMTA) intends to select a Design-Build Contractor interested in providing Engineering, Construction and Support services under a single integrated project to Capital Metro for the optimization and extension of its fully implemented/certified Enhanced Automated Train Control (E-ATC) PTC system in accordance with 49 CFR Part 236 Subpart I. As part of the mandated PTC Regulations, all CMTA E-ATC PTC systems shall meet the following as a minimum:

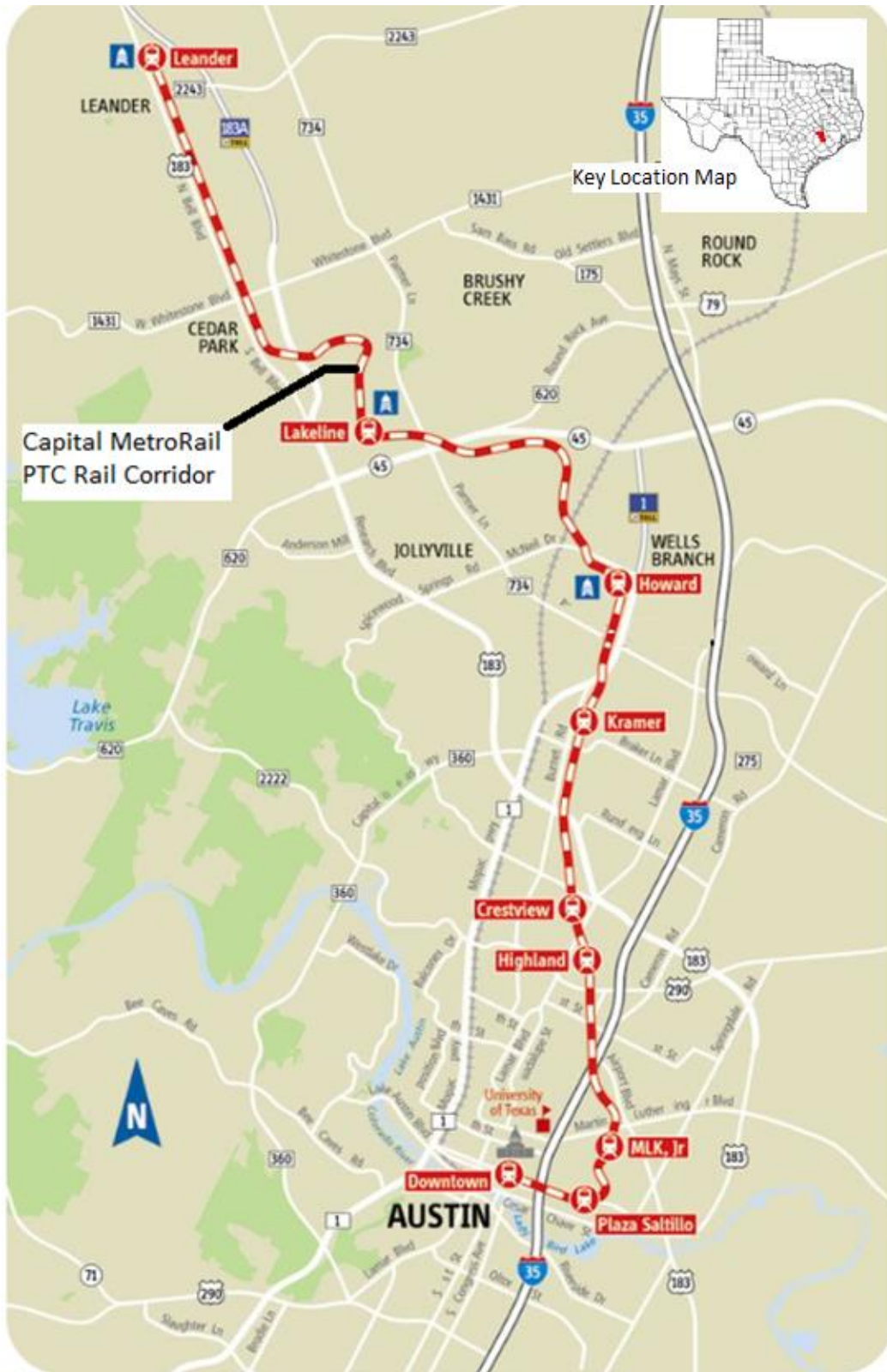
- (a) Enforce an upper speed limit associated with Civil Speed and Temporary Speed Restriction.
- (b) Prevent overspeed derailments related to speed restrictions.
- (c) Enforce upper speed limit with Mandatory Directive at grade crossings.
- (d) Prevent movement of a train through a mainline switch in the improper position.
- (e) Dispatch office requirements.
- (f) Wayside vital and non-vital requirements.
- (g) Support both Commuter and Freight movement through PTC territory
- (h) Comply with the conditions of certification.
- (i) Comply with current PTCSP. Any deviation will require FRA approved variance.

**Description of the Work**

The Work may include optimization of the existing E-ATC PTC system, technical oversight, design, installation, and construction of PTC on new or existing rail assets such as at grade crossings, sidings, and main tracks within the existing PTC corridor as a single integrated project (See Map below). Each of the tasks under this single integrated project may be performed as funding and constructability allows.

The Work may be divided into the following: Optimization Scope of Work, Engineering Scope of Work, Construction Scope of Work, and Support Services. It should be recognized that notwithstanding this division, the components of the Works may overlap. Services associated with the Work includes but is not limited to, engineering, design, technical review, procurement, construction, testing and validation, hazard risk analysis, modification and updates to FRA required documents, training and other.

The single integrated project is anticipated to be initiated in 2022 and expected to be completed by 2027.



Map: CMTA PTC Integrated territory

## BACKGROUND

- (a) Capital Metropolitan Transportation Authority (“Capital Metro” or “the Authority”) is a public agency responsible for providing mass transit service within the City of Austin and the surrounding communities of Leander, Lago Vista, Jonestown, Manor, San Leanna, and Point Venture, and the unincorporated area of Travis County within Commissioner Precinct 2 and the Anderson Mill area of Williamson County. Capital Metro services include bus, ride-share programs, special event services, and special transit services for the mobility impaired.
- (b) Capital Metro has been a leader in providing mobility solutions for the citizens of Austin and Central Texas. The agency offers commuter rail service in its Northwest Corridor from Leander to downtown Austin. As one of the fastest-growing regions in the United States, sustainable mobility solutions are paramount.
- (c) Capital Metro operates and maintains Diesel Multiple Units (DMUs) for commuter rail service from Leander to downtown Austin under a centralized train control signal system dispatched from the North Maintenance and Operation facility utilizing the same track as the freight rail service. Capital Metro also operates and maintains short line railroad freight service from Giddings to Llano using the services of a third-party vendor. A third-party vendor operates the Metro Rail system and coordinates maintenance for the Giddings to Llano rail line.
- (d) Capital Metro implemented a Positive Train Control System (PTC System) along its commuter rail line service area. The addition of a PTC System on the existing freight and passenger lines complies with the Federal Railroad Administration (FRA) mandates of Title 49 CFR Part 236, Subparts H and I to improve the overall safety of the transit services system.
- (e) The Capital Metro PTC system is based on Enhanced Automatic Train Control (E-ATC) methodology. E-ATC employ a cab signal overlay on the existing Signal system to provide the required PTC functions of train separation, speed enforcement, work zone protection, and enforcement of mandatory directives.

## 2. GENERAL SCOPE OF SERVICES

- (a) The Design-Build Contractor will provide services required to Optimize the existing FRA certified and implemented E-ATC PTC Wayside Signal segment, the Control Office segment, the Data Communication segment, and the Rail Vehicle Onboard Segment.
- Services to optimize the Wayside Signal segment may include but are not limited to, target speed upgrades, modification to control lines, wayside logic modifications, wayside logic design, installations and testing, review/modification to block design, addition of new Audio Frequency Track Circuit (AFTAC), addition of new Cut Sections.
  - Services to optimize the Control Office segment may include but are not limited to, modification to Dispatch office system, to add/replace existing speed codes, add/revise Mandatory Directives (MD), Temporary Speed Restrictions (TSR), and work zone protection for the implementation and removal of restrictions and protections. The Design-Build Contractor shall inventory existing control office functionality and ensure all upgrades do not degrade existing capability.
  - Services to optimize the Data Communication segment may include but are not limited to, configuration changes, modifications and expansion of Fiber Network, data migration, FAT table updates, IP SCHEMA, etc.
  - Services to optimize the Rail Vehicle Onboard segment may include but are not limited to, modifications to braking and vigilance system, data logger, engineering display unit, and Ultra Cab II functionality changes/updates. Such changes/updates may include addition of new functionalities such as End of Block (EOB) proceed, station stops, modifications to No Code Proceed mode, warning alarm decibel changes, Time to Penalty (TTP) changes, Speed sensor

modifications, etc.

- Completion of any individual work or Change Order associated with service must be followed with the submission of a Substantial Completion document (CDRL). Capital Metro will only accept the completion of the work after the full functionality and full verification of the work is approved by the assigned Rail Staff.

(b) The Design-Build Contractor may provide the following services in support of Capital Metro's effort to expand its E-ATC PTC footprint within its current PTC territory. Services associated with the footprint expansion are:

- Technical Review, Oversight and Quality Assurance services for E-ATC PTC integration/overlay for the proposed construction of the new Bell Boulevard Siding to be constructed at Park Street between MP 81.39 and MP 82.08. The scope of work may include but is not limited to, E-ATC PTC Wayside segment, Communication segment and Dispatch Control Office segment. Upon completion of this service, the Design-Build Contractor shall provide recommendations, and a Final report.

- Technical Review, Oversight and Quality Assurance services for E-ATC PTC integration/overlay for the proposed construction of a new station (McKalla Station), siding and pedestrian crossing between MP 65.32 and MP 66.24. The scope of work may include but is not limited to, E-ATC PTC Wayside segment, Communication segment and Dispatch Control Office segment. Upon completion of this service, the Design-Build Contractor shall provide recommendations, and a Final report.

- Technical Review, Oversight and Quality Assurance services for the E-ATC PTC integration/overlay for the new Broadmoor Station and Siding between MP 66.68 and MP 67.11. The scope of work may include but is not limited to, E-ATC PTC Wayside segment, Communication segment and Dispatch Control Office segment. Upon completion of this service, the Design-Build Contractor shall provide recommendations, and a Final report.

- Wayside modification to the existing E-ATC PTC system between the Wye (MP 55.64) and CP Valley (MP 55.80) to support the addition of a new station (Pleasant Valley Station). The Wayside modification work may include design, supply, configuration, deployment (including data migration), testing, installation, and commissioning of new PTC cab signal equipment and associated control and interface equipment along with required modifications to existing signal houses, crossing house and cases. It may also include required modifications to existing PTC Signal control equipment and to the existing vital and non-vital software to integrate the new cab signal equipment and the new PTC functions into the new or existing interlocking. It may require the creation of commissioning test plans, testing, and commissioning of the new and modified equipment. Upon completion of this service, the Design-Build Contractor shall provide a Substantial Completion document (CDRL). Capital Metro will only accept the completion of the work after the full functionality and full verification of the work is approved by the assigned Rail Staff.

- This work may include design, modification and construction of E-ATC, wayside signal and communication system compatible with existing system to support the double tracking at Crestview Station (MP 62.52). it would also include material, installation, testing and modifications to adjacent locations as necessary.

- Completion of any individual work or Change Order associated with these services must be followed with either a Final Report or a Substantial Completion document (CDRL). Capital Metro will only accept the completion of the work after the full functionality and full verification of the work is approved by the assigned Rail Staff.

### **3. ENGINEERING SCOPE OF WORK**

(a) The Design-Build Contractor shall closely communicate, integrate, and coordinate Works with other Authority



Contractors as required.

(b) The Design-Build Contractor shall provide a Construction Schedule and Phasing Plan (CDRL) for Work requiring engineering, in consultation with Capital Metro, and subject to Capital Metro's review. The plan shall be provided within 30 days after NTP for each Work.

(c) The Design-Build Contractor shall become familiar with and if deemed necessary, update/modify the following documents when Work identified in this document, requires, or justifies updates or variance to be performed to the existing FRA certified E-ATC PTC system:

- PTC Safety Plan
- PTC System Design Document
- PTC Safety Critical Item List (SCIL)
- PTC Preliminary Hazard List
- PTC Operation and Support Hazard Analysis
- PTC System Hazard List

(d) The Design-Build Contractor shall be familiar with all conditions of Capital Metro Conditions of Certification.

(e) The Design-Build Contractor shall provide a list of recommended special tools (CDRL) and recommended spare parts with pricing, and supplier information (CDRL).

(f) The Design-Build Contractor will provide as-built drawings. (Provide PDF and CAD in the latest Bentley MicroStation format or as required).

#### **4. CONSTRUCTION SCOPE OF WORK**

(a) The Design-Build Contractor shall closely communicate, integrate, and coordinate services with other Authority Contractors as required to timely complete each Work.

(b) The Design-Build Contractor shall provide a Construction Schedule and Phasing Plan (CDRL) for each Work identified in this document, in consultation with Capital Metro, and subject to Capital Metro's review. The plan shall be provided within 30 days after NTP for each Work.

(c) The Design-Build Contractor shall provide Cutover Plans, Test Plans, Test Record Results based on Capital Metro's approved templates.

(d) The Design-Build Contractor shall conform to instructions provided by Capital Metro concerning Work performed in the proximity of the right-of-way, required on-track safety training of personnel, permission for fouling of the right-of-way.

(e) The Design-Build Contractor shall conform to the requirements of the Federal Railroad Administration (FRA) and Texas Department of Transportation (TxDOT) for Work performed in the proximity of the right-of-way and specifically for work that affects the operation and safety of the signal systems(s) that governs the movement of trains on Capital Metro territory.

(f) The Design-Build Contractor shall perform and provide Factory Acceptance Testing (FAT) and System Acceptance Testing (SAT) documentation.

(g) The Design-Build Contractor shall implement Capital Metro’s Configuration Management Plan or approved equivalent of Software Configuration Management Plan (CDRL) and Configuration Management Plan (CDRL) for software and hardware changes. A template document shall be provided by Capital Metro for the Contractor to use for submittals of all final as-built software and hardware list.

(h) Software source material shall be provided to Capital Metro for each work identified in in this document.

**5. TECHNICAL SUPPORT SERVICES**

(a) The Design-Build Contractor may provide E-ATC PTC related Technical Review, Oversight and Quality Assurance services. These services are design to ensure correct interpretation and application of PTC technical specifications requirements.

**6. CONTRACTOR DELIVERABLES**

(b) The Design-Build Contractor shall provide progress reports, scheduling and phasing plans or as defined per each Work in this document.

(c) The Design-Build Contractor shall provide a signed auditable copy of test results for any safety-critical component replaced, rearranged, or installed, in compliance with condition 12 of Capital Metro’s PTC post-certification Federal Railroad Authority (FRA) condition.

(d) The Design-Build Contractor shall provide updated documents in PDF and CAD file format when required/requested.

(e) Contract Document Requirements List (CDRL)

**Table 1**

| Reference   | Description  | Submission        |
|---|--|-------------------|
| 3.1   | Substantial Completion for Optimization work               | TBD*              |
| 3.2   | Substantial Completion for PTC and Signal Engineering Work | TBD*              |
| 3.3   | Final Report for Bell Boulevard Siding                     | TBD*              |
| 3.4   | Final Report for McKalla Station and Siding                | TBD*              |
| 3.5   | Final Report for Broadmoor Station Siding                  | TBD*              |
| 3.6   | Substantial Completion for Pleasant Valley Station         | TBD*              |
| 5.1   | Construction Schedule and Phasing Plan                     | TBD*              |
| 5.2   | Special Tools List   | 30 days after NTP |
| 5.3   | Recommended Spare Part List                                | 30 days after NTP |
| 5.1   | Software Management Plan                                   | 30 days after NTP |
| 5.2   | Configuration Management Plan                              | 30 days after NTP |
| *Schedule will be defined no later than 30 days after Notice To Proceed (NTP) |  |                   |

**7. SCHEDULES**

(a) The Design-Build Contractor shall undertake each of these tasks immediately upon receipt of task order.

(b) A schedule shall accompany the Design-Build proposal outlining proposed deliverables for each Work.

**8. RESPONSIBILITIES OF THE CONTRACTOR**

- (a) The Design-Build Contractor shall have experience in the design, supply, installation, configuration deployment, testing, commissioning, and maintenance of E-ATC PTC systems. The experience shall also include in both freight and passenger modes E-ATC PTC modes, block design, vital and non-vital software design, fiber optic cable system, data network, and FRA E-ATC PTC requirements.
- (b) The Design-Build Contractor shall provide qualified personnel who are proficient in all aspects of the Project, including without limitations, all local, state, and federal laws, orders, ordinances, and regulatory requirements associated with Track, Signal, Rail Systems, Rail Dispatch Control Systems, and Communications Systems
- (c) The Design-Build Contractor shall provide a seal of an Engineer licensed in the State of Texas for all engineering design services.
- (d) The Design-Build Contractor shall conduct all the inspections and testing required to ensure that all segments of the E-ATC PTC System comply with its full functionality.
- (e) The Design-Build Contractor shall be responsible for identifying, inspection and performing any analysis required to prevent potential unforeseen conditions.
- (f) The Design-Build Contractor shall provide a minimum of 2 weeks advance notice to the Rail Department prior to any field work being performed.
- (g) The Contractor shall be responsible for the safety and security of all persons, visitors, equipment operators, workers, and subcontractors within the areas of work.
- (h) The Contractor shall comply with all Capital Metro's Roadway Worker Protection and Certificate Safety program, Roadway Worker In-Charge (RWIC) requirements, Right of Way (ROW) permitting, and "Form B" restrictions.
- (i) The Contractor is required to minimize disturbance and prevent hazards to pedestrians, cyclists, automobile, and commuter train traffic.
- (j) The Contractor shall comply with all applicable Capital Metro standards, Occupational Safety and Health Administration (OSHA) standards and Federal Railroad Administration (FRA) regulations.
- (k) For Work that requires shutdown of the rail system or suspension of the PTC system, the contractor shall provide staff to safely perform work activities until the task order is complete.

**9. CAPITAL METRO RESPONSIBILITY**

- (a) Capital Metro will provide a project manager to:
  - Provide project oversight.
  - Provide high-level guidance.
  - Provide decision-making.
  - Identify property/railroad right-of-way.
  - Act as the primary point of contact.
- (b) Capital Metro will allow the Design-Build Contractor access to the Premises, Facilities, Right of Way, and Capital Metro staff members assigned to the Project.

(c) Capital Metro will provide appropriate access request to Design-Build Contractor Project employees in a timely manner.

(d) Capital Metro will provide:

- Track Charts
- Standards Specifications
- PTC Documents such as PTC Safety Plans (PTCSP), System Design Documents (SDD), Control Line drawings, Braking, and Block Design Criteria.
  - Current as-built engineering, signal system drawings and crossing drawings.
  - Applicable "Other" contractors design and construction drawings.
  - Access to existing configuration information.
  - Project control management system as a central repository to record all documentation generated for the project.
- Templates for test forms, Request for Information (RFI) forms, and other, if available.

## EXHIBIT G

### WAGE RATES

#### 1. PAYMENT

(a) Employee Certification: Contractor, Subcontractor, and Sub-subcontractor shall identify in writing, the classification agreed to by all laborers and mechanics employed by them in the execution of the Contract and pay not less than rates specified in the attached Wage Rate Schedule(s). If work performed by worker is different than the classification agreed upon, the worker shall be paid no less than the minimum wage for work performed.

(b) Classification Definitions

(1) Building

Definitions for building classifications as stated on the Worker Classification Definition Sheet attached to the Prevailing Wage Rate Determination Building Construction Trades.

(2) Highway-Heavy

Definitions for Highway-Heavy classifications shall conform to the current "Dictionary of Occupational Titles" as published by the U.S. Department of Labor.

(3) Federal Building and Highway-Heavy

Definitions are stated in current "Dictionary of Occupational Titles" as published by the U.S. Department of Labor.

(c) Minimum Wages: Workers on Project shall be paid not less than wage rates, including fringe benefits, for Building Construction Trades and the Department of Labor (DOL) Highway-Heavy. The DOL Highway-Heavy rates are to be paid to workers engaged in site work determined to be five (5) feet beyond the building, extending to the property boundary or construction limits. Such wage rates shall be used throughout the Contract. If a classification is to be used, which is not listed in this section, Contractor shall submit to the Authority rates and classification proposed for use, for approval, prior to performance of the Work.

NOTE: The terms journeyman and apprentice apply to both union and independent workers and are not intended to imply that these positions are union workers only.

(d) All laborers and mechanics working upon the Work for this Project shall be paid unconditionally and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by Secretary of Labor under the Copeland Act, Title 29 CFR, Part 3) full wages accrued and when due, computed at rates not less than wage rates bound herein pertaining to type of Work being performed. When Work is of such a nature that both Building and Highway Heavy wage scales are incorporated into contract, Contractor shall pay wage rates to mechanics or laborers performing Work in

more than one classification at the rate indicated for each classification for time actually worked as determined by area practice applicable to type (Site Construction Crafts or Building Construction Crafts) of Work being performed without regards to skill. Salaried specialists project superintendent and administrative personnel only) in the permanent employment of Contractor do not fall under any Wage Classification. Contractor shall post wage rates at site(s) of Work in prominent, easily accessible places where they can be seen by all workers.

(e) Overtime Requirements: No Contractor, Subcontractor, or Sub-subcontractor contracting for any part of contract Work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such Work, to work in excess of forty hours such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours in excess of forty hours in such workweek.

## **2. APPRENTICES**

(a) Locally Funded Projects: Apprentices will be permitted to work as such when they are listed on a payroll as an apprentice. Apprentices are to be paid a minimum of 60 percent of journeymen wages indicated. At no time shall a journeyman supervise more than one (1) apprentice.

(b) Employees who are not under the apprentice program shall be paid the minimum wage rate provided in contract per individual classification or for Work actually performed.

(c) Federally Funded Projects: Apprentices and Trainees will be permitted to work as such only when they are registered, individually, under a bonafide Apprenticeship or Trainee program registered with a State Apprenticeship or Training Agency which is recognized by Bureau of Apprenticeship and Training, United States Department of Labor, or, if no recognized Agency exists, under a program registered with Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of Apprentices or Trainees to journeymen in any craft classification shall not be greater than the ratio permitted to Contractor as to Contractor's entire work force under the registered program. Employee listed on a payroll at an Apprentice or Trainee wage rate, who is not registered as above, shall be paid the wage rate provided in Contract for Work employee actually performed. Contractor, Subcontractor, or Sub-subcontractor shall furnish to the Authority written evidence of registration of his program for Apprentice and Trainees as well as of the appropriate ratios and wage rates, for the area of construction prior to using any Apprentices or Trainee on this Contract.

## **3. WITHHOLDING OF PAYMENTS**

The Authority may withhold or cause to be withheld from Contractor as much of the accrued payments as necessary to pay laborers and mechanics employed by Contractor, Subcontractors, or Sub-subcontractors the amount of wages required to comply with the Contract. In the event of nonpayment of wages to laborers or mechanics working on the site of the Work of this Contract, the Authority may, after Written Notice to Contractor, take such action as may be necessary to cause suspension of any further payments or advance of funds to Contractor until such violations have ceased and until restitution has been made.

## **4. PAYROLLS**

(a) Contractor shall keep records showing:

(1) the name and occupation of each worker employed by the contractor or subcontractor(s) in the construction of the public work; and

(2) the actual per diem wages paid to each worker.

(b) The record shall be open at all reasonable hours to inspection by the officers and agents of the Authority as requested. Contractor will be responsible to provide copies of records as requested by the Authority within two (2) working days. Payrolls relating to this Work shall be maintained during term of Contract and preserved for a period of three (3) years thereafter by Contractor for all laborers and mechanics working on the Work.

(c) Confirmed Disciplinary action taken by Contractor against employees who provide information during an interview or investigation, by the Authority, on wages received, will result in a six-month revocation of their right to bid on other Authority projects.

## **5. COMPLAINTS AND PENALTIES**

A public body awarding a contract, and an agent or officer of the public body, shall, take cognizance of complaints of all violations of Chapter 2258 Texas Government Code Title 10 committed in the execution of the contract; and withhold money forfeited or required to be withheld under this chapter from the payments to the contractor under the contract. A contractor or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body shall use any money collected under this section to offset the costs incurred in the administration - of this chapter.

## **6. AREA PRACTICE**

(a) Highway Heavy Construction Wage Rates shall be used on this Project unless Building Construction Rates are included as follows.

(b) Building Construction Wage Rates shall be used when the following conditions are met.

(c) Building Construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade level, as well as incidental grading, utilities and paving. Additionally, such structures need not be "habitable" to be Building Construction. The installation of heavy machinery and/or equipment does not generally change the project's character as a building.

(d) Building Construction Wage Rates determination shall include all construction necessary to complete a facility regardless of the number of contracts involved so long as all contracts awarded are closely related in purpose, time and place. Demolition or site work preparatory to Building Construction is considered a part of the building Project for wage rate determination purposes.

(e) Incidental Building Construction shall include Highway Heavy Construction items when the Project cost for the incidental items are less than 20 percent, except when the Building Construction is less than 4 percent of the Project cost the Highway Heavy Construction Rates shall apply.

(f) Multiple Classification: A multiple classification shall be used if Highway Heavy Construction items are more than 20 percent of the Project cost.

## **7. WAGE RATES**

The Labor Rates applicable to this project are in General Decision Number TX20220007 dated 01/07/2022 which follows.

"General Decision Number: TX20220007 01/07/2022

Superseded General Decision Number: TX20210007

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Banderita, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClellon and Williamson Counties) and HIGHWAY Construction Projects

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022, Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022, Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance





|  |          |
|--|----------|
| 80 tons.....                               | \$ 19.38 |
| Crawler Tractor.....                       | \$ 15.67 |
| Directional Drilling<br>Locator.....       | \$ 11.67 |
| Directional Drilling<br>Operator.....      | \$ 17.24 |
| Excavator 50,000 lbs or<br>Less.....       | \$ 12.88 |
| Excavator over 50,000 lbs...\$             | 17.71    |
| Foundation Drill, Truck<br>Mounted.....    | \$ 16.93 |
| Front End Loader, 3 CY or<br>Less.....     | \$ 13.04 |
| Front End Loader, Over 3 CY.\$             | 13.21    |
| Loader/Backhoe.....                        | \$ 14.12 |
| Mechanic.....                              | \$ 17.10 |
| Milling Machine.....                       | \$ 14.18 |
| Motor Grader, Fine Grade....\$             | 18.51    |
| Motor Grader, Rough.....                   | \$ 14.63 |
| Pavement Marking Machine....\$             | 19.17    |
| Reclaimer/Pulverizer.....                  | \$ 12.88 |
| Roller, Asphalt.....                       | \$ 12.78 |
| Roller, Other.....                         | \$ 10.50 |
| Scraper.....                               | \$ 12.27 |
| Spreader Box.....                          | \$ 14.04 |
| Trenching Machine, Heavy....\$             | 18.48    |
| <br>Servicer.....                          | \$ 14.51 |
| <br>Steel Worker                           |          |
| Reinforcing.....                           | \$ 14.00 |
| Structural.....                            | \$ 19.29 |
| <br>TRAFFIC SIGNAL INSTALLER               |          |
| Traffic Signal/Light Pole<br>Worker.....   | \$ 16.00 |
| <br>TRUCK DRIVER                           |          |
| Lowboy-Float.....                          | \$ 15.66 |
| Off Road Hauler.....                       | \$ 11.88 |
| Single Axle.....                           | \$ 11.79 |
| Single or Tandem Axle Dump<br>Truck.....   | \$ 11.68 |
| Tandem Axle Tractor w/Semi<br>Trailer..... | \$ 12.81 |
| <br>WELDER.....                            | \$ 15.97 |

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union, which prevailed in the survey for this classification, which in this example would be Plumbers 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1,

2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Division National Office Branch of Wage Surveys. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
 Wage and Hour Division  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

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## EXHIBIT H

### INSPECTION, TESTING AND ACCEPTANCE

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#### 1. GENERAL REQUIREMENTS

This section outlines requirements for inspection, testing and acceptance that are applicable to all PTC System components, combination of components, installations and for the overall integrated PTC System as implemented on Capital Metro PTC designated rail lines.

All new PTC System installation shall be subjected to comprehensive testing programs to validate that each segment of the PTC System complies with the functional and performance requirements of the Technical Specifications and Contract Documents. The configuration and requirements of all testing phases described in this section shall meet or exceed, FRA or other regulatory requirements, or stay in compliance with current PTC Certification.

The Design-Build Contractor shall perform joint work inspection with Capital Metro using CMTA approved plans and procedures. It shall be understood that, where applicable and appropriate, OEM test standards shall be used within the Design-Builder's test plans and procedures. Should any inspections or tests indicate that specific hardware, software, or documentation does not meet the specified requirements or fails to meet regulatory requirements, the deficiency shall be repaired, replaced, upgraded, or corrected by the contractors as required. After any correction of a deficiency, tests necessary to verify the effectiveness of the corrective action shall be repeated. All test reports shall be provided to CMTA.

#### 2. INSPECTION

The Design-Build Contractor shall establish a coordinated inspection schedule and team with Capital Metro. The responsibility of this team shall include but is not limited to:

- (a) Witnessing functional, performance, qualification and acceptance test.
- (b) Ensure Inspection and testing occur at appropriate points in the construction sequence to ensure compliance with installation procedures, drawings, process and test specification.
- (c) Ensure inspection and test are based on current approved designs and installation procedures.
- (d) Shall provide on-site personnel to provide QC oversight of PTC installation locations.
- (e) When modifications, repairs, rework and replacement are required, ensure a re-inspection and re-test of the affected item and subsystem are performed.
  - Provide a test report of completed test to Capital Metro.

#### 3. TESTING

Under this Design-Build proposal, it is anticipated that only Acceptance test will be required, and no Qualification test will be necessary. If a Qualification test on a first article items is required, such test must be witnessed by Capital Metro at its discretion and determination.

3.1. **Field Installation Test:** Field installation tests shall provide verification that the PTC System component is operational.

3.2. **Field Functional Performance Test:** The field functional performance test shall be conducted to verify those parts of the functional performance test that were not fully tested as part of the field installation test. All field performance tests shall be the responsibility of the Design-Build Contractor.

3.3. **Acceptance Test:** Acceptance test: Acceptance tests encompass the system components in a completely installed approved configuration(s) to demonstrate proper functioning and performance of individual system segments, the integrated PTC system and the components after installation. Acceptance test shall be performed statically and/or dynamically.

3.4. **Cutover Test:** Cutover test shall be performed during non-revenue service hours. The Design-Build Contractor shall ensure that all problems encountered during this test are resolved and that revenue service operation are not impaired during the cutover.

3.5. **Regression Test:** Regression test shall be performed on all PTC software changes/updates.

3.6. **Test Plans:** A separate test plan [CDRL 3.1] shall be submitted formally for each test such as Acceptance and Cutover Test. The test plan shall describe the overall test procedures, responsibilities of individuals including RWIC, and documentation of the test results. Test Plans shall be submitted for review and approval to Capital Metro, at least 2 weeks prior to day of testing. The following shall be included in each test plan at a minimum:

- Test Schedule, showing all functions to be tested, expected test dates and test duration for each function.
- Staffing requirements, qualifications, and assignment for each test.
- Responsibility of all personnel involved.
- Designated test coordinator
- Test forms
- Procedures for controlling and documenting all changes made to a hardware or software after the start of testing.
- Block diagram of the hardware test configuration
- Detailed list of test procedures, diagrams of hardware test configuration, requirement traceability matrix mapping test to the hardware and software functional requirement that will be verified.

3.7. **Test Reports:** The Design-Build Contractor shall provide a detailed test reports [CDRL 3.2] produced during testing and shall provide the report to Capital Metro for review and acceptance.

#### 4. SUBSTANTIAL COMPLETION

The Design-Build Contractor shall prepare the Substantial Completion acceptance package for each work performed under this contract as defined in Exhibit F, Section 3, for review by Capital Metro's assigned Rail Staff. The Substantial Completion form shall provide supporting documentation of satisfactory completion, as determined by Capital Metro, of all criteria set forth in the Contract and shall include but are not limited to the following:

- Submitted to and approved by Capital Metro of all required documentation, manuals and CDRLs.
- Certification that the work has been completed in accordance with the Contract Documents.
- Confirmation of deposit into escrow, if applicable to work as define in Exhibit F, Section 3.
- Provision and acceptance of all spare parts, test equipment and special tools, if applicable to work as define in Exhibit F, Section 3.

#### 5. FINAL ACCEPTANCE

Final Acceptance shall occur when the following obligations have been met by the Design-Build Contractor:

- Achievement of Substantial Completion

- All punch list items, field modifications, design defects, training and manual updates have been addressed to the satisfaction of Capital Metro.
- Contract Document Requirement List (CDRL) have been provided.

**Table 1**

| Reference | Description | Submission |
|-----------|-------------|------------|
| 3.1       | Test Plan   | TBD*       |
| 3.2       | Test Report | TBD*       |

\*Schedule will be defined no later than 30 days after Notice To Proceed (NTP)

**End of Section**



## EXHIBIT IT

## PROPRIETARY RIGHTS AND DATA SECURITY ADDENDUM

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

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

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

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

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

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

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

“**Remediation Efforts**” means, with respect to any Security Incident, activities designed to remedy a Security Incident which may be required by a Data Law or by the Authority’s or the Contractor’s policies or procedures, or which may otherwise be necessary, reasonable or appropriate under the circumstances, commensurate with the nature of such Security Incident. Remediation Efforts may include: (i) development and delivery of legal notices to affected individuals or other third parties; (ii) establishment and operation of toll-free telephone numbers for affected individuals to receive specific information and assistance; (iii) procurement of credit monitoring, credit or identity repair services and identity theft insurance from third parties that provide such services for affected individuals; (iv) provision of identity theft insurance for affected individuals; (v) cooperation with and response to regulatory, government and/or law enforcement inquiries and other similar actions; (vi) undertaking of investigations (internal or in cooperation with a governmental body) of such Security Incident, including forensics; (vii) public relations and other crisis management services; and (viii) cooperation with and response to litigation with respect to such Security Incident (including, but not limited to, class action suits or similar proceedings); and in each case of examples (i) through (viii), payment of legal costs, disbursements, fines, settlements and damages.

“**Security Incident(s)**” means: (i) the loss or misuse of the Authority Data or the Authority Electronic Property; (ii) the inadvertent, unauthorized, or unlawful processing, alteration, corruption, sale, rental, or destruction of Authority Data or the Authority Electronic Property; (iii) unauthorized access to internal resources; (iv) programmatic manipulation of a system or network to attack a third party; (v) elevation of system privileges without authorization; (vi) unauthorized use of system

resources; (vii) denial of service to a system or network; or (viii) any potential or confirmed exposure (which may stem from an act or omission to act) that would result in any of the events described in (i) through (viii).

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

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

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

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

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

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

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

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

6. **Prohibited Internet Practices.** The Contractor will not, and will not authorize or encourage any third party to, directly or indirectly: (i) use any automated, deceptive or fraudulent means to generate impressions, click-throughs, or any other actions in relation to advertisements or Internet promotions on Authority Electronic Property or in relation to advertisements or Internet promotions of the Authority (or its products or services) on third party websites; or (ii) collect or Process data from an Authority Electronic Property other than as has been expressly authorized by the Authority in the Agreement or another written agreement with the Authority. Except as expressly allowed in the Agreement, the Contractor will not “screen-scrape” Authority Electronic Property or conduct any automated extraction of data from Authority Electronic Property or tracking of activity on Authority Electronic Property.

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

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

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

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

11. Security Incidents. The Contractor will promptly notify the Authority upon discovering or otherwise learning of a Security Incident. Following any Security Incident, the Contractor will consult in good faith with the Authority regarding Remediation Efforts that may be necessary and reasonable. The Contractor will (i) at the Authority's direction undertake Remediation Efforts at the Contractor's sole expense and reimburse the Authority for its reasonable costs and expenses in connection with any Remediation Efforts it elects to undertake, (ii) ensure that such Remediation Efforts provide for, without limitation, prevention of the recurrence of the same type of Security Incident, and (iii) reasonably cooperate with any Remediation Efforts undertaken by the Authority.

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

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

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