



CONTRACT NO. 500205

(RFP 807072)

CHILDCARE FACILITY PROGRAM

CONTRACTOR:

Bright Horizons Children's Centers LLC
2 Wells Ave
Newton, MA 02456
Phone: 617-673-8000
Email: icasagrande@brighthorizons.com

AWARD DATE:

October 30, 2024

NOT TO EXCEED AWARD AMOUNT:

\$125,000.00

TERM:

April 01, 2025 through March 31, 2026

PROJECT MANAGER:

Virginia Keeling
512-695-7556
virginia.keeling@capmetro.org

CONTRACT ADMINISTRATOR:

Karen Ross
512-389-7521
karn.ross@capmetro.org



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

**CONTRACT 500205
(RFP 807072)**

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CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY AUSTIN, TEXAS		
AWARD/CONTRACT FORM		
1. SOLICITATION NO: RFP 807072	2. CONTRACT NO: 500205	3. EFFECTIVE DATE: Upon Execution
4. CONTRACTS ADMINISTRATOR: Karen Ross		PHONE: 512-389-7521
5. SHIP TO ADDRESS:		6. DELIVERY TERMS:
Capital Metro 2910 East 5 th Street Austin, Texas 78702		F.O.B. Destination
8. CONTRACTOR NAME & ADDRESS:		7. DISCOUNTS FOR PROMPT PAYMENT: N/A
Bright Horizons Children's Centers, LLC 2 Wells Avenue Newton, MA 02459		9. REMITTANCE ADDRESS: (If different from Item 8)
PHONE: 617-673-8000		EMAIL: icasagrande@brighthorizons.com
10. SBE GOAL: N/A		
CONTRACT EXECUTION		
CAUTION: A false statement in any bid or proposal submitted to CMTA may be a criminal offense in violation of Section 37.10 of the Texas Penal Code.		
X	NEGOTIATED AGREEMENT: (Contractor is required to sign below and return to the Contracting Officer within three (3) calendar days of receipt.)	
<p>Contractor agrees to perform, furnish and deliver all the services set forth or otherwise identified in the following items and all relevant attachments and addenda for the base and option years. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this Award/Contract, (b) the solicitation, as amended, and (c), such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein.</p> <ul style="list-style-type: none"> Exhibit A—Revised-3, Pricing Schedule Exhibit B, Representations and Certifications Exhibit E – Revised-1, Contractual Terms and Conditions Exhibit F – Revised-2, Scope of Services Attachment 1 to Exhibit F, Lease Agreement Exhibit H, Authorization of Work Product Additional Data, October 17, 2024 Proposal, dated September 16, 2024 		
SIGNATURE OF CONTRACTOR: Name/Title: <u>John G. Casagrande / General Counsel</u> Signature:  Date: <u>October 30, 2024</u>		
X	AWARD: Items listed below are changes from the original offer and solicitation as submitted.	
This Award/Contract Form may be executed in multiple originals, and an executed facsimile or email copy shall have the same force and effect as an original document.		
ALTERATIONS IN CONTRACT: Changes are as follows: Refer to Exhibit A—Revised-2, Pricing Schedule, Exhibit E – Revised-1, Contractual Terms and Conditions, and Exhibit F—Revised-2 which reflect the most recent versions of the following Exhibits: <ul style="list-style-type: none"> Refer to <u>Exhibit A—Revised-2</u>, Pricing Schedule, which shall be replaced in its entirety with <u>Exhibit A--Revised-3</u>, Pricing Schedule, attached hereto and made a part hereof for all pertinent purposes. Refer to <u>Exhibit E</u>, Contractual Terms and Conditions, which shall be replaced in its entirety with <u>Exhibit E--Revised-1</u>, Contractual Terms and Conditions, attached hereto and made a part hereof for all pertinent purposes. Refer to <u>Exhibit F—Revised-1</u>, Scope of Services, which shall be replaced in its entirety with <u>Exhibit F--Revised-2</u>, Scope of Services, attached hereto and made a part hereof for all pertinent purposes. Exhibit F—Revised-2 updates Attachment 1, Lease Agreement in its entirety. 		
11. ACCEPTED AS TO: Exhibit A—Revised-3, Section 6.A, Pricing: Base Period 1 (Contract Year 1), Item 1 and Item 2, for a total Not-to-Exceed amount of \$125,000.00.		
SIGNATURE OF CONTRACTING OFFICER: Muhammad Abdullah, C.P.M., VP Procurement & Chief Contracting Officer Signature:  Date: <u>January 13, 2025</u> <div style="text-align: right; font-size: small;">E-SIGNED by Muhammad Abdullah on 2025-01-13 14:40:46 GMT</div>		

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

EXHIBIT A--REVISED-3**PRICING SCHEDULE****RFP 807072****THE OFFEROR IS REQUIRED TO SIGN AND DATE EACH PAGE OF THIS SCHEDULE****1. IDENTIFICATION OF OFFEROR AND SIGNATURE OF AUTHORIZED AGENT**

Company Name (Printed)	Bright Horizons Children's Centers LLC		
Address	2 Wells Avenue		
City, State, Zip	Newton, MA 02459		
Phone, Fax, Email	Phone: 617-673-8000	Fax: 617-826-7338	jcasagrande@brighthorizons.com
The undersigned agrees, if this offer is accepted within the period specified, to furnish any or all supplies and/or services specified in the Schedule at the prices offered therein.			
Authorized Agent Name and Title (Printed)	John G. Casagrande, General Counsel		
Signature and Date			10/25/2024

2 ACKNOWLEDGEMENT OF AMENDMENTS

The offeror must acknowledge amendment(s) to this solicitation in accordance with the ACKNOWLEDGMENT OF AMENDMENTS section of Exhibit C-Revised-2.

3. PROMPT PAYMENT DISCOUNT

# of Days		Percentage	%
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Note, payment terms are specified in Exhibit E, Contractual Terms and Conditions.

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

The Authority hereby accepts this offer.

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

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

For further information regarding Exhibit A, you may:

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

OR

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

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

EXHIBIT B

REPRESENTATIONS AND CERTIFICATIONS

(LOCALLY FUNDED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)

MUST BE RETURNED WITH THE OFFER

1. TYPE OF BUSINESS

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

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

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

Delaware

2. PARENT COMPANY AND IDENTIFYING DATA

(a) The offeror (mark one):

- ☒ is
☐ is not

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

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

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

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

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

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

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

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

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

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

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

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

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

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

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

4. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

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

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

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

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

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

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

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

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

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

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

5. **COMMUNICATIONS**

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

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

Individual's Name	Date/Subject of Communication
Virgina Keeling	Weekly. 9-6-24 - CSS Payments
Virginia Keeling and Donna Simmons	Monthly Partnership Review 8-23-24

(Attach continuation form, if necessary.)

6. **CONTINGENT FEE**

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

- ☐ has
☒ has not

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

- ☐ has
☒ has not

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

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

7. CODE OF ETHICS

- (a) Statement of Purpose

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

- (b) Applicability

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

- (c) Standards of Ethical Conduct

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

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

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

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

(d) Roles and Responsibilities

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

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

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

(1) Anonymous Fraud Hotline – Internal Audit

(2) Anonymous Online Ethics Reporting System

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

(4) Safety Hotline

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

(e) Ethical Business Transactions

Section 1. Impartiality and Official Position

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

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

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

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

(2) No Board Member or employee shall:

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

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

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

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

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

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

(vii) Participate for a period of two (2) years in a contract for a contractor or first-tier subcontractor with Capital Metro if the Board Member or employee participated in the recommendation, bid, proposal or solicitation of the Capital Metro contract or procurement.

Section 2. Employment and Representation

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

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

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

Section 3. Gifts

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

No Board Member or employee shall:

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

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

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

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

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

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

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

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

Section 4. Business Meals and Functions

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

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

Section 5. Confidential Information

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

No Board Member or employee shall:

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

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

Section 6. Financial Accountability and Record Keeping

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

A Board Member or employee shall:

(1) Not falsify a document or distort the true nature of a transaction.

- (2) Properly disclose risks and potential liabilities to appropriate Capital Metro staff.
- (3) Cooperate with audits of financial records.
- (4) Ensure that all transactions are supported by accurate documentation.
- (5) Ensure that all reports made to government authorities are full, fair, accurate and timely.
- (6) Ensure all accruals and estimates are based on documentation and good faith judgment.

Section 7. Conflict of Interest

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

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

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

Disclosure

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

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

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

Definitions

- (1) A Local Government Officer is defined by Tex. Loc. Govt. Code § 176.001(4). A Local Government Officer is:
 - (i) A member of the Board of Directors;
 - (ii) The President/CEO; or
 - (iii) A third party agent of Capital Metro, including an employee, who exercises discretion in the planning, recommending, selecting or contracting of a vendor.
- (2) A Family Member is a person related within the first degree by consanguinity or the second degree by affinity as defined by Tex. Govt. Code, Ch. 573.
- (3) A Family Relationship is a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity as defined by Tex. Govt. Code, Ch. 573.
- (4) A Local Government Officer must file a Conflicts Disclosure Statement (FORM CIS) if:

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

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

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

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

Section 9. Duty to Report and Prohibition on Retaliation

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

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

Section 10. Penalties for Violation of the Code of Ethics

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

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

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

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

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

Section 11. Miscellaneous Provisions

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

(2) Within sixty (60) days of the effective date for the adoption of this Code each Board Member and employee of Capital Metro will receive a copy of the Code and sign a statement acknowledging that they have read,

understand and will comply with Capital Metro's Code of Ethics. New Board Members and employees will receive a copy of the Code and are required to sign this statement when they begin office or at the time of initial employment.

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

8. RESERVED

9. TEXAS ETHICS COMMISSION CERTIFICATION

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

10. TEXAS LABOR CODE CERTIFICATION (CONSTRUCTION ONLY)

Contractor certifies that Contractor will provide workers' compensation insurance coverage on every employee of the Contractor employed on the Project. Contractor shall require that each Subcontractor employed on the Project provide workers' compensation insurance coverage on every employee of the Subcontractor employed on the Project and certify coverage to Contractor as required by Section 406.96 of the Texas Labor Code, and submit the Subcontractor's certificate to the Authority prior to the time the Subcontractor performs any work on the Project.

11. CERTIFICATION REGARDING ISRAEL

As applicable and in accordance with Section 2271.002 of the Texas Government Code, the Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

12. CERTIFICATION REGARDING FOREIGN TERRORIST ORGANIZATIONS

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

13. VERIFICATION REGARDING FIREARM ENTITIES AND FIREARM TRADE ASSOCIATIONS

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

14. BOYCOTT OF ENERGY COMPANIES PROHIBITED

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

- (a) it does not, and will not for the duration of the Contract, boycott energy companies, as defined in Section 2274.002 of the Texas Government Code, or
- (b) the verification required by Section 2274.002 of the Texas Government Code does not apply to Contractor and this Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify the Authority.

15. CRITICAL INFRASTRUCTURE PROHIBITION

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

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

16. CERTIFICATION OF PRIME CONTRACTOR PARTICIPATION

- (a) The Prime Contractor certifies that it shall perform no less than thirty percent (30%) of the work with his own organization. The on-site production of materials produced by other than the Prime Contractor's forces shall be considered as being subcontracted.
- (b) The organization of the specifications into divisions, sections, articles, and the arrangement and titles of the project drawings shall not control the Prime Contractor in dividing the work among subcontractors or in establishing the extent of the work to be performed by any trade.
- (c) The offeror further certifies that no more than seventy percent (70%) of the work will be done by subcontractors.

17. REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

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

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

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

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

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

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

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

(1) It

- ☐ will
☒ will not

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

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

- ☐ does
☒ does not

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

(d) *Disclosures.*

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

(i) For covered equipment—

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

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

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

(ii) For covered services—

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

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

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

(i) For covered equipment—

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

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

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

(ii) For covered services—

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

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

18. SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS

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

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

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

(d) A false statement in any offer submitted to the Authority may be a criminal offense in violation of Section 37.10 of the Texas Penal Code.

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

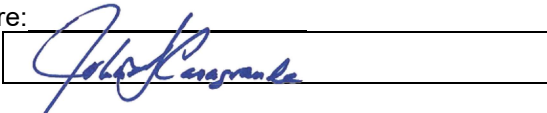
Name of Offeror:

Bright Horizons Children's Centers LLC

Type/Print Name of Signatory:

John G. Casagrande

Signature:



Date:

9-11-2024

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

1. DEFINITIONS

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

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

(b) “Authority”, “Capital Metro”, “CapMetro”, “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. **Notwithstanding the foregoing, Authority Data shall not include Employee Services Information. Employee Services Information is defined as any information received by Bright Horizons directly from or on behalf of Eligible Employees and their dependents (or other designated users) or generated by Bright Horizons in connection with the use of the Services by the Eligible Employee, including, without limitation, personally identifiable financial information and data related to gender, birth dates, addresses, health, and medical information.**

(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) “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.

(f) “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.

(g) “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.

(h) “Contract Modification” means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.

(i) “Contract Sum” means the total compensation payable to the Contractor for performing the Services as originally contracted for or as subsequently adjusted by Contract Modification.

(j) “Contract Term” means period of performance set forth in the paragraph entitled “Term” contained in Exhibit E.

(k) “Contracting Officer” means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings 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.

- (l) "Contractor" means the entity that has assumed the legal obligation to perform the Services as identified in the Contract.
- (m) "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.
- (n) "FAR" means the Federal Acquisition Regulations codified in 48 C.F.R. Title 48.
- (o) "FCPA" means the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., as amended.
- (p) "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.
- (q) "FTA" means the Federal Transit Administration.
- (r) "Fully Burdened Hourly Labor Rate" means an hourly rate that includes all salary, overhead costs, general and administrative expenses, and profit.
- (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 Services.
- (w) "Project Manager" means the designated individual to act on behalf of the Authority, to monitor and certify the technical progress of the Contractor's Services under the terms of this Contract.
- (x) "Proposal" means the offer of the proposer, submitted on the prescribed form, stating prices for performing the work described in the Scope of Services.
- (y) "Services" means the services to be performed by the Contractor under this Contract, and includes services performed, workmanship, and supplies furnished or utilized in the performance of the Services.
- (z) "Subcontract" means the Contract between the Contractor and its Subcontractors.
- (aa) "Subcontractor" means subcontractors of any tier.

(bb) "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. FIXED PRICE CONTRACT

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

3. TERM

The term of the Contract shall be one (1) year starting from April 1, 2025 through March 31, 2026. No Services shall be performed under this Contract prior to April 1, 2025.

4. OPTION TO EXTEND CONTRACT TERM

The Authority shall have the unilateral right and option to extend the Contract for up to four (4) option periods for a twelve (12) month duration each at the option prices set forth in Exhibit A - Pricing Schedule upon written notice to the Contractor. The Authority shall notify the Contractor sixty (60) calendar days in advance of the Authority's intent to exercise the option period to extend the contract term. Contractor shall have the right to terminate this Contract at the end of any optional renewal period by providing at least nine (9) months' prior written notice to the Authority; provided, however, in no event shall any termination by Contractor be effective prior to March 31, 2027 (i.e., the end of the first optional renewal period).

5. ADDITIONAL OPTION TO EXTEND CONTRACT PERFORMANCE

If the options granted in Paragraph 4 have been exercised in their entirety, the Authority shall have the unilateral right and option to require continued performance of any services within the limits and rates specified in the Contract. This option may be exercised more than once, but the extension of performance hereunder shall not exceed a total of 6 months. The Authority shall notify the Contractor sixty (60) calendar days in advance of the Authority's intent to exercise the option period to extend the contract performance. may exercise the option by written notice to the Contractor.

6. INVOICING AND PAYMENT

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

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

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

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

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

(b) 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.

(e) **Release of Payment Claims by Contractor.** The final invoice submitted by Contractor shall be accompanied by a complete and legally effective release of the Authority from all known and unknown payment claims relating to the Contract on a form provided by the Authority. Contractor's acceptance of final payment constitutes a waiver of all known or unknown payment claims against the Authority related to the Contract, other than those specifically excepted in the General Release of Claims Form.

7. RESERVED

8. RESERVED

9. INSURANCE

(a) The Contractor shall furnish proof of CapMetro-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 reduction of such policies coverage, 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.

CAPMETRO MINIMUM COVERAGE REQUIREMENTS

(1) Commercial General Liability Insurance Coverage with limits of not less than One Million and No/100 Dollars (\$1,000,000) Combined Single Limit of Liability for Bodily Injury and Property Damage including Products Liability.

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

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

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

(5) All policies shall include Terrorism Coverage **in accordance with the Contractor's actual insurance program.**

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

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

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

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

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

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

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

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

10. PERFORMANCE OF SERVICES BY THE CONTRACTOR

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

11. REMOVAL OF ASSIGNED PERSONNEL

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

12. REPRESENTATIONS AND WARRANTIES

The Contractor represents and warrants to the Authority, that the Services shall be performed in conformity with the descriptions and other data set forth in this Contract and with sound professional principles and practices in accordance with accepted industry standards, and that work performed by the Contractor's personnel shall reflect sound professional knowledge, skill and judgment. ~~If any breach of the representations and warranties is discovered by the Authority during the process of the work or within one (1) year after acceptance of the work by the Authority, the Contractor shall again cause the nonconforming or inadequate work to be properly performed at the Contractor's sole expense and shall reimburse for costs directly incurred by the Authority as a result of reliance by the Authority on services failing to comply with the representations and warranties.~~

13. INDEPENDENT CONTRACTOR

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

14. 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.

15. SUBCONTRACTORS AND OUTSIDE CONSULTANTS

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

16. EQUITABLE ADJUSTMENTS

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

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

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

(ii) For proposals in excess of \$5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the Contract.

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

17. CONTRACTOR AND SUBCONTRACTOR ANNUAL AUDITED FINANCIAL STATEMENTS AND ABILITY TO PERFORM

The Contractor must provide evidence of its financial resources and its ability to perform the services for which Contractor is submitting a response. This includes information Contractor or believes is pertinent that demonstrates its financial capability, financial solvency, and capability to fulfill the requirements of this contract.

The Contractor shall provide to the Authority a copy of Contractors' and Subcontractors' latest audited financial statements, which may include Contractor's balance sheet, statements of income, retained earnings, cash flows, and the notes to the financial statements, as well as Contractor's most current 10-K, if applicable, throughout the term of the Contract. The audited financial statements shall be provided annually. The financial statements 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 31st, then the financial statements shall be provided to the Authority no later than March 31st of the following year. The Authority, at its' discretion, may accept unaudited financial reports.

18. PERSONNEL ASSIGNMENTS

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

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

(c) At the commencement of the Contract, the Contractor shall provide a list of candidates to be used to provide the Services and shall certify that a criminal history background check has been completed on each candidate within the preceding 6-month period. Thereafter during the Term, the Contractor shall submit quarterly report containing a list of all persons (including Subcontractors) assigned to perform Services under the Contract and a certification that each named person has undergone a criminal background check as required by this Contract. ~~The Authority shall~~

~~have the right to audit the Contractor's records for compliance with the provisions of this Section.~~ Criminal background checks shall include the following:

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

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

(3) National Sex Offender Registry

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

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

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

Offense Type	Action Required
Crimes Against the Person (other than sex crimes)	
Felony	Submit to CapMetro for review if less than 10 years from date of release from confinement
Class A or B Misdemeanor	Submit to CapMetro for review if less than 7 years from date of conviction
Class C Misdemeanor	Submit to CapMetro for review if less than 5 years from date of conviction
Crimes Against the Person - Sex Crimes/Registered Sex Offenders	
ALL	Submit to CapMetro for review
Crimes Against Property	
Felony	Submit to CapMetro for review if less than 10 years from date of release from confinement
Moral Crimes, including, but not limited to: Drug Crimes, Prostitution, Bigamy, Illegal Gambling, Child Pornography	
Felony	Submit to CapMetro for review if less than 10 years from date of release from confinement
Class A or B Misdemeanor	Submit to CapMetro for review if less than 7 years from date of conviction
Class C Misdemeanor	Submit to CapMetro for review if less than 5 years from date of conviction
Driving Offenses	
Class A or B Misdemeanor, DWI/DUI or other "serious driving offense"	Disqualified if less than 7 years from date of conviction or deferred adjudication. Submit to CapMetro 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 **periodically** conduct new criminal history background checks on all assigned personnel **every two (2) years** during the Contract to ensure the preceding criterion are still met by the assigned personnel and notify the Authority if an employee has a subsequent arrest with pending disposition or conviction (or change in driving record, as applicable) that requires further review by the Authority using the criterion set forth above. The Authority reserves the right to request that the assigned individual be removed from performing work under this Contract.

19. BADGES AND ACCESS CONTROL DEVICES

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

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

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

20. CHANGES

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

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

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

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

(e) If any change under this paragraph causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Services under this Contract, whether or not changed by any such order, the Contracting Officer may make an equitable adjustment and modify the Contract in writing in accordance with the provisions in paragraph entitled "Equitable Adjustments" contained in Exhibit E.

21. TERMINATION FOR DEFAULT

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

(1) if the Contractor fails to perform the Services within the time specified herein or any extension thereof; or

(2) if the Contractor fails to perform any of the other provisions of this Contract and does not cure such failure within a period of ~~ten (10)~~ thirty (30) days (or such longer period as the Authority may authorize in writing) after receipt of notice from the Authority specifying such failure.

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

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

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

(d) 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.

(e) 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 **sixty (60) calendar days** written notice of the termination to the Contractor specifying the part of the Contract terminated and when termination becomes effective.

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

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

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

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

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

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

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

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

23. CONTRACTOR CERTIFICATION

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

24. INTELLECTUAL PROPERTY; DATA PRIVACY PROVISIONS

(a) As between the Contractor and the Authority, the Works and Intellectual Property Rights therein are and shall be owned exclusively by CapMetro, 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.

(k) The parties agree that any intellectual property created prior to the date of this agreement, and all educational materials, parent handbooks and related materials, trademarks and service marks, graphics, data, text, manuals,

forms, writings, charts, photographs, drawings, web sites, videotapes and other materials created by or for Contractor, other than those created exclusively for the Authority. The parties agree that Contractor shall continue to exclusively own and hold all rights to all such intellectual property during and after the Term. The permitted use of any such intellectual property by the Authority pursuant to the specific terms of this Agreement shall not create any ownership interest in such property or related rights whatsoever. Works in this subsection (k) does not include Works prepared, created, developed, produced, or generated specifically for the Authority through any other or previous Authority contract with Contractor if there was Works in that contract (if, for example, Contractor is an incumbent with a contract for prior Works).

25. STANDARDS OF PERFORMANCE

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

26. INSPECTIONS AND APPROVALS

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

(b) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the Services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during Contract performance and for as long afterwards and the Contract requires.

(c) The Authority has the right to inspect and test all Services called for by this Contract, to the extent practicable, at all times and places during the term of the Contract. The Authority shall perform inspections and tests in a manner that will not unduly delay the Services.

~~(d) If any of the Services do not conform with Contract requirements, the Authority may require the Contractor to perform the Services again in conformity with the Contract requirements, at no increase in the Contract Sum. When the defects in services cannot be corrected by performance, the Authority may (1) require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements and (2) reduce the Contract Sum to reflect the reduced value of the Services performed.~~

~~(e) If the Contractor fails promptly to perform the Services again or to take the necessary action to ensure future performance in conformity with Contract requirements, the Authority may (1) by contract or otherwise, perform the Services and charge to the Contractor any cost incurred by the Authority that is directly related to the performance of such service or (2) terminate the Contract for default.~~

27. SUSPENSION OF SERVICES

(a) The Authority, **with reasonable cause**, may order the Contractor in writing to suspend all or any part of the Services for such period of time as the Authority determines to be appropriate for **reasons of public safety or due to a Force Majeure Event or termination rights of the Authority under the Contract making such suspension or closure unavoidable.** ~~the convenience of the Authority.~~

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

other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.

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

28. PAYMENT TO SUBCONTRACTORS

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

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

29. FEDERAL, STATE AND LOCAL TAXES

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

30. EQUAL OPPORTUNITY

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

31. CONFLICT OF INTEREST

(a) Reference is made to Exhibit B, Representations and Certifications, Code of Ethics, which is incorporated herein and made a part of this Contract. Capitalized terms used in this paragraph and not otherwise defined shall have the meanings as described to them in the Code of Ethics.

(b) The Contractor represents that no Employee has a Substantial Interest in the Contractor or this Contract, which Substantial Interest would create or give rise to a Conflict of Interest. The Contractor further represents that no person who has a Substantial Interest in the Contractor and is or has been employed by the Authority for a period of two (2) years prior to the date of this Contract has or will (1) participate, for the Contractor, in a recommendation, bid, proposal or solicitation on any Authority contract, procurement or personnel administration matter, or (2) receive any pecuniary benefit from the award of this Contract through an ownership of a Substantial Interest (as that term is defined in Paragraph II, subparagraphs (1) and (3) of the Code of Ethics) in a business entity or real property.

(c) The Contractor agrees to ensure that the Code of Ethics is not violated as a result of the Contractor's activities in connection with this Contract. The Contractor agrees to immediately inform the Authority if it becomes aware of the existence of any such Substantial Interest or Conflict of Interest, or the existence of any violation of the Code of Ethics arising out of or in connection with this Contract.

(d) The Authority may, in its sole discretion, require the Contractor to cause an immediate divestiture of such Substantial Interest or elimination of such Conflict of Interest, and failure of the Contractor to so comply shall render this Contract voidable by the Authority. Any willful violation of these provisions, creation of a Substantial Interest or

existence of a Conflict of Interest with the express or implied knowledge of the Contractor shall render this Contract voidable by the Authority.

(e) In accordance with paragraph 176.006, Texas Local Government Code, "vendor" is required to file a conflict-of-interest questionnaire within seven business days of becoming aware of a conflict of interest under Texas law. The conflict of interest questionnaire can be obtained from the Texas Ethics Commission at www.ethics.state.tx.us. The questionnaire shall be sent to the Authority's Contract Administrator.

32. GRATUITIES

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

33. PUBLICATIONS

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

34. REQUEST FOR INFORMATION

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

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

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

(d) The requirements of Subchapter J, Chapter 552, Government Code, may apply to this bid/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.

35. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

(a) All documentation related to or prepared in connection with any proposal, including the contents of any proposal contracts, responses, inquiries, correspondence, and all other material submitted in connection with the proposal shall become the property of the Authority upon receipt.

(b) All documents, reports, data, graphics and other materials produced under this Contract shall become the sole possession of the Authority upon receipt and payment, subject only to the Contractor's professional obligation to maintain copies of its work product.

36. LIMITATION OF LIABILITY

In no event shall the Authority or its officers, directors, agents or employees be liable in contract or tort, to the Contractor or its Subcontractors for special, indirect, incidental or consequential damages, resulting from the Authority's

performance, nonperformance, or delay in performance of its obligations under this Contract, or the Authority's termination of the Contract with or without cause, or the Authority's suspension of the Services. This limitation of liability shall not apply to intentional tort or fraud. The Contractor shall include similar liability provisions in all its Subcontracts.

37. LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS

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

38. CLAIMS

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

39. LICENSES AND PERMITS

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

40. NOTICE OF LABOR DISPUTES

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

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

41. PUBLICITY RELEASES

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

42. INTEREST OF PUBLIC OFFICIALS

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

43. INDEMNIFICATION

(a) THE CONTRACTOR WILL INDEMNIFY, DEFEND AND HOLD THE AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES (THE AUTHORITY AND EACH SUCH PERSON OR ENTITY IS AN "INDEMNIFIED PARTY"), **UNLESS SUCH EMPLOYEE IS ALSO A PARENT OR GUARDIAN WHOSE CHILD IS ENROLLED AT THE CENTER AND BRINGS SUIT AGAINST CONTRACTOR,** HARMLESS FROM AND AGAINST AND PAY ANY AND ALL THIRD PARTY 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) **CONTRACTOR'S NEGLIGENCE OR WILLFUL MISCONDUCT WITH RESPECT TO** THE USE, CONDITION, **OR** 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 ~~(NOT AS PARENTS OR GUARDIANS WHOSE CHILD IS ENROLLED AT THE CENTER AND BRINGS SUIT AGAINST CONTRACTOR)~~, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF ANY INDEMNIFIED PARTY, OTHER THAN THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS OF ANY TIER.

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

44. RECORD RETENTION; ACCESS TO RECORDS AND REPORTS

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

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

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

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

(e) The Contractor agrees to provide sufficient access to the Authority and its contractors to inspect and audit records and information related to performance of this Contract as reasonably may be required.

(f) The Contractor agrees to permit the Authority and its contractors' access to the sites of performance under this Contract as reasonably may be required.

(g) If an audit pursuant to this paragraph reveals that the Authority has paid any invoices or charges not authorized under this Contract, the Authority may offset or recoup such amounts against any indebtedness owed by it to the Contractor, whether arising under this Contract or otherwise, over a period of time equivalent to the time period over which such invoices or charges accrued.

(h) This paragraph will survive any termination or expiration of this Contract.

45. EXCUSABLE DELAYS

(a) Except for defaults of Subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this Contract under its terms if the failure arises from Force Majeure Events. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the performance of the Services.

(b) If the failure to perform is caused by the failure of a Subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and Subcontractor and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless:

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

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

46. LOSS OR DAMAGE TO PROPERTY

The Contractor shall be responsible for any loss or damage to property including money securities, merchandise, fixtures and equipment belonging to the Authority or to any other individual or organization, if any such loss or damage was caused by the Contractor or any Subcontractor at any tier, or any employee thereof, while such person is on the premises of the Authority as an employee of the Contractor or Subcontractor. **Normal wear and tear of a child care center is an exception to this clause, and the Authority shall use a reasonable standard in determining normal wear and tear for a child care center.**

47. CONTRACTOR CONTACT/AUTHORITY DESIGNEE

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

48. QUALITY ASSURANCE

A periodic review of the Contractor's scheduled work may be performed by the Authority. If work is deemed incomplete or unacceptable in any way, the Authority will determine the cause and require the Contractor to take corrective measures in accordance with the terms of the Contract.

49. INTERPRETATION OF CONTRACT – DISPUTES

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

50. TOBACCO FREE WORKPLACE

- (a) Tobacco products include cigarettes, cigars, pipes, snuff, snus, chewing tobacco, smokeless tobacco, dipping tobacco and any other non-FDA approved nicotine delivery device.
- (b) The tobacco free workplace policy refers to all CapMetro 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 CapMetro owned or leased property, including personal vehicles parked in CapMetro parking lots.
- (d) Littering of tobacco-related products on the grounds or parking lots is also prohibited.

51. ORDER OF PRECEDENCE

In the event of inconsistency between the provisions of this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order, as revised:

1. Exhibit A - Pricing Schedule
2. Exhibit E - Contractual Terms and Conditions
3. Exhibit H – Authorization of Work Product
4. Exhibit B - Representations and Certifications
5. Exhibit F - Scope of Services
6. Attachments 1 & 2 – Operator Experience/Staffing and Program Expenses
7. Other provisions or attachments to the Contract

52. ANTI-CORRUPTION AND BRIBERY LAWS

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

53. ORGANIZATIONAL CONFLICT OF INTEREST (OCI)

- (a) This Contract may task the Contractor to prepare or assist in preparing work statements that directly, predictably and without delay are used in future competitive acquisitions. The parties recognize that by the Contractor providing this support a potential conflict of interest arises as defined by FAR 9.5.
- (b) For the purposes of this paragraph, the term “Contractor” means the Contractor, its subsidiaries and affiliates, joint ventures involving the Contractor, any entity with which the Contractor may hereafter merge or affiliate and any other successor or assignee of the Contractor.
- (c) The Contractor acknowledges the full force and effect of this paragraph. It agrees to be bound by its terms and conditions and understands that violation of this paragraph may, in the judgment of the Contracting Officer, be cause for Termination for Default. The Contractor also acknowledges that this does not represent the sole and exclusive remedy available to the Authority in the event the Contractor breaches this or any other Organizational Conflict of Interest paragraph.

54. 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: 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) CapMetro 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.

55. DRUG AND ALCOHOL TESTING PROGRAM

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

(a) For avoidance of doubt, this Section 55 is not applicable to the Childcare and Learning Center Operations Management services.

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

(1) A copy of the Contractor's 49 C.F.R. Part 219 Railroad Contractor Compliance Plan.

(2) A copy of the Federal Railroad Administration's acceptance letter for 49 C.F.R. Part 219 Railroad Contractor Compliance Plan.

(3) A certified list of the Contractor's Part 219 grandfathered employees (June 12, 2017).

(4) A certified list of employees who are currently regulated by 49 C.F.R. Part 219 Railroad Contractor Compliance Plan Part 219.

(5) Copies of the employees DOT 40-25 previous employer drug and alcohol record covered by 49 C.F.R. Part 219 Railroad Contractor Compliance Plan.

(6) Updated list of the Contractor's employees when an employee status has changed or employee becomes ineligible, along with an updated certification required in subparagraph (4).

(7) Rule G Observations when requested by the Authority.

(8) Management Information System Report (MIS) each six (6) months.

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

(c) Upon notice to the Contractor, CapMetro may require the Contractor and any Subcontractor providing Part 219 employees to use a third-party compliance provider to track the Contractor's Part 219 compliance. If the Contractor or any of its Subcontractors fails to utilize such required compliance provider or an approved equivalent as required, then the Authority may suspend the Contractor's performance under this Contract and/or pursue default remedies under this Contract. The Authority reserves the right to change the required third-party compliance provider upon notice to the Contractor. In the event that CapMetro requires the Contractor to use a third-party compliance service, any costs of the required service will be reimbursed by CapMetro provided the Contractor follows the following reimbursement procedure: the Contractor shall provide the estimated costs of the compliance service within fourteen (14) calendar days following CapMetro's notice to the Contractor of the adoption of a third-party compliance provider requirement and the Contractor shall not incur any costs until a subsequent Contract modification is fully executed.

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

(e) The Contractor shall include the substance of subparagraph (a)-(e) of this paragraph, in each applicable Subcontract under this Contract.

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

56. FUNDING AVAILABILITY

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

EXHIBIT F-REVISED-2
SCOPE OF SERVICES
CHILDCARE FACILITY PROGRAM

1. BACKGROUND

Capital Metropolitan Transportation Authority ("Capital Metro") 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. Capital Metro services include bus, rail, ride-share programs, special event services, and special transit services for the mobility impaired.

As a benefit to our employees, CapMetro has provided onsite childcare to our employees through a discounted tuition program and paying a management fee for the operations of the center. CapMetro desires to enter into a new contract under a lease agreement model with a childcare provider who will be responsible for the licensing and operation of the Childcare and Learning Center (the "Center"). Under this model, CapMetro may provide a financial contribution to facilitate the sustainability of the Center.

2. GENERAL SCOPE

- (a) The Authority is seeking proposals from a qualified entity, including a nonprofit organization, to serve as the Contractor ("Childcare Provider") for the full operation of a childcare program using the existing CapMetro childcare space for providing a childcare center. The Childcare Provider will be responsible for full operation of the center with priority enrollment for CapMetro employees and CapMetro contracted service providers.
- (b) The Center is located at 624 N. Pleasant Valley Road, Austin TX 78702 (the "Premises"). The square footage is approximately 6,000 square feet of indoor space, and 2,800 square feet of exterior space. The floor plan for the indoor space can be found under Exhibit A to the **Draft** Lease Agreement at Attachment 1 to this Exhibit F.

3. REQUIREMENTS FOR CHILDCARE PROVIDER

- (a) The Childcare Provider shall use the Premises for the sole purpose of operating a childcare program.
- (b) The Childcare Provider shall, at all times, comply with all Texas minimum standards for licensed childcare programs as determined by the Texas Health and Human Services Commission and maintain Texas Rising Star accreditation and a four-star quality rating for the Center during the Term of the Contract.
- (c) The Childcare Provider shall provide developmentally appropriate activities for children ages six (6) weeks to five (5) years enrolled in the Center.
- (d) The Childcare Provider shall operate the Center Monday through Friday for 10 hours each day, except on holidays agreed to by CapMetro.
- (e) The Center shall be designed to serve sixty-five (65) FTE enrollees and always maintain a 90% or better FTE enrollment. Any change in number of enrollees can only be made by modification to this Contract.
- (f) Childcare Provider shall try to retain existing Center staff and recruit competent and qualified staff in the childcare field who have, at a minimum, an Associate degree in early childhood education.
- (g) The director of the Center should have, at a minimum, an Associate degree in early childhood education, child development, or a related field and a minimum of three (3) years' experience, including experience as a Center administrator for a childcare facility.
- (h) **Priority Enrollment:** The Childcare Provider shall provide priority enrollment to employees of CapMetro and employees of CapMetro contracted service providers who wish to enroll in the Childcare Providers childcare and learning center programs operated at the Premises. The Childcare Provider will also offer priority enrollment at any of its other centers operated in the central Texas area. Likewise, employees of CapMetro and CapMetro contracted service providers will have priority placement of waiting lists at the Premises operated by the Childcare Provider.

- (i) **Insurance:** The Childcare Provider shall be responsible for providing insurance for the operation of the Center in accordance with the insurance coverages stated in the Contract.
- (j) **Reporting:** Monthly reports will be required of Childcare Provider to keep CapMetro informed of the monthly enrollment, inquiries about childcare availability by employees of CapMetro and CapMetro contracted service providers and waiting list status. These reports will be submitted within five (5) working days following the end of the previous month.
- (k) **Additional Terms for Childcare Provider:**
 - i. The Childcare Provider will be responsible for contacting CapMetro for facility repairs needed.
 - ii. The Childcare Provider will continue to provide childcare services for all families enrolled in the program until their enrollment ends.

4. REQUIREMENTS FOR CAPMETRO

- (a) **Payment:** In exchange for priority enrollment for CapMetro employees and CapMetro contracted service provider employees, CapMetro will offer up to \$150,000 annually to the Childcare Provider to support the sustainability of the program.
- (a) **Utilities:** CapMetro will provide standard and customary utilities for the Premises. CapMetro will pay for reasonable utilities.
- (b) **Parking:** CapMetro shall provide Childcare Provider with parking spaces for its employees and enrolled families in the program throughout the term of the Contract at no cost.
- (c) **Provided Facilities:** Classroom, office furniture, kitchen, and playground equipment will be provided by CapMetro to Childcare Provider for utilization during the term of the Contract. CapMetro will be responsible for all repair and maintenance of the facility, playground equipment, classroom, and office furniture. CapMetro will replace playground equipment and office furniture as needed to maintain the safety, licensing, and accreditation of the Center.
- (d) The Childcare Provider shall provide a process for access to and from the Premises through the direct access door to the Center. The door to the main lobby of 624 Pleasant Valley will not be accessible to parents who are not CapMetro employees.
- (e) CapMetro will provide Childcare Provider employees access to CapMetro's wellness centers, transit passes to Childcare Provider's employees, and inclusion in CapMetro employee events.
- (f) **Janitorial Services:** CapMetro is responsible for normal janitorial services. This will include daily dusting, vacuuming, and cleaning of the Center. Special floor or carpet cleaning will be completed by CapMetro as required with a work order. Special sanitizing services are to be provided by the Center employees. The Center employees are also responsible for the cleaning of the kitchen area. The Contractor shall coordinate with the CapMetro Janitorial Project Manager in developing schedules and resolving issues regarding janitorial services.

5. LEASE AGREEMENT

- (a) This Contract includes a Lease Agreement, (Refer to Attachment 1 – **Draft** Lease Agreement to this Exhibit F). CapMetro reserves the right, in its sole discretion, to make an award without negotiation of the Lease Agreement provisions. The terms of the executed Lease Agreement are in addition to, and construed together with, the terms of the Contract. A binding agreement for a lease of the Premises shall be executed between the Childcare Provider and CapMetro and approved by the Capital Metropolitan Transportation Authority Board of Directors.
- (b) **Rent:** The rent for the lease will be a nominal annual payment.

CHILDCARE FACILITY PROGRAM

RFP 807072

ATTACHMENT 1

TO

EXHIBIT F—REVISED-2

LEASE AGREEMENT (SIGNED)

LEASE AGREEMENT

Between

BRIGHT HORIZONS CHILDREN'S CENTERS, LLC
as Tenant,

and

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY,
as Landlord,

Covering approximately 6,000 gross square feet of interior space and 2,800 gross square feet of
exterior space of the Building located at

624 Pleasant Valley Road
Austin, Texas, 78702

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into by and between **Capital Metropolitan Transportation Authority**, hereinafter referred to as "Landlord," and "Tenant".

1. **PREMISES AND TERM.** In consideration of the mutual obligations of Landlord and Tenant set forth herein, Landlord leases to Tenant, and Tenant hereby takes from Landlord, certain leased premises situated within the County of Travis, State of Texas, as more particularly described on EXHIBIT "A" attached hereto and incorporated herein by reference (the "Premises"), to have and to hold, subject to the terms, covenants and conditions in this Lease. The term of this Lease shall commence on the Commencement Date hereinafter set forth and shall end one year from the Notice to Proceed date on Contract 500205, unless otherwise extended in accordance with this Lease. [NOTE: The Lease will be co-terminus with Contract 500205 – in the event of a termination of Contract 500205, the Lease shall automatically terminate and in the event of an extension of Contract 500205, the Lease will automatically renew.]

A. Existing Building and Improvements. The "Commencement Date" shall be on the date Notice to Proceed is issued for Contract 500205. Tenant acknowledges that (i) it has inspected and accepts the Premises in its "as is" condition, (ii) the buildings and improvements comprising the same are suitable for the purpose for which the Premises are leased, (iii) the Premises are in good and satisfactory condition, and (iv) no representations as to the repair or condition of the Premises nor promises to alter, remodel or improve the Premises, including the handling or removal of any communications cable, have been made by Landlord (unless otherwise expressly set forth in this Lease). [NOTE: The foregoing would be subject to Landlord's ongoing repair and maintenance obligations as set forth in the Lease.]

2. BASE RENT, SECURITY DEPOSIT AND ESCROW DEPOSITS.

A. Base Rent. Tenant agrees to pay Landlord rent for the Premises, in advance, without demand, deduction or set off, at \$10.00 per year during the term hereof. The yearly Tenant installment of \$10.00 shall be due annually during the first of the month following the month of execution.

B. Security Deposit. Not applicable.

C. Escrow Deposits. Not applicable.

3. TAXES

A. Real Property Taxes. Tenant agrees to pay all taxes, assessments and governmental charges of any kind and nature (collectively referred to herein as "Taxes") that accrue against the Premises, the Building and/or the land of which the Premises or the Building are a part, if such Taxes are assessed due to Tenant's use of the Premises. If at any time during the term of this Lease there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom and/or a franchise or margin tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises and/or the land and improvements of which the Premises are a part (including but not limited to the tax imposed pursuant to the 2006 amendments to the Texas Tax Code, Chapter 171, then all such taxes, assessments, levies or charges, or the part thereof so measured or based shall be deemed to be included within the term "Taxes" for the purposes hereof. Tenant shall immediately notify

Landlord of any Taxes assessed against the Premises or the Building due to the Tenant's use of the Premises, and Tenant indemnify and, at Landlord's discretion, defend Landlord in any dispute regarding the Taxes. [NOTE: Bright Horizons should be responsible only for its proportionate share of RET based on the rentable square feet of the Premises compared to the remainder of the building.]

B. Personal Property Taxes. Tenant shall be liable for all taxes levied or assessed against any personal property or fixtures placed in or on the Premises by Tenant. If any such taxes are levied or assessed against Landlord or Landlord's property and (i) Landlord pays the same or (ii) the assessed value of Landlord's property is increased by inclusion of such personal property and fixtures and Landlord pays the increased taxes, then Tenant shall pay to Landlord, upon demand, the amount of such taxes.

4. UTILITIES. Landlord will provide standard and customary utilities to the Premises. Landlord will pay for reasonable utilities and determine the lease rate to demonstrate the pro-rata share of utility costs that Tenant is not be obligated to pay.

5. PARKING. Tenant and its employees, customers and licensees shall have the right to use the parking spaces described in Section 24 below and in Exhibit B attached hereto, subject to (i) all rules and regulations promulgated by Landlord, and (ii) rights of ingress and egress of other lessees. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties, and Tenant expressly does not have the right to tow or obstruct improperly parked vehicles. Tenant agrees not to park on any public streets or private roadways adjacent to or in the vicinity of the Premises. Tenant shall not park or store vehicles, trucks or other trailers, campers, RVs, equipment or other mobile storage units overnight, except in areas specifically designated and agreed to in writing by Landlord.

6. ALTERATIONS. Tenant shall not make any alterations, additions or improvements (collectively referred to as "Alterations") to the Premises without the prior written consent of Landlord. Landlord shall not be required to notify Tenant of whether it consents to any Alterations until it (a) has received plans and specifications in a CAD disk format therefore which are sufficiently detailed to allow construction of the work depicted thereon to be performed in a good and workmanlike manner, and (b) has had a reasonable opportunity to review them. If the Alterations will affect the Building's structure, HVAC system, or mechanical, electrical, or plumbing systems, then the plans and specifications therefore must be prepared by a licensed engineer reasonably acceptable to Landlord and provided to Landlord in a CAD disk format. Landlord's approval of any plans and specifications shall not be a representation that the plans or the work depicted thereon will comply with law or be adequate for any purpose, but shall merely be Landlord's consent to performance of the work. Upon completion of any Alteration, Tenant shall deliver to Landlord accurate, reproducible as-built plans therefore in a CAD disk format. Tenant may erect shelves, bins, machinery and trade fixtures (collectively "Tenant Installations") provided that such items (1) do not alter the basic character of the Premises or the Building; (2) do not overload or damage the same; and (3) may be removed without damage to the Premises. Unless Landlord specifies in writing otherwise, all alterations, additions, and improvements shall be Landlord's property when installed in the Premises. Unless Landlord notifies Tenant to the contrary, all Tenant Installations installed by Tenant after the Commencement Date hereof and any proprietary property of Tenant shall be removed on or before the earlier to occur of the day of termination or expiration of this Lease, or vacating the Premises, at which time Tenant shall restore the Premises to the same good condition as existed on the Commencement Date, reasonable wear and tear and damage by casualty excepted. All work performed by Tenant in the Premises (including that relating to the installations, or removal of any item) shall be performed in

accordance with all applicable governmental laws, ordinances, regulations, and with Landlord's specifications and requirements, in a good and workmanlike manner, and so as not to damage or alter the Building's structure or the Premises. As it relates to any improvements constructed by Tenant after the Commencement Date hereof only, Tenant shall be responsible for compliance with 1) The Americans With Disabilities Act of 1990 as amended (hereafter "ADA") and 2) the Texas Elimination of Architectural Barriers Act (hereafter "TEAB") or any successor statute to the ADA or TEAB; provided, Tenant shall not be responsible for compliance with the foregoing or any laws unless and except constructed by Tenant after the Commencement Date hereof.

7. **SIGNS.** Any signage Tenant desires for the Premises shall be subject to Landlord's written approval and shall be submitted to Landlord prior to the Commencement Date of this Lease. Tenant shall repair, paint and/or replace the Building fascia surface to which its signs are attached upon Tenant's vacating the Premises or the removal or alteration of its signage. If Tenant is permitted to use the Building fascia located directly above the premises for signage, such use shall be non-exclusive and shall be subject to such other usage as Landlord may determine. Tenant shall not, without Landlord's prior written consent, (i) make any changes to the exterior of the Premises, such as painting; (ii) install any exterior lights, decorations, balloons, flags, pennants or banners; or (iii) erect or install any signs, windows or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of the Premises. All signs, decorations, advertising media, blinds, draperies and other window treatment or bars or other security installations visible from outside the Premises shall conform in all respects to the criteria established by Landlord or shall be otherwise subject to Landlord's prior written consent.

8. **INSURANCE.** Tenant must obtain and maintain for the Term of the Lease the Insurance coverage specified in Contract 500205.

9. **FIRE AND CASUALTY DAMAGE.**

A. Total or Substantial Damage and Destruction. If the Premises or the Building should be damaged or destroyed by fire or other peril, Tenant shall promptly give written notice to Landlord of such damage or destruction. If the Premises or the Building should be totally destroyed by any peril covered by the insurance to be provided by Landlord under Paragraph 8A above, or if they should be so damaged thereby that, in Landlord's estimation, rebuilding or repairs cannot be completed within one hundred eighty (180) days after the date of such damage or after such completion there would not be enough time remaining under the terms of this Lease to fully amortize such rebuilding or repairs, then this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease, effective upon the date of the occurrence of such damage.

B. Partial Damage or Destruction. If the Premises or the Building should be damaged by any peril covered by the insurance to be provided by Landlord under Paragraph 8A above and, in Landlord's estimation, rebuilding or repairs can be substantially completed within one hundred eighty (180) days after the date of such damage, then this Lease shall not terminate and Landlord shall substantially restore the Premises to its previous condition, except that Landlord shall not be required to rebuild, repair or replace any part of the partitions, fixtures, additions and other improvements that may have been constructed, erected or installed in or about the Premises for the benefit of, by or for Tenant to the extent such partitions, fixtures, additions, or other improvements were constructed after the Commencement Date of this Lease.

C. Lienholders' Rights in Proceeds. Not applicable.

D. Waiver of Subrogation. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant hereby waive and release each other of and from any and all rights of recovery, claims, actions or causes of action against each other, or their respective agents, officers and employees, for any loss or damage that may occur to the Premises, improvements to the Building or personal property (Building contents) within the Building and/or Premises, for any reason regardless of cause or origin. Each party to this Lease agrees immediately after execution of this Lease to give written notice of the terms of the mutual waivers contained in this subparagraph to each insurance company that has issued to such party policies of fire and extended coverage insurance and to have the insurance policies properly endorsed to provide that the carriers of such policies waive all rights of recovery under subrogation or otherwise against the other party.

10. **LIABILITY AND INDEMNIFICATION**. Except for any claims, rights of recovery and causes of action that Landlord has released in writing signed by Landlord, Tenant shall hold Landlord harmless from and defend Landlord against any and all claims or liability for any injury or damage (i) to any person or property whatsoever occurring in, on or about the Premises or any part thereof, the Building and/or other common areas, the use of which Tenant may have in accordance with this Lease, if such injury or damage shall be caused in whole or in part by the act, neglect, fault or omission of any duty by Tenant, its agents, servants, employees or invitees at common law, pursuant to statute, ordinance, or regulation, or under this Lease; (ii) arising from the conduct or management of any work done by the Tenant in or about the Premises; or (iii) arising from transactions of the Tenant; or (iv) arising out of Tenant's breach of its obligations pursuant to this Lease; and (v) all costs, counsel fees, expenses and liabilities incurred in connection with any such claim or action or proceeding brought thereon. The provisions of this Paragraph 10 shall survive the expiration or termination of this Lease. Landlord shall not be liable in any event for personal injury or loss of or to Tenant's property caused by fire, flood, water leaks, rain, hail, ice, snow, smoke, lightning, wind, explosion, interruption of utilities, molds, or other occurrences. Landlord strongly recommends that Tenant secure Tenant's own insurance in excess of the amounts required elsewhere in this Lease to protect against the above occurrences if Tenant desires additional coverage for such risks. Tenant shall give prompt notice to Landlord of any significant accidents involving injury to persons or property. Furthermore, Landlord shall not be responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or from the public areas of the Building or the Project, regardless of whether such loss occurs when the area is locked against entry. Landlord shall not be liable to Tenant or Tenant's employees, customers or invitees for any damages or losses to persons or property caused by any lessees in the Building or the Project, or for any damages or losses caused by theft, burglary, assault, vandalism or other crimes. Tenant shall give Landlord prompt written notice of any criminal or suspicious conduct within or about the Premises, the Building or the Project and/or any personal injury or property damage caused thereby. Landlord may, but is not obligated to, enter into agreements with third parties for the provision, monitoring, maintenance and repair of any courtesy patrols or similar services or fire protective systems and equipment and, to the extent same is provided at Landlord's sole discretion, Landlord shall not be liable to Tenant for any damages, costs or expenses which occur for any reason in the event any such system or equipment is not properly installed, monitored or maintained or any such services are not properly provided. Landlord shall use reasonable diligence in the maintenance of existing lighting, if any, in the parking areas servicing the Premises.

Notwithstanding anything to the contrary herein, this Indemnification provision shall not apply to the extent that the claims or losses arise out of the negligence or willful misconduct of Landlord.

11. **USE**. The Premises shall be used only for the purpose of a childcare center (the "Center"). Tenant shall maintain Texas Rising Star accreditation for the Center for the period of the Lease.

Tenant shall provide child development activities to children ages six (6) weeks to five (5) years enrolled in the Center. Tenant shall operate the Center Monday through Friday for 10 hours daily, except for Landlord holidays [Note: Holidays to be discussed/coordinated]. The Center shall be designed to serve sixty-five (65) FTE enrollees unless expanded by agreement of the parties. Tenant shall endeavor to retain existing Center staff and recruit highly competent and qualified staff in the childcare field who possess a degree in early childhood education. The Center Director should have a degree in early childhood education, child development, or a related field, and a minimum of three (3) years' experience, including time as a Center administrator. Outside storage, including without limitation storage of trucks and other vehicles, is prohibited without Landlord's prior written consent. Tenant shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in, upon or connected with the Premises, all at Tenant's sole expense. Tenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations as determined by Landlord in its discretion to emanate from the Premises, nor take any other action that would constitute a nuisance or would disturb, unreasonably interfere with or endanger Landlord or any other lessees of the Building or the Project. The Tenant's operation of the Center at the Premises shall be limited to 7:00 AM – 6:00 PM Central Time, Monday through Friday, unless otherwise permitted by the Landlord in writing. Notwithstanding the foregoing to the contrary, Tenant shall have the right to utilize the Premises on a 24/7 basis for open houses, community events, staff training sessions, staff meetings, and other uses ancillary to its operation as a childcare center as may be reasonably determined by Tenant.

Classroom, kitchen, and playground equipment shall be provided by Landlord to Tenant for utilization during the term of the lease. Landlord will be responsible for all repair and maintenance of the facility, including but not limited to structural repairs, maintenance and replacement (including doors and windows, roof and drainage/gutters, etc.), base building systems repair, maintenance, and replacement (including HVAC, electrical, plumbing, etc.), general facility upkeep (including repair, maintenance, and replacement of flooring, millwork, internal doors and windows, regular painting, etc.), and repair, maintenance, and replacement of playground equipment, and classroom and office furniture. Landlord will make such repairs or complete such replacements as needed to maintain the safety, licensing, and accreditation of the Center. The Tenant will be responsible for contacting Landlord for repair needs.

Tenant shall provide priority enrollment to employees of Landlord and employees of Landlord contracted service providers who wish to enroll in the Tenant's childcare and learning center programs operated at the Premises. The Tenant will also offer priority enrollment to Landlord's employees at two locations, to be determined, currently operated by Tenant in the Austin metro area.

12. CONSTRUCTION CONTRACT REQUIREMENTS. In accordance with Texas Government Code Section 2252.909, to the extent that Tenant is required to perform any repair or alteration under this Lease, Tenant shall be required to:

(a) include in each contract for the construction, alteration, or repair of an improvement to the Premises a condition that the contractor:

(1) execute a payment bond that conforms to Subchapter I, Chapter 53, Property Code; and

(2) execute a performance bond in an amount equal to the amount of the contract for the protection of Landlord and conditioned on the faithful performance of the contractor's work in accordance with the plans, specifications, and contract documents; and

(b) provide to Landlord a notice of commencement (the "**Notice**") at least ninety (90) days before the date the construction, alteration, or repair of any improvement to the Premises begins. The Notice must:

(1) identify the public property where the work will be performed;

(2) describe the work to be performed;

(3) state the total cost of the work to be performed;

(4) include copies of the performance and payment bonds required under Subsection (a) above; and

(5) include a written acknowledgment signed by the contractor stating that copies of the required performance and payment bonds will be provided to all subcontractors not later than the fifth day after the date a subcontract is executed.

13. HAZARDOUS WASTE. The term "Hazardous Substances," as used in this Lease, shall mean pollutants, contaminants, toxic or hazardous wastes, radioactive materials or any other substances, the use and/or the removal of which is required or the use of which is restricted, prohibited or penalized by any "Environmental Law," which term shall mean any federal, state or local statute, ordinance, regulation or other law of a governmental or quasi-governmental authority relating to pollution or protection of the environment or the regulation of the storage or handling of Hazardous Substances. Tenant hereby agrees that: (i) no activity will be conducted on the Premises that will produce any Hazardous Substances, except for such activities that are part of the ordinary course of Tenant's business activities (the "Permitted Activities"), provided said Permitted Activities are conducted in accordance with all Environmental Laws and have been approved in advance in writing by Landlord and, in connection therewith, Tenant shall be responsible for obtaining any required permits or authorizations and paying any fees and providing any testing required by any governmental agency; (ii) the Premises will not be used in any manner for the storage of any Hazardous Substances, except for the temporary storage of such materials that are used in the ordinary course of Tenant's business (the "Permitted Materials"), provided such Permitted Materials are properly stored in a manner and location meeting all Environmental Laws and have been approved in advance in writing by Landlord, and, in connection therewith, Tenant shall be responsible for obtaining any required permits or authorizations and paying any fees and providing any testing required by any governmental agency; (iii) no portion of the Premises will be used as a landfill or a dump; (iv) Tenant will not install any underground tanks of any type; (v) Tenant will not allow any surface or subsurface conditions to exist or come into existence that constitute, or with the passage of time may constitute, a public or private nuisance; and (vi) Tenant will not permit any Hazardous Substances to be brought onto the Premises, except for the Permitted Materials, and if so brought or found located thereon, the same shall be immediately removed, with proper disposal, and all required clean-up procedures shall be diligently undertaken by Tenant at its sole cost pursuant to all Environmental Laws. Landlord and Landlord's representatives shall have the right but not the obligation to enter the Premises for the purpose of inspecting the storage, use and disposal of any Permitted Materials to ensure compliance with all Environmental Laws. Should it be determined, in Landlord's sole opinion, that any Permitted

Materials are being improperly stored, used or disposed of, then Tenant shall immediately take such corrective action as requested by Landlord. Should Tenant fail to take such corrective action within twenty-four (24) hours, Landlord shall have the right to perform such work and Tenant shall reimburse Landlord, on demand, for any and all costs associated with said work. If at any time during or after the term of this Lease, the Premises is found to be contaminated with Hazardous Substances, Tenant shall diligently institute proper and thorough clean-up procedures, at Tenant's sole cost to the extent only that such Hazardous Substances were introduced by Tenant. Tenant agrees to indemnify and hold Landlord harmless from all claims, demands, actions, liabilities, costs, expenses, damages, penalties and obligations of any nature arising from or as a result of any contamination of the Premises with Hazardous Substances by Tenant. To the extent that Hazardous Substances are discovered at the Premises which were not introduced by Tenant, Landlord shall diligently institute proper and thorough clean-up procedures, at Landlord's sole cost and shall, to the extent allowed by state law, indemnify and hold Tenant harmless from all claims, demands, actions, liabilities, costs, expenses, damages, penalties, and obligations of any nature arising from or as a result of any contamination of the Premises with Hazardous Substances by any means other than the introduction by Tenant. The foregoing indemnification and the responsibilities shall survive the termination or expiration of this Lease.

14. INSPECTION. Landlord's agents and representatives shall have the right to enter the Premises at any reasonable time during business hours upon at least 24-hours notice (or at any time in case of emergency) (i) to inspect the Premises, (ii) to make such repairs as may be required or permitted pursuant to this Lease, and/or (iii) during the last six (6) months of the Lease term, for the purpose of showing the Premises. In addition, Landlord shall have the right to erect a suitable sign on the Premises stating the Premises are available for lease. Tenant shall notify Landlord in writing at least thirty (30) days prior to vacating the Premises and shall arrange to meet with Landlord for a joint inspection of the Premises prior to vacating.

15. ASSIGNMENT AND SUBLETTING. Tenant shall not sublet, assign or otherwise transfer or encumber this Lease, or any interest therein, without the prior written consent of Landlord. Any attempted assignment, subletting, transfer or encumbrance by Tenant in violation of the terms and covenants of this paragraph shall be void and any Transferee (as hereafter defined) shall be deemed to be a trespasser. Any assignee, sublessee or transferee of Tenant's interest in this Lease (all such assignees, sublessees and transferees being hereinafter referred to as "Transferees"), by assuming Tenant's obligations hereunder, shall assume liability to Landlord for all amounts paid to persons other than Landlord by such Transferees to which Landlord is entitled or is otherwise in contravention of this Paragraph 14. No assignment, subletting or other transfer, whether or not consented to by Landlord or permitted hereunder, shall relieve Tenant of its liability under this Lease. If Tenant has failed to pay all or any portion of the Yearly Rent by its due date, or if an Event of Default occurs, or if Landlord in good faith deems the prospect of collecting the next payment of Yearly Rent to be impaired, while the Premises or any part thereof are assigned or sublet, then Landlord, in addition to any other remedies herein provided or provided by law, may collect directly from such Transferee all rents payable to the Tenant and apply such rent against any sums due or to become due to Landlord hereunder. No such collection shall be construed to constitute a novation or a release of Tenant from the further performance of Tenant's obligations hereunder. If Landlord consents to any subletting or assignment by Tenant as hereinabove provided and any category of rent subsequently received by Tenant under any such sublease is in excess of the same category of rent payable under this Lease, or any additional consideration is paid to Tenant by the assignee under any such assignment, then Landlord may, at its option, declare such excess rents under any sublease or such additional consideration for any assignment to be due and payable by Tenant to Landlord as additional rent hereunder

16. CONDEMNATION. If any portion of the Premises are taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain or private purchase in lieu thereof, and the taking prevents or materially interferes with the use of the Premises for the purpose for which they were leased to Tenant, then this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease, effective on the date of such taking. All compensation awarded in connection with or as a result of any of the foregoing proceedings (including any sum separately designated or awarded as a value of the leasehold estate) shall be the property of Landlord, and Tenant hereby assigns any interest in any such award to Landlord; provided, however, Landlord shall have no interest in any award made to Tenant for loss of business or goodwill or for the taking of Tenant's trade fixtures and personal property, if a separate award for such items is sought by and made to Tenant.

17. EXPIRATION; HOLDING OVER. At the termination of this Lease or of the possessory rights of Tenant in the Premises pursuant to this Lease, by its expiration or otherwise, Tenant shall immediately deliver possession of the Premises to Landlord. In addition, the Premises shall be left broom-clean. All trash, debris, and unaffixed or unattached items that are permitted or required to be removed by Tenant from the Premises shall be removed from the Premises. The Premises shall be left in the same good condition as it was on the Commencement Date hereof, excepting only for reasonable wear and tear and casualty. If, for any reason, Tenant retains possession of the Premises after the expiration or termination of this Lease or of Tenant's possessory rights in the Premises, such possession shall be deemed to be a tenancy at will only, and all of the other terms and provisions of this Lease shall be applicable during such period, except that Tenant shall pay Landlord from time to time, upon demand, as rental for the period of such possession, an amount equal to 150% the rent in effect on the date of such termination of this Lease, computed on a daily basis for each day of such period. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided. The preceding provisions of this Paragraph 16 shall not be construed as consent for Tenant to retain possession of the Premises in the absence of written consent thereto by Landlord.

18. QUIET ENJOYMENT. Landlord represents that it has the authority to enter into this Lease and that, so long as Tenant pays all amounts due hereunder and performs all other covenants and agreements herein set forth, Tenant shall peaceably and quietly have, hold and enjoy the Premises for the term hereof without hindrance or molestation from Landlord, subject to the terms and provisions of this Lease.

19. EVENTS OF DEFAULT. The following events (herein individually referred to as an "Event of Default") each shall be deemed to be a default in or breach of Tenant's obligations under this Lease:

A. Tenant shall fail to pay any installment of the rent herein reserved when due, or any other payment or reimbursement to Landlord required herein when due, and such failure shall continue for a period of five (5) business days after receipt of written notice from Landlord.

B. Tenant shall (i) vacate or abandon all or a substantial portion of the Premises or (ii) fail to continuously operate its business at the Premises for the permitted use set forth herein, in either event whether or not Tenant is in default of the rental payments due under this Lease.

C. Tenant shall fail to discharge any lien placed upon the Premises in violation of Paragraph 21 hereof within twenty (20) days after any such lien or encumbrance is filed against the Premises.

D. Tenant shall default in the performance of any of its obligations under any other lease or agreement by Tenant with Landlord, or from any person or entity affiliated with or related to Landlord including Landlord's property manager, if any, and same shall remain uncured after the lapsing of any applicable cure periods provided for under such other lease or agreement.

E. Tenant shall fail to comply with any term, provision or covenant of this Lease (other than those listed above in this paragraph) and shall not cure such failure within twenty (20) days after written notice thereof from Landlord.

20. REMEDIES. Upon each occurrence of an Event of Default, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand:

(a) Terminate this Lease;

(b) Enter upon and take possession of the Premises without terminating this Lease;

(c) Make such payments and/or take such action and pay and/or perform whatever Tenant is obligated to pay or perform under the terms of this Lease, and Tenant agrees that Landlord shall not be liable for any damages resulting to Tenant from such action; and/or

(d) Alter all locks and other security devices at the Premises, with or without terminating this Lease, and pursue, at Landlord's option, one or more remedies pursuant to this Lease, and Tenant hereby expressly agrees that Landlord shall not be required to provide to Tenant the new key to the Premises, regardless of hour, including Tenant's regular business hours;

and in any such event Tenant shall immediately vacate the Premises, and if Tenant fails to do so, Landlord, without waiving any other remedy it may have, may enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying such Premises or any part thereof, without being liable for prosecution or any claim of damages therefore. The provisions of this Lease are intended to supersede Section 93.002 of the Texas Property Code (and any successor statute) and Tenant hereby expressly waives any and all rights and remedies Tenant may have under Section 93.002(g).

A. Damages Upon Termination. If Landlord terminates this Lease, Tenant shall be liable for and shall pay to Landlord the sum of all rental and other payments owed to Landlord hereunder accrued to the date of such termination. Landlord and Tenant agree that determining the actual amount of additional damages which Landlord will incur will be extremely difficult to estimate because neither party can predict the market conditions that will exist at the time of the termination. In order to arrive at a reasonable forecast of just compensation, Landlord and Tenant agree that, at Landlord's option, and if the termination occurred as a result of the occurrence of an Event of Default under Paragraphs 18A, 18B, or 18E above, Tenant shall additionally pay to Landlord immediately upon demand as liquidated damages, an amount equal to (i) the present value of the total rental and other payments owed hereunder for the remaining portion of the Lease term, calculated as if such term expired on the date set forth in Paragraph 1, less (ii) the present value of the then fair market rental for the Premises for such period. Because of the difficulty of ascertaining such value and in order to achieve a reasonable estimate of liquidated damages hereunder, Landlord and Tenant stipulate and agree, for the purposes hereof, that i) the present value discount rate shall be seven per cent (7%); and ii) such fair market rental shall in no event exceed seventy-five percent (75%) of the rental amount for such period set forth in Paragraph 2 above. Unless Tenant has abandoned the Premises in violation of this Lease, Tenant waives any claim or defense that the liquidated damages provided for herein should be reduced or offset by the

failure of Landlord to mitigate, or exercise reasonable efforts to mitigate its damages, whether pursuant to the provisions of Paragraph 19G below or otherwise.

B. Damages Upon Repossession. If Landlord repossesses the Premises without terminating this Lease, Tenant, at Landlord's option, shall be liable for and shall pay Landlord on demand all rental and other payments owed to Landlord hereunder, accrued to the date of such repossession, and shall additionally timely pay as they accrue all amounts required to be paid by Tenant under the Lease to Landlord until the date of expiration of the term as stated in Paragraph 1, diminished by all amounts actually received by Landlord through reletting the Premises during such remaining term (but only to the extent of the rent herein reserved). Actions to collect amounts due by Tenant to Landlord under this paragraph may be brought from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease term. Unless Tenant has abandoned the Premises in violation of this Lease, Tenant waives any claim or defense that the damages provided for herein should be reduced or offset by the failure of Landlord to mitigate, or exercise reasonable efforts to mitigate its damages, whether pursuant to the provisions of Paragraph 19G below or otherwise.

C. Costs of Reletting, Removing, Repairs and Enforcement. Not applicable.

D. Late Charge. Not applicable.

E. Interest on Past Due Amounts. Not applicable.

F. No Implied Acceptances or Waivers. Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance by Landlord of Tenant's surrender of the Premises, it being understood that such surrender can be effected only by the written signed agreement of Landlord. Tenant and Landlord further agree that forbearance by Landlord to enforce any of its rights under this Lease or at law or in equity shall not be a waiver of Landlord's right to enforce any one or more of its rights, including any right previously forborne, in connection with any existing or subsequent default. No re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease, unless a written notice of such intention is given to Tenant, and, notwithstanding any such reletting or re-entry or taking possession of the Premises, Landlord may at any time thereafter elect to terminate this Lease for a previous default. Pursuit of any remedies hereunder shall not preclude the pursuit of any other remedy herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages occurring to Landlord by reason of the violation of any of the terms, provisions and covenants contained in this Lease. Landlord's acceptance of any rent following an Event of Default hereunder shall not be construed as Landlord's waiver of such Event of Default. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants of this Lease shall be deemed or construed to constitute a waiver of any other violation or default.

G. Reletting of Premises. In the event of any termination of this Lease and/or repossession of the Premises for an Event of Default, Landlord shall use reasonable efforts to relet the Premises and to collect rental after reletting, with no obligation to accept any lessee that Landlord deems undesirable or to expend any funds in connection with such reletting or collection of rents therefrom. Tenant shall not be entitled to credit for or reimbursement of any proceeds of such reletting in excess of the rental owed hereunder for the period of such reletting. Landlord may relet the whole or any portion of the Premises, for any period, to any tenant and for any use or purpose.

H. Landlord's Default. If Landlord fails to perform any of its obligations hereunder within thirty (30) days after written notice from Tenant specifying such failure, Tenant's exclusive remedy shall be an action for damages. Unless and until Landlord fails to so cure any default after such notice, Tenant shall not have any remedy or cause of action by reason thereof. All obligations of Landlord hereunder will be construed as covenants, not conditions; and all such obligations will be binding upon Landlord only during the period of its possession of the premises and not thereafter. The term "Landlord" shall mean only the owner, for the time being, of the Premises and, in the event of the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all covenants and obligations of the Landlord thereafter accruing, provided that such covenants and obligations shall be binding during the Lease term upon each new owner for the duration of such owner's ownership. Notwithstanding any other provision of this Lease, Landlord shall not have any personal liability hereunder. In the event of any breach or default by Landlord in any term or provision of this Lease, Tenant agrees to look solely to the equity or interest then owned by Landlord in the Premises or the Building; however, in no event shall any deficiency judgment or any money judgment of any kind be sought or obtained against any Landlord.

I. Tenant's Personal Property. If Landlord repossesses the Premises pursuant to the authority herein granted, or if Tenant vacates or abandons all or any part of the Premises, then, in addition to Landlord's rights under Paragraph 26 hereof, Landlord shall have the right to (i) keep in place and use, or (ii) remove and store, all of the furniture, fixtures equipment, and other property (collectively "Stored Property") at the Premises, including that which is owned by or leased to Tenant, at all times prior to any foreclosure or other disposition thereon by Landlord or repossession thereof by any lessor thereof or third party having a lien thereon. In addition to the Landlord's other rights hereunder, Landlord may dispose of the Stored Property if Tenant does not claim the property within ten (10) days after the date Landlord gives notice that it has taken possession of the Stored Property pursuant to this Paragraph. Landlord shall give Tenant at least ten (10) days prior written notice of such intended disposition. Landlord shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("Claimant") who presents to Landlord a copy of any instrument represented by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment or other property, without the necessity on the part of Landlord to inquire into the authenticity or legality of said instrument. The rights of Landlord herein stated shall be in addition to any and all other rights that Landlord has or may hereafter have at law or in equity, and Tenant stipulates and agrees that the rights granted Landlord under this Paragraph are commercially reasonable. This Paragraph expressly supersedes Section 93.002(e) of the Texas Property Code.

21. **MORTGAGES.** Tenant accepts this Lease subject and subordinate to any mortgages and/or deeds of trust now or at any time hereafter constituting a lien or charge upon the Premises or the improvements situated thereon or the Building, provided, however, that if the mortgagee, trustee or holder of any such mortgage or deed of trust elects to have Tenant's interest in this Lease superior to any such instrument, then by notice to Tenant from such mortgagee, trustee or holder, this Lease shall be deemed superior to such lien, whether this Lease was executed before or after said mortgage or deed of trust. Tenant, at any time hereafter on demand, shall execute any instruments, releases or other documents that may be required by any mortgagee, trustee or holder for the purpose of subjecting and subordinating this Lease to the lien of any such mortgage, which documents shall be in form and substance reasonably acceptable to Tenant. Tenant shall not terminate this Lease or pursue any other remedy available to Tenant hereunder for any default on the part of Landlord without first giving written notice by certified or registered mail, return receipt requested, to any mortgagee, trustee or holder of any such mortgage or deed of trust, the name and

post office address of which Tenant has received written notice, specifying the default in reasonable detail and affording such mortgagee, trustee or holder a reasonable opportunity (but in no event less than thirty (30) days) to make performance, at its election, for and on behalf of Landlord.

22. **MECHANIC'S LIENS.** Tenant has no authority, express or implied, to create or place or permit any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord or Tenant in the Premises. Tenant acknowledges and agrees that in connection with all Alterations to the Premises, i) Tenant does not act as Landlord's agent; ii) the Alterations are done solely for the benefit of Tenant; and iii) the Alterations do not "enrich" Landlord because they are specific to the needs of Tenant and therefore have little or no intrinsic value to Landlord. Tenant will indemnify, defend, save and hold Landlord harmless from any and all loss, cost or expense, including without limitation attorneys' fees, based on or arising out of asserted claims or liens against the leasehold estate or against the right, title and interest of the Landlord in the Premises or under the terms of this Lease.

23. **MISCELLANEOUS.**

A. **Interpretation.** The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease. Any reference in this Lease to rentable area shall mean the gross rentable area as determined by the roofline of the building in question.

B. **Binding Effect.** Except as otherwise herein expressly provided, the terms, provisions and covenants and conditions in this Lease shall apply to, inure to the benefit of and be binding upon the parties hereto and upon their respective heirs, executors, personal representatives, legal representatives, successors and assigns. Landlord shall have the right to transfer and assign, in whole or in part, its rights and obligations in the Premises and in the Building and other property that are the subject of this Lease.

C. **Evidence of Authority.** Tenant agrees to furnish to Landlord, promptly upon demand, a corporate resolution, proof of due authorization by partners or other appropriate documentation evidencing the due authorization of such party to enter into this Lease.

D. **Force Majeure.** Neither party shall be held responsible for delays in the performance of its obligations hereunder when caused by material shortages, acts of God, labor disputes or other events beyond the control of Landlord or Tenant, as applicable.

E. **Payments Constitute Rent.** Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as rent, shall constitute rent.

F. **Estoppel Certificates.** Tenant agrees, from time to time, within ten (10) business days after request of Landlord, to deliver to Landlord, or Landlord's designee, an estoppel certificate stating that this Lease is in full force and effect, the date to which rent has been paid, the unexpired term of this Lease, any defaults existing under this Lease (or the absence thereof) and the status of other matters pertaining to this Lease as may be requested by Landlord. It is understood and agreed that Tenant's obligation to furnish such estoppel certificates in a timely fashion is a material inducement for Landlord's execution of this Lease.

G. Entire Agreement. In addition to, and construed together with Contract 500205, this Lease constitutes the entire understanding and agreement of Landlord and Tenant with respect to the subject matter of this Lease, and contains all of the covenants and agreements of Landlord and Tenant with respect thereto. Landlord and Tenant each acknowledge that no representations, inducements, promises or agreements, oral or written, have been made by Landlord or Tenant, or anyone acting on behalf of Landlord or Tenant, which are not contained herein, and any prior agreements, promises, negotiations or representations (collectively "Representations") not expressly set forth in this Lease are of no force or effect. Tenant therefore acknowledges that it has not and may not rely on any such Representations which alter or vary from the written terms of this Lease. EXCEPT AS SPECIFICALLY PROVIDED IN THIS LEASE, TENANT HEREBY WAIVES THE BENEFIT OF ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR ANY PARTICULAR PURPOSE. Landlord's agents and employees (including any broker) do not and will not have authority to make exceptions, changes or amendments to this Lease, or factual representations not expressly contained in this Lease. Under no circumstances shall Landlord or Tenant be considered an agent of the other. This Lease may not be altered, changed or amended except by an instrument in writing signed by both parties hereto.

H. Survival of Obligations. All monetary obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the term of this Lease shall survive the expiration or earlier termination of the term hereof, including without limitation all payment obligations with respect to taxes and insurance and all obligations concerning the condition and repair of the Premises. Tenant shall surrender the Premises in the same good condition as existing on the Commencement Date, reasonable wear and tear, casualty, and maintenance for which Tenant is not responsible excepted.

I. Severability of Terms. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then, in such event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

J. Effective Date. All references in this Lease to "the date hereof" or similar references shall be deemed to refer to the last date, in point of time, on which all parties hereto have executed this Lease.

K. Brokers' Commission. Tenant represents and warrants that it has dealt with and will deal with no broker, agent or other person in connection with this transaction or future related transactions and that no broker, agent or other person brought about this transaction, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

L. Ambiguity. Landlord and Tenant hereby agree and acknowledge that this Lease has been fully reviewed and negotiated by both Landlord and Tenant, and that Landlord and Tenant have each had the opportunity to have this Lease reviewed by their respective legal counsel, and, accordingly, in the event of any ambiguity herein, Tenant does hereby waive the rule of construction that such ambiguity shall be resolved against the party who prepared this Lease.

M. Joint Several Liability. If there be more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several. If there be a guarantor of Tenant's obligations hereunder, the obligations hereunder imposed upon Tenant shall be joint and several obligations of Tenant and such guarantor, and Landlord need not first proceed against Tenant before proceeding against such guarantor, nor shall any such guarantor be released from its guaranty for any reason whatsoever, including, without limitation, in case of any amendments hereto, waivers hereof or failure to give such guarantor any notices hereunder.

N. Third Party Rights. Nothing herein expressed or implied is intended, or shall be construed, to confer upon or give to any person or entity, other than the parties hereto, any right or remedy under or by reason of this Lease.

O. Exhibits and Attachments. All exhibits, attachments, riders and addenda referred to in this Lease, and the exhibits listed herein below and attached hereto, are incorporated into this Lease and made a part hereof for all intents and purposes as if fully set out herein. All capitalized terms used in such documents shall, unless otherwise defined therein, have the same meanings as are set forth herein.

P. Applicable Law. This Lease has been executed in the State of Texas and shall be governed in all respects by the laws of the State of Texas. It is the intent of Landlord and Tenant to conform strictly to all applicable state and federal usury laws. All agreements between Landlord and Tenant, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever shall the amount contracted for, charged or received by Landlord for the use, forbearance or retention of money hereunder or otherwise exceed the maximum amount which Landlord is legally entitled to contract for, charge or collect under the applicable state or federal law. If, from any circumstance whatsoever, fulfillment of any provision hereof at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be automatically reduced to the limit of such validity, and if from any such circumstance Landlord shall ever receive as interest or otherwise an amount in excess of the maximum that can be legally collected, then such amount which would be excessive interest shall be applied to the reduction of rent hereunder, and if such amount which would be excessive interest exceeds such rent, then such additional amount shall be refunded to Tenant. Venue shall lie in a court of competent jurisdiction in Travis County, Texas.

24. NOTICES. Each provision of this instrument or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivering of notice or the making of any payment by Landlord to Tenant or with reference to the sending, mailing or delivering of any notice or the making of any payment by Tenant to Landlord shall be deemed to be complied with when and if the following steps are taken:

A. All rent and other payments required to be made by Tenant to Landlord hereunder shall be payable to Landlord at the address for Landlord set forth below or at such other address as Landlord may specify from time to time by written notice delivered in accordance herewith. Tenant's obligation to pay rent and any other amounts to Landlord under the terms of this Lease shall not be deemed satisfied until such rent and other amounts have been actually received by Landlord.

B. All payments required to be made by Landlord to Tenant hereunder shall be payable to Tenant at the address set forth below, or at such other address within the continental United States as Tenant may specify from time to time by written notice delivered in accordance herewith.

C. Except as expressly provided herein, any written notice, document or payment required or permitted to be delivered hereunder shall be deemed to be delivered when received or, for notices or documents whether actually received or not, when deposited in the United States Mail, postage prepaid, Certified or Registered Mail, or deposited with a reputable overnight courier (e.g. FedEx, UPS) and addressed to the parties hereto at the respective addresses set out in this Contract, or at such other address as they have theretofore specified by written notice delivered in accordance herewith.

25. ADDITIONAL PROVISIONS. See EXHIBIT "B" attached hereto and incorporated herein by reference.

26. Intentionally deleted.

27. Intentionally deleted.

28. MULTIPLE COUNTERPARTS. This Lease may be signed in counterparts. To expedite and facilitate the signing of this Lease by the parties, any Party may sign its respective signature and forward that page electronically or by telecopy transmission to the other parties. The copy of any party's signature transmitted by e-mail or telecopy shall be deemed to be an adequate substitute for the original page containing the signature.

(Signature page to follow)

EXECUTED BY TENANT, this 10th day of January, 2025.

TENANT: Bright Horizons Children's Centers, LLC

By: E-SIGNED by John Casagrande
on 2025-01-10 20:42:01 GMT

Name: John G. Casagrande

Title: General Counsel

EXECUTED BY LANDLORD, this 12th day of January, 2025.

LANDLORD: Capital Metropolitan Transportation Authority

a political subdivision of the State of Texas organized and existing under Chapter 451, Texas Transportation Code

By: E-SIGNED by Kenneth Cartwright
on 2025-01-12 22:12:24 GMT

Name: Kenneth Cartwright

Title: VP, Facility Management & Capital Construction

EXHIBIT "A" - Description of Premises

EXHIBIT "B" - Additional Provisions

EXHIBIT "A"

DESCRIPTION OF PREMISES

Floor plan of Premises with Center represented in shaded area.

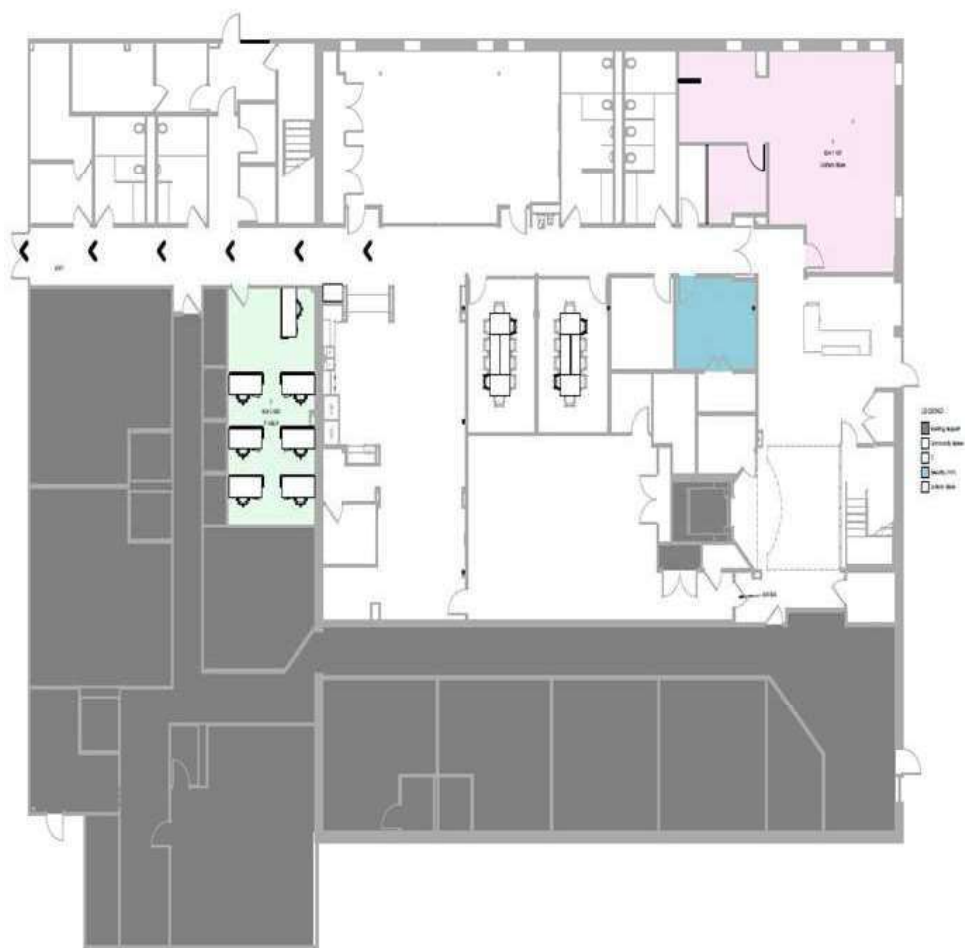


EXHIBIT "B"

ADDITIONAL PROVISIONS

RENEWAL OPTION

(a) Landlord shall have the unilateral right (hereinafter called the "Extension Notice") of its desire to extend the term in accordance with Contract 500205.

(b) The Base Rent payable by Tenant to Landlord during the Extension Term shall remain the nominal amount as provided for in this Lease.

(c) Except for the Base Rent as determined above, Tenant's occupancy of the Premises during the Extension Term shall be on the same terms and conditions as are in effect immediately prior to the expiration of the initial Lease Term; provided, however, Tenant shall have no further right to any allowances, credits or abatements or any options to expand, contract, renew or extend the Lease.

(d) Landlord shall have no obligation to refurbish or otherwise improve the Premises for the Extension Term. The Premises shall be tendered on the Commencement Date of the Extension Term in "as-is" condition.

(e) If the Lease is extended for the Extension Term, then Landlord shall prepare and Tenant shall execute an amendment to the Lease confirming the extension of the Lease Term and the other provisions applicable thereto (the "Amendment").

PARKING

Landlord shall provide Tenant with unreserved parking spaces at no cost to Tenant. Parking is available at 624 N. Pleasant Valley Road, Austin, Texas 78702 on a first come basis. There are 46 parking spaces at 624 N. Pleasant Valley Road but there is additional parking available at the main location, 2910 East 5th Street, Austin, Texas 78702 when needed. Additionally, Landlord shall provide Tenant with 7 reserved parking spaces adjacent to the Premises for drop-off and pick-up related to Tenant's use between the hours of 7:00 AM to 9:20 AM Central Time and 4:40 PM to 6:00 PM Central Time.

RULES AND REGULATIONS

Please be advised that all building Rules and Regulations are to be adhered to at ALL TIMES including during any phase of construction. Observance of these rules will provide for a safer environment for all parties and will help avert delays and or inconveniences.

No smoking is allowed inside of the facility, on any portion of the building roof, or within 20 ft. of the building's entrances and exits.

No rowdy, lewd, or disruptive behavior shall be permitted on the property.

No disrupting of or hindering of activities in or around the Tenant's premises.

No storage / build-up of debris is permitted in or around the building except in designated areas or as directed by the Landlord.

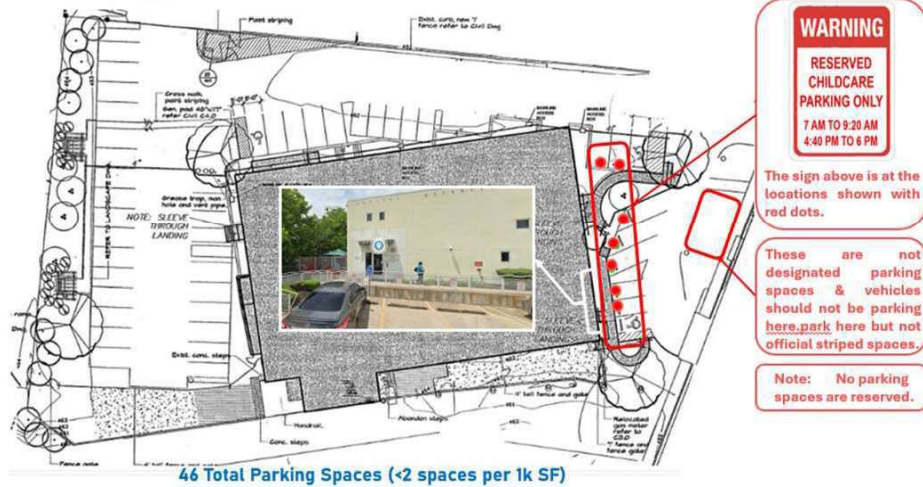
No posting, removal or modification of any signage, banners and or flags in any part of the Building shall be permitted without written authorization of the Landlord.

Any necessary partial closures of driveways required for receiving deliveries and associated off-loading of materials shall be coordinated with the Landlord.

Landlord reserves the right to order an immediate halt to any operation that is deemed hazardous or poses any potential danger to the premises the Building or any occupants thereof.

The Building Rules & Regulations are subject to change at any time at Landlord's discretion.

624 Parking Overview



CHILDCARE FACILITY PROGRAM

RFP 807072

REFERENCE ATCH 1

TO

EXHIBIT F—REVISED-2

LEASE AGREEMENT (REDLINED)

LEASE AGREEMENT

Between

BRIGHT HORIZONS CHILDREN'S CENTERS, LLC
as Tenant,

and

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY,
as Landlord,

Covering approximately 6,000 gross square feet of interior space and 2,800 gross square feet of
exterior space of the Building located at

624 Pleasant Valley Road
Austin, Texas, 78702

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into by and between **Capital Metropolitan Transportation Authority**, hereinafter referred to as "Landlord," and "Tenant".

1. **PREMISES AND TERM.** In consideration of the mutual obligations of Landlord and Tenant set forth herein, Landlord leases to Tenant, and Tenant hereby takes from Landlord, certain leased premises situated within the County of Travis, State of Texas, as more particularly described on EXHIBIT "A" attached hereto and incorporated herein by reference (the "Premises"), to have and to hold, subject to the terms, covenants and conditions in this Lease. The term of this Lease shall commence on the Commencement Date hereinafter set forth and shall end one year from the Notice to Proceed date on Contract 500205, unless otherwise extended in accordance with this Lease. [NOTE: The Lease will be co-terminus with Contract 500205 – in the event of a termination of Contract 500205, the Lease shall automatically terminate and in the event of an extension of Contract 500205, the Lease will automatically renew.]

A. Existing Building and Improvements. The "Commencement Date" shall be on the date Notice to Proceed is issued for Contract 500205. Tenant acknowledges that (i) it has inspected and accepts the Premises in its "as is" condition, (ii) the buildings and improvements comprising the same are suitable for the purpose for which the Premises are leased, (iii) the Premises are in good and satisfactory condition, and (iv) no representations as to the repair or condition of the Premises nor promises to alter, remodel or improve the Premises, including the handling or removal of any communications cable, have been made by Landlord (unless otherwise expressly set forth in this Lease). [NOTE: The foregoing would be subject to Landlord's ongoing repair and maintenance obligations as set forth in the Lease.]

2. BASE RENT, SECURITY DEPOSIT AND ESCROW DEPOSITS.

A. Base Rent. Tenant agrees to pay Landlord rent for the Premises, in advance, without demand, deduction or set off, at \$10.00 per year during the term hereof. The yearly Tenant installment of \$10.00 shall be due annually during the first of the month following the month of execution.

B. Security Deposit. Not applicable.

C. Escrow Deposits. Not applicable.

3. TAXES

A. Real Property Taxes. Tenant agrees to pay all taxes, assessments and governmental charges of any kind and nature (collectively referred to herein as "Taxes") that accrue against the Premises, the Building and/or the land of which the Premises or the Building are a part, if such Taxes are assessed due to Tenant's use of the Premises. If at any time during the term of this Lease there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom and/or a franchise or margin tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises and/or the land and improvements of which the Premises are a part (including but not limited to the tax imposed pursuant to the 2006 amendments to the Texas Tax Code, Chapter 171, then all such taxes, assessments, levies or charges, or the part thereof so measured or based shall be deemed to be included within the term "Taxes" for the purposes hereof. Tenant shall immediately notify

Landlord of any Taxes assessed against the Premises or the Building due to the Tenant's use of the Premises, and Tenant indemnify and, at Landlord's discretion, defend Landlord in any dispute regarding the Taxes. [NOTE: Bright Horizons should be responsible only for its proportionate share of RET based on the rentable square feet of the Premises compared to the remainder of the building.]

B. Personal Property Taxes. Tenant shall be liable for all taxes levied or assessed against any personal property or fixtures placed in or on the Premises by Tenant. If any such taxes are levied or assessed against Landlord or Landlord's property and (i) Landlord pays the same or (ii) the assessed value of Landlord's property is increased by inclusion of such personal property and fixtures and Landlord pays the increased taxes, then Tenant shall pay to Landlord, upon demand, the amount of such taxes.

4. UTILITIES. LANDLORD'S REPAIRS AND MAINTENANCE.

A. Structural Repairs. Landlord, at its own cost and expense, shall maintain the foundation and the structural soundness of the exterior walls of the Building in good repair, reasonable wear and tear excluded. The term "walls" as used herein shall not include windows, glass or plate glass, any doors, special store fronts or office entries, and the term "foundation" as used herein shall not include loading docks. Tenant shall immediately give Landlord written notice of defect or need for repairs, after which Landlord shall have a reasonable opportunity to effect such repairs or cure such defect. In no event shall Landlord have any obligation or liability to Tenant or any others for the existence of molds, fungi, bacteria, mildew, and other similar matters (collectively referred to hereafter as "Molds"), except for the repair or replacement of the foundation or walls in which such items are found. Further, Landlord shall not have any obligation or liability with respect to communications cable within the Premises except as provided for in Exhibit B.

B. Utilities. Landlord will provide standard and customary utilities to the Premises. Landlord will pay for reasonable utilities and determine the lease rate to demonstrate the pro-rata share of utility costs that Tenant is not be obligated to pay.

C. System Maintenance. Landlord shall service HVAC equipment within thirty (30) days of Tenant's occupancy to ensure such HVAC equipment is in good working order. Tenant, at its own cost and expense, shall prevent the discharge, leakage, or overflow of water and other liquids produced by all HVAC, electrical, plumbing, sprinkler and other mechanical systems. The service contract must include the replacement of filters on a regular basis and all services suggested by the equipment manufacturer in its operations/maintenance manual and must become effective within thirty (30) days of the date Tenant takes possession of the Premises.

5. PARKING. Tenant and its employees, customers and licensees shall have the right to use the parking spaces described in Section 24 below and in Exhibit B attached hereto drop-off spaces adjacent to the Premises and such additional parking for the use of its employees as further described in Section 24 below and Exhibit B attached hereto only its Proportionate Share of any parking areas that have been designated for such use by Landlord in writing, subject to (i) all rules and regulations promulgated by Landlord, and (ii) rights of ingress and egress of other lessees. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties, and Tenant expressly does not have the right to tow or obstruct improperly parked vehicles. Tenant agrees not to park on any public streets or private roadways adjacent to or in the vicinity of the Premises. Tenant shall have no right to a reserved number or location of parking spaces unless this Lease explicitly provides otherwise. Tenant shall not park or store vehicles, trucks or other

trailers, campers, RVs, equipment or other mobile storage units overnight, except in areas specifically designated and agreed to in writing by Landlord.

6. ALTERATIONS. Tenant shall not make any alterations, additions or improvements (collectively referred to as "Alterations") to the Premises without the prior written consent of Landlord. Landlord shall not be required to notify Tenant of whether it consents to any Alterations until it (a) has received plans and specifications in a CAD disk format therefore which are sufficiently detailed to allow construction of the work depicted thereon to be performed in a good and workmanlike manner, and (b) has had a reasonable opportunity to review them. If the Alterations will affect the Building's structure, HVAC system, or mechanical, electrical, or plumbing systems, then the plans and specifications therefore must be prepared by a licensed engineer reasonably acceptable to Landlord and provided to Landlord in a CAD disk format. Landlord's approval of any plans and specifications shall not be a representation that the plans or the work depicted thereon will comply with law or be adequate for any purpose, but shall merely be Landlord's consent to performance of the work. Upon completion of any Alteration, Tenant shall deliver to Landlord accurate, reproducible as-built plans therefore in a CAD disk format. Tenant may erect shelves, bins, machinery and trade fixtures (collectively "Tenant Installations") provided that such items (1) do not alter the basic character of the Premises or the Building; (2) do not overload or damage the same; and (3) may be removed without damage to the Premises. Unless Landlord specifies in writing otherwise, all alterations, additions, and improvements shall be Landlord's property when installed in the Premises. Unless Landlord notifies Tenant to the contrary, all ~~shelves, bins, communications cables, machinery and trade fixtures~~ ~~Tenant Installations~~ installed by Tenant ~~after the Commencement Date hereof and any proprietary property of Tenant~~ shall be removed on or before the earlier to occur of the day of termination or expiration of this Lease, or vacating the Premises, at which time Tenant shall restore the Premises to ~~the same good their original~~ condition ~~as existed on the Commencement Date, reasonable wear and tear and damage by casualty excepted.~~ All work performed by Tenant in the Premises (including that relating to the installations, ~~repair-replacement,~~ or removal of any item) shall be performed in accordance with all applicable governmental laws, ordinances, regulations, and with Landlord's specifications and requirements, in a good and workmanlike manner, and so as not to damage or alter the Building's structure or the Premises. ~~As it relates to any improvements constructed by Tenant after the Commencement Date hereof only,~~ Tenant shall be responsible for compliance with 1) The Americans With Disabilities Act of 1990 as amended (hereafter "ADA") and 2) the Texas Elimination of Architectural Barriers Act (hereafter "TEAB") or any successor statute to the ADA or TEAB; ~~provided, Tenant shall not be responsible for compliance with the foregoing or any laws unless and except constructed by Tenant after the Commencement Date hereof.~~ ~~Tenant shall also be responsible for compliance with all applicable laws, ordinances, and regulations with respect to tagging, installation and removal of communications cable in, above, appurtenant to, or associated with the Premises. At Landlord's option, Tenant at its sole cost and expense shall remove all communications cable installed by it, or on its behalf, or utilized by it (even if installed by others) during Tenant's occupancy of the Leased Premises. No communications cable installed or utilized by Tenant shall be abandoned by Tenant after it ceases to occupy the Premises. The term "communications cable" includes wire, cable, fiber optic or any other physical method of electronic, electrical or optical transmission of a) data, b) information, c) voice and other sound, d) pictures, motion picture, video or images, or e) other communication of any kind whatsoever including use as or for audio speaker, computer network, internet, intranet, electronic mail, fire, security and/or other emergency or alarm systems, optical fiber, communications circuits, radio, television, satellite, computer, coaxial, or network powered broadband whether within or outside the Premises. In connection with any such Alteration, Tenant shall pay to Landlord an administration fee of five percent (5%) of all costs incurred for such work.~~

7. **SIGNS.** Any signage Tenant desires for the Premises shall be subject to Landlord's written approval and shall be submitted to Landlord prior to the Commencement Date of this Lease. Tenant shall repair, paint and/or replace the Building fascia surface to which its signs are attached upon Tenant's vacating the Premises or the removal or alteration of its signage. If Tenant is permitted to use the Building fascia located directly above the premises for signage, such use shall be non-exclusive and shall be subject to such other usage as Landlord may determine. Tenant shall not, without Landlord's prior written consent, (i) make any changes to the exterior of the Premises, such as painting; (ii) install any exterior lights, decorations, balloons, flags, pennants or banners; or (iii) erect or install any signs, windows or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of the Premises. All signs, decorations, advertising media, blinds, draperies and other window treatment or bars or other security installations visible from outside the Premises shall conform in all respects to the criteria established by Landlord or shall be otherwise subject to Landlord's prior written consent.

8. **INSURANCE.** Tenant must obtain and maintain for the Term of the Lease the Insurance coverage specified in Contract 500205.

9. FIRE AND CASUALTY DAMAGE.

A. Total or Substantial Damage and Destruction. If the Premises or the Building should be damaged or destroyed by fire or other peril, Tenant shall promptly immediately give written notice to Landlord of such damage or destruction. If the Premises or the Building should be totally destroyed by any peril covered by the insurance to be provided by Landlord under Paragraph 8A above, or if they should be so damaged thereby that, in Landlord's estimation, rebuilding or repairs cannot be completed within one hundred eighty (180) days after the date of such damage or after such completion there would not be enough time remaining under the terms of this Lease to fully amortize such rebuilding or repairs, then this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease, effective upon the date of the occurrence of such damage.

B. Partial Damage or Destruction. If the Premises or the Building should be damaged by any peril covered by the insurance to be provided by Landlord under Paragraph 8A above and, in Landlord's estimation, rebuilding or repairs can be substantially completed within one hundred eighty (180) days after the date of such damage, then this Lease shall not terminate and Landlord shall substantially restore the Premises to its previous condition, except that Landlord shall not be required to rebuild, repair or replace any part of the partitions, fixtures, additions and other improvements that may have been constructed, erected or installed in or about the Premises for the benefit of, by or for Tenant to the extent such partitions, fixtures, additions, or other improvements were constructed after the Commencement Date of this Lease.

C. Lienholders' Rights in Proceeds. Not applicable.

D. Waiver of Subrogation. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant hereby waive and release each other of and from any and all rights of recovery, claims, actions or causes of action against each other, or their respective agents, officers and employees, for any loss or damage that may occur to the Premises, improvements to the Building or personal property (Building contents) within the Building and/or Premises, for any reason regardless of cause or origin. Each party to this Lease agrees immediately after execution of this Lease to give written notice of the terms of the mutual waivers contained in this subparagraph to each insurance company that has issued to such party policies of fire and extended

coverage insurance and to have the insurance policies properly endorsed to provide that the carriers of such policies waive all rights of recovery under subrogation or otherwise against the other party.

10. LIABILITY AND INDEMNIFICATION. Except for any claims, rights of recovery and causes of action that Landlord has released in writing signed by Landlord, Tenant shall hold Landlord harmless from and defend Landlord against any and all claims or liability for any injury or damage (i) to any person or property whatsoever occurring in, on or about the Premises or any part thereof, the Building and/or other common areas, the use of which Tenant may have in accordance with this Lease, if such injury or damage shall be caused in whole or in part by the act, neglect, fault or omission of any duty by Tenant, its agents, servants, employees or invitees at common law, pursuant to statute, ordinance, or regulation, or under this Lease; (ii) arising from the conduct or management of any work done by the Tenant in or about the Premises; or (iii) arising from transactions of the Tenant; or (iv) arising out of Tenant's breach of its obligations pursuant to this Lease; and (v) all costs, counsel fees, expenses and liabilities incurred in connection with any such claim or action or proceeding brought thereon. The provisions of this Paragraph 10 shall survive the expiration or termination of this Lease. Landlord shall not be liable in any event for personal injury or loss of or to Tenant's property caused by fire, flood, water leaks, rain, hail, ice, snow, smoke, lightning, wind, explosion, interruption of utilities, molds, or other occurrences. Landlord strongly recommends that Tenant secure Tenant's own insurance in excess of the amounts required elsewhere in this Lease to protect against the above occurrences if Tenant desires additional coverage for such risks. Tenant shall give prompt notice to Landlord of any significant accidents involving injury to persons or property. Furthermore, Landlord shall not be responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or from the public areas of the Building or the Project, regardless of whether such loss occurs when the area is locked against entry. Landlord shall not be liable to Tenant or Tenant's employees, customers or invitees for any damages or losses to persons or property caused by any lessees in the Building or the Project, or for any damages or losses caused by theft, burglary, assault, vandalism or other crimes. Tenant shall give Landlord prompt written notice of any criminal or suspicious conduct within or about the Premises, the Building or the Project and/or any personal injury or property damage caused thereby. Landlord may, but is not obligated to, enter into agreements with third parties for the provision, monitoring, maintenance and repair of any courtesy patrols or similar services or fire protective systems and equipment and, to the extent same is provided at Landlord's sole discretion, Landlord shall not be liable to Tenant for any damages, costs or expenses which occur for any reason in the event any such system or equipment is not properly installed, monitored or maintained or any such services are not properly provided. Landlord shall use reasonable diligence in the maintenance of existing lighting, if any, in the parking areas servicing the Premises.

Notwithstanding anything to the contrary herein, this Indemnification provision shall not apply to the extent that the claims or losses arise out of the negligence or willful misconduct of Landlord.

11. USE. The Premises shall be used only for the purpose of a childcare center (the "Center"). Tenant shall maintain Texas Rising Star accreditation for the Center for the period of the Lease. Tenant shall provide child development activities to children ages six (6) weeks to five (5) years enrolled in the Center. Tenant shall operate the Center Monday through Friday for 10 hours daily, except for Landlord holidays [Note: Holidays to be discussed/coordinated]. The Center shall be designed to serve sixty-five (65) FTE enrollees unless expanded by agreement of the parties. Tenant shall endeavor to retain existing Center staff and recruit highly competent and qualified staff in the childcare field who possess a degree in early childhood education. The Center Director should have a degree in early childhood education, child development, or a related field, and a minimum of three (3) years' experience, including time as a Center

administrator. Outside storage, including without limitation storage of trucks and other vehicles, is prohibited without Landlord's prior written consent. Tenant shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in, upon or connected with the Premises, all at Tenant's sole expense. Tenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations as determined by Landlord in its discretion to emanate from the Premises, nor take any other action that would constitute a nuisance or would disturb, unreasonably interfere with or endanger Landlord or any other lessees of the Building or the Project. ~~The Tenant's operation of the Center at the Premises shall be limited to 7:00 AM – 6:00 PM Central Time, Monday through Friday, unless otherwise permitted by the Landlord in writing. Notwithstanding the foregoing to the contrary, Tenant shall have the right to utilize the Premises on a 24/7 basis for open houses, community events, staff training sessions, staff meetings, and other uses ancillary to its operation as a childcare center as may be reasonably determined by Tenant. Tenant's use of the Premises shall be limited to the following hours, unless otherwise permitted by Landlord in writing:~~

~~Monday XAM—XPM
Tuesday XAM—XPM
Wednesday XAM—XPM
Thursday XAM—XPM
Friday XAM—XPM~~

Classroom, kitchen, and playground equipment shall be provided by Landlord to Tenant for utilization during the term of the lease. Landlord will be responsible for all repair and maintenance of the facility, ~~including but not limited to structural repairs, maintenance and replacement (including doors and windows, roof and drainage/gutters, etc.), base building systems repair, maintenance, and replacement (including HVAC, electrical, plumbing, etc.), general facility upkeep (including repair, maintenance, and replacement of flooring, millwork, internal doors and windows, regular painting, etc.), and repair, maintenance, and replacement of playground equipment, and classroom and office furniture. Landlord will replace equipment and furniture make such repairs or complete such replacements~~ as needed to maintain the safety, licensing, and accreditation of the Center. The Tenant will be responsible for contacting Landlord for repair needs.

Tenant shall provide priority enrollment to employees of Landlord and employees of Landlord contracted service providers who wish to enroll in the Tenant's childcare and learning center programs operated at the Premises. The Tenant will also offer priority enrollment ~~to Landlord's employees at two locations, to be determined, currently operated by Tenant in the Austin metro area.any of its other centers operated in the central Texas area. Likewise, employees of Landlord and Landlord contracted service providers will have priority placement of waiting lists at the Premises operated by the Tenant two additional locations operated by Tenant in the Austin metro area or any new, to be determined, locations added in the future.~~

12. CONSTRUCTION CONTRACT REQUIREMENTS. In accordance with Texas Government Code Section 2252.909, to the extent that Tenant is required to perform any repair or alteration under this Lease, Tenant shall be required to:

(a) include in each contract for the construction, alteration, or repair of an improvement to the Premises a condition that the contractor:

(1) execute a payment bond that conforms to Subchapter I, Chapter 53, Property Code; and

(2) execute a performance bond in an amount equal to the amount of the contract for the protection of Landlord and conditioned on the faithful performance of the contractor's work in accordance with the plans, specifications, and contract documents; and

(b) provide to Landlord a notice of commencement (the "**Notice**") at least ninety (90) days before the date the construction, alteration, or repair of any improvement to the Premises begins. The Notice must:

(1) identify the public property where the work will be performed;

(2) describe the work to be performed;

(3) state the total cost of the work to be performed;

(4) include copies of the performance and payment bonds required under Subsection (a) above; and

(5) include a written acknowledgment signed by the contractor stating that copies of the required performance and payment bonds will be provided to all subcontractors not later than the fifth day after the date a subcontract is executed.

13. HAZARDOUS WASTE. The term "Hazardous Substances," as used in this Lease, shall mean pollutants, contaminants, toxic or hazardous wastes, radioactive materials or any other substances, the use and/or the removal of which is required or the use of which is restricted, prohibited or penalized by any "Environmental Law," which term shall mean any federal, state or local statute, ordinance, regulation or other law of a governmental or quasi-governmental authority relating to pollution or protection of the environment or the regulation of the storage or handling of Hazardous Substances. Tenant hereby agrees that: (i) no activity will be conducted on the Premises that will produce any Hazardous Substances, except for such activities that are part of the ordinary course of Tenant's business activities (the "Permitted Activities"), provided said Permitted Activities are conducted in accordance with all Environmental Laws and have been approved in advance in writing by Landlord and, in connection therewith, Tenant shall be responsible for obtaining any required permits or authorizations and paying any fees and providing any testing required by any governmental agency; (ii) the Premises will not be used in any manner for the storage of any Hazardous Substances, except for the temporary storage of such materials that are used in the ordinary course of Tenant's business (the "Permitted Materials"), provided such Permitted Materials are properly stored in a manner and location meeting all Environmental Laws and have been approved in advance in writing by Landlord, and, in connection therewith, Tenant shall be responsible for obtaining any required permits or authorizations and paying any fees and providing any testing required by any governmental agency; (iii) no portion of the Premises will be used as a landfill or a dump; (iv) Tenant will not install any underground tanks of any type; (v) Tenant will not allow any surface or subsurface conditions to exist or come into existence that constitute, or with the passage of time may constitute, a public or private nuisance; and (vi) Tenant will not permit any Hazardous Substances to be brought onto the Premises, except for the Permitted Materials, and if so brought or found located thereon, the same shall be immediately removed, with proper disposal, and all required clean-up procedures shall be diligently undertaken by Tenant at its sole cost pursuant to all Environmental Laws. Landlord and Landlord's

representatives shall have the right but not the obligation to enter the Premises for the purpose of inspecting the storage, use and disposal of any Permitted Materials to ensure compliance with all Environmental Laws. Should it be determined, in Landlord's sole opinion, that any Permitted Materials are being improperly stored, used or disposed of, then Tenant shall immediately take such corrective action as requested by Landlord. Should Tenant fail to take such corrective action within twenty-four (24) hours, Landlord shall have the right to perform such work and Tenant shall reimburse Landlord, on demand, for any and all costs associated with said work. If at any time during or after the term of this Lease, the Premises is found to be contaminated with Hazardous Substances, Tenant shall diligently institute proper and thorough clean-up procedures, at Tenant's sole cost **to the extent only that such Hazardous Substances were introduced by Tenant**. Tenant agrees to indemnify and hold Landlord harmless from all claims, demands, actions, liabilities, costs, expenses, damages, penalties and obligations of any nature arising from or as a result of any contamination of the Premises with Hazardous Substances **by Tenant, or otherwise arising from the use of the Premises by Tenant**. **To the extent that Hazardous Substances are discovered at the Premises which were not introduced by Tenant, Landlord shall diligently institute proper and thorough clean-up procedures, at Landlord's sole cost and shall, to the extent allowed by state law, indemnify and hold Tenant harmless from all claims, demands, actions, liabilities, costs, expenses, damages, penalties, and obligations of any nature arising from or as a result of any contamination of the Premises with Hazardous Substances by any means other than the introduction by Tenant.** The foregoing indemnification and the responsibilities **of Tenant** shall survive the termination or expiration of this Lease.

14. INSPECTION. Landlord's agents and representatives shall have the right to enter the Premises at any reasonable time during business hours **upon at least 24-hours notice** (or at any time in case of emergency) (i) to inspect the Premises, (ii) to make such repairs as may be required or permitted pursuant to this Lease, and/or (iii) during the last six (6) months of the Lease term, for the purpose of showing the Premises. In addition, Landlord shall have the right to erect a suitable sign on the Premises stating the Premises are available for lease. Tenant shall notify Landlord in writing at least thirty (30) days prior to vacating the Premises and shall arrange to meet with Landlord for a joint inspection of the Premises prior to vacating.

15. ASSIGNMENT AND SUBLETTING. Tenant shall not sublet, assign or otherwise transfer or encumber this Lease, or any interest therein, without the prior written consent of Landlord. Any attempted assignment, subletting, transfer or encumbrance by Tenant in violation of the terms and covenants of this paragraph shall be void and any Transferee (as hereafter defined) shall be deemed to be a trespasser. Any assignee, sublessee or transferee of Tenant's interest in this Lease (all such assignees, sublessees and transferees being hereinafter referred to as "Transferees"), by assuming Tenant's obligations hereunder, shall assume liability to Landlord for all amounts paid to persons other than Landlord by such Transferees to which Landlord is entitled or is otherwise in contravention of this Paragraph 14. No assignment, subletting or other transfer, whether or not consented to by Landlord or permitted hereunder, shall relieve Tenant of its liability under this Lease. If Tenant has failed to pay all or any portion of the Yearly Rent by its due date, or if an Event of Default occurs, or if Landlord in good faith deems the prospect of collecting the next payment of Yearly Rent to be impaired, while the Premises or any part thereof are assigned or sublet, then Landlord, in addition to any other remedies herein provided or provided by law, may collect directly from such Transferee all rents payable to the Tenant and apply such rent against any sums due or to become due to Landlord hereunder. No such collection shall be construed to constitute a novation or a release of Tenant from the further performance of Tenant's obligations hereunder. If Landlord consents to any subletting or assignment by Tenant as hereinabove provided and any category of rent subsequently received by Tenant under any such sublease is in excess of the same category of rent payable under this Lease, or any additional consideration is

paid to Tenant by the assignee under any such assignment, then Landlord may, at its option, declare such excess rents under any sublease or such additional consideration for any assignment to be due and payable by Tenant to Landlord as additional rent hereunder. ~~The following shall additionally constitute an assignment of this Lease by Tenant for the purposes of this Paragraph 14: (i) if Tenant is a corporation, any merger, consolidation, dissolution or liquidation, or any change in ownership or power to vote of thirty percent (30%) or more of Tenant's outstanding voting stock; (ii) if Tenant is a partnership, joint venture or other entity, any liquidation, dissolution or transfer of ownership of any interests totaling thirty percent (30%) or more of the total interests in such entity; (iii) the sale, transfer, exchange, liquidation or other distribution of more than thirty percent (30%) of Tenant's assets, other than this Lease; or (iv) the mortgage, pledge, hypothecation or other encumbrance of or grant of a security interest by Tenant in this Lease, or of any of Tenant's rights hereunder.~~

16. CONDEMNATION. If ~~any portion more than eighty percent (80%)~~ of the Premises are taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain or private purchase in lieu thereof, and the taking prevents or materially interferes with the use of ~~the remainder of~~ the Premises for the purpose for which they were leased to Tenant, then this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease, effective on the date of such taking. ~~If less than eighty percent (80%) of the Premises are taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or private purchase in lieu thereof, or if the taking does not prevent or materially interfere with the use of the remainder of the Premises for the purpose for which they were leased to Tenant, then this Lease shall not terminate, but the rent payable hereunder during the unexpired portion of this Lease shall be reduced to such extent as may be fair and reasonable under all of the circumstances.~~ All compensation awarded in connection with or as a result of any of the foregoing proceedings (including any sum separately designated or awarded as a value of the leasehold estate) shall be the property of Landlord, and Tenant hereby assigns any interest in any such award to Landlord; provided, however, Landlord shall have no interest in any award made to Tenant for loss of business or goodwill or for the taking of Tenant's trade fixtures and personal property, if a separate award for such items is sought by and made to Tenant.

17. EXPIRATION; HOLDING OVER. At the termination of this Lease or of the possessory rights of Tenant in the Premises pursuant to this Lease, by its expiration or otherwise, Tenant shall immediately deliver possession of the Premises to Landlord. In addition, the Premises shall be left broom-clean. All trash, debris, and unaffixed or unattached items that are permitted or required to be removed by Tenant from the Premises shall be removed from the Premises. The Premises shall be left in the same ~~good~~ condition as it was ~~in upon the completion of all Alterations and Improvements, on the Commencement Date hereof,~~ excepting only for reasonable wear and tear and casualty ~~and for those items which Landlord requires Tenant to remove from the Premises pursuant to the terms of this Lease.~~ If, for any reason, Tenant retains possession of the Premises after the expiration or termination of this Lease or of Tenant's possessory rights in the Premises, such possession shall be deemed to be a tenancy at will only, and all of the other terms and provisions of this Lease shall be applicable during such period, except that Tenant shall pay Landlord from time to time, upon demand, as rental for the period of such possession, an amount equal to ~~two (2) times~~ **150%** the rent in effect on the date of such termination of this Lease, computed on a daily basis for each day of such period. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided. The preceding provisions of this Paragraph 16 shall not be construed as consent for Tenant to retain possession of the Premises in the absence of written consent thereto by Landlord.

18. QUIET ENJOYMENT. Landlord represents that it has the authority to enter into this Lease and that, so long as Tenant pays all amounts due hereunder and performs all other covenants and agreements herein set forth, Tenant shall peaceably and quietly have, hold and enjoy the Premises for the term hereof without hindrance or molestation from Landlord, subject to the terms and provisions of this Lease.

19. EVENTS OF DEFAULT. The following events (herein individually referred to as an "Event of Default") each shall be deemed to be a default in or breach of Tenant's obligations under this Lease:

A. Tenant shall fail to pay any installment of the rent herein reserved when due, or any other payment or reimbursement to Landlord required herein when due, and such failure shall continue for a period of five (5) business days ~~from the date such payment was due~~ after receipt of written notice from Landlord.

B. Tenant shall (i) vacate or abandon all or a substantial portion of the Premises or (ii) fail to continuously operate its business at the Premises for the permitted use set forth herein, in either event whether or not Tenant is in default of the rental payments due under this Lease.

C. Tenant shall fail to discharge any lien placed upon the Premises in violation of Paragraph 21 hereof within twenty (20) days after any such lien or encumbrance is filed against the Premises.

D. Tenant shall default in the performance of any of its obligations under any other lease or agreement by Tenant with Landlord, or from any person or entity affiliated with or related to Landlord including Landlord's property manager, if any, and same shall remain uncured after the lapsing of any applicable cure periods provided for under such other lease or agreement.

E. Tenant shall fail to comply with any term, provision or covenant of this Lease (other than those listed above in this paragraph) and shall not cure such failure within twenty (20) days after written notice thereof from Landlord.

20. REMEDIES. Upon each occurrence of an Event of Default, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand:

(a) Terminate this Lease;

(b) Enter upon and take possession of the Premises without terminating this Lease;

(c) Make such payments and/or take such action and pay and/or perform whatever Tenant is obligated to pay or perform under the terms of this Lease, and Tenant agrees that Landlord shall not be liable for any damages resulting to Tenant from such action; and/or

(d) Alter all locks and other security devices at the Premises, with or without terminating this Lease, and pursue, at Landlord's option, one or more remedies pursuant to this Lease, and Tenant hereby expressly agrees that Landlord shall not be required to provide to Tenant the new key to the Premises, regardless of hour, including Tenant's regular business hours;

and in any such event Tenant shall immediately vacate the Premises, and if Tenant fails to do so, Landlord, without waiving any other remedy it may have, may enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying such

Premises or any part thereof, without being liable for prosecution or any claim of damages therefore. The provisions of this Lease are intended to supersede Section 93.002 of the Texas Property Code (and any successor statute) and Tenant hereby expressly waives any and all rights and remedies Tenant may have under Section 93.002(g).

A. Damages Upon Termination. If Landlord terminates this Lease, Tenant shall be liable for and shall pay to Landlord the sum of all rental and other payments owed to Landlord hereunder accrued to the date of such termination. Landlord and Tenant agree that determining the actual amount of additional damages which Landlord will incur will be extremely difficult to estimate because neither party can predict the market conditions that will exist at the time of the termination. In order to arrive at a reasonable forecast of just compensation, Landlord and Tenant agree that, at Landlord's option, and if the termination occurred as a result of the occurrence of an Event of Default under Paragraphs 18A, 18B, or 18E above, Tenant shall additionally pay to Landlord immediately upon demand as liquidated damages, an amount equal to (i) the present value of the total rental and other payments owed hereunder for the remaining portion of the Lease term, calculated as if such term expired on the date set forth in Paragraph 1, less (ii) the present value of the then fair market rental for the Premises for such period. Because of the difficulty of ascertaining such value and in order to achieve a reasonable estimate of liquidated damages hereunder, Landlord and Tenant stipulate and agree, for the purposes hereof, that i) the present value discount rate shall be seven per cent (7%); and ii) such fair market rental shall in no event exceed seventy-five percent (75%) of the rental amount for such period set forth in Paragraph 2 above. Unless Tenant has abandoned the Premises in violation of this Lease, Tenant waives any claim or defense that the liquidated damages provided for herein should be reduced or offset by the failure of Landlord to mitigate, or exercise reasonable efforts to mitigate its damages, whether pursuant to the provisions of Paragraph 19G below or otherwise.

B. Damages Upon Repossession. If Landlord repossesses the Premises without terminating this Lease, Tenant, at Landlord's option, shall be liable for and shall pay Landlord on demand all rental and other payments owed to Landlord hereunder, accrued to the date of such repossession, and shall additionally timely pay as they accrue all amounts required to be paid by Tenant under the Lease to Landlord until the date of expiration of the term as stated in Paragraph 1, diminished by all amounts actually received by Landlord through reletting the Premises during such remaining term (but only to the extent of the rent herein reserved). Actions to collect amounts due by Tenant to Landlord under this paragraph may be brought from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease term. Unless Tenant has abandoned the Premises in violation of this Lease, Tenant waives any claim or defense that the damages provided for herein should be reduced or offset by the failure of Landlord to mitigate, or exercise reasonable efforts to mitigate its damages, whether pursuant to the provisions of Paragraph 19G below or otherwise.

C. Costs of Reletting, Removing, Repairs and Enforcement. Not applicable.

D. Late Charge. Not applicable.

E. Interest on Past Due Amounts. Not applicable.

F. No Implied Acceptances or Waivers. Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance by Landlord of Tenant's surrender of the Premises, it being understood that such surrender can be effected only by the written signed agreement of Landlord. Tenant and Landlord further agree that forbearance by Landlord to enforce any of its rights under this Lease or at law or in equity shall not

be a waiver of Landlord's right to enforce any one or more of its rights, including any right previously forborne, in connection with any existing or subsequent default. No re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease, unless a written notice of such intention is given to Tenant, and, notwithstanding any such reletting or re-entry or taking possession of the Premises, Landlord may at any time thereafter elect to terminate this Lease for a previous default. Pursuit of any remedies hereunder shall not preclude the pursuit of any other remedy herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages occurring to Landlord by reason of the violation of any of the terms, provisions and covenants contained in this Lease. Landlord's acceptance of any rent following an Event of Default hereunder shall not be construed as Landlord's waiver of such Event of Default. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants of this Lease shall be deemed or construed to constitute a waiver of any other violation or default.

G. Reletting of Premises. In the event of any termination of this Lease and/or repossession of the Premises for an Event of Default, Landlord shall use reasonable efforts to relet the Premises and to collect rental after reletting, with no obligation to accept any lessee that Landlord deems undesirable or to expend any funds in connection with such reletting or collection of rents therefrom. Tenant shall not be entitled to credit for or reimbursement of any proceeds of such reletting in excess of the rental owed hereunder for the period of such reletting. Landlord may relet the whole or any portion of the Premises, for any period, to any tenant and for any use or purpose.

H. Landlord's Default. If Landlord fails to perform any of its obligations hereunder within thirty (30) days after written notice from Tenant specifying such failure, Tenant's exclusive remedy shall be an action for damages. Unless and until Landlord fails to so cure any default after such notice, Tenant shall not have any remedy or cause of action by reason thereof. All obligations of Landlord hereunder will be construed as covenants, not conditions; and all such obligations will be binding upon Landlord only during the period of its possession of the premises and not thereafter. The term "Landlord" shall mean only the owner, for the time being, of the Premises and, in the event of the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all covenants and obligations of the Landlord thereafter accruing, provided that such covenants and obligations shall be binding during the Lease term upon each new owner for the duration of such owner's ownership. Notwithstanding any other provision of this Lease, Landlord shall not have any personal liability hereunder. In the event of any breach or default by Landlord in any term or provision of this Lease, Tenant agrees to look solely to the equity or interest then owned by Landlord in the Premises or the Building; however, in no event shall any deficiency judgment or any money judgment of any kind be sought or obtained against any Landlord.

I. Tenant's Personal Property. If Landlord repossesses the Premises pursuant to the authority herein granted, or if Tenant vacates or abandons all or any part of the Premises, then, in addition to Landlord's rights under Paragraph 26 hereof, Landlord shall have the right to (i) keep in place and use, or (ii) remove and store, all of the furniture, fixtures equipment, and other property (collectively "Stored Property") at the Premises, including that which is owned by or leased to Tenant, at all times prior to any foreclosure or other disposition thereon by Landlord or repossession thereof by any lessor thereof or third party having a lien thereon. In addition to the Landlord's other rights hereunder, Landlord may dispose of the Stored Property if Tenant does not claim the property within ten (10) days after the date Landlord gives notice that it has taken possession of the Stored Property pursuant to this Paragraph. Landlord shall give Tenant at least ten (10) days prior written notice of such intended disposition. Landlord shall also have the right

to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("Claimant") who presents to Landlord a copy of any instrument represented by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment or other property, without the necessity on the part of Landlord to inquire into the authenticity or legality of said instrument. The rights of Landlord herein stated shall be in addition to any and all other rights that Landlord has or may hereafter have at law or in equity, and Tenant stipulates and agrees that the rights granted Landlord under this Paragraph are commercially reasonable. This Paragraph expressly supersedes Section 93.002(e) of the Texas Property Code.

J. Dispute Resolution.

i) — Upon written request of either Landlord or Tenant, any controversy or claim between or among the parties hereto including but not limited to those arising out of or relating to the Lease, any Guaranty, or any related agreements or instruments executed in connection with the Lease (the "Lease Documents"), including any claim based on or arising from an alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act, the Commercial Arbitration Rules of the American Arbitration Association, and the "Special Rules" set forth below unless both Landlord and Tenant, in their respective sole discretion, agree in writing to mediate the dispute prior to submitting to binding arbitration. In the event of any inconsistency, the Special Rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any party to this Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this agreement applies in any court having jurisdiction over such action. The party that requests arbitration has the burden to initiate the arbitration proceedings pursuant to and by complying with the Commercial Arbitration Rules of the American Arbitration Association and shall pay all associated administrative and filing fees.

ii) — Special Rules. The arbitration shall be conducted in the City of Austin, Travis County, Texas and administered by the American Arbitration Association. All arbitration hearings will commence within one hundred twenty (120) days of the written request for arbitration. Nothing in this Agreement shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation or repose and any waivers contained in this Lease; or (ii) limit the right of Landlord hereto (A) to exercise self-help remedies such as (but not limited to) lockout, eviction, or repossession or (B) to foreclose against any collateral in accordance with applicable law, or (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief. Landlord may exercise such self-help remedies, foreclose upon such property, or obtain such provisional or ancillary remedies before, during or after the pendency of any arbitration proceeding brought pursuant to this Lease or any other Lease Document. Neither this exercise of self-help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the controversy or claim occasioning resort to such remedies.

21. MORTGAGES. Tenant accepts this Lease subject and subordinate to any mortgages and/or deeds of trust now or at any time hereafter constituting a lien or charge upon the Premises or the improvements situated thereon or the Building, provided, however, that if the mortgagee, trustee or holder of any such mortgage or deed of trust elects to have Tenant's interest in this Lease superior to any such instrument, then by notice to Tenant from such mortgagee, trustee or holder, this Lease shall be deemed superior to such lien, whether this Lease was executed before or after said mortgage or deed of trust. Tenant, at any time hereafter on demand, shall execute any instruments,

releases or other documents that may be required by any mortgagee, trustee or holder for the purpose of subjecting and subordinating this Lease to the lien of any such mortgage, **which documents shall be in form and substance reasonably acceptable to Tenant**. Tenant shall not terminate this Lease or pursue any other remedy available to Tenant hereunder for any default on the part of Landlord without first giving written notice by certified or registered mail, return receipt requested, to any mortgagee, trustee or holder of any such mortgage or deed of trust, the name and post office address of which Tenant has received written notice, specifying the default in reasonable detail and affording such mortgagee, trustee or holder a reasonable opportunity (but in no event less than thirty (30) days) to make performance, at its election, for and on behalf of Landlord.

22. **MECHANIC'S LIENS.** Tenant has no authority, express or implied, to create or place or permit any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord or Tenant in the Premises. Tenant acknowledges and agrees that in connection with all Alterations to the Premises, i) Tenant does not act as Landlord's agent; ii) the Alterations are done solely for the benefit of Tenant; and iii) the Alterations do not "enrich" Landlord because they are specific to the needs of Tenant and therefore have little or no intrinsic value to Landlord. Tenant will indemnify, defend, save and hold Landlord harmless from any and all loss, cost or expense, including without limitation attorneys' fees, based on or arising out of asserted claims or liens against the leasehold estate or against the right, title and interest of the Landlord in the Premises or under the terms of this Lease.

23. **MISCELLANEOUS.**

A. Interpretation. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease. Any reference in this Lease to rentable area shall mean the gross rentable area as determined by the roofline of the building in question.

B. Binding Effect. Except as otherwise herein expressly provided, the terms, provisions and covenants and conditions in this Lease shall apply to, inure to the benefit of and be binding upon the parties hereto and upon their respective heirs, executors, personal representatives, legal representatives, successors and assigns. Landlord shall have the right to transfer and assign, in whole or in part, its rights and obligations in the Premises and in the Building and other property that are the subject of this Lease.

C. Evidence of Authority. Tenant agrees to furnish to Landlord, promptly upon demand, a corporate resolution, proof of due authorization by partners or other appropriate documentation evidencing the due authorization of such party to enter into this Lease.

D. Force Majeure. **Landlord Neither party** shall **not** be held responsible for delays in the performance of its obligations hereunder when caused by material shortages, acts of God, labor disputes or other events beyond the control of Landlord **or Tenant, as applicable**.

E. Payments Constitute Rent. Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as rent, shall constitute rent.

F. Estoppel Certificates. Tenant agrees, from time to time, within ten (10) **business** days after request of Landlord, to deliver to Landlord, or Landlord's designee, an estoppel certificate stating that this Lease is in full force and effect, the date to which rent has been paid, the unexpired

term of this Lease, any defaults existing under this Lease (or the absence thereof) and ~~the status of other such other factual or legal~~ matters pertaining to this Lease as may be requested by Landlord. It is understood and agreed that Tenant's obligation to furnish such estoppel certificates in a timely fashion is a material inducement for Landlord's execution of this Lease.

G. Entire Agreement. ~~In addition to, and construed together with Contract 500205,~~ This Lease constitutes the entire understanding and agreement of Landlord and Tenant with respect to the subject matter of this Lease, and contains all of the covenants and agreements of Landlord and Tenant with respect thereto. Landlord and Tenant each acknowledge that no representations, inducements, promises or agreements, oral or written, have been made by Landlord or Tenant, or anyone acting on behalf of Landlord or Tenant, which are not contained herein, and any prior agreements, promises, negotiations or representations (collectively "Representations") not expressly set forth in this Lease are of no force or effect. Tenant therefore acknowledges that it has not and may not rely on any such Representations which alter or vary from the written terms of this Lease. EXCEPT AS SPECIFICALLY PROVIDED IN THIS LEASE, TENANT HEREBY WAIVES THE BENEFIT OF ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR ANY PARTICULAR PURPOSE. Landlord's agents and employees (including any broker) do not and will not have authority to make exceptions, changes or amendments to this Lease, or factual representations not expressly contained in this Lease. Under no circumstances shall Landlord or Tenant be considered an agent of the other. This Lease may not be altered, changed or amended except by an instrument in writing signed by both parties hereto.

H. Survival of Obligations. All ~~monetary~~ obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the term of this Lease shall survive the expiration or earlier termination of the term hereof, including without limitation all payment obligations with respect to taxes and insurance and all obligations concerning the condition and repair of the Premises. ~~Upon the expiration or earlier termination of the term hereof, and prior to Tenant vacating the Premises,~~ Tenant shall surrender the Premises in the same good condition as existing on the Commencement Date, reasonable wear and tear, casualty, and maintenance for which Tenant is not responsible excepted pay to Landlord any amount reasonably estimated by Landlord as necessary to put the Premises in good condition and repair, reasonable wear and tear excluded, as existing on the Commencement Date including without limitation the cost of repairs to and replacements of all heating and air conditioning systems and equipment therein. All such amounts shall be used and held by Landlord for payment of such obligations of Tenant hereunder, with Tenant being liable for any additional costs therefore upon demand by Landlord, or with any excess to be returned to Tenant after all such obligations have been determined and satisfied, as the case may be. Any Security Deposit held by Landlord may, at Landlord's option, be credited against any amounts due from Tenant under this Paragraph 22H.

I. Severability of Terms. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then, in such event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

J. Effective Date. All references in this Lease to "the date hereof" or similar references shall be deemed to refer to the last date, in point of time, on which all parties hereto have executed this Lease.

K. Brokers' Commission. Tenant represents and warrants that it has dealt with and will deal with no broker, agent or other person in connection with this transaction or future related transactions and that no broker, agent or other person brought about this transaction, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

L. Ambiguity. Landlord and Tenant hereby agree and acknowledge that this Lease has been fully reviewed and negotiated by both Landlord and Tenant, and that Landlord and Tenant have each had the opportunity to have this Lease reviewed by their respective legal counsel, and, accordingly, in the event of any ambiguity herein, Tenant does hereby waive the rule of construction that such ambiguity shall be resolved against the party who prepared this Lease.

M. Joint Several Liability. If there be more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several. If there be a guarantor of Tenant's obligations hereunder, the obligations hereunder imposed upon Tenant shall be joint and several obligations of Tenant and such guarantor, and Landlord need not first proceed against Tenant before proceeding against such guarantor, nor shall any such guarantor be released from its guaranty for any reason whatsoever, including, without limitation, in case of any amendments hereto, waivers hereof or failure to give such guarantor any notices hereunder.

N. Third Party Rights. Nothing herein expressed or implied is intended, or shall be construed, to confer upon or give to any person or entity, other than the parties hereto, any right or remedy under or by reason of this Lease.

O. Exhibits and Attachments. All exhibits, attachments, riders and addenda referred to in this Lease, and the exhibits listed herein below and attached hereto, are incorporated into this Lease and made a part hereof for all intents and purposes as if fully set out herein. All capitalized terms used in such documents shall, unless otherwise defined therein, have the same meanings as are set forth herein.

P. Applicable Law. This Lease has been executed in the State of Texas and shall be governed in all respects by the laws of the State of Texas. It is the intent of Landlord and Tenant to conform strictly to all applicable state and federal usury laws. All agreements between Landlord and Tenant, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever shall the amount contracted for, charged or received by Landlord for the use, forbearance or retention of money hereunder or otherwise exceed the maximum amount which Landlord is legally entitled to contract for, charge or collect under the applicable state or federal law. If, from any circumstance whatsoever, fulfillment of any provision hereof at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be automatically reduced to the limit of such validity, and if from any such circumstance Landlord shall ever receive as interest or otherwise an amount in excess of the maximum that can be legally collected, then such amount which would be excessive interest shall be applied to the reduction of rent hereunder, and if such amount which would be excessive interest exceeds such rent, then such additional amount shall be refunded to Tenant. Venue shall lie in a court of competent jurisdiction in Travis County, Texas.

24. NOTICES. Each provision of this instrument or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivering of notice or the making of any payment by Landlord to Tenant or with reference to the sending, mailing or delivering of any notice or the making of any payment by Tenant to Landlord shall be deemed to be complied with when and if the following steps are taken:

A. All rent and other payments required to be made by Tenant to Landlord hereunder shall be payable to Landlord at the address for Landlord set forth below or at such other address as Landlord may specify from time to time by written notice delivered in accordance herewith. Tenant's obligation to pay rent and any other amounts to Landlord under the terms of this Lease shall not be deemed satisfied until such rent and other amounts have been actually received by Landlord.

B. All payments required to be made by Landlord to Tenant hereunder shall be payable to Tenant at the address set forth below, or at such other address within the continental United States as Tenant may specify from time to time by written notice delivered in accordance herewith.

C. Except as expressly provided herein, any written notice, document or payment required or permitted to be delivered hereunder shall be deemed to be delivered when received or, for notices or documents whether actually received or not, when ~~a)~~ deposited in the United States Mail, postage prepaid, Certified or Registered Mail, ~~or deposited with a reputable overnight courier (e.g. FedEx, UPS) and~~ addressed to the parties hereto at the respective addresses set out ~~in this Contract below~~, or at such other address as they have theretofore specified by written notice delivered in accordance herewith; ~~or b) when transmitted by facsimile machine to the number indicated below, so long as a receipt has confirmed successful transmission; or c) when transmitted by email so long as a receipt confirms receipt at the email address, or to the individual designated for receipt below.~~

COMPANY:	Capital Metro	(Tenant)
ADDRESS:		ADDRESS:
ATTENTION:		
ATTENTION:		
EMAIL:		EMAIL:
TELEPHONE:		
TELEPHONE:		

25. ADDITIONAL PROVISIONS. See EXHIBIT "B" attached hereto and incorporated herein by reference.

26. Intentionally deleted.

27. Intentionally deleted. **LANDLORD'S LIEN. LANDLORD SHALL HAVE AND TENANT HEREBY GRANTS TO LANDLORD A CONTINUING SECURITY INTEREST FOR ALL RENT AND OTHER SUMS OF MONEY DUE OR TO BECOME DUE HEREUNDER FROM TENANT, UPON ALL GOODS, WARES, EQUIPMENT, FIXTURES, FURNITURE, INVENTORY, ACCOUNTS, DOCUMENTS, GENERAL INTANGIBLES, CHATTEL PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY AND**

~~OTHER PERSONAL PROPERTY OF TENANT NOW OWNED OR HEREAFTER ACQUIRED (COLLECTIVELY "COLLATERAL") AND SITUATED (OR DOCUMENTS EVIDENCING SUCH COLLATERAL KEPT) ON, AT, OR WITHIN THE PREMISES, WHICH IS LOCATED AT 624 Pleasant Valley Road, Austin, Texas. SUCH COLLATERAL (OTHER THAN INVENTORY SOLD IN THE ORDINARY COURSE OF BUSINESS PRIOR TO THE OCCURRENCE OF AN EVENT OF DEFAULT) SHALL NOT BE REMOVED THEREFROM WITHOUT THE WRITTEN CONSENT OF LANDLORD. CASH, NON-CASH PROCEEDS, AND PRODUCTS OF COLLATERAL ARE ALSO COVERED. IN THE EVENT OF A DEFAULT UNDER THIS LEASE, LANDLORD SHALL HAVE, IN ADDITION TO ANY OTHER REMEDIES PROVIDED HEREIN OR BY LAW, ALL RIGHTS AND REMEDIES UNDER THE UNIFORM COMMERCIAL CODE, INCLUDING WITHOUT LIMITATION THE RIGHT TO SELL THE PROPERTY DESCRIBED IN THIS PARAGRAPH AT PUBLIC OR PRIVATE SALE UPON AT LEAST TEN (10) DAYS NOTICE TO TENANT. TENANT HEREBY AGREES TO EXECUTE AND AUTHORIZES LANDLORD TO EXECUTE ON ITS BEHALF SUCH OTHER INSTRUMENTS NECESSARY OR DESIRABLE IN LANDLORD'S DISCRETION TO PERFECT THE SECURITY INTEREST HEREBY CREATED. ANY STATUTORY LIEN FOR RENT IS NOT HEREBY WAIVED, THE EXPRESS CONTRACTUAL LIEN HEREIN GRANTED BEING IN ADDITION AND SUPPLEMENTARY THERETO. LANDLORD AND TENANT AGREE THAT THIS LEASE AND SECURITY AGREEMENT MAY SERVE AS A FINANCING STATEMENT AND THAT A COPY OR PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS PORTION OF THIS LEASE MAY BE FILED OF RECORD BY LANDLORD AND HAVE THE SAME FORCE AND EFFECT AS THE ORIGINAL. LANDLORD IS FURTHER AUTHORIZED TO PERFECT ITS SECURITY INTEREST IN ACCORDANCE WITH THEN APPLICABLE LAW. THIS SECURITY AGREEMENT AND FINANCING STATEMENT ALSO COVERS FIXTURES LOCATED AT THE PREMISES, AND MAY BE FILED FOR RECORD IN THE REAL ESTATE RECORDS FOR THE COUNTY IN WHICH THE PREMISES ARE LOCATED. TENANT WARRANTS THAT THE COLLATERAL SUBJECT TO THE SECURITY INTEREST GRANTED HEREIN IS NOT PURCHASED OR USED BY TENANT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES. TENANT'S STATE OF ORGANIZATION IS _____. TENANT'S CHIEF EXECUTIVE OFFICES ARE LOCATED IN _____.~~

~~LANDLORD AND TENANT ADDITIONALLY AGREE THAT THIS SECURITY INTEREST EXCLUDES INCIDENTAL TANGIBLE PERSONAL PROPERTY (AS DETERMINED BY LANDLORD IN ITS REASONABLE JUDGMENT TO HAVE NEGLIGIBLE NET MARKET VALUE IN THE EVENT OF DISPOSITION BY SALE) LEFT OR ABANDONED UPON THE PREMISES FOLLOWING THE VACATING OR ABANDONMENT OF THE PREMISES BY TENANT.~~

28. MULTIPLE COUNTERPARTS. This Lease may be signed in counterparts. To expedite and facilitate the signing of this Lease by the parties, any Party may sign its respective signature and forward that page electronically or by telecopy transmission to the other parties. The copy of any party's signature transmitted by e-mail or telecopy shall be deemed to be an adequate substitute for the original page containing the signature.

(Signature page to follow)

EXECUTED BY TENANT, this _____ day of _____, 2025.

TENANT: Bright Horizons Children's Centers, LLC

By:

Name: John G. Casagrande

Title: General Counsel

EXECUTED BY LANDLORD, this _____ day of _____, 2025.

LANDLORD: Capital Metropolitan Transportation Authority

a political subdivision of the State of Texas organized and existing under Chapter 451, Texas
Transportation Code

By:

Name: Kenneth Cartwright

Title: VP, Facility Management & Capital Construction

EXHIBIT "A" - Description of Premises

EXHIBIT "B" - Additional Provisions

DESCRIPTION OF PREMISES

Floor plan of Premises with Center represented in shaded area.



RENEWAL OPTION

- (a) Landlord shall have the unilateral right (hereinafter called the "Extension Notice") of its desire to extend the term in accordance with Contract 500205.
- (b) The Base Rent payable by Tenant to Landlord during the Extension Term shall remain the nominal amount as provided for in this Lease.
- (c) Except for the Base Rent as determined above, Tenant's occupancy of the Premises during the Extension Term shall be on the same terms and conditions as are in effect immediately prior to the expiration of the initial Lease Term; provided, however, Tenant shall have no further right to any allowances, credits or abatements or any options to expand, contract, renew or extend the Lease.
- (d) Landlord shall have no obligation to refurbish or otherwise improve the Premises for the Extension Term. The Premises shall be tendered on the Commencement Date of the Extension Term in "as-is" condition.
- (e) If the Lease is extended for the Extension Term, then Landlord shall prepare and Tenant shall execute an amendment to the Lease confirming the extension of the Lease Term and the other provisions applicable thereto (the "Amendment").

PARKING

Landlord shall provide Tenant with unreserved parking spaces at no cost to Tenant. Parking is available at 624 N. Pleasant Valley Road, Austin, Texas 78702 on a first come basis. There are 46 parking spaces at 624 N. Pleasant Valley Road but there is additional parking available at the main location, 2910 East 5th Street, Austin, Texas 78702 when needed. Additionally, Landlord shall provide Tenant with 7 reserved parking spaces adjacent to the Premises for drop-off and pick-up related to Tenant's use between the hours of 7:00 AM to 9:20 AM Central Time and 4:40 PM to 6:00 PM Central Time.

RULES AND REGULATIONS

Please be advised that all building Rules and Regulations are to be adhered to at ALL TIMES including during any phase of construction. Observance of these rules will provide for a safer environment for all parties and will help avert delays and or inconveniences.

No smoking is allowed inside of the facility, on any portion of the building roof, or within 20 ft. of the building's entrances and exits.

No rowdy, lewd, or disruptive behavior shall be permitted on the property.

No disrupting of or hindering of activities in or around the Tenant's premises.

No storage / build-up of debris is permitted in or around the building except in designated areas or as directed by the Landlord.

No posting, removal or modification of any signage, banners and or flags in any part of the Building shall be permitted without written authorization of the Landlord.

Any necessary partial closures of driveways required for receiving deliveries and associated off-loading of materials shall be coordinated with the Landlord.

Landlord reserves the right to order an immediate halt to any operation that is deemed hazardous or poses any potential danger to the premises the Building or any occupants thereof.

The Building Rules & Regulations are subject to change at any time at Landlord's discretion.

[illegible]

WARNING
RESERVED
CHILDCARE
PARKING ONLY
7 AM TO 9:20 AM
4:40 PM TO 6 PM

The sign above is at the locations shown with red dots.

These are not designated parking spaces & vehicles should not be parking here. park here but not official striped spaces.

Note: No parking spaces are reserved.

EXHIBIT H – AUTHORIZATION OF WORK PRODUCT

DESCRIPTION: Child Care Facility Program
CONTRACT NO.: To be determined following contract award

Authority's Contracting Officer (CO)

- A. The CO for administration of this Contract is Karen Ross.
B. Phone: 512-389-7521
C. Email: karen.ross@capmetro.org

The Contracting Officer is responsible for the general administration of the Contract, negotiation of any changes, and issuance of written modifications, task order revisions, or Change Orders (as it pertains to Construction Contracts Only and results in a Contract modification – see below) to the Contract. If the parties desire to modify the Contract, or revise the Task Order of the Contract, in any way, only the Contracting Officer is authorized to issue a written modification for authorized signatures.

Authority's Project Manager (PM)

- A. The PM for this Contract is Virginia Keeling.
B. Phone: 512-695-7556
C. Email: virginia.keeling@capmetro.org

The Authority's PM for this Contract is responsible for the overall management and coordination of this Contract and will act as the central point of contact for the Authority. The PM has full authority to act for the Authority in the performance of any project connected to the Contract. However, the PM cannot authorize, in writing or orally, to commence any work. The PM shall meet with Contractor's PM to discuss problems as they occur. Any changes, including changes pursuant to the Changes clause in the Contract, will be handled solely by the CO. As needed, the Authority's PM may assist with development of Change Orders and Contract modifications with the Authority's CO.

Field Change Orders (Construction Contracts Only) – The Authority's PM is permitted to authorize work when an event occurs in the field during construction which requires immediate action. Immediately, but no later than three (3) business days following such action, the Authority's PM must provide a signed Change Order to the CO along with any other required procurement documentation in order to memorialize the Change Order in a task order revision or Contract modification.

The Contractor understands that should Contractor perform any work prior to written authorization by the Authority's CO, Contractor is not allowed to invoice for any additional cost or fee for services or goods under the Contract, nor is the Authority liable for any payment for any unauthorized work.

SIGNED and DATED

John Casagrande
Contractor – must sign and return with Offer

09/16/2024

Date

to be signed by the Authority following contract award
Authority's Project Manager (PM)

Date

to be signed by the Authority following contract award
Authority's Contracting Officer (CO)

Date