

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY ("CapMetro")  
AUSTIN, TEXAS

**CONTRACT MODIFICATION**

<b>1. CONTRACT NO: 200870</b> Fabrication & Delivery of Bus Stop Amenities-Solar Lighting	<b>2. CONTRACT MODIFICATION NO.: 2</b>	<b>3. EFFECTIVE DATE OF C.M.</b> See Block 9 Below	<b>4. CONTRACTOR NAME:</b> SELS USA, LLC
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**5. AGREEMENT TO MODIFY CONTRACT:**

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

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

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

**8. CONTRACTOR'S EXECUTION:**

Name & Title: Rafael Badilla - CEO  
(print or type)

Signature:   
Date Executed: 04-07-2023

**9. CAPMETRO'S EXECUTION:**

Name & Title: Karen Ross, Contracting Officer  
(print or type)

E-SIGNED by Karen Ross  
on 2023-04-12 19:50:20 GMT  
Signature: \_\_\_\_\_  
Date Executed: April 12, 2023

**10. DESCRIPTION OF CONTRACT MODIFICATION:**

1. This contract modification is in accordance with Exhibit E—Revised-2, Contractual Terms and Conditions, Section 12, Changes.
2. Refer to Exhibit E—Revised-2, CONTRACTUAL TERMS AND CONDITIONS. Exhibit E—Revised-2 is hereby replaced in its entirety with **Exhibit E--Revised-3**, attached hereto and incorporated herein for all pertinent purposes. This modification revises the delivery address in Section 6, Delivery, and incorporates the provision at Section 51, Contractor and Subcontractor Annual Audited Financial Report. This modification also updates Section 45, Order of Precedence, to reflect the latest version to Exhibit E and Exhibit F. Changes are shown in highlighted text.
3. Refer to Exhibit F—Revised-2, SCOPE OF SERVICES. Exhibit F—Revised-2 is hereby replaced in its entirety with **Exhibit F—Revised-3**, attached hereto and incorporated herein for all pertinent purposes. This modification revises the delivery address in Section 9, Delivery. Changes are shown in highlighted text.

*The amount stated above is the final contract modification amount agreed to by both parties. Upon receipt of payments totaling this amount, the Contractor, for itself, its successors and assigns will release, acquit and forever discharge Capital Metropolitan Transportation Authority (CapMetro) from and against any claims, debts, demands, or cause of action which the Contractor has or may have had a result of furnishing labor, supplies, or materials for the change order stated above. This modification may be executed in multiple originals, and an executed facsimile or email copy shall have the same force and effect as the original document.*

**[END OF MODIFICATION # 2]**

**EXHIBIT E – REVISED-3**  
**CONTRACTUAL TERMS AND CONDITIONS**  
**(SUPPLY 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 to the Authority, including without limitation “FCPA” or any applicable laws and regulations, including in the jurisdiction in which the Contractor operates and/or manufactures goods for the Authority, relating to anti-corruption and bribery.
- (b) “Authority”, “Capital Metro”, “Cap Metro”, “CMTA” means Capital Metropolitan Transportation Authority.
- (c) “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.
- (d) “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.
- (e) “Bid” means the offer of the bidder, submitted on the prescribed form, stating prices for performing the supplies.
- (f) “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.
- (g) “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.
- (h) “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.
- (i) “Contract Modification” means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.
- (j) “Contract Sum” means the total compensation payable to the Contractor under this Contract as originally contracted for or as subsequently adjusted by Contract Modification.
- (k) “Contract Term” means period of performance set forth in the paragraph entitled “Term” contained in Exhibit E.
- (l) “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.
- (m) “Contractor” means the entity that has assumed the legal obligation to deliver the supplies as identified in the Contract.

- (n) "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.
- (o) "FAR" means the Federal Acquisition Regulations codified in 48 C.F.R. Title 48.
- (p) "FCPA" means the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., as amended.
- (q) "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.
- (r) "FTA" means the Federal Transit Administration.
- (s) "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.
- (t) "Manufacturing Materials" mean any completed or partially completed supplies and materials, parts, dies, jigs, fixtures, plans, drawings, information, and contract rights specifically produced or specially acquired by the Contractor for the performance of the Contract.
- (u) "Notice of Award" means formal notice of award of the Contract to the Contractor issued by the Contracting Officer.
- (v) "Notice to Proceed" means written authorization for the Contractor to start the performance of the Contract.
- (w) "Project Manager" means the designated individual to act on behalf of Capital Metro, to monitor and certify the technical progress of the Contractor's performance under the terms of this Contract.
- (x) "Subcontract" means the contract between the Contractor and its Subcontractors.
- (y) "Subcontractor" means Subcontractors of any tier.
- (z) "Works" means any tangible or intangible items or things that have been or will be 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**

- (a) This is an indefinite-quantity Contract for the supplies specified and stated elsewhere in the Contract. The quantities of supplies specified are estimates only and are not purchased by this Contract [subject to the provisions of this Exhibit E, Paragraph entitled "Variation in Estimated Quantity"].
- (b) This indefinite quantity, indefinite delivery contract is subject to the following minimum/maximum paragraphs:
  - (1) Minimum order. The Authority will order a minimum of \$1,000 in supplies under this Contract.
  - (2) Maximum order. The Authority will order a maximum not to exceed the total dollar amount of \$29,000,000.00 which includes three (3) option periods which may or may not be exercised.
- (c) There is no limit to the number of orders that may be placed under this Contract.
- (d) The quantities provided by the Authority on the Schedule are estimates used as a basis for Contract award and are, therefore, not hereby purchased under the Contract.

**3. TERM**

The term of the Contract shall be one (1) ~~five (5)~~ years from the date of Contract Notice to Proceed. No work shall be performed under this Contract prior to issuance of a Notice to Proceed.

**4. OPTION TO EXTEND CONTRACT TERM**

The Authority shall have the unilateral right and option to extend the Contract for up to four (4) ~~three (3)~~ option periods for a twelve (12) month duration each at the option prices set forth in Exhibit A - Pricing Schedule upon written notice to Contractor.

**OPTION PERIOD PRICE ADJUSTMENTS:**

- (a) Economic price adjustments under this contract shall apply to estimated unit prices for all amenities for exercised Option Periods in Exhibit A. Unit price adjustments will be determined by using the most current U.S. Department of Labor, Bureau of Labor Statistics Producer Price Index ("PPI") Series WPU107: Metals and Metal Products: Fabricated Structural Metal Products.
- (b) The estimated unit prices for the Base Period as reflected in Exhibit A, Pricing Schedule, shall remain fixed and are not subject to any price adjustment outlined in this section.
- (c) When applicable, estimated unit price adjustments shall be computed using the instructions and formula detailed in this section. The adjusted estimated unit prices under each option shall be determined by dividing the PPI (Series WPU107) at the time of the award of the option by the PPI (Series WPU107) at the time of the base award (contract date) and multiplying the percent change in PPI by the base award estimated unit price.
- (d) The aggregate of the increases to the estimated unit price for applicable amenities in any Option Period in Exhibit A under this contract shall not exceed ten (10) percent of the original contract estimated unit price. There is no percentage limitation on the amount of decreases that may be made under this section.

**FORMULA EXAMPLE:**

Index Point Change Calculation

PPI Index:	
Future order month:	141.1
Less PPI Index:	
Base order month:	<u>137.6</u>
Index Point Change:	3.5

Index Percentage Change Calculation

Index Point Change:	3.5
Divided by PPI Index:	
Base Order Month:	<u>137.6</u>
Change:	.0254

Percent Change (Multiplied by 100):	2.54%
Price Increase Calculation	

Base Order Price* (example only):	\$250,000
Plus Percentage Change (\$250,000 x 2.54%) :	<u>\$ 6,350</u>
Revised Order Price:	\$256,350

(e) Notwithstanding anything else to the contrary contained herein, in the event that a price adjustment is required with respect to changes that are mandatory as a result of legislation or regulations that become effective after the date of the submission of the Contractor’s proposal, such price adjustment shall be negotiated in good faith by the Authority and the Contractor--and shall be made in accordance with Section 12, “Changes”.

**5. ORDERING**

- (a) Any supplies to be furnished under this Contract shall be ordered by issuance of written delivery orders.
- (b) All delivery orders are subject to the terms and conditions of this Contract. In the event of a conflict between an order and this Contract, the Contract shall control.
- (c) 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 the Authority’s rights and obligations with respect to that order to the same extent as if the order was completed during the Contract’s effective period.

**6. DELIVERY**

- (a) Delivery shall be made to **CapMetro, Attn: Fidel Campos, 7415 Circle South, Austin, TX 78745 907 East St. Johns Ave, Austin, TX 78752.**
- (b) All delivery orders are subject to the terms and conditions of this Contract. In the event of a conflict between an order and this Contract, the Contract shall control.
- (c) Delivery hours are limited to 8:00 a.m. – 5:00 p.m., prevailing local time.

(d) All deliveries shall be made F.O.B. destination. This term means free of expense to the Authority delivered and laid down in the area indicated by the Authority. The Contractor shall:

- (1) pack and mark the shipment to comply with specifications; or if the specifications do not contain specific packing or marking instructions, pack and mark the shipment in accordance with prevailing commercial practices and in such a manner to assure delivery in good condition and as required by this Contract;
- (2) prepare and distribute commercial bills of lading;
- (3) deliver the shipment in good order and condition to the point of delivery specified in the Contract;
- (4) be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the Authority at the delivery point specified in the Contract;
- (5) furnish a delivery schedule and designate the mode of delivering carrier; and
- (6) pay and bear all charges to the specified point of delivery.

## **7. ACCEPTANCE CRITERIA**

A review of the Contractor's supplies will be performed by the Authority upon delivery. If any supplies delivered under this contract are deemed incomplete or unacceptable in any way, the Authority will require the Contractor to take corrective measures including replacing any supplies at no additional cost to the Authority.

## **8. INVOICING AND PAYMENT**

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

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

Or via e-mail to: [ap\\_invoices@capmetro.org](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) evidence of the acceptance of the supplies by the Authority; and
  - (5) any other information necessary to demonstrate entitlement to payment under the terms of the Contract.
- (b) All undisputed invoices shall be paid within the time period allowed by law through the Texas Prompt Payment Act, Tex. Gov't. Code § 2251.021(b).
- (c) The Contractor shall be responsible for all costs/expenses not otherwise specified in this Contract, including by way of example, all costs of equipment provided by the Contractor or Subcontractor(s), all fees, fines, licenses, bonds, or taxes required or imposed against the Contractor and Subcontractor(s), travel related expenses, and all other Contractor's costs of doing business.

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

## 9. 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

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

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

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

(3) **Workers' Compensation Insurance** providing statutory limits in accordance with the Texas Workers' Compensation Act and/or other State or Federal law as may be applicable to the work being performed under this Contract. Employers Liability Insurance with minimum limits of liability of One Million Dollars and No/100 Dollars (\$1,000,000).



(4) **Other Insurance:**

~~(i) 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.~~

(ii) Terrorism coverage shall be included on all policies.

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

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

(f) If any part of the Contract is sublet, the Contractor shall be liable for its Subcontractor's insurance coverages of the types and in the amounts stated above, and shall furnish the Authority with copies of such Certificates of Insurance. No delay in the work 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, all of the Contractor's insurance policy required under this Contract.

(h) The Contractor must furnish proof of the required insurance within five (5) days of the award of the Contract. Certificate of Insurance must indicate the Contract number and description. The insurance certificate should be furnished to the attention of the Contracting Officer.

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

**10. INDEPENDENT CONTRACTOR**

The Contractor's relationship to the Authority in the performance of this Contract is that of an independent contractor. The personnel performing services under this Contract shall at all times be under the Contractor's exclusive direction and control and shall be employees of the Contractor and not employees of the Authority. The Contractor shall be



fully liable for all acts and omissions of its employees, Subcontractors, and their suppliers and shall be specifically responsible for sufficient supervision and inspection to assure compliance in every respect with Contract requirements. There shall be no contractual relationship between any Subcontractor or supplier of the Contractor and the Authority by virtue of this Contract. The Contractor shall pay wages, salaries and other amounts due its employees in connection with this Contract and shall be responsible for all reports and obligations respecting them, such as Social Security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

**11. 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.

**12. CHANGES**

(a) The Authority may at any time, by a written order, make changes within the general scope of this Contract in any one or more of the following:

- (1) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Authority in accordance therewith;
- (2) method of shipment or packing; and
- (3) place of delivery.

(b) If any such change 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 changed or not changed by the order, an equitable adjustment shall be made in the Contract price or delivery schedule, or both, and the Contract shall be modified in writing accordingly.

(c) Any notice of intent to assert a claim for adjustment under this paragraph must be asserted by the Contractor within thirty (30) days from the date of receipt of the Authority's written order; provided, however, that later notice shall not bar the Contractor's claim if the Contractor can demonstrate that the Authority was not prejudiced by the delay in notification. In no event shall any claim be asserted after final payment.

(d) Failure to agree to any adjustment under this paragraph shall be a dispute concerning a question of fact within the meaning of the disputes paragraph of this Contract. However, nothing in this paragraph shall excuse the Contractor from proceeding with the Contract as changed pending resolution of the dispute.

**13. EXTRAS**

Except as otherwise provided in this Contract, no payment for extras shall be made unless such extras and the prices therefor have been authorized in writing by the Authority.

**14. VARIATION IN ESTIMATED QUANTITY**

If the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit-priced item varies more than twenty-five percent (25%) above or below the estimated quantity, an equitable adjustment in the Contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request (in writing) an extension of time to be received by the Contracting Officer within ten (10) days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the Contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.

**15. PERSONNEL ASSIGNMENTS**

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

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

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

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

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

(3) National Sex Offender Registry

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

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

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

Offense Type	Action Required
<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>	

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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>
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.

**16. 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 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 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.

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

**17. INSPECTION**

(a) All supplies (which term throughout this paragraph includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Authority or its authorized representative, to the extent practicable, at all times (including the period of manufacture) and places and, in any event, prior to acceptance.

(b) In the event any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this Contract, the Authority shall have the right either to reject those supplies (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Authority, corrected in place by and at the expense of the Contractor promptly after notice and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Authority either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Authority thereby, or (ii) may terminate this Contract for default as provided in the termination paragraph of this Contract. Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Authority may require the delivery of such supplies at a reduction in price that is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the Disputes paragraph of this Contract.

(c) If any inspection or test is made by the Authority or its authorized representative on the premises of the Authority or a Subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Authority's inspectors in the performance of their duties. If the Authority's inspection or test is made at a point other than the premises of the Contractor or a Subcontractor, it shall be at the expense of the Authority, except as otherwise provided in this Contract; provided, that in case of rejection, the Authority shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Authority shall be performed in such a manner as not to unduly delay the work. The Authority reserves the right to charge to the Contractor any additional cost of the Authority's inspection and test when supplies are not ready at the time such inspection and test is required by the Contract or when re-inspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this Contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the Contract requirements nor impose liability on the Authority therefor.

(d) The inspection and test by the Authority of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the Contract requirements that may be discovered prior to acceptance. Except as otherwise provided in this Contract, acceptance shall be conclusive except for latent defects, fraud, or such gross mistakes as amount to fraud.

**18. MATERIALS**

All equipment, material, and articles incorporated into the supplies covered by this Contract shall be new and of the most suitable grade for the purpose intended unless otherwise specifically provided in this Contract. If applicable, 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.

**19. SUSPENSION OF WORK**

(a) The Contracting Officer may order the Contractor in writing to suspend all or any part of the Contract 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 Contract 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 the 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 subparagraph shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this paragraph.

**20. RISK OF LOSS OR DAMAGE**

Except as otherwise provided in this Contract, the Contractor shall be responsible for the supplies covered by this Contract until they are delivered at the designated delivery point, regardless of the point of inspection. After delivery to the Authority at the designated point and prior to acceptance by the Authority or rejection and giving notice thereof by the Authority, the Authority shall be responsible for the loss, destruction of, or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Authority acting within the scope of their employment. The Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Authority shall be responsible for the loss, destruction of, or damage to the supplies only if such loss, destruction, or damage results from the gross negligence of officers, agents, or employees of the Authority acting within the scope of their employment.

**21. TERMINATION FOR DEFAULT**

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

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

(2) if the Contractor fails to perform any of the other provisions of this Contract and does not cure such failure within a period of ten (10) days (or such longer period as the Authority may authorize in writing) after receipt of notice from the Authority specifying such failure.

(b) In the event the Authority terminates this Contract in whole or in part as provided in paragraph (a) of this paragraph, the Authority may procure, upon such terms and in such manner as the Authority may deem appropriate, supplies similar to those so terminated, and the Contractor shall be liable to the Authority for any excess costs for such similar supplies; 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 to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.



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

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

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

## **22. TERMINATION FOR CONVENIENCE**

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

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

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

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

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

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

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

(4) the reasonable settlement costs of the Contractor and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination and settlement of Subcontracts thereunder, together with reasonable storage, transportation, and

other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract.

(5) The total sum to be paid the Contractor under this paragraph shall not exceed the total Contract 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 orders not terminated.

**23. PAYMENT TO SUBCONTRACTORS**

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

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

**24. CONTRACTOR CERTIFICATION**

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

**25. INTELLECTUAL; DATA PRIVACY PROPERTY PROVISIONS**

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

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

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

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

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

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

(2) where the obtaining of worldwide rights is not reasonably practical or feasible, provide written notice to the Authority of such pre-existing or third party rights or limitations, request the Authority's approval of such pre-existing or third party rights, obtain a limited right and license to use such pre-existing or third-party rights on such terms as may be reasonably negotiated, and obtain the Authority's written approval of such pre-existing or third-party rights and the limited use of same. The Contractor shall provide the Authority with documentation indicating a third party's written approval for the Contractor to use any pre-existing or third-party rights that may be embodied, contained, reserved or reflected in the Works. The Contractor shall indemnify, defend and hold the Authority harmless from and against any and all claims, demands, regulatory proceedings and/or causes of action, and all losses, damages, and costs (including attorneys' fees and settlement costs) arising from or relating to, directly or indirectly, any claim or assertion by any third party that the Works infringe any third-party rights. The foregoing indemnity obligation shall not apply to instances in which the Authority either:

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

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

(d) The Contractor hereby warrants and represents to the Authority that individuals or characters appearing or depicted in any advertisement, marketing, promotion, publicity or media, of any type or form that may now exist or hereafter be created or developed by or on behalf of the Contractor for the use by or benefit of the Authority, have provided their written consent for the use, reproduction, display, performance, and distribution of, and/or preparation of derivative works to, their persona or personality rights, including name, biographical information, picture, portrait, likeness, performance, voice and/or identity ("Personality Rights"), and have been compensated for such Personality Rights, if appropriate. If such permission has been obtained for a limited time, the Contractor shall be responsible for any costs associated with claims resulting from such use, etc., of the Personality Rights after the expiration of those time limits. The Contractor agrees to defend, indemnify and hold the Authority harmless from any claims, including but not limited to claims for invasion of privacy, infringement of the right of publicity, libel, unfair competition, false advertising, intentional or negligent infliction of emotional distress, copyright or trademark infringement, and/or claims for attorney's fees, resulting from such use, etc., of the Personality Rights.

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

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

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

(h) 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 to 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.

(i) The Contractor and its subcontractors, employees and consultants may 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.

(j) This Section 24 will survive termination or expiration of this Agreement for any reason.

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

The Contract Sum includes all applicable federal, state, and local taxes and duties. The Authority is exempt from taxes imposed by the State of Texas and local sales and use taxes under Texas Tax Code § 151.309, and any such taxes included on any invoice received by the Authority shall be deducted from the amount of the invoice for purposes of payment. The Contractor may claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts. The Contractor bears sole and total responsibility for obtaining information pertaining to such exemption.

**27. 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.

**28. 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.

## **29. 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.

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

## **31. LIMITATION OF LIABILITY**

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

## **32. 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.

## **33. 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. 5<sup>th</sup> Street, Austin, Texas 78702.

**34. 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.

**35. LICENSES AND PERMITS**

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

**36. INDEMNIFICATION**

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

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

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

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

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

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

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

(d) **"THREATENED" MEANS A DEMAND OR STATEMENT HAS BEEN MADE (ORALLY OR IN WRITING) OR A NOTICE HAS BEEN GIVEN (ORALLY OR IN WRITING), OR ANY OTHER EVENT HAS OCCURRED OR ANY**



OTHER CIRCUMSTANCES EXIST THAT WOULD LEAD A PRUDENT PERSON OR ENTITY TO CONCLUDE THAT AN ACTION OR OTHER MATTER IS LIKELY TO BE ASSERTED, COMMENCED, TAKEN OR OTHERWISE PURSUED IN THE FUTURE.

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

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

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

**37. NOTICE OF LABOR DISPUTES**

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

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

**38. PUBLICITY RELEASES**

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this Contract 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.

**39. 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.

**40. MANUFACTURER’S WARRANTY**

Any and all standard manufacturer's warranties shall accrue to the benefit of the Authority. The manufacturer's warranties referenced herein shall be in addition to the contractual remedies set forth in this Contract and in addition to any and all other statutory remedies or warranties imposed on the Contractor for the benefit of the Authority.

**41. 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 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.

**42. EXCUSABLE DELAYS**

(a) Except for defaults of Subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this Contract under its terms if the failure arises from Force Majeure Events. In each instance, the failure

to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work.

(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 were obtainable from other sources;
- (2) the Authority ordered the Contractor in writing to purchase these supplies from the other source; and
- (3) the Contractor failed to comply reasonably with this order.

(c) Upon the request of the Contractor, the Authority shall ascertain the facts and extent of the failure. If the Authority determines that any failure to perform results from one or more of the causes above, the delivery schedule or period of performance shall be revised, subject to the rights of the Authority under this Contract.

**43. INTERPRETATION OF CONTRACT – DISPUTES**

All questions concerning interpretation or clarification of this Contract or the acceptable fulfillment of this Contract by the Contractor shall be immediately submitted in writing to the Authority's Contracting Officer for determination. All determinations, instructions, and clarifications of the Contracting Officer shall be final and conclusive unless the Contractor files with the Capital Metro President/CEO within two (2) weeks after the Authority notifies the Contractor of any such determination, instruction or clarification, a written protest, stating in detail the basis of the protest. The President/CEO shall consider the protest and notify the Contractor within two (2) weeks of the protest filing of his or her final decision. The President/CEO's decisions shall be conclusive subject to judicial review. Notwithstanding any disagreement the Contractor may have with the decisions of the President/CEO, the Contractor shall proceed with the Work 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.

**44. TOBACCO FREE WORKPLACE**

- (a) Tobacco products include cigarettes, cigars, pipes, snuff, snus, chewing tobacco, smokeless tobacco, dipping tobacco and any other non-FDA approved nicotine delivery device.
- (b) The tobacco free workplace policy refers to all Capital Metro owned or leased property. Note that this includes all buildings, facilities, work areas, maintenance facilities, parking areas and all Authority owned vehicles.
- (c) Tobacco use is not permitted at any time on Capital Metro owned or leased property, including personal vehicles parked in Capital Metro parking lots.
- (d) Littering of tobacco-related products on the grounds or parking lots is also prohibited.

**45. 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—Revised-3 – Contractual Terms and Conditions
3. Exhibit F—Revised-3 – Scope of Services
4. Exhibit B – Representations and Certifications
5. Exhibit D – Small Business Enterprise Program/SBE
6. Other provisions or attachments to the Contract

**46. 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.

**47. MISCELLANEOUS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**48. 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.

**49. COOPERATIVE CONTRACT**

(a) The Authority has entered into a master cooperative purchasing agreement with other governmental entities (with the Authority, the “Cooperative Members”) to form the Texas Interlocal ~~Purchase~~ Purchasing Cooperative, under which the Cooperative Members grant access and make available to one another certain contracts of the Cooperative Members, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Chapter 271 of the Texas Local Government Code. The Contractor agrees to offer to other eligible Cooperative Members the

goods and services provided under this Contract with the same prices, and under terms and conditions, of this Contract.'

(b) The Authority does not accept any responsibility or liability arising from or related to a separate contract between another Cooperative Member and Contractor based on this Contract or for any purchases made thereunder.

(c) Cooperative Members shall no create participating cooperative contracts to procure professional services as defined by Texas Government Code Chapter 2254.

**50. AUSTIN TRANSIT PARTNERSHIP**

~~At the direction of Capital Metro, the services provided under the Contract may be performed on behalf of or in connection with Austin Transit Partnership (ATP), and ATP's projects, initiatives, and proposals.~~

**51. CONTRACTOR AND SUBCONTRACTOR ANNUAL AUDITED FINANCIAL REPORT**

The Contractor shall provide to the Authority a copy of Contractors' and Subcontractors' latest unaudited financial report throughout the term of the Contract. The unaudited financial report shall be provided annually. The unaudited financial report shall be provided to the Authority within ninety (90) calendar days from the end of Contractor's fiscal period. For instance, if Contractor's fiscal period ends each December 31<sup>st</sup>, then the unaudited financial report shall be provided to the Authority no later than March 31<sup>st</sup> of the following year.



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**EXHIBIT F – REVISED-3**  
**SCOPE OF SERVICES**  
**FABRICATION & DELIVERY OF BUS STOP AMENITIES**

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**1. INTRODUCTION**

- (a) Capital Metropolitan Transportation Authority (CapMetro) 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, as well as the unincorporated area of Travis County within Commissioner Precinct 2 and the Anderson Mill area of Williamson County. CapMetro operates fixed route bus and rail services, paratransit and rideshare.
- (b) CapMetro is continuing the amenities program for new and existing bus stops and intends to enter into a contract to purchase prefabricated bolt down shelters, benches, litter receptacles/containers and solar lighting for use at bus stops and transit facilities. All the components mentioned in this solicitation are CapMetro's currently adopted standards for amenities.

**2. SHELTERS**

- (a) Shelters shall be Tolar Model 32640-03 (5x12) or an approved equivalent and Optional Tolar Model 35950-00 (7x14) or an approved equivalent.
- (b) All shelters shall be manufactured in accordance with the specifications and drawings provided under Exhibit F-1.
- (c) The leg base shall include a thick aluminum custom fabricated escutcheon cover mechanically to be attached to base plates like the picture provided under Exhibit F-1.
- (d) All shelters shall be designed to support Solar Lighting, Solar Panels and battery systems installation.
- (e) The shelters must be ADA complaint with all applicable building codes, and designed to withstand all extreme wind, weather, and rain loads typical to Central Texas.
- (f) The shelters shall be designed in a manner that allows a moderately experienced technician to assemble, install and disassemble, and remove the unit on a concrete slab site.
- (g) Shelters shall be fabricated with metal components finished in Super Durable baked powder coat color RAL9006 White Aluminum and with a clear coat.
- (h) The Contractor shall make any necessary penetrations for easy installation.
- (i) The Contractor shall provide two (2) re-touch spray paint cans per shelter for future use. The color of the re-touch spray paint shall be RAL9006 White Aluminum or an approved equivalent.
- (j) CapMetro reserves the right to acquire, at any time during the term of the contract, the Optional Shelter Items and Shelter Parts separately priced under Exhibit A. The Contractor shall provide, on an as needed basis, the following Optional Shelter Items: Shelter (7x14 – Tolar Model 35950-00 or an approved equivalent), CapMetro Banner Sign (Refer to the paragraph below for detailed requirements), and Integrated Solar Lighting. The Contractor shall also provide, on an as needed basis, the following Shelter Parts: Box of Paint (RAL9006 White Aluminum or an approved equivalent), Dual Post End Leg with Radius Front Post, End Leg Perforated Metal Screen, Split Shoe Escutcheon Cover, Split Shoe Weldment, Left Rear Screen Post, Center Rear Screen Post, Right Rear Screen Post, Rear Screen Shoe Weldment, and Rear Perforated Screen Panel.
- (k) Shelter will be installed by CapMetro on both existing and new concrete pads.

**3. CAPMETRO BANNER**

- (a) The signs shall be manufactured in accordance with the drawings and specifications provided under Exhibit F-1.
- (b) The signs shall have the same look and feel of the existing signs that are located at existing CapMetro bus stops.
- (c) The contractor's final interpretation of the specifications and field verification must be completed, documented, and approved in writing by CapMetro's Project Manager.
- (d) The signs shall be powder coated with blue or red paint scheme as requested by the agency. CapMetro reserves the right to change, in accordance with Provision 12, "Changes", in Exhibit E, the artwork on the banner due to future re-branding efforts.

**4. BENCHES**

**Backless 71" Benches shall be "Austin™" Benches or an approved equivalent. (See Exhibit F-2).**

- (a) All Benches shall be constructed in accordance with the drawings and specifications provided under Exhibit F-2, "Austin™" Benches, Backless Bench, Cantilever, Aluminum, End Arms and Center Arm.
- (b) Benches shall be aluminum seating surface.
- (c) Benches shall be fabricated with metal components finished in Super Durable baked powder coat color Silver provided under Exhibit F-2 or an approved equivalent.
- (d) The Contractor shall provide one (1) re-touch spray paint per bench in Super Durable baked powder coat color Silver or an approved equivalent for future use.

**Backed 71" Benches should be "Austin™" Benches or an approved equivalent. (See Exhibit F-2)**

- (e) All Benches shall be constructed in accordance with the specifications and drawings provided under Exhibit F-2, "Austin™" Benches, Backed Bench, Cantilever, Aluminum, End Arms and Center Arm
- (f) Benches shall be aluminum seating surface
- (g) Benches shall be fabricated with metal components finished in Super Durable baked powder coat color Silver provided under Exhibit F-2 or approved equivalent.
- (h) The Contractor shall provide one (1) re-touch spray paint per bench in Super Durable baked powder coat color Silver or an approved equivalent for future use.

**Optional Item: 96" Benches should be "Austin™" Benches or an approved equivalent. (See Exhibit F-2)**

- (i) All Benches shall be constructed in accordance with the specifications and drawings provided under Exhibit F-2 "Austin™" Benches, Backless Bench, Cantilever, Aluminum, End Arms and Center Arm.
- (j) Benches shall be aluminum seating surface.
- (k) Benches shall be fabricated with metal components finished in Super Durable baked powder coat color Silver provided in Exhibit F-2 or an approved equivalent.
- (l) The Contractor shall provide one (1) re-touch paint per bench in Super Durable baked powder coat color Silver or an approved equivalent for future use.

**5. LITTER RECEPTACLES**

- (a) CapMetro is seeking to purchase fabricated steel litter receptacles/containers with a 32 Gal. Black Round Liner. The liner shall be made of a durable design, dent resistant, environmentally friendly, and made of recycled content or an approved equivalent to match the TR-12 Great Street receptacle as supplied by Tournesol or an approved equivalent.
- (b) Existing litter receptacles shall be manufactured in accordance with the design drawings and specifications provided under Exhibit F-3.
- (c) The successful Contractor's final interpretation of drawings, and/or field verification must be completed, approved, and documented in writing with CapMetro's Project Manager and the Procurement Department before fabrication of the of litter receptacles/containers can commence.
- (d) All welds between flat straps shall be smooth continuous fillet welds ground smooth where necessary, to remove any burs or sharp edges. Where flared straps meet ½" rod, all welds are ground smooth for appearance.
- (e) Following fabrication, the receptacles shall be cleaned and treated with an iron phosphate process prior to the coating application. This process shall include a non-chromated alkaline cleaner and an iron phosphate treatment followed with an acidic sealer for maximum adhesion. The protective coating shall consist of a corrosion resistant epoxy undercoat with a RAL9006 color coat, Tournesol Silver Matte (approved equal), or an approved equivalent and a clear topcoat . Color coat and clearcoat are polyester TGIC power applied by the dry electrostatic method. The resultant coating shall be a minimum of 4 mils thick on all surfaces. There is no lead in the finish.
- (f) The Contractor shall build, finish (apply coatings), and deliver the litter receptacles/containers units and liner units to CapMetro.

**Optional Item: Recycle Litter Container**

- (g) CapMetro is seeking to purchase fabricated steel litter receptacles/containers with a bottle and can recycling top-and with a 32 Gal. Black Round Liner. The liner shall be made of a durable design, dent resistant, environmentally friendly, and made of recycled content or an approved equivalent to match the TR-12 Great Street receptacle as supplied by Tournesol or an approved equivalent.
- (h) Following fabrication, the receptacles shall be cleaned and treated win an iron phosphate process prior to the coating application. This process shall include a non-chromated alkaline cleaner and an iron phosphate treatment followed with an acidic sealer for maximum adhesion. The protective coating shall consist of a corrosion resistant epoxy undercoat with a RAL9006 color coat, Tournesol Silver Matte (approved equal), or an approved equivalent and a clear top-coat. Color coat and clearcoat are polyester TGIC power applied by the dry electrostatic method. The resultant coating shall be a minimum of 4 mils thick on all surfaces. There is no lead in the finish.
- (i) The Contractor shall build, finish (apply coatings), and deliver the litter receptacles/container units and liner units to CapMetro.
- (j) The Contractor shall provide the same trash receptacles with a bottle and can recycling top. This fabricated lid shall allow for recyclables to be easily disposed of and will decrease the amount of landfill waste mixed within the recycling waste.

**6. SHELTER SOLAR LIGHTS**

**Shelter Solar Lighting for the 5x12 Shelters**

- (a) Solar Lights shall be RMS80F series shelter lighting by Urban Solar or an approved equivalent.

- (b) Solar Lighting should be compatible with the existing Tolar Model 32640-03 (5x12) shelter. The Solar Lighting System needs to be connected and easily attached to the shelter. Installation will be performed by CapMetro.
- (c) The Shelter Solar Lighting for the 5x12 Shelters shall be manufactured in accordance with the existing lighting design drawings and specifications under Exhibit F-4.
- (d) The lighting system shall provide lighting using state of the art LED luminaires, batteries, and solar panels, integrated with an intelligent programmable Energy Control Module (ECM).
- (e) Solar lighting exterior casing shall be RAL9006 White Aluminum with clear coat or an approved equivalent.

**Optional Item: Stand Alone Solar Lighting**

- (f) The lighting system shall be Urban Solar PV Stop Max 70 Dual Luminaire or approved equal.
- (g) The Stand Alone Solar Lighting shall be manufactured in accordance with the existing lighting design drawings and specifications under Exhibit F-4.
- (h) The lighting system shall provide lighting using state of the art LED luminaires, batteries, and solar panels.
- (i) The Solar lighting high powered LED solar lighting system shall come complete with solar power assembly, fixture, bracket, and all mounting hardware.
- (j) The lighting system shall be manufactured such that it can be mounted onto the existing neighborhood signage post at local bus stops.

**Optional Item: Remote Solar Lighting**

- (k) The lighting system shall be Urban Solar RMS 170 or an approved equal. (See Exhibit F-4)
- (l) The lighting system shall provide lighting using state of the art LED luminaires, batteries, and solar panels.
- (m) The Solar lighting high powered LED solar lighting system shall come complete with solar power assembly, fixture, bracket, and all mounting hardware.
- (n) Solar units and all associated hardware are to be resistant to vandalism. All fasteners used shall resistant tampering.
- (o) Pole-mounted security lighting systems must be capable of mounting to 4.5" OD round posts.
- (p) The Contractor shall supply a 4.5" OD x 16' round post with a bolt down post base.
- (q) CapMetro will provide the recommended foundation footing for installation.

**7. EXCLUSION**

This contract includes fabrication and delivery only. The Installation of the bus stop amenities will be the responsibility of CapMetro.

**8. SUBMITTALS/APPROVALS**

The Contractor shall submit shop drawings with complete details/specifications for the fabrication of the shelters for approval by CapMetro's Project Manager fourteen (14) calendar days before proceeding with fabrication of the shelters.

**9. DELIVERY**

- (a) The Contractor shall coordinate with CapMetro's designated Project Manager regarding delivery of amenities. Amenities shall be delivered F.O.B. destination; this term means free of expense to CapMetro.
- (b) The Contractor shall coordinate with CapMetro's designated Project Manager regarding multiple deliveries as needed.
- (c) Additional Deliveries shall be coordinated with CapMetro's designated Project Manager no later than 45 days after last delivery.
- (d) The Contractor shall coordinate with CapMetro's designated Project Manager if the Contractor experiences any late delivery or supply chain issues during performance of this contract.
- (e) The Contractor is responsible for the delivery and the offloading of shipment from the delivery truck onto an asphalt storage area indicated by CapMetro and arrange for the offloading of amenities. For enclosed trucks, a liftgate service will be required.
- (f) First Delivery shall be made within 120 days after delivery order issuance to **CapMetro, Attn: Fidel Campos, 7415 Circle South, Austin, TX 78745 907 East St Johns Ave. Austin, TX 78752**. The Contractor shall contact CapMetro's Project Manager seven (7) days in advance of shipping to coordinate the specifics of the delivery, such as lay down locations, access, and timing.
- (g) Deliveries shall be made between the hours of 7:00 AM Central Time to 2:00 PM Central Time Mondays through Fridays. Deliveries not made at the location stated in paragraph 9(f) above will be rejected.

**10. SALIENT CHARACTERISTICS OF APPROVED EQUIVALENTS**

- (a) Shelter – General Salient Characteristics (minimum criteria) are:
  - 1) Shelter should be Tolar Model 32640-03 (5x12) or an approved equivalent.
  - 2) All structural steel shall be ASTM- A-36 minimum yield strength 36,000PSI
  - 3) All structural aluminum members shall be of alloy 6063-T% or greater
  - 4) All holes to be drill or punch
  - 5) Steel welding shall conform to American Welding Society standard D1.1-10. Electrodes shall conform to AWS 5.1, Class E70S-5
  - 6) Aluminum welding shall conform to American Welding Society standard D1.2-08. Electrodes shall conform to AWS/SFA 5.10, Class ER 4043
  - 7) All welding to be done at the manufacturer facilities
  - 8) Finishes – Super Durable baked powder coat color RAL9006 White Aluminum with clear coat.
- (b) Tolar Model 35950-00 (7x14) – Additional Shelter Salient Characteristics (minimum criteria) are:
  - 1) All structural steel shall be ASTM- A-36 minimum yield strength 36,000PSI
  - 2) All structural aluminum members shall be of alloy 6063-T% or greater
  - 3) All holes to be drill or punch
  - 4) Steel welding shall conform to American Welding Society standard D1.1-10. Electrodes shall conform to AWS 5.1, Class E70S-5
  - 5) Aluminum welding shall conform to American Welding Society standard D1.2-08. Electrodes shall conform to AWS/SFA 5.10, Class ER 4043
  - 6) All welding to be done at the manufacturer facilities
  - 7) Integrated lighting shall be RAD series shelter lighting by Urban Solar or an approved equivalent.
- (c) Benches - General Salient Characteristics (minimum criteria) are:
  - 1) Benches should be Landscape Forms- Austin Bench or an approved equivalent.
  - 2) All aluminum shall resist rusting, chipping, peeling, and fading.

- 3) Arms should be added to both ends and center position
- 4) Bench shall have freestanding/surface mount supports ship with glides which may be removed for surface mounting.
- 5) All cantilever supports must be surface mounted into concrete.
- 6) Tamper resistance screws shall be used on bench
- 7) Finish on Metal:
  - (a) Primer: Rust inhibitor
  - (b) Topcoat: Thermosetting TGIC polyester powder coat UV, chip, and flake resistant.
  - (c) Test Results: "Pangard II".
  - (d) Gloss Consistency, Gardner 60 Degrees, ASTM D 523: Plus or minus 5 percent from standard.
  - (e) UV Resistance, Color and Gloss, ASTM G 155, Cycle 7: Delta E less than 2 at 2.0 mils and less than 20 percent loss.
  - (f) Cross-Hatch Adhesion, ASTM D 3359, Method B: 100 percent pass.
  - (g) Flexibility Test, Mandrel, ASTM D 522: 3 mm at 2 mils.
  - (h) Erichsen Cupping, ISO 1520: 8 mm.
  - (i) Impression Hardness, Buchholz, ISO 2815: 95.
  - (j) Impact Test, ASTM D 2794: 60 inch-pounds at 2.5 mils.
  - (k) Pencil Hardness, ASTM D 3363: 2H minimum.
  - (l) Corrosion Resistance, 1,500-Hour Test, ASTM B 117: Max. undercutting 1 mm.
  - (m) Humidity Resistance, 1,500-Hour Test, ASTM D 2247: Max. blisters 1 mm.
- 8) Color: Silver
- 9) Aluminum: Extruded aluminum boards for the face and interior seats are clear anodized (202-R1) and powder coated.
- 10) Frame, Legs, and Arms:
  - a. Supports: Cast ductile iron
  - b. End caps, back straps and optional arm rests: 319 cast aluminum

(d) Backless "Austin" Benches (71") – Additional Salient Characteristics (minimum criteria) are:

- 1) Style: Backless
- 2) Depth: 22 inches
- 3) Overall Height: 18 inches
- 4) Arm Height: 25.5 inches
- 5) Length: 72 inches
- 6) Mounting: Cantilevered (Surface mount only)

(e) Backed "Austin" Benches (71") – Additional Salient Characteristics (minimum criteria) are:

- 1) Style: Backed
- 2) Depth: 24 inches
- 3) Overall Height: 33 inches
- 4) Arm Height: 25.5 inches
- 5) Length: 72 inches
- 6) Mounting: Cantilevered (Surface mount only)

(f) Litter Receptacles - Salient Characteristics (minimum criteria) are:

General Characteristics: LR shall be a steel litter container to match the TR-12 Great Street receptacle as supplied by Fair Weather Site Furnishings, along with OTTO USA Multi-Purpose Container or approved equal.

- 1) Material
  - (a) The TR-12 modified trash receptacle shall be fabricated with 1/4 x 1 1/2" mild steel vertical slats welded to 1/4 x 1 1/2" hoops.
  - (b) Flared straps shall be welded to 1/2" rod. All steel shall conform to ASTM A36 hot rolled steel and shall be wheelabrated prior to fabrication.
  - (c) Four mounting tabs with 1/2" holes are welded to the base ring.



- (d) The door is self-latching and is secured with a keyed lock.
  - (e) The 10" x 13" steel decal plate shall be supplied with stainless steel attachment hardware.
  - (f) The decal plate and the bolt heads shall be powder coated to match the receptacle and shall be factory installed with: landscape orientation, the center of the plate 180 degrees from the center of the door and the top of the plate level with the top of the door.
- 2) Welds: All welds between flat straps shall be smooth, continuous fillet welds ground smooth where necessary, to re-move any burs or sharp edges. Where flared straps meet 1/2" rod, all welds are ground smooth for appearance.
  - 3) Protecting Coatings: Following fabrication, the receptacles shall be cleaned and treated with an iron phosphate process prior to the coating application. This process shall include a non-chromated alkaline cleaner and an iron phosphate treatment followed with an acidic sealer for maximum adhesion.
  - 4) Finishes: The protective coating shall consist of a corrosion resistant epoxy undercoat with either a Silvadillo color coat and a clear topcoat. Color coat and clearcoat shall be polyester TGIC powder applied by the dry electrostatic method. The resultant coating shall be a minimum of 4 mils thick on all surfaces. Shall not contain lead in the finish.
  - 5) Interior Liner: The litter container liner, OTTO USA, Multi-Purpose Container, #1332-Blk, 32 gallon: 28" High, 22 width, 22" Depth.
- (g) Solar Lighting- Salient Characteristics (minimum criteria) are:
- 1) Shelter Solar Lighting
    - a. Solar units and all associated hardware are to be resistant to vandalism. All fasteners used shall resist tampering. All mounted hardware and brackets shall be supplied.
    - b. To ensure a minimum safety standard each complete PV LED lighting system shall carry a Nationally Recognized Testing Laboratory (NRTL – <https://www.osha.gov/dts/ot-pca/nrtl/nrtllist.html>) certification such as Underwriters Laboratory (UL) or equivalent. NRTL's for (multiple) individual sub-components shall not be considered.
    - c. Security light wattage shall be a minimum of 8W.
    - d. The solar array wattage (Pmax) shall be a minimum of 80W.
    - e. Battery capacity shall be a minimum of 36Ah at 12VDC.
    - f. Battery chemistry shall be sealed lead acid absorbed glass mat (AGM).
    - g. System enclosure shall be aluminum and powder coated RAL9006 White Aluminum
    - h. LED technology shall be used with a minimum of 50,000 hours of operation.
    - i. Battery back-up (autonomy) shall be a minimum of three (5) days in any environment.
    - j. Unit controller shall be a "smart controller" and possess a self-test feature.
    - k. Batteries shall have a minimum five (5) year prorated warranty
    - l. All other system components including LEDs, controllers, wiring, metal work, and associated hardware shall have a minimum ten (10) year warranty.
    - m. Solar panel shall have a twenty-five (25) year warranty.
    - n. System shall have a power source of 12VDC.
    - o. Solar controller unit shall be delivered with the capability to automatically adjust light level
    - p. output to seasonal changes or weather conditions.
    - q. Solar controller unit shall contain a factory set real time clock for on/off transition
    - r. accuracy and possess a self-test feature which is functional during the day without use of
    - s. specialty tools. A unit that adjusts automatically to daylight savings time is required.
    - t. Solar controller unit shall minimize false transitions by not to relying on module voltages or
    - u. photocell to transition between on and off.
    - v. Solar controller shall allow for factory-customizable lighting profiles
    - w. Solar unit shall be designed so that independent components can be replaced, including LED
    - x. luminaire, batteries, control module.

2) Stand Alone Solar Lighting

- a. Security light wattage shall be a minimum of 5W.
- b. The panel wattage (Pmax) shall be a minimum of 20W.
- c. The photovoltaic (PV) panel shall be tilted and able to be turned in any direction to orient south without affecting the orientation of the luminaire.
- d. Battery capacity shall be a minimum of 20Ah at 12VDC.
- e. Battery chemistry shall be LiFePO4 (Lithium Iron Phosphate).
- f. Pole-mounted security lighting systems must be capable of mounting to various pole sizes and shapes.
- g. Solar units and all associated hardware are to be resistant to vandalism. All fasteners used shall resist tampering. Agency maintenance staff must be able to service the solar units with minimal effort.
- h. Solar unit shall be designed so that independent components can be replaced, including LED luminaire, batteries, control module. Such replacement items are to be identified in a parts catalog.
- i. The photovoltaic (PV) panel shall be tilted and able to be turned in any direction to orient south without affecting the orientation of the luminaire.
- j. All metal components shall be powder coated RAL 9006 White Aluminum as a standard.
- k. Security light activation shall be from dusk to dawn with programmable activation periods.
- l. Solar controller unit shall be delivered with the capability to automatically adjust light level output to seasonal changes or weather conditions.
- m. Solar controller unit shall contain a factory set real time clock for on/off transition accuracy and possess a self-test feature which is functional during the day without use of specialty tools. A unit that adjusts automatically to daylight savings time is required.
- n. Solar controller unit shall minimize false transitions by not relying on module voltages or photocell to transition between on and off.
- o. LED technology shall be used with minimum of 50,000 hours of operation.
- p. Battery back-up (autonomy) shall be a minimum of four (4) days in any environment.
- q. Batteries shall have a minimum five (5) year prorated warranty
- r. All other system components including LEDs, controllers, wiring, metal work, and associated hardware shall have a minimum ten (10) year warranty.
- s. Solar panel shall have a twenty-five (25) year warranty.

3) Remote Solar Lighting

- a. Pole-mounted security lighting systems must be capable of mounting to 4.5" OD round posts.
- b. Solar units and all associated hardware are to be resistant to vandalism. All fasteners used shall resist tampering.
- c. The system must be capable of powering one or more remotely mounted luminaires to provide illumination at shaded bus stops from a nearby unshaded location. Security lighting profiles shall be completely customizable.
- d. The panel wattage (Pmax) shall be a minimum of 70W.
- e. Solar array tilted at a minimum angle of 45 degrees from horizontal for optimal year-round performance.
- f. Solar panel shall have insulated backing to reduce the internal temperature of the battery enclosure, extending battery life.
- g. Battery capacity shall be a minimum of 40Ah at 12VDC.
- h. Battery chemistry shall be LiFePO4 (Lithium Iron Phosphate).
- i. Battery back-up (autonomy) shall be a minimum of three (5) days in any environment.
- j. Unit controller shall be a "smart controller" and possess a self-test feature.
- k. System enclosure shall be powder coated RAL9006 White Aluminum
- l. Batteries shall have a minimum five (5) year prorated warranty

- m. All other system components including controllers, wiring, metal work, and associated hardware shall have a minimum ten (10) year warranty.
- n. Solar panel shall have a twenty-five (25) year warranty.
- o. Agency maintenance staff must be able to service the solar units with minimal effort.
- p. System shall have a power source of 12VDC.
- q. Solar controller unit shall be delivered with the capability to automatically adjust light level output to seasonal changes or weather conditions.
- r. Solar controller unit shall contain a factory set real time clock for on/off transition accuracy and possess a self-test feature which is functional during the day without use of specialty tools. A unit that adjusts automatically to daylight savings time is required.
- s. Solar controller unit shall minimize false transitions by not relying on module voltages or photocell to transition between on and off.
- t. Solar unit shall be designed so that independent components can be replaced including the solar panel, batteries, and control module. Such replacement items are to be identified in a parts catalog.