



CONTRACT NO. 500323

(RFP 807701)

IDIQ RAILROAD CONSTRUCTION AND REHABILITATION SERVICES

CONTRACTOR:

Modern Railway System
8201 Southpark Lane, Suite 200
Littleton, Co 80120
720-542-3325
jlemieux@modrailsystems.com

AWARD DATE:

May 19, 2026

CONTRACT TERM:

Three (3) Year Base Period
Two (2) One-Year Options

SBE GOAL:

1.45%

NOT TO EXCEED AMOUNT:

The total contract amount for the three (3) year base period shall be determined by the cumulative total of the task orders issued. The total amount of all task orders for the three year base period shall not exceed \$16,270,554.

PROJECT MANAGER:

Surya Dhanekula
surya.dhanekula@capmetro.org

CONTRACT ADMINISTRATOR:

Jeffery Yeomans
512-369-7727
jeffery.yeomans@capmetro.org

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



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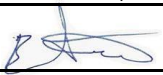
ATTACHMENT 1	SEED PROJECT SCOPE OF WORK – 8 PAGES
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CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

EXHIBIT A-Revised-1-FPR**PRICING SCHEDULE****RFP 807701**

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)	Modern Railway Systems		
Address	8201 Southpark Lane, Suite 200		
City, State, Zip	Littleton, CO 80120		
Phone, Email	720-394-0601	bmartinez@modrailsystems.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)	Ben Martinez, Director of Business Development		
Signature and Date			3/25/2026

2. ACKNOWLEDGEMENT OF AMENDMENTS

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

3. PROMPT PAYMENT DISCOUNT

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

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

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

1.45	%
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5. AUTHORITY'S ACCEPTANCE (TO BE COMPLETED UPON AWARD BY CAPITAL METRO)

The Authority hereby accepts this offer.

Authorized Agent Name and Title (Printed)	Muhammad Abdullah C.P.M., VP Procurement & Chief Contracting Officer
Signature and Date	 July 01, 2026
Accepted as to:	Exhibit A-Revised-1, dated 3/25/2026, Section 7. Pricing, for the indirect rates and percentage of profit for Items 1-2 inclusive, and Exhibit A-1-Rev-1 (Seed Project Pricing Itemization), Items 1-15 inclusive. The total contract amount for the three-year base period shall be determined by the cumulative total of task orders issued. The total amount of all task orders shall not exceed \$16,270,554 for the three-year base period.

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:

CA

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 Ben Martinez [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. CERTIFICATION OF PROPOSED PRICING

The Offeror certifies that the pricing offered in Exhibit A - Pricing Schedule, as amended, is exclusive of any sales tax.

5. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

(a) 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 CapMetro upon request.

6. COMMUNICATIONS

(a) All oral and written communications with CapMetro 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 CapMetro's procurement system. If competition cannot be resolved through normal communication channels, CapMetro'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 CapMetro employee or other representative of CapMetro's (including Board Members, CapMetro contractors or consultants), except as described below:

Individual's Name	Date/Subject of Communication

(Attach continuation form, if necessary.)

7. 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.

8. CODE OF ETHICS- CAPMETRO POLICY

(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 CapMetro'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, Tex. Govt. Code § 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.

9. SMALL BUSINESS ENTERPRISE (SBE) GOALS

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

10. TEXAS ETHICS COMMISSION CERTIFICATION

In accordance with Section 2252.908, Texas Government Code, upon request of CapMetro, 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 CapMetro with the original signed and notarized document prior to the time CapMetro 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.

11. 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 CapMetro prior to the time the Subcontractor performs any work on the Project.

12. 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.

13. 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.

14. 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.

15. BOYCOTT OF ENERGY COMPANIES PROHIBITED

Pursuant to Chapter 2276 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 2276.002 of the Texas Government Code, or

(b) the verification required by Section 2276.002 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 CapMetro.

16. CRITICAL INFRASTRUCTURE PROHIBITION

Pursuant to Chapter 2275 of Texas Government Code, Contractor certifies that, if this Contract or any contract between Contractor and CapMetro relates to critical infrastructure, as defined in Chapter 2275 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.

17. 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.

18. 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 (C.F.R.) 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 CapMetro in the performance of any contract, subcontract 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.

(c) *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.

19. 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 CapMetro may have, CapMetro may terminate the contract for default and/or recommend that the offeror be debarred or suspended from doing business with CapMetro in the future.

(b) The offeror shall provide immediate written notice to CapMetro 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 CapMetro 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:

Modern Railway Systems

Type/Print Name of Signatory:

Ben Martinez

Signature:



Date:

2/12/2026

EXHIBIT D
SMALL BUSINESS ENTERPRISE (SBE) PROGRAM
FOR LOCALLY FUNDED SOLICITATIONS

1. PROGRAM BACKGROUND

CapMetro's Small Business Enterprise (SBE) Program, in accordance with Texas Transportation Code, Title 6, Subtitle K, Chapter 451, Subchapter A, Subchapter F, Section 451.251 – 451.253 is designed to enhance SBE participation in locally funded procurements. The SBE Program seeks to provide full and fair opportunities for equal participation by all small businesses to compete for CapMetro prime contracts and associated subcontracts. The SBE Program provides specific thresholds to create opportunities, promote competitiveness, and assist SBEs in overcoming potential barriers to participating in CapMetro's contracting opportunities. CapMetro has established, in connection with this contract, an SBE goal as specified in the solicitation for the utilization of firms certified as SBEs. The SBE goal remains in effect for the duration of the contract/life of the project. If the SBE goal is zero, the contractor should make an effort to identify and use SBEs.

2. DEFINITION

(a) CapMetro defines small business as any business whose annual gross income averaged over the past three (3) years does not exceed the Small Business Administration's (SBA) size standards as set forth in 13 C.F.R., Part 121. A size standard is the largest that a firm can be and still qualify as a small business.

(b) Any Small Business that is certified as a Small Business Enterprise (SBE), which includes Minority Business Enterprise (MBE), Women Business Enterprise (WBE), or Historically Underutilized Business (HUB) meeting the SBA size requirement will be accepted as meeting the CapMetro SBE requirements.

3. SUBMISSION OF SBE FORMS

(a) Offerors shall submit with their offer a completed Schedule C of Subcontractor Participation form (listing all proposed subcontractors,) and an executed Intent to Perform as a SBE Subcontractor form for each SBE subcontractor listed on the Schedule C. As required in Section 5 of this Exhibit, complete Good Faith Effort (GFE) documentation (if necessary) must be submitted at this same time. The listing of a SBE by an Offeror shall constitute a representation by the Offeror to CapMetro that it believes such SBE firm to be technically and financially qualified and available to perform the work. It shall also represent a commitment by the Offeror that if it is awarded the Contract it will enter into a subcontract with such SBE for the work described and at the price set forth in both the Schedule C of Subcontractor Participation and the Intent to Perform as a SBE Subcontractor forms. If the price changes after the forms have been submitted but prior to award of the contract, the Offeror will immediately notify CapMetro's Procurement Department of the changed amount and the reason(s) for the change. No substitutions of SBE firms may be effected without CapMetro's prior written approval. If an offeror is a SBE and wishes to count its participation on the project towards the goal, it is required to perform that portion with its own work force.

4. CREDIT TOWARDS GOALS

(a) No credit toward meeting SBE goals will be allowed unless the SBE is determined to be eligible by CapMetro's Small Business Programs & Compliance (SBPC) Department. Offerors are strongly encouraged to contact CapMetro's SBPC Department well in advance of the date set for receipt of offers in order to enable review of the proposed SBEs eligibility to participate in CapMetro's SBE Program. The dollar value of work performed under a contract with a firm after it has graduated from the SBE program cannot count toward a contract goal. Participation of a SBE subcontractor cannot count toward the prime contractor's SBE achievements until the amount being counted has been paid to the SBE.

(b) Only expenditures to SBEs that perform a Commercially Useful Function (CUF) may be counted towards goals. A SBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the SBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality

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and quantity, ordering the material, and installing (where applicable) and paying for the material itself. If a SBE does not perform or exercise responsibility for at least thirty (30%) percent of the total cost of its contract with its own work force, or the SBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is not performing a CUF.

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

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

(e) A Contractor may count toward its SBE goals the following expenditures to SBE firms that are not manufacturers or regular dealers.

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

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

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

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

5. SBE GOAL AND SUBCONTRACTING OPPORTUNITIES

(a) The SBE goal for this solicitation is **13%**.

(b) Possible subcontracting opportunities include but are not limited to the following. An offeror can use SBEs certified in other codes to meet the contract goal, so long as the SBE will perform a CUF and it is certified to perform that North American Industry Classification System (NAICS) code scope of work:

NAICS Code and Industry

NAICS 237990 Railroad construction
NAICS 237990 Light rail system construction
NAICS 237990 Railway roadbed construction
NAICS 237990 Drainage project construction
NAICS 238910 Exterior demolition contractors
NAICS 238910 Culvert or bridge removal
NAICS 237310 Bridge construction
NAICS 321114 Railroad ties (i.e., bridge, cross, switch) treating
NAICS 321114 Ties, wood railroad bridge, cross, and switch, treating
NAICS 331110 Railroad crossings, iron or steel, made in iron and steel mills
NAICS 238110 Poured Concrete Foundation and Structure Contractors 356
NAICS 238190 Welding, on-site, contractors
NAICS 238210 Railroad signaling equipment installation
NAICS 238210 Electrical Contractors and Other Wiring Installation Contractors
NAICS 484110 General freight trucking, local

6. DEMONSTRATION OF AND DOCUMENTATION OF GOOD FAITH EFFORTS (GFE)

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

(b) In the event that a firm submitted by the Contractor is not able to become SBE certified by the execution of the Contract, the contractor will be notified and given an opportunity to substitute that firm with another SBE. The Contractor will be given a deadline to accomplish the substitution. If the contractor is to substitute a SBE, it must submit documentation to the SBPC Department.

(c) To determine whether the Contractor has made GFE to meet the SBE goal, CapMetro shall consider, among other things it deems relevant, the criteria set forth below. The Contractor shall furnish specific documentation concerning the steps it has taken to obtain SBE participation. Please refer to *Appendix A to Part 26 – Guidance Concerning Good Faith Efforts*, as amended, for illustrations:

- (1) Whether the Contractor conducted market research to identify small business contractors and suppliers and solicited through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified SBEs who have the capability to perform the work of the Contract. The Contractor must solicit this interest early in the acquisition process within sufficient time to allow the SBEs to respond to the solicitation. The contractor must determine with certainty if the SBEs are interested by taking appropriate steps to follow up on initial solicitations.
- (2) Whether the Contractor selected portions of the work to be performed by SBEs in order to increase the likelihood that the SBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate SBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- (3) Whether the Contractor provided interested SBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (4) Whether the Contractor negotiated in good faith with interested SBEs. It is the Contractor's responsibility to make a portion of the work available to SBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available SBE subcontractors and suppliers, so as to facilitate SBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of SBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for SBEs to perform the work.
- (5) A contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including SBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using SBEs is not in itself sufficient reason for a contractor's failure to meet the contract SBE

goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the contractor of the responsibility to make GFE. A contractor is not, however, required to accept higher quotes from SBEs if the price difference is excessive or unreasonable.

- (6) Whether the Contractor rejected SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the SBE goal.
- (7) Whether the Contractor rejected the SBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the Contractor to accept unreasonable quotes in order to satisfy the contract goal.
- (8) A contractor's inability to find a replacement SBE at the original price is not alone sufficient to support a finding that GFE have been made to replace the original SBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the Contractor of the obligation to make GFEs to find a replacement SBE, and it is not a sound basis for rejecting a prospective replacement SBE's reasonable quote.
- (9) Whether the Contractor made efforts to assist interested SBEs in obtaining bonding, lines of credit, or insurance as required by CapMetro or the contractor.
- (10) Whether the Contractor made efforts to assist interested SBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (11) Whether the Contractor effectively used the services of available minority/women community organizations, minority/women contractors' groups, local, state, and Federal minority/women business assistance offices, and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of SBEs.

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

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

(f) A promise to use SBEs after contract award is not considered to be responsive to the Contract solicitation or to constitute GFEs.

7. GOOD FAITH EFFORTS (GFE) RECONSIDERATION

(a) If the Contractor does not meet the SBE goal or make adequate GFE to do so, CapMetro will notify the Contractor in writing. The Contractor must request reconsideration within five (5) business days of the date of the notice of decision by filing a written request for reconsideration. As part of this request for reconsideration, the Contractor has the opportunity to provide written documentation or an argument concerning the issue of whether it met the goal or made adequate GFE to do so. The reconsideration will be made by the SBE Reconsideration Officer, an individual who did not take part in the original determination that the contractor failed to meet the goal or make adequate GFE to do so. The Contractor will have the opportunity to meet with the SBE

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Reconsideration Officer to discuss the issue of whether it met the goal or made adequate GFE to do so. The result of the reconsideration process is final. Requests for reconsideration will be submitted to:

Brad Bowman
SBE Reconsideration Officer
Capital Metropolitan Transportation Authority
2910 East 5th St.
Austin, TX 78702
Email: brad.bowman@capmetro.org

8. **CERTIFICATION OF SBEs**

(a) The City of Austin will serve as the certifying agency for the Austin region, which includes the counties of Bastrop, Caldwell, Hays, Travis and Williamson County. All prospective SBEs must submit appropriate forms, available through the City of Austin Certification Department, to prove actual ownership and control by SBEs. All such firms shall cooperate in supplying additional information as requested by the City of Austin DSMBR Certification Department, which will determine the certification of eligible SBEs. Blank forms may be obtained by contacting the City of Austin Certification Department, 4201 Ed Bluestein Blvd., (512) 974-7645, fax: (512) 974-7609. The firm may also contact CapMetro at (512) 389-7512 to obtain information.

(b) In the event CapMetro determines that a firm identified by the Offeror as a potential SBE does not qualify as a SBE, the Offeror shall be informed and will be provided with an opportunity to substitute firms meeting the certifying agency's SBE eligibility criteria for CapMetro's consideration. The SBE firm added as a substitution must have been communicated with prior to the bid submission deadline.

(c) CapMetro will accept Small Business Certification from any government agency that certifies Small Business Enterprises or an organization that has an MOA with a government agency to certify on their behalf.

(d) Information concerning SBEs currently certified can be obtained by contacting the SBPC Department at SBPC@capmetro.org. Offerors may search for SBE using the following directories:

- i. **City of Austin Certified Directory** (***ONLY select MBE and WBE when conducting a search***)
https://financeonline.austintexas.gov/afo/account_services/search/vendors/certvendor.cfm
- ii. **Texas Comptroller CMBL/HUB Directory**
<https://mycpa.cpa.state.tx.us/tpasscmbsearch/tpasscmbsearch.do>
- iii. **TxDOT's TUCP Directory** (***ONLY select SBE Certification when conducting a search***)

(e) Offerors are reminded that only SBEs may participate in CapMetro contracts in such capacities. If an offeror proposes using a SBE from another state, the firm must produce a certification as evidence that it is SBE certified in the state in which the business is headquartered.

9. **SUBCONTRACTOR'S OBLIGATION**

(a) Each subcontract the Contractor signs with a subcontractor must include the following assurance:

- (1) "The subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements in the award and administration of the contract. Failure by the subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this Contract or such other remedy as CapMetro deems appropriate."

10. **PROMPT PAYMENT & RETURN OF RETAINAGE**

(a) The Contractor must pay all subcontractors for satisfactory performance of their contracts no later than ten (10) days from receipt of each payment CapMetro makes to the contractor. In addition, each contract the Contractor

signs with a subcontractor must include a clause to require the Contractor to pay the subcontractor for satisfactory performance under the contract no later than ten (10) days from receipt of each payment CapMetro makes to the prime contractor.

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

- (i) CapMetro may decline to hold retainage from the contractors and prohibit the contractor from holding retainage from subcontractors;
- (ii) CapMetro may decline to hold retainage from the contractor and require a contract clause obligating the contractor to make prompt and full payment of any retainage kept by the contractor to the subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed; or
- (iii) CapMetro may hold retainage from the contractor and provide for prompt and regular incremental acceptance of portions of the prime contract, pay retainage to the contractor based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within ten (10) days after CapMetro's payment to the contractor.

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

(d) CapMetro may require any or all of the following additional mechanisms to ensure prompt payment:

- (i) A contract clause that requires the contractor to include language in their subcontract providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms as outlined in the Payment Disputes section of this Exhibit to resolve payment disputes;
- (ii) A contract clause providing that the contractor will not be reimbursed for any work performed unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed; or
- (iii) Other mechanisms, consistent with this Part and applicable state and local law, to ensure that SBEs and other contractors are fully and promptly paid.

11. SBE PROGRAM KICK-OFF MEETING

(a) CapMetro may require a meeting to discuss SBE contractual requirements with the contractor and all SBE subcontractors. This conference will be held before the Notice to Proceed has been issued. Attendees will include CapMetro personnel from different points of service that will be involved with the satisfactory performance and completion of the contract. External attendees of both the contractor and subcontractors should include, but not be limited to, designated representatives, points of contact and/or contract compliance officers.

The conference will cover the following:

- (1) CapMetro staff and role on contract;
- (2) CapMetro's SBE program's requirements, guidelines, and regulations;
- (3) The Contractor and subcontractors' roles and responsibilities;

- (4) Introduction and use of B2Gnow vendor management system, user set-up, vendor payments, auditing requirements, and contract reporting; and,
- (5) CapMetro's requirements and procedures for monitoring and enforcement of SBE contracts.

12. TERMINATION OR SUBSTITUTION OF SBE SUBCONTRACTOR

(a) The Contractor must notify CapMetro's SBPC Department at SBPC@capmetro.org immediately if there is an intent to substitute or terminate a SBE or non-SBE Subcontractor. The contractor must obtain express written approval from the SBPC Department before terminating or substituting an SBE or making any change to the SBE participation listed on the Schedule C.

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

(b) The Contractor may not terminate a listed SBE subcontractor (or approved substitute), replace a subcontractor previously listed, permit a subcontract to be assigned or transferred, or allow that portion of the work to be performed by anyone, including its own company or affiliate, other than the listed subcontractor without the prior written consent of CapMetro. For termination of a SBE subcontractor, prior written consent will only be provided where there is a "good cause" for termination. Good cause includes the following circumstances:

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

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

(d) When a SBE subcontractor is terminated or fails to complete its work on the contract for any reason, the Contractor must make GFE find another SBE subcontractor to substitute for the original SBE. These GFE shall be directed at finding another certified SBE to perform at least the same amount of work under the contract as the SBE

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that was terminated, to the extent needed to meet the Contract goal. Documentation of GFE must be maintained and provided to CapMetro within seven (7) days of a request, which may be extended for an additional seven (7) days, if necessary, at the request of the Contractor. CapMetro will provide a written determination to the contractor stating whether or not GFE have been demonstrated.

Any SBE that has been approved by CapMetro to be substituted has the right to appeal the decision directly to CapMetro's SBE Reconsideration Officer. The Reconsideration Officer's decision shall be final. Appeals must be sent to:

Brad Bowman
SBE Reconsideration Officer
Capital Metropolitan Transportation Authority
2910 East 5th St.
Austin, TX 78702
Email: brad.bowman@capmetro.org

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

13. PAYMENT DOCUMENTATION AND PAYMENT DISPUTES

(a) CapMetro will track and monitor every contract on which SBE participation is claimed to ensure that the work is actually performed by the SBEs to which the work was committed. CapMetro must have written certification that it has reviewed contracting records and monitored work sites located in Texas. CapMetro utilizes the B2Gnow compliance monitoring program to ensure that it has developed a monitoring process to comply with this regulation.

(b) For each subcontract, the Contractor must update payment and payment information on each subcontractor, including non-SBE subcontractors, or vendor monthly in B2Gnow to document its compliance with the SBE participation and prompt payment requirements. The Contractor is required to report, monitor and maintain its subcontractor participation through monthly contract audits that require confirmation from the subcontractor representative in the B2Gnow program. Subcontractors are also required to confirm payments reported by the Contractor.

(c) If a payment dispute arises between the Contractor and any subcontractor or supplier related to the contract, the Contractor shall provide a written response to the subcontractor or supplier, with a copy to the SBPC Department, specifically addressing any disputed amounts. The Contractor shall resolve all disputed invoices at the earliest time to avoid a delay in the submission of required subcontractor/supplier payment certifications that could delay payment to the SBE. If the Contractor cannot resolve a subcontractor or supplier disputed invoice, it shall bring the matter to the attention of the SBPC Department at the time of submitting the Contractor's invoice for payment. The SBPC Department will investigate the situation and determine whether the Contractor's invoice should be processed for payment without the required subcontractor or supplier certification. The SBPC Department will not mediate the dispute between the Contractor and any subcontractor or supplier in the resolution of disputed invoices. At no time shall the contractor invoice CapMetro for amounts in dispute without prior notification to the SBPC Department.

14. SANCTIONS FOR NONCOMPLIANCE WITH CAPMETRO'S SBE PROGRAM REQUIREMENTS

(a) Failure by the Contractor to carry out CapMetro's SBE Program Requirements or the terms of this Exhibit shall be deemed to be a material breach of the contract, which may result in the termination of the Contract or such other remedy as CapMetro deems appropriate.

If legal remedies are deemed necessary, the SBPC Department shall notify the Contractor of the findings and justification for the applied sanctions in writing. If the contractor believes the sanction(s) is not justified, the Contractor will be allowed a five-day appeal period from the time of the notification to submit a written appeal with supporting documents to the SBE Reconsideration Officer. The Reconsideration Officer's decision shall be final. Appeals must be sent to:

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

Brad Bowman
SBE Reconsideration Officer
Capital Metropolitan Transportation Authority
2910 East 5th St.
Austin, TX 78702
brad.bowman@capmetro.org

(b) The willful making of false statements or providing incorrect information shall be referred to the appropriate officials for legal action.

15. SBE FINAL REPORT

(a) The Contractor will complete and submit the SBE Final Report prior to contract closeout to show final SBE goal attainment under the Contract, whether the contract SBE goal was attained or not attained, and justification if the SBE contract goal was not attained.

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

REQUIRED SUBMITTAL IF SUBCONTRACTORS ARE UTILIZED CAPITAL METRO Schedule C, Subcontractor Participation (Local Funds)

Instructions: The Offeror shall complete this form by listing 1) Names of all proposed subcontractors. 2) Contact information, 3) Description of work to be performed/product to be provided, 4) Age of the firm, 5) Number of employees, 6) % or \$ amount of Total Contract.

NOTE: AS DEFINED BY THE SMALL BUSINESS ADMINISTRATION; A SMALL BUSINESS IS ANY BUSINESS WHOSE ANNUAL GROSS INCOME AVERAGED OVER THE PAST THREE (3) YEARS DOES NOT EXCEED THE SMALL BUSINESS ADMINISTRATION'S (SBA) SIZE STANDARDS AS SET FORTH IN 13 C.F.R., PART 121.

Size Standards for principal NAICS Sectors: **Construction** General building and heavy construction contractors: \$33.5 million Special trade construction contractors: \$14 million Land subdivision: \$7 million Dredging: \$20 million **Services** Most common: \$7 million Computer programming, data processing and systems design: \$25.5 million The highest annual-receipts size standard in any service industry: \$35.5 million **Manufacturing** About 75 percent of the manufacturing industries: 500 employees A small number of industries: 1,500 employees The balance: either 750 or 1,000 employees **All Other Types of Small Business** Less than 500 employees or three years of gross receipts under \$10 Million.

Name of Prime Contractor (Offeror): Modern Railway Systems

Project Name: IDIQ Railroad Construction and Rehabilitation Services

RFP Number: 807701

1) Name of Subcontractor	2) Address, Telephone # of Sub Firm (Including name of contact person)	3) Description of Work, Services Provided. Where applicable, specify "supply" or "Install" or both.	4) SBE or non-SBE	5) Age of Firm	6) Number of employees	7) Sub % or \$ amount of Total Contract
Jay-Reese Contractors, Inc.	32780 Ranch Road 12 Dripping Springs, Texas 72620 (512) 829-5360; Jake Woehr	Installation / Civil construction	non-SBE	36-Years	105	\$371,300.00
Lone Star Railroad Contractors	PO Box 1150 Ennis, TX 75120 (214) 763-4055; Darrin Pouncy	Installation / Trackwork	non-SBE	33-Years	85	\$1,224,100.00
QN Management Solutions, Inc.	6220 Campbell Rd Suite 202 Dallas, Texas 75248 (469) 223-1010; Qui Nguyen	Support / Scheduling	SBE	20-Years	6	\$27,000.00
DDE, Inc. (dba Generation Cable Corp)	5028 South Atlanta Road Suite 128 Atlanta, GA 30339 (404) 226-7884; Dana Dabruzzi	Supplier / Signal Cable	SBE	12-Years	3	\$24,318.06
Haeco Services Inc.	11411 Bristle Oak Trail, Austin, TX (512) 925-1193, Humberto Friede	Furnish and Construct two #15 turnouts	SBE	19 years	14	\$333,000.00

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

The undersigned will enter into a formal agreement with Subcontractors for work listed in this form upon execution of a contract with Capital Metro.


Signature of Authorized Representative of Offeror

2/18/2026

Date Signed

These subcontractors and dollar values are based on the Seed Project Only.

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

REQUIRED SUBMITTAL

CAPITAL METRO
(Local) Intent to Perform as a SBE Contractor/SBE Subcontractor
RFP # 807701

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

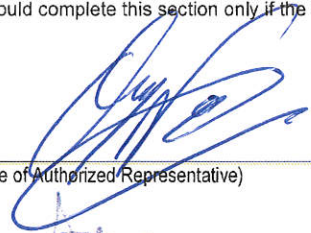
2. The undersigned is either currently certified as a SBE or will be at the time this solicitation is due.

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

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

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

QU MANAGEMENT SOLUTIONS, INC
(Name of SBE Firm)


(Signature of Authorized Representative)

469-223-1010
(Phone Number)

2/18/2026
(Date Signed)

Modern Railway Systems
(Name of Offeror/Prime Contractor)


(Signature of Authorized Representative)

720-394-0601
(Phone Number)

2/12/2026
(Date Signed)

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

REQUIRED SUBMITTAL

CAPITAL METRO
(Local) Intent to Perform as a SBE Contractor/SBE Subcontractor
RFP # 807701

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

2. The undersigned is either currently certified as a SBE or will be at the time this solicitation is due.

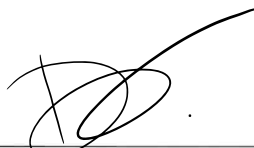
The undersigned is prepared to perform the following described work with their own workforce and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both) Electrical Wire, Cable, Equipemnt Supply

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

With respect to the proposed subcontract described above, the undersigned SBE anticipates that _____⁰ % of the dollar value of this subcontract will be sublet and/or awarded to other contractors. Any and all subcontractors that a SBE subcontractor uses must be listed in Schedule C and must also be SBE certified. (The SBE subcontractor should complete this section only if the SBE is subcontracting any portion of its subcontract.)

DDE Inc. dba Generation Cable Corp.

(Name of SBE Firm)



(Signature of Authorized Representative)

404-226-7884

(Phone Number)

02/18/2026

(Date Signed)

Modern Railway Systems

(Name of Offeror/Prime Contractor)



(Signature of Authorized Representative)

720-394-0601

(Phone Number)

2/12/2026

(Date Signed)

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

REQUIRED SUBMITTAL

CAPITAL METRO
(Local) Intent to Perform as a SBE Contractor/SBE Subcontractor
RFP # 807701

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

2. The undersigned is either currently certified as a SBE or will be at the time this solicitation is due.

The undersigned is prepared to perform the following described work with their own workforce and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both) FURNISH AND CONSTRUCT 2 #15 TURNOUTS

Welding of Turnout will be provided by others

and at the following price \$ 333,000 and/or _____% of the total contract amount (should be the same \$ or % found on Schedule C).

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

HAFCO SERVICES INC

(Name of SBE Firm)



(Signature of Authorized Representative)

512-925-1193

(Phone Number)

02/11/2026

(Date Signed)

Modern Railway Systems

(Name of Offeror/Prime Contractor)



(Signature of Authorized Representative)

720-542-3325

(Phone Number)

2/17/2026

(Date Signed)

EXHIBIT E
CONTRACTUAL TERMS AND CONDITIONS
(CONSTRUCTION, ALTERATION OR REPAIR 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 CapMetro, including without limitation “FCPA” or any applicable laws and regulations, including in the jurisdiction in which Contractor operates and/or manufactures goods for CapMetro, relating to anti-corruption and bribery.
- (b) “Architect/Engineer” (A/E) means a person registered as an Architect pursuant to Tex. Occ. Code § 1051.001 et seq, as a Landscape Architect pursuant to Tex. Occ. Code § 1052.003 et seq, and/or a person licensed as a Professional Engineer pursuant to Tex. Occ. Code § 1001.001, et seq or firm employed to provide professional architectural or engineering services and having overall responsibility for the design of a Project or a significant portion thereof, if applicable.
- (c) “As-Built Drawings” means drawings that show Construction of a particular structure or Work as actually completed under the Contract.
- (d) “Authority”, “Capital Metro”, “CapMetro”, “CMTA” means Capital Metropolitan Transportation Authority.
- (e) “CapMetro Data” means all data, content and information (i) submitted by or on behalf of CapMetro or its customers to the Contractor or loaded into the System, (ii) obtained, developed, produced or processed by the Contractor or by the Application or System in connection with the Contract, or (iii) to which the Contractor has access in connection with the Contract, and all derivative versions of such data, content and information, and any derivative versions thereof, in any form or format.
- (f) “CapMetro Electronic Property” means (i) any websites controlled by CapMetro, (ii) any CapMetro mobile device apps, (iii) any application programming interfaces (API) to CapMetro’s information technology systems, (iv) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by CapMetro, 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 CapMetro.
- (g) “Bid” means the offer of the bidder, submitted on the prescribed form, stating prices for performing the Work described in the Plans and Specifications.
- (h) “Bid Guarantee” or “Bid Bond” means a form of security assuring that the bidder will not withdraw a Bid within the bid acceptance period and will execute a contract and furnish required bonds and insurance within the time specified in the bid.
- (i) “Change Order” means a written order to the Contractor signed by the Contracting Officer and the Architect/Engineer, if an Architect/Engineer is assigned to the Project, issued after execution of the Contract, authorizing a change in the term or scope of the Contract.
- (j) “Construction” means the building, alteration, or repair (including dredging, excavating and painting) of structures, or other real property improvement.

- (k) "Contract" or "Contract Documents" means this written agreement between the parties comprised of all the documents listed in the Table of Contents and any emergency field orders, Change Orders and/or Contract Modifications that may be entered into by the parties.
- (l) "Contract Award Date" means the date of the Contract award notice, which may take the form of a purchase order, signed Contract or Notice of Award, issued by CapMetro.
- (m) "Contract Modification" means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.
- (n) "Contract Sum" means the total compensation payable to the Contractor for performing the Work as originally contracted for or as subsequently adjusted by Contract Modification.
- (o) "Contract Term" means period of performance set forth in the paragraph entitled "Period of Performance" contained in Exhibit E.
- (p) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and finding on behalf of CapMetro. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (q) "Contractor" or "Prime Contractor" means the entity that has assumed the legal obligation to perform the Work as identified in the Contract.
- (r) "Days" means calendar days. In computing any period of time established under this Contract, the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or State of Texas holiday, in which event the period shall run to the end of the next business day.
- (s) "FAR" means the Federal Acquisition Regulations codified in 48 C.F.R. Title 48.
- (t) "FCPA" means the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., as amended.
- (u) "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.
- (v) "FTA" means the Federal Transit Administration.
- (w) "Fully Burdened Hourly Labor Rate" means an hourly rate that includes all salary, overhead costs, general and administrative expenses, and profit.
- (x) "Good Industry Practice" means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor, operator or maintenance provider seeking in good faith to comply with its contractual obligations, complying with all applicable laws and engaged in the same type of undertaking in the United States under similar circumstances and conditions.
- (y) "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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(nn) “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, CapMetro under the Contract, including but not limited to any (i) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes but is not limited to manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object code, source code or other programming code, HTML code, data, information, multimedia files, text web pages or web sites, other written or machine

readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, and (vi) all documentation and materials related to any of the foregoing.

2. TYPE OF CONTRACT

(a) This is an indefinite quantity Contract for the construction services specified and stated elsewhere in the Contract.

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

(1) Minimum Guarantee. CapMetro makes no representation as to the number of Task Orders or actual amount of work to be ordered; however, there is a minimum of \$1,000 guaranteed to each awardee for the first year of the Contract. Contractors are not guaranteed work in excess of the minimum guarantee. The minimum guarantee will be paid to contractors who have not been awarded a task order in the first year of performance, beginning in year 2, and who have participated in 75% of all offered Task Order opportunities by CapMetro. Contractors who have not been issued a Task Order and who have not participated on 75% of all TO RFP's waive their right to reimbursement by the use of the minimum guarantee. Issuance of a Task Order in the first year of the IDIQ will fulfill CapMetro's responsibility for the Minimum Guarantee. The maximum aggregate amount of the IDIQ program, inclusive of all awarded task orders, including options, shall not exceed \$28 million over the life of the contract.

(2) Maximum order. CapMetro will order a maximum of a total not-to-exceed amount of \$28 million for all Contracts awarded for construction services under *RFP 807701 – IDIQ Railroad Construction and Rehabilitation Services*.

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

(d) When CapMetro requires supplies or Services covered by this Contract in an amount of less than \$10,000.00, CapMetro is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or Services under the Contract.

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

3. VARIATION IN ESTIMATED QUANTITY

If the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit-priced item varies more than ten percent (10%) above or below the estimated quantity, an equitable adjustment in the Contract Sum shall be made upon demand of either party in accordance with Exhibit E, Paragraph entitled "Changes". The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred ten percent (110%) or below ninety percent (90%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request (in writing) an extension of time to be received by the Contracting Officer within ten days (10) days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the Contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.

4. CONTRACT TERM

(a) The term of the Contract shall be three (3) years from the Contract Award Date. No work shall be

performed under this Contract prior to issuance of a written Task Order.

- (b) The performance period of the Seed Project is Nine (9) months from receipt of a fully executed task order authorization.

5. OPTION TO EXTEND CONTRACT TERM

CapMetro shall have the unilateral right and option to extend the Contract for up to two (2) option periods for a twelve (12) month duration each.

6. ADDITIONAL OPTION TO EXTEND CONTRACT PERFORMANCE

CapMetro 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. CapMetro may exercise the option by written notice to the Contractor.

7. PERFORMANCE AND PAYMENT BONDS APPLICABLE TO INDIVIDUAL TASK ORDERS:

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

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

(c) The Contractor shall be required to submit all required bonds prior to the issuance of a fully executed Task Order. Upon receipt of the payment and/or performance bond, the Bid Guarantee, if applicable, shall be returned to the Contractor.

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

(e) Each bond shall be accompanied by a valid Power-of-Attorney, issued by the surety company and attached, signed and sealed, with the corporate embossed seal, to the bond, authorizing the agent who signs the bond to commit the surety company to the terms of the bond, and stating on the face of the Power-of-Attorney the limit, if any, in the total amount for which he/she is empowered to issue a single bond.

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

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

(1) any surety upon any bond furnished with this Contract becomes unacceptable to CapMetro;

or

(2) any surety fails to furnish reports on its financial condition as required by CapMetro.

8. ORDERING PROCEDURES:

(a) When services are required, CapMetro's Contracting Officer or authorized representative will issue a Task Order Request for Pricing (TO RFP). Each awardee will be provided a fair opportunity to be considered for each order exceeding the micro purchase threshold of \$10,000.00. The TO RFP will contain at a minimum the following information:

- (1) Detailed description of services required including specifications and drawings as applicable
- (2) Task Order Terms & Conditions applicable to the services required
- (3) TO RFP submittal requirements
- (4) Performance period
- (5) Bonding and Insurance Requirements
- (6) TO RFP Issue date
- (7) TO RFP Response Date
- (8) Range of Magnitude - ROM
- (9) Applicable wage determination
- (10) Applicable liquidated damages
- (11) Site visit information
- (12) Submittal requirements
- (13) Pricing Schedule

(b) When bid documents are received in response to the TO RFP, the Contracting Officer will evaluate them in accordance with the requirements in the TO RFP.

(c) Award of the TO RFP will be executed by a written Task Order on a Task Order Award Form signed by the Contracting Officer. Task Orders will be awarded on a fixed price basis and shall clearly define the specific services to be performed or the performance desired. Each Task Order will be awarded as a result of competition to the contractor who offers the low responsive and responsible bid to CapMetro.

(d) Submission of Proposals for Task Order RFPs are not mandatory. However, the contractor shall notify the Contracting Officer within two (2) workdays of receipt of the TO RFP if they do not intend to submit a bid. Failure to bid and/or communicate intent may result in a negative performance assessment.

(e) Costs for preparation of Task Order Proposals shall be the responsibility of the Contractor and are not directly reimbursable. The Contractor shall furnish all project management, planning, estimating, labor, transportation, mobilization, materials, equipment, tools, supervision, and all other associated costs necessary to fulfill the requirements of the Task Order as defined in the pricing schedule for each project.

9. TASK ORDER

The Contractor shall provide and deliver all labor, materials, equipment, tools, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution of the work required in the Task Order Documents (the Work), whether temporary or permanent. Award of Task Orders will be on a fixed price basis. Task Order in the first year of the IDIQ will fulfill CapMetro's responsibility for the Minimum Guarantee.

10. COMMENCEMENT OF WORK

No work under this contract will commence until such time as the Contracting Officer issues a fully executed Task Order Authorization. Prior to issuance of Task Order, contractor may be required to provide the following:

- (a) Performance and Payment Bonds
- (b) Proof of Insurance

11. SITE INSPECTIONS

Upon receipt of the scope of work, including applicable specifications and drawings, and following a brief time period for reviewing the documents, the Contractor shall inspect the job site. Site visit information will be provided by TO RFP. Any deficiencies, conflicts, or other areas of concern existing in the scope of work and applicable specifications and drawings should be brought to the attention of the Contracting Officer, in writing. The contractor shall also notify the Contracting Officer, in writing, upon observing any features in the design that appear to be ambiguous, confusing, conflicting or erroneous.

12. PRE-CONSTRUCTION CONFERENCE

Prior to commencing work under a Task Order, the Contractor shall meet with the Contracting Officer and/or designated technical personnel at a mutually agreeable time to discuss and develop mutual understandings concerning schedule, logistics, security, technical approach, and administration of work.

13. COMPETITION

(a) Only the contractors awarded contracts as a result of this RFP will be eligible to compete for subsequent task orders. These contractors are encouraged to participate in all site visits and submit bids for each requirement. Failure to propose and/or communicate intent may result in a negative performance assessment.

(b) A minimum of two bids submitted in response to the TO RFP's (if the Contracting Officer determines the price to be fair and reasonable) will satisfy competition requirements. If only (1) proposal is received in response to the TO RFP, the Contracting Officer shall evaluate the single response for Technical Acceptability and Fair and Reasonable pricing. If the Contracting Officer cannot make a favorable determination, the Contracting Officer can solicit to the open market.

(c) Unless the Contracting Officer applies the exceptions noted below, Awarding Orders Under Multiple Award Contracts, each Task Order will be awarded, as a result of competition to the contractor who offers the low responsive and responsible bid to CapMetro.

(d) The contracting officer shall give every awardee a fair opportunity to be considered for a task-order exceeding the micro purchase threshold unless one of the following exceptions applies:

(1) The agency's need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.

(2) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.

(3) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.

(4) It is necessary to place an order to satisfy a minimum guarantee.

(5) For orders exceeding the simplified acquisition threshold, a statute expressly authorizes or requires that the purchase be made from a specified source.

14. INSURANCE

(a) The Contractor shall furnish proof of CapMetro-stipulated insurance requirements specified below.

(b) All insurance policies shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to CapMetro and shall contain a contract waiver of subrogation in favor of CapMetro.

- (c) The Contractor shall furnish to CapMetro certificate(s) of insurance evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies.
- (d) Prior to the expiration of a certificate of insurance, a new certificate of insurance shall be furnished to CapMetro showing continued coverage.
- (e) Each policy shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to CapMetro and CapMetro shall be named as an Additional Insured under each policy except Professional Liability insurance if required by this Contract.
- (f) All insurance policies shall be written by reputable insurance company or companies acceptable to CapMetro 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.
- (g) The Contractor shall notify CapMetro in writing of any material alteration of such policies, including any change in the retroactive date in any "claims-made" policy or substantial reduction of aggregate limits, if such limits apply or cancellation thereof at least thirty (30) days prior thereto.
- (h) The below requirements only represent the minimum coverage acceptable to CapMetro 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 CapMetro.
- (i) The Contractor shall carry and pay the premiums for insurance of the types and in the amounts stated below.

CAPMETRO MINIMUM COVERAGE REQUIREMENTS:

1. **Comprehensive General Liability Insurance** Coverage with limits of not less than One Million Dollars and No/100 Dollars (\$1,000,000) with an aggregate of Two Million Dollars and No/100 Dollars (\$2,000,000) with coverage that includes:
 - Products and Completed Operations Liability
 - Independent contractors
 - Personal Injury Liability extended to claims arising from employees of Contractor and CapMetro.
 - Contractual Liability pertaining to the liabilities assumed in the agreement.
2. **Automobile Liability Insurance** covering all owned, hired and non-owned automobiles used in connection with work 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. **Builders Risk/Equipment Installation insurance** covering the full value of the construction values at risk. Insurance should provide coverage for all perils and provide Replacement Cost for the equipment and construction materials in the event of a loss.
5. **Railroad Protective Liability Insurance** in the amount of Five Million Dollars and No/110 Dollars (\$5,000,000).
6. **All policies should include Terrorism Coverage.**

(j) 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.

(k) 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 CapMetro, its directors, officers, employees, agents, successors and assigns, and CapMetro's insurance companies arising out of any claims for injury(ies) or damages resulting from the work performed by or on behalf of the Contractor under this Contract and/or use of any CapMetro premises or equipment under this Contract.

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

(m) 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, CapMetro 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.

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

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

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

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

15. PLANS AND SPECIFICATIONS

(a) The Contractor shall perform the Work in accordance to the Plans and Specifications. The Contractor shall keep on the Work Site a copy of the building permit and Plans and Specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the Specifications and not shown on the drawings, or shown on the drawings and not mentioned in the Specifications, shall be of like effect as if

shown or mentioned in both. In case of difference between drawings and Specifications, the Specifications shall govern. In case of a discrepancy in the figures, in the drawings, or in the Specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Absent such submission, the most restrictive, greatest quantity, or highest standard shall govern. Any action or adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

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

(c) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this Contract unless stated otherwise. The word "provided" as used herein shall be understood to mean, "provide complete in place" (that is, "furnished and installed").

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

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

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

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

(h) All Plans and/or Specifications and copies thereof furnished by CapMetro are, and shall remain, CapMetro's property.

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

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

Specifications and its inclusion in another paragraph shall not relieve the Contractor of responsibilities for the item specified.

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

16. PERFORMANCE OF WORK BY THE CONTRACTOR

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

(b) The organization of the Specifications into divisions, paragraphs, and articles, and the arrangement and titles of Project drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

17. INDEPENDENT CONTRACTOR

The Contractor's relationship to CapMetro in the performance of this Contract is that of an independent contractor. The personnel performing Work under this Contract shall at all times be under the Contractor's exclusive direction and control and shall be employees of the Contractor and not employees of CapMetro. 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 CapMetro by virtue of this Contract. The Contractor shall pay wages, salaries and other amounts due its employees in connection with this Contract and shall be responsible for all reports and obligations respecting them, such as Social Security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

18. 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.

19. SUBCONTRACTORS AND OUTSIDE CONSULTANTS

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

20. INTELLECTUAL PROPERTY; DATA PRIVACY PROVISIONS

(a) As between the Contractor and CapMetro, 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 CapMetro. 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 CapMetro 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 CapMetro 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 CapMetro to evidence more fully the transfer of ownership of all Works to CapMetro to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by CapMetro. In the event CapMetro 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 CapMetro 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 CapMetro 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 CapMetro'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 CapMetro of such pre-existing or third party rights or limitations, request CapMetro'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 CapMetro's written approval of such pre-existing or third-party rights and the limited use of same. The Contractor shall provide CapMetro 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 CapMetro 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 CapMetro either:

(i) exceeded the scope of the limited license that was previously obtained by the Contractor and agreed to by CapMetro, 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 CapMetro 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 CapMetro, 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 CapMetro 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 CapMetro'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 CapMetro'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 CapMetro, without requiring proof of irreparable injury as same should be presumed.

(g) Upon the request of CapMetro, but in any event upon termination of this Contract, the Contractor shall surrender to CapMetro 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 CapMetro to the Contractor, including all materials embodying the Works, any CapMetro 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 CapMetro 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 CapMetro 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 CapMetro's customers. To the extent any CapMetro 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 CapMetro Data in accordance with CapMetro'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 CapMetro Electronic Property and related CapMetro 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 CapMetro's Access and Use Agreement, which will be attached as an addendum to the Contract, as applicable.

(j) The provisions of this paragraph shall survive termination or expiration of the Contract.

21. STANDARD OF PERFORMANCE

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

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

22. 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 believes is pertinent that demonstrates its financial capability, financial solvency, and capability to fulfill the requirements of this contract.

The Contractor shall provide to CapMetro 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 CapMetro 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 CapMetro no later than March 31st of the following year. CapMetro, at its' discretion, may accept unaudited financial reports.

23. PERSONNEL ASSIGNMENTS

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

(b) The Contractor certifies that the Contractor, and each Subcontractor, have established a criminal history background policy that complies with guidance issued by the U.S. Equal Employment Opportunity Commission and that the Contractor and each Subcontractor conducts criminal history checks on its assigned personnel in accordance with such policy to identify, hire and assign personnel to work on this Contract whose criminal backgrounds are appropriate for the Work being performed, considering the risk and liability to the Contractor and CapMetro. CapMetro 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. CapMetro 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 of Texas 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.

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

The Contractor shall disclose to CapMetro 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 CapMetro in accordance with subparagraph (d).

(d) The Contractor may request CapMetro perform an individual assessment of a candidate with a criminal conviction meeting one of the above categories to determine whether an exception is granted. In conducting an individual assessment, CapMetro'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.

CapMetro will provide a written decision to the Contractor regarding the Contractor's request to grant an exception within five (5) working days of receipt of all required documentation from the Contractor.

(e) The Contractor will conduct new criminal history background checks on all assigned personnel every two (2) years during the Contract to ensure the preceding criterion are still met by the assigned personnel and notify CapMetro if an employee has a subsequent arrest with pending disposition or conviction (or

change in driving record, as applicable) that requires further review by CapMetro using the criterion set forth above. CapMetro reserves the right to request that the assigned individual be removed from performing work under this Contract.

24. REMOVAL OF ASSIGNED PERSONNEL

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

25. BADGES AND ACCESS CONTROL DEVICES

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

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

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

26. SUBCONTRACTORS

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

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

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

27. ADMINISTRATIVE CONTROL OF DOCUMENTS

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

28. WORK SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

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

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

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

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

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

29. LAYOUT OF WORK

The Contractor shall lay out its work from CapMetro-established base lines and benchmarks indicated on the Plans and Specifications and shall be responsible for all measurements in connection with the layout.

The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. The Contractor shall be responsible for executing the Work to the lines and grades that may be established or indicated by the Project Manager. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Project Manager until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, CapMetro may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

30. PROTECTION OF CAPMETRO PROPERTY

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

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

31. PROTECTION OF EXISTING SITE CONDITIONS

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

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

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

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

32. WORK BY CAPMETRO: OTHER CONTRACTS

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

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

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

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

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

33. CONSTRUCTION SCHEDULE

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

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

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

34. OPERATIONS AND STORAGE AREAS

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

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials

furnished by the Contractor without expense to CapMetro. The temporary buildings and utilities shall remain the property of the Contractor and shall be promptly removed by the Contractor at its expense upon completion of the Work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

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

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

35. DIFFERING WORK SITE CONDITIONS

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

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

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

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

36. PERMITS

The Contractor shall, without additional expense to CapMetro, be responsible for obtaining any and all necessary licenses and permits and for complying with any federal, state, county, and municipal laws, codes, and regulations applicable to the performance of the Work, including, but not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the Work.

37. SUPERINTENDENCE BY CONTRACTOR

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

38. CONTRACTOR CONTACT/CAPMETRO DESIGNEE

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

39. MATERIAL AND WORKMANSHIP

(a) All equipment, material, and articles incorporated into the Work covered by this Contract shall be new and of the most suitable grade for the purpose intended unless otherwise specifically provided in this Contract. References in the Specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer is equal to that named in the Specifications, unless otherwise specifically provided in this Contract.

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

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

40. USE AND POSSESSION PRIOR TO COMPLETION

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

(b) While CapMetro has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from CapMetro's possession or use, notwithstanding the terms of Exhibit E, Paragraph entitled "Permits". If prior possession or use by CapMetro delays the progress of

the Work or causes additional expense to the Contractor, an equitable adjustment shall be made in the Contract Sum or the time of completion, and the Contract shall be modified in writing accordingly.

41. CONDITION OF THE WORK SITE

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

42. TITLE TO SUBMITTALS

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

43. ACCIDENT PREVENTION

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

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

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

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

44. SUSPENSION OF WORK

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

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

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

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

45. CAPMETRO'S RIGHT TO CARRY OUT WORK

(a) If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from CapMetro to commence and continue correction of such default or neglect with diligence and promptness, CapMetro may, without prejudice to other remedies CapMetro may have, correct such deficiencies. In such case, an appropriate adjustment shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including CapMetro's expenses and compensation for the A/E additional services made necessary by such default. If payments due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to CapMetro.

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

46. CHANGE ORDER ACCOUNTING

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

47. WARRANTY

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

(b) Contractor shall correct all Construction and material defects and deficiencies (other than latent defects and deficiencies which are discussed below) which may develop within the applicable of (i) a period of one (1) year from the date when all of the Work is completed and accepted by CapMetro, or (ii) such longer period for any component of the Work which may be specified in the Contract Documents, or (iii)

any warranty period which may be longer than the periods specified in (i) and (ii) above as provided in any specific warranty for such item. Nothing set forth above or otherwise in this Contract shall restrict in any way or operate as any limitation on the right of CapMetro to seek damages or other remedies against Contractor for any other period under any legal or equitable theory with respect to any defects and deficiencies which are latent in nature and not readily ascertainable in the ordinary course of observation, subject, however, to any limitations imposed under governing law.

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

(d) The Contractor shall issue in writing to CapMetro as a condition precedent to final payment a "General Warranty" reflecting terms and conditions of this paragraph for all work under the Contract. This warranty shall specifically provide that all defects in materials and workmanship appearing during the warranty period shall be remedied to the satisfaction of CapMetro at no additional cost to CapMetro.

(e) This provisions of this paragraph shall survive termination or expiration of the Contract.

48. INSPECTION AND TESTING OF WORK

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

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

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

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

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

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

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

(1) by Contract or otherwise, replace or correct the Work and charge the cost to the Contractor, plus an administrative fee of ten percent (10%), or

(2) terminate for default the Contractor's right to proceed.

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

(h) Unless otherwise specified in the Contract, CapMetro shall accept, as promptly as practicable after completion and inspection, all Work required by the Contract or that portion of the Work the Contracting Officer determines can be accepted separately. Subject to the provisions of Paragraph entitled "Warranty of Construction", acceptance by CapMetro shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or CapMetro's rights under any warranty or guarantee.

49. PRICING OF ADJUSTMENTS

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

50. CHANGES

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

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

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

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

(d) If any change under this paragraph causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the Contract in writing in accordance with the provisions in paragraph entitled, "Equitable Adjustments" contained in Exhibit E. However, except for a "proposal for adjustment" (hereafter referred to as "proposal") based on defective Specifications, no proposal for any change under paragraph (b), above, shall be allowed for any costs

incurred more than twenty (20) days before the Contractor gives written notice as required. In the case of defective Specifications for which CapMetro is responsible, the equitable adjustment shall include the increased cost reasonably incurred by the Contractor in attempting to comply with the defective Specifications.

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

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

51. EQUITABLE ADJUSTMENTS

If the Contractor's performance of the Services is increased or decreased by a Change Order that changes the scope, nature, or timing of the Services, the Contractor may be entitled to an equitable adjustment in the Contract Price, performance schedule, or both. Such adjustments shall be limited to the actual, reasonable, and necessary costs or time impacts directly attributable to CapMetro.

(a) The Contractor shall provide written notice to the Contracting Officer within thirty (30) calendar days after the Contractor first became aware, or reasonably should have become aware, of the event giving rise to the potential adjustment. The notice must describe the general nature of the change, the impact on performance, and the estimated amount of time involved. Failure to provide timely notice shall constitute a waiver of the Contractor's right to an equitable adjustment.

(b) Within sixty (60) calendar days after the date of notice under subsection (b), the Contractor shall submit a detailed written proposal, including: (i) a narrative of the facts supporting the request; (ii) the specific contract requirement affected; (iii) all costs and schedule impacts, supported by cost data, payroll records, equipment logs, and other relevant documentation; and (iv) a proposed adjustment amount and/or schedule. CapMetro may request additional documentation.

(c) Within fifteen (15) business days of CapMetro's receipt of a properly supported proposal, CapMetro and Contractor will meet to negotiate in good faith to determine an equitable adjustment.

(d) No adjustment shall be allowed for: (i) any cost or delay resulting from the Contractor's fault, negligence, or failure to perform in accordance with the Contract; (ii) changes or conditions that are the result of the Contractor's means, methods, or management of operations; (iii) foreseeable or ordinary fluctuations in labor, fuel, or material costs; (iv) events for which the Contractor has assumed risk under other provisions of this Contract.

(e) The execution of a written modification incorporating the equitable adjustment shall constitute the Contractor's full and final settlement of all claims, direct or indirect, arising from or related to the event or change giving rise to the adjustment.

(f) Calculation of Direct Costs

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

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

(3) Construction equipment exclusively necessary for the change.

- (4) Costs of preparation and/or revision to Shop Drawings resulting from the change.
- (5) Employment taxes under FICA and FUTA.
- (6) Bond Costs - when size of change warrants revision.

52. CALCULATION OF OVERHEAD, PROFIT AND COMMISSION

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

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

53. TIME EXTENSIONS

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

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

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

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

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

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

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

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

54. LIQUIDATED DAMAGES

(a) Liquidated Damages will be included in each TO RFP (if applicable) and incorporated into the resultant Task Order (if applicable) identifying the liquidated damages rate applicable to that Task Order.

(b) If the Contractor fails to perform the Work within the time specified in this Contract, or any extension, the Contractor shall in place of actual damages, pay to CapMetro the sum of \$2,467.25 for each calendar day of delay as liquidated damages and not as a penalty. It is agreed that such liquidated damages represent an estimate of actual damages and are not intended as a penalty; and that such delay will cause CapMetro to incur substantial economic damage in amounts which are difficult or impossible to ascertain with certainty. Liquidated damages do not limit CapMetro's right to terminate this Contract for default or otherwise as provided elsewhere in this Contract. Liquidated damages do not limit CapMetro's right to terminate this Contract for default or pursue other remedies available to CapMetro elsewhere in this Contract. Liquidated damages may be deducted from any amounts due and owing Contractor under this Contract.

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

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

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

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

(g) If the Contractor fails to perform the Work within the time specified in this Contract, or any extension, the Contractor shall in place of actual damages, pay to CapMetro an amount designated in (b) below for each calendar day of delay as liquidated damages and not as a penalty. It is agreed that such liquidated damages represent an estimate of actual damages and are not intended as a penalty; and that such delay will cause CapMetro to incur substantial economic damage in amounts which are difficult or impossible to ascertain with certainty. Liquidated damages do not limit CapMetro's right to terminate this Contract for default or otherwise as provided elsewhere in this Contract. Liquidated damages do not limit CapMetro's right to terminate this Contract for default or pursue other remedies available to CapMetro elsewhere in this Contract. Liquidated damages may be deducted from any amounts due and owing Contractor under this Contract.

(h) If the Contractor fails to complete the work within the time specified in the Task Order, or any extension, the Contractor shall, in place of actual damages, pay to CapMetro as fixed, agreed and liquidated

damages, for each calendar day of delay the total sum of \$2,467.25 per day represented as follows:

1. \$806 per calendar day for additional operating costs to Capital Metro for each day of delay in completion, including but not limited to cashier, operator and supervisory costs resulting from contract completion delays. Costs of route detours or substitution of one transit mode for another shall be considered.
2. \$660 per calendar day for loss of revenue to Capital Metro's operations for each day due to delay in contract completion.
3. \$800 per calendar day for any other damages for each day of delay in completion which CapMetro may anticipate, e.g., is there a high potential for delay of one prime contract with resulting costs to CapMetro for the other prime contracts.
4. \$201.25 per calendar day for costs of inspections.

55. FORCE MAJEURE

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

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

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

56. EXAMINATION OF BID DOCUMENTS

CapMetro shall have the right to examine and review the Contractor's original Bid and estimating documents used in preparing its Bid as a reference to aid in CapMetro's evaluation of the Contractor's scheduling and Construction progress. A certified copy of such documents shall be submitted to CapMetro if requested by the Contracting Officer. CapMetro shall maintain in confidence all information contained in such Bid and estimating documents. It is CapMetro's position that the Contractor's estimating documents in support of its original Bid are exempt from mandatory release prior to award of Contract under the Texas Public Information Act ("Act"). After award, the documents will require individual review to determine whether or not an exemption from release under the Act is available.

57. TERMINATION FOR DEFAULT

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

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

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

(b) In the event CapMetro terminates this Contract in whole or in part as provided in paragraph (a) of this clause, CapMetro may procure, upon such terms and in such manner as CapMetro may deem

appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to CapMetro for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this Contract to the extent, if any, it has not been terminated under the provisions of this paragraph.

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

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

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

(f) CapMetro shall withhold from any payment sufficient funds to remedy any back-wage liability resulting from the failure to incorporate the correct wage determination or as may be directed by the U.S. Department of Labor.

(g) The rights and remedies of CapMetro 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.

58. TERMINATION FOR CONVENIENCE

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

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

(c) CapMetro may require the Contractor to transfer title and deliver to CapMetro in the manner and to the extent directed by CapMetro: (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 CapMetro, protect and preserve property in the possession of the Contractor in which CapMetro has an interest. If CapMetro does not exercise this right, the Contractor shall use its best efforts to sell such supplies and Manufacturing Materials.

(d) CapMetro shall pay the Contractor the following amounts:

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

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

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

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

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

(e) CapMetro shall withhold from any payment sufficient funds to remedy any back-wage liability resulting from the failure to incorporate the correct wage determination or as may be directed by the U.S. Department of Labor.

59. NO DAMAGES FOR DELAY

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

60. NOTICE OF LABOR DISPUTES

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

(b) The Contractor agrees to insert the substance of this subparagraph (b) in any Subcontract under which a labor dispute may delay the timely performance of this Contract. 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.

61. 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 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 CapMetro notifies the Contractor of any such determination, instruction or clarification, a written protest, stating in detail the basis of the protest. The President/CEO shall consider the protest and notify the Contractor within two (2) weeks of the protest filing of his final decision. The President/CEO's decisions shall be conclusive subject to judicial review. Notwithstanding any disagreement the Contractor may have with the decisions of the President/CEO, the Contractor shall proceed with the Work 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.

62. INVOICING AND PAYMENTS

(a) **Schedule of Values.** In the case of a Lump Sum Contract, within ten (10) days of the Notice to Proceed, the Contractor shall submit to CapMetro for CapMetro approval an initial schedule of values allocated to various portions of the Work prepared in such a form and supported by such data to substantiate its accuracy as CapMetro may require. This schedule, unless objected to by CapMetro, shall be used as a basis for reviewing the Contractor's applications for payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

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

Accounts Payable
Capital Metropolitan Transportation Authority
2910 East 5th Street
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 CapMetro. 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 CapMetro under the terms of the Contract;
- (4) evidence of the acceptance of the supplies or services by CapMetro; and
- (5) any other information necessary to demonstrate entitlement to payment under the terms of the Contract.

(6) Note: Certified Payrolls must be submitted to the Contracting Officer each week using CapMetro's Certified Payroll Reporting Software.

Subject to the withholding regarding retainage as provided herein, all undisputed invoices shall be paid within the time period allowed by law through the Texas Prompt Payment Act, Tex. Gov't Code § 2251.021(b).

(c) Contractor should submit an invoice to CapMetro on a monthly basis, preferably no later than the 5th

business day of each calendar month, for all work that was accepted during the preceding month. Each invoice must reference the applicable acceptance documentation and clearly identify the dates and scope of work performed. Failure to submit timely invoices may result in a delay of payment.

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

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

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

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

(h) 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.

(i) Final payment to the Contractor shall be paid by CapMetro after:

- (1) completion and acceptance of all of the Work by CapMetro;
- (2) presentation of an undisputed invoice; and

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

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

amount to CapMetro within thirty (30) calendar days of the date of the written notice of such overpayment or such other period as CapMetro may agree. CapMetro 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.

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

63. PAYMENT TO SUBCONTRACTORS

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

(b) A false certification to CapMetro under the provisions of the paragraph entitled, "Invoicing and Payments" hereof may be a criminal offense in violation of Tex. Penal Code § 37.10.

64. FEDERAL, STATE, AND LOCAL TAXES

(a) CapMetro is exempt from taxes. Any taxes included in the Contract Sum and/or on any invoice received by CapMetro shall be deducted from the Contract Sum and/or the amount of the invoice for purposes of payment. Inclusion of taxes in the Contract Sum or any invoice or request for payment under this Contract shall constitute a material breach of this Contract.

(b) CapMetro qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of the Texas Tax Code Sections 151.309 and 151.311. Prices/the Contract Sum shall not include sales or use tax on materials, supplies, or equipment that are incorporated into the real property interest of CapMetro or are necessary and essential to the Contract and are completely consumed at the job site in the performance of the Contract. CapMetro will furnish Contractor with a Sales Tax Exemption Certificate. The Contract with CapMetro and any contracts with subcontractors shall separately state the Contract price for incorporated materials and the price for all skill and labor that includes fabrication, installation and other labor performed by the Contractor or subcontractor. The Contractor and its subcontractors must claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts, including without limitation, 34 Texas Administrative Code Section 3.291. The Contractor and its subcontractors bear total responsibility for obtaining information pertaining to such exemption from the Comptroller.

65. WAGE RATES: APPLICABLE WAGE RATES WILL BE PROVIDED FOR EACH TASK ORDER

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

Contractor shall provide **weekly** Certified Payrolls to CapMetro which will include any pertinent Subcontractor Certified Payrolls. Certified Payrolls shall be entered into to CapMetro's Certified Payroll Reporting software on a weekly basis. In the event that CapMetro's Certified Payroll Reporting software is inaccessible at the time the weekly Certified Payrolls are ready to be submitted to CapMetro, the Contractor shall submit the Certified Payrolls directly to CapMetro's Contracts Administrator. Certified Payrolls shall clearly indicate whether the person employed is a Contractor or Subcontractor employee and will include the associated employee number for each person employed in the performance of the Work under this Contract.

66. FEDERAL, STATE AND LOCAL LAWS GOVERNING CONSTRUCTION

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

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

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

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

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

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

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

67. INDEMNIFICATION

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

CONTRACTOR OR ANY SUBCONTRACTOR OF THE CONTRACTOR.

(a) FOR PURPOSES OF THIS CONTRACT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS CONTRACT.

68. LIMITATION OF LIABILITY

In no event shall CapMetro 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 CapMetro's performance, nonperformance, or delay in performance of its obligations under this Contract, or CapMetro's termination of the Contract with or without cause, or CapMetro's suspension of the Work. This limitation of liability shall not apply to intentional tort or fraud. The Contractor shall include similar liability provisions in all its Subcontracts.

69. 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. The Contractor is advised that the legal requirements applicable to this Contract as set forth in federal and/or state law, regulations, policies, and related administrative practices may change during the performance of this Contract. Any such changes shall also apply to this Contract and subcontracts at all tiers.

70. PUBLICITY RELEASES

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

71. 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 CapMetro and its authorized agents except as otherwise provided by this Contract or after obtaining the prior written permission of CapMetro.

(b) This Contract, all data and other information developed pursuant to this Contract shall be subject to the Texas Public Information Act. CapMetro 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 CapMetro.

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

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

72. INTEREST OF PUBLIC OFFICIALS

The Contractor represents and warrants that no employee, official, or member of the Board of CapMetro 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 CapMetro 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, CapMetro 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.

73. GRATUITIES

CapMetro 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 CapMetro 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 CapMetro pursuant to this provision, CapMetro 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.

74. DRUG-FREE WORKPLACE PROGRAM

(a) Definitions. As used in this paragraph:

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

(2) "Controlled Substance" means a controlled substance listed in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. § 812) and as further defined in regulation at 21 C.F.R. §§ 1308.11 - 1308.15, or listed in Schedules I through V of Subchapter AB of the Texas Controlled Substances Act, Tex Health & Safety Code, Ch. 481, which include, but are not limited to, marijuana, heroin, LSD, concentrated cannabis or cannabinoids, hashish or hash oil, morphine or its derivatives, mescaline, peyote, phencyclidine (PCP, Angel Dust), opium, opiates, methadone, cocaine, Quaaludes, amphetamines, methamphetamines, depressants, "exotic/designer" drugs, benzodiazepines, Seconal, codeine, barbiturates, Phenobarbital, or Valium.

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

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

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

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

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

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

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

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

- (i) The dangers of drug abuse in the workplace;
- (ii) The Contractor's policy of maintaining a drug-free workplace;
- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

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

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

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction.

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

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

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

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

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

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

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

75. TOBACCO FREE WORKPLACE

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

CapMetro Property: 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 CapMetro owned vehicles.

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

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

76. 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. Award/Contract Form
2. Exhibit A - Pricing Schedule and Exhibit A-1 - Seed Project Pricing Itemization
3. Exhibit E - Contractual Terms and Conditions
4. Exhibit I - Authorization of Work Product
5. Exhibit B - Representations and Certifications
6. Exhibit D – Small Business Enterprise Program/SBE
7. Exhibit F - Scope of Work and Volume II Attachments
8. Exhibit G - Prevailing Wage Rates
9. Other provisions or attachments to the Contract

77. HAZARDOUS MATERIALS

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

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

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

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

(4) Any flammable substances or explosives;

(5) Any radioactive materials;

(6) Any asbestos or asbestos-containing materials;

(7) Any lead and lead-based paint;

(8) Any radon or radon gas;

(9) Any methane gas or similar gaseous materials;

(10) Any urea formaldehyde foam insulation;

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

(12) Pesticides;

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

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

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

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

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

(d) Neither the Contractor, nor any of the Contractor's agents, Subcontractors, employees, Contractors or invitees, shall at any time handle, use, manufacture, store or dispose of in or about the Work Site ("Premises") any Hazardous Materials. Contractor shall notify CapMetro of any Release of Hazardous Materials within six (6) hours of discovering any such Release of Hazardous Materials. Contractor agrees to abide by Best Management Practices. Contractor shall protect, defend, indemnify and hold CapMetro harmless from and against any and all loss, claims, liability or costs (including court costs and attorneys' fees) incurred by reason of any actual or asserted failure of Contractor to fully comply with all applicable Environmental Laws, or the presence, handling, use or disposition in or from the Premises of any Hazardous Materials, or by reason of any actual or asserted failure of Contractor to keep, observe, or perform any provision of this paragraph. The provisions of this paragraph shall survive termination of this Contract.

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

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

78. ENVIRONMENTAL LAW

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

- (a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation and transportation of Hazardous Materials;
- (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (c) Releases of Hazardous Materials;
- (d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- (e) The operation and closure of underground storage tanks;

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

Community Right-To-Know Act), and Chapter 507 (the Texas Non-manufacturing Facilities Community Right-To-Know Act);

(20) The Texas Natural Resources Code, including Chapter 40 (the Texas Oil Spill Prevention and Response Act of 1991);

(21) The Texas Water Code;

(22) The Texas Parks and Wildlife Code;

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

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

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

79. 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 may arise.

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

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

80. 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 CapMetro 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, CapMetro 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 CapMetro 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 CapMetro 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 CapMetro has paid any invoices or charges not authorized under this Contract, CapMetro may offset or recoup such amounts against any indebtedness owed by it to the Contractor, whether arising under this Contract or otherwise, over a period of time equivalent to the time period over which such invoices or charges accrued.

This provisions of this paragraph shall survive termination or expiration of the Contract.

81. 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 CapMetro to violate any such Anti-Corruption and Bribery Laws. The Contractor further represents and warrants that, in connection with supplies or services provided to CapMetro or with any other business transaction involving the CapMetro, 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, CapMetro 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 CapMetro to violate the Applicable Anti-Corruption and Bribery Laws. CapMetro shall not be liable to the Contractor for any claim, losses, or damages related to its decision to exercise its rights under this provision.

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

(d) 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.

(e) 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.

(f) 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.

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

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

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

(j) 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.

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

(l) 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.

(m) 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.

(n) 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.

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

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

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

83. DRUG AND ALCOHOL TESTING PROGRAM

(a) CapMetro 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 CapMetro to inspect the facilities and records associated with the implementation and operation of the drug and alcohol testing program as required under 49 C.F.R. Part 219, including the review of the testing process.

(b) **Prior to the performance of any work under the Contract by any Part 219 employees on or after June 12, 2017,** the Contractor shall furnish CapMetro, and cause each subcontractor that provides part 219 employees to perform work under the Contract to furnish CapMetro, 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 CapMetro.
- (8) Management Information System Report (MIS) each six (6) months.

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

(c) Upon notice to the Contractor, 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 CapMetro may suspend the Contractor's performance under this Contract and/or pursue default remedies under this Contract. CapMetro 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 Contractor shall not incur any costs until a subsequent Contract Modification is fully executed.

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

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

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

84. 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.

85. 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.

86. 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 CapMetro's Board of Directors.

87. APPROVED SAFETY VESTS AND PPE

The Contractor and each of the Contractor's employees, as well as each Subcontractor and any workers working on behalf of Subcontractor, shall wear ANSI Class 2 or 3 high-visibility safety vests at all times when on CapMetro's premises including but not limited to bus maintenance and operations facilities, rail maintenance and operations facilities, on or near a roadway exposed to vehicular traffic or while on or near rail right-of-way, construction sites, operations and maintenance facilities. Furthermore, within designated project areas such as construction sites and rail right-of-way, additional personal protective equipment (PPE) must be worn, including but not limited to ANSI Class 2 or 3 high-visibility safety vests, hard hats, safety glasses, and any other PPE deemed necessary based on the specific tasks or hazards present. Failure to comply with this requirement shall result in removal from the premises and may result in termination of the Contract.

EXHIBIT F SCOPE OF WORK

IDIQ RAILROAD CONSTRUCTION AND REHABILITATION SERVICES

1) **BACKGROUND**

(a) Capital Metropolitan Transportation Authority ("Capital Metro", "CapMetro", "CMTA", or "the Authority") is a public agency responsible for providing mass transit service within the City of Austin and the surrounding communities of Leander, Lago Vista, Jonestown, Manor, San Leanna, and Point Venture, as well as the unincorporated area of Travis County within Commissioner Precinct 2 and the Anderson Mill area of Williamson County. CapMetro services include bus, ride-share programs, and special transit services for the mobility impaired.

(b) For the past 40 years, CapMetro has been a leader in providing mobility solutions for the citizens of Austin and Central Texas. CapMetro offers a commuter rail service in its Northwest Corridor from Leander to downtown Austin. As one of the fastest-growing regions in the United States, sustainable mobility solutions are paramount.

(c) Additional capacity on the existing freight and passenger lines will optimize the system to better meet a growing demand for services in the corridor. The rail components of the project reduce the need for temporal separation on the Red Line, opening significant capacity for freight movement through the corridor, as well as a needed increase in passenger service.

(d) CapMetro operates and maintains Diesel Multiple Units ("DMUs") for commuter rail service, Metrorail, from Leander to downtown Austin under a centralized train control signal system dispatched from the North Operations and Maintenance facility. Metrorail utilizes the same track as the freight rail service. A third-party vendor operates and maintains the Metrorail system in the central subdivision.

(e) CapMetro requires a solicitation package for IDIQ contracts on work related to the railroad and its associated components for new and improvement works.

(f) CapMetro operates and maintains red line railroad commuter service that runs approximately from Leander, TX to Austin Downtown, TX.

(g) ***There is no requirement for professional engineering services associated with this Contract.***

2) **GENERAL SCOPE**

CapMetro is seeking a qualified contractor for the project described below:

Scope of work will include the entire freight corridor that includes West Subdivision, Central Subdivision and East Subdivision (Giddings, Milepost 0 to Marble Falls, Milepost 127). The portion of the Central Subdivision, also known as CapMetro's Red Line corridor, carries daily passenger service from Leander to downtown Austin, Texas. The main scope of the construction includes but is not limited to demolition of existing tracks to repair and replace, install new track/special tracks and its components, including turnouts and Switches, Wayside Signalization and PTC modifications, demolish/rehabilitate/replace/install Bridges made of timber, steel or concrete, concrete culverts, cross-drainage works, railroad crossings with concrete panels and Ballast undercutting as per detailed construction documents.

It is assumed that absolute track outages for construction or heavy maintenance activities are restricted to 10:00 PM Friday to 4:00 AM Monday ("Scheduled Outage"). There is the potential for a new Saturday service from 8:00 AM to 10:00 PM that is not included as part of the track outage assumption. The construction phasing for each work scope can be completed within this work window. As such, all construction involving removal of track from service to placement back into service must occur within the Scheduled Outage. Incidental construction work and cleanup 25 feet or more from near rail can occur at any time (construction fence required) provided it does not require equipment that would impact the foul zone (25 feet from center of track). Partial outages not interfering with the in-service track can be accommodated with a Roadway Worker-in-Charge (RWIC) provided by CapMetro. There may be some longer outages required based on the scope of the task that may be accommodated based on merit.

Construction scheduling and phasing can potentially occur at one location within the same outage and as approved by CapMetro.

The work scope items include but are not limited to:

- (a) Demolish Existing track, track components, timber bridges, signaling systems and Stockpile at designated CapMetro Yards.
- (b) Provide and install new track and its components including but not limited to Rail (#136, #115), timber ties, tie plates, joint bars, anchors, rail fasteners and ballast.
- (c) Provide and install new turnouts and switch points along with the stands for regular and special tracks.
- (d) Bring track sections to FRA class IV standards in the central subdivision and class II standards in west and east subdivisions.
- (e) All new rails joints shall be welded within 60 days of creation.
- (f) Ballast undercutting, tamping, ballast walls and regulating as well as cleaning up the job site at the end of construction.
- (g) Dirt and Drainage work includes material supply for sub ballast installation (new/improvement) as per CapMetro or approved equivalent railroad standards.
- (h) Provide and install railroad crossings with concrete panels.
- (i) Rehabilitate and Reconstruct track sections to existing FRA class standards.
- (j) Rehabilitate or replace old bridges and construct new timber bridges, concrete or steel bridges, concrete culverts and other cross-drainage works, concrete pipes, PVC pipes, steel pipes, corrugated metal pipes with headwalls.
- (k) Install/remove , grade crossing equipment and warning devices.
- (l) Write/Modify wayside application programs and complete commissioning and required testing.
- (m) Install/Remove Wayside signal equipment and modify necessary PTC Control Lines.
- (n) PTC Modifications, if needed.
- (o) Install/Commission Fiber optic cable and Vital/Non-Vital network connections.
- (p) Communications, onboard systems, Backoffice systems, CCTV& security systems, training on new systems, underground and above ground utilities.

3) CAPMETRO RESPONSIBILITIES

- (a) CapMetro will:
 - (1) Designate a project manager as the primary point of contact to provide:
 - (i) Project oversight.
 - (ii) High-level guidance.
 - (iii) Project decision-making as necessary.
 - (2) Allow the Contractor access to the:
 - (i) Project Site.
 - (ii) CapMetro's Cedar Park Yard, or other storage location instructed by CapMetro.

- (iii) CapMetro staff members assigned to the project.
- (3) Provide construction observation to monitor quality of work in addition to the contractor inspector.
- (4) Track R.O.W/Flagging/RWIC.
- (5) Provide timely reviews and approvals for material submittals.
- (6) When workers or their equipment work within, or have the potential of working within, the foul zone (25' from center of track), the Contractor is required to have an Employee in Charge ("EIC"). CapMetro shall provide two (2) EIC's, at 30 hours each, for track safety, during the track outage period at CapMetro's cost.

4) CONTRACTOR RESPONSIBILITIES

The Contractor's responsibilities are as follows:

- (a) Execute all Work for this Contract in accordance with the contract requirements and the construction documents.
- (b) Supply all materials with regards to work scope including but not limited to rail, ties, tie plates, clips, tie plugs, spikes, anchors, ballast, and welding kits.
- (c) All material including but not limited to rail, ties, tie plates, clips, tie plugs, spikes, anchors, ballast supplied by contractor to complete the defined or agreed work scope shall be new with no exceptions unless otherwise specified.
- (d) All new rail and its associated components will be #136 rails. This includes the replacement/rehabilitation and new tracks.
- (e) All rail associated components shall be new and meet AREMA class I specs.
- (f) Transition rails shall be used to bridge between existing #115 to new #136 rails. No compromise bars are allowed unless otherwise agreed or approved by CapMetro.
- (g) All new joints are to be welded unless otherwise specified.
- (h) All field welds shall be as per CapMetro's specifications.
- (i) Work will include installing rail material, installing ballast, ballast walls, tamping and other works shown in the work scope drawings. The rail work is to be regulated to current UPRR/BSNF railroad standards and CapMetro standards.
- (j) All existing ballast shall be replaced with new ballast that confirms with CapMetro's or CapMetro approved standards. All new ballast shall be replaced to required elevations of existing track or those elevations specified on the approved for construction drawings/documents.
- (k) The contractor shall supply all material to build and install switch components including but not limited to turnouts, switch points, switch stands, rail tracks, crossties, etc.
- (l) All new turnouts shall be SMSG, complete with all fasteners and components fully assembled with FROG and ready to install.
- (m) All switch points shall have Samson switch points and components with self-guarded FROG and FM point protectors fully assembled and installed with all components.
- (n) All new concrete panels shall be minimum 10'-0" wide w/ provision for up to 3" conduits.
- (o) Assess the existing bridge condition by a competent professional. Demolish/Rehabilitate exiting timber bridges as proposed by the assessment reports.
- (p) Install new timber bridges, bridge walkways and concrete culverts.
- (q) Repair/Reinstall existing sub ballast. Install new sub ballast as per CapMetro provided specifications. All materials by the contractor.
- (r) The Contractor shall identify, procure and build permanent or temporary material staging areas/laydown yards with all required safety norms and applicable standard practices as required by the work scope. CapMetro will not be responsible for any issues or costs associated with or arising from contractor-built laydown yards or material staging

areas.

- (s) Proper disposal of all demolished and unused/scrap materials, including but not limited to rail, rail components, timber, ballast, etc. as per existing procedures of CapMetro, RCRA and any governing authorities shall be the contractor's responsibility. The contractor shall fully be aware of CapMetro's existing protocols and standard procedures for hauling materials off site.
- (t) Arrange for the securing of any and all necessary permits and fees.
- (u) Minimize disturbance and hazards to pedestrians as well as automobile traffic. The contractor shall not unreasonably encumber the construction site with materials or equipment. The contractor shall be responsible for the protection of the construction site. No materials or equipment may be stored on the tracks.
- (v) Provide adequate temporary sanitary facilities.
- (w) Comply with CapMetro Permitting and Track Access Rules. The requirements are available at <http://www.capmetro.org/RailROW>.
- (x) Strictly follow the construction notes provided in the Plans, Specifications, and Estimates ("PS&E").
- (y) Coordinate all work with CapMetro.
- (z) Supply and transport track material to the job site. All material shall be subject to approval of CapMetro.
- (aa) Provide a project schedule and work plan, including track outages, estimated start and finish dates, material delivery dates, intermediate dates of milestones.
- (bb) Coordinate with CapMetro and its contractors to promptly resolve issues through effective communication and collaboration.
- (cc) Supply the necessary supervision and labor to execute the work properly and in such numbers as may be required by the project manager, and at the request of the project manager will remove any supervisor or worker not satisfactory to CapMetro.
- (dd) Follow the CapMetro Configuration Management Plan.
- (ee) Work during predetermined work windows based on time required and train schedule.
- (ff) Include provisions for liquidated damages that occur in direct or indirect relation of work scope including but not limited to providing temporary TCP for alternate routes, arrange for approved method of transportation etc. until the work scope is completed.

5) **REQUIREMENTS**

The Contractor shall:

- (a) Provide construction services as required. Contractor should be able to self perform at least 30% of these services.
- (b) Provide qualified railroad maintenance workers that are proficient in:
 - (1) FRA Part 213 Track Safety Standards, or CapMetro Engineering Design standards, whichever is stricter.
 - (2) American Railway Engineering and Maintenance Right-of-Way Association ("AREMA");
 - (3) FRA Part 214 Roadway Worker Requirements,
 - (4) Identifying deficiencies, and including but not limited to: defective welds, head and web separation, and broken base, and
 - (5) Performing remedial work to correct deficiencies.
 - (6) Provide an organization chart and qualifications of all contractor's employees and crew that will be working on CapMetro's jobs. The contractor shall update and notify CapMetro of any changes in their organization chart in a timely fashion.
- (c) Provide all equipment and labor and materials.

- (d) Adhere to the CapMetro Configuration Management Plan (Vol. II).
- (e) Adhere to the CapMetro Software Configuration Plan (Vol. II).
- (f) Adhere to the CapMetro Contractor Interface with Rail Operations (Vol. II).
- (g) Adhere to the CapMetro Contractor Safety Programs (Vol. II).
- (h) Comply with all applicable requirements of, and allow site access to, representatives of any authority having jurisdiction over the project.
- (i) Obtain any required "Rail ROW Permits" and "Roadway Worker Protection Certifications" for equipment operators, workers or subcontractors working within the 25'- 0" of the railroad centerline of track (foul zone).
- (j) The Contractor shall be responsible for the safety of its equipment operators, workers and subcontractors in the Project Site.
- (k) The Contractor shall be responsible for the security of all persons, equipment and materials on the Project Site.
- (l) The Contractor shall be responsible for the protection of the Project Site.
- (m) All workers, on CapMetro's Railroad Right-of-Way (within 25 feet of the rail line), are required to complete Roadway Worker Protection and Certificate Safety training class, currently provided by Herzog Transportation Services, prior to beginning any work on the project. Call Herzog at 512-852-7227 for further information. The requirements are available at <http://www.capmetro.org/RailROW>.
- (n) When workers or their equipment are working within or have the potential of working within the foul zone (25' from center of operating tracks), the Contractor is required to have an Employee in Charge ("EIC").
- (o) Construction windows will need to be coordinated with CapMetro and its relevant contractors. Schedule will need to be developed well in advance of construction.
- (p) Return the track to service at the end of each day. Track shall always remain in service unless specifically approved by CapMetro.
- (q) Remove and dispose of all old ties and construction debris at the conclusion of the work.
- (r) All material shall comply with the Buy America Standards.
- (s) Salvage signal equipment at either the Cedar Park Yard or Abbott Yard as directed by the CapMetro Project Manager.
- (t) Contractor to salvage and stockpile some of the demolished material as per Instructions from CapMetro's authorized personnel at CapMetro's Yard. The materials to be salvaged or hauled off by contractor include but are not limited to:
 - (1) All demolished rail material (including but not limited to rail tracks, crossties, tie plates, joint bars, turnouts, switchpoints, ballast and sub ballast etc.) that are not reused or reinstalled but are in good condition.
 - (2) Grade crossing gates.
 - (3) Grade crossing houses and signal houses.
 - (4) Concrete grade crossing panels.
 - (5) Bridge components.

6) **DELIVERABLES**

Deliverables required for the performance of the Contract include but are not limited to:

- (a) Submittals to be provided within one week of a fully executed Notice to Proceed:
 - (1) Project Schedule
 - (2) Phased Project Work Plan

- (3) Project Organization Chart
 - (4) Supervisors Qualifications
 - (5) Schedule of Submittals
 - (6) Safety Plan
 - (7) Quality Control/Assurance Plan
 - (8) Safety Representative
- (b) Product Data and Shop Drawings - provided a minimum of one (1) month before construction.
- (c) Material and equipment to be used: Pre-cast Concrete Box Culverts, Flexible Base, Ballast, Concrete and other materials required per construction documents.
- (d) Product Certifications and Reports: provided a minimum of one (1) month before beginning construction. This period shall occur parallel with Product Data & Shop Drawings.
- (1) Calibration Records of Equipment
 - (2) Laboratory Tests of Products
- (e) Product Certifications and Reports Provided within two weeks of substantial completion:
- (1) Rail welding logs
 - (2) Rail de-stressing logs
- (f) On-Going Progress Submittals - Provided Weekly and/or Monthly:
- (1) Project Progress Reports
 - (2) Meeting Minutes
 - (3) BIM models, Software models of the design and construction drawings @ all phases of submittals.
 - (4) Schedule Updates
 - (5) Certified Payroll - Provided Monthly
 - (6) Applications for Payment
- (g) Close Out Documents:
- (1) Within one week of Completion
 - (2) Notice of Substantial Completion
- (h) Within one month of Substantial Completion:
- (1) Certification of Completion of Punch List
 - (2) Release of Liens
 - (3) Consent of Surety for Final Payment
 - (4) General Release of Claim
 - (5) As-Built Drawings, BIM models, Software models of the design and construction drawings.
 - (6) Contractors Certificate of Completion
 - (7) Final Invoice

GENERAL INFORMATION REGARDING TRAINS / SCHEDULES

Trains/Schedule: Commuter (Herzog), Freight (Watco) and Austin Steam Train Association (ASTA)

Commuter: Monday – Friday 4:50 a.m. - 9:00 p.m.

Friday As of January 6, 2021, Friday Late Night Hours from 4:50 a.m. - 2:50 a.m. Sat

Saturday Check with CapMetro Rail Ops for the latest updates.

Sunday Special Events Only

Note: Commuter service does not run between Lakeline (MP 77) and Leander (MP 87.02) between 10:02 a.m. and 2:05 p.m. on weekdays and does not operate from Lakeline to Leander on Saturdays. Check with CapMetro Rail Ops for the latest updates.

Freight: Typically one round trip per day after commuter service ends. Schedule will need to be carefully coordinated with Watco.

ASTA: Weekdays Special Events Only

(between mileposts 81.5 - 114): One round trip on Saturday in the morning and occasionally one round trip on Sunday.

The Construction Contractor will be provided with work windows during the weekends starting at 2:00 a.m. on Saturday through 4:00 a.m. the following Monday. MOW/construction windows are coordinated throughout the week and on weekends around the above operations.

Contractors and Schedules are subject to change. Check with CapMetro Rail Ops for the latest updates.

EXHIBIT G

WAGE RATES

Part I – No Federal Funds Used for Project

1. APPRENTICES

(a) Locally Funded Projects: Apprentices will be permitted to work as such when they are listed on a payroll as an apprentice. Apprentices are to be paid a minimum of 60 percent of journeymen wages indicated. At no time shall a journeyman supervise more than one (1) apprentice.

(b) Employees who are not under the apprentice program shall be paid the minimum wage rate provided in contract per individual classification or for Work actually performed.

2. COMPLAINTS AND PENALTIES

A public body awarding a contract, and an agent or officer of the public body, shall, take cognizance of complaints of all violations of Chapter 2258 Texas Government Code Title 10 committed in the execution of the contract; and withhold money forfeited or required to be withheld under this chapter from the payments to the contractor under the contract. A contractor or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body shall use any money collected under this section to offset the costs incurred in the administration - of this chapter.

Part II – Federal Funds Used for Part of Project

3. PAYMENT

(a) Employee Certification: Contractor, Subcontractor, and Sub-subcontractor shall identify in writing, the classification agreed to by all laborers and mechanics employed by them in the execution of the Contract, and pay not less than rates specified in the attached U.S. Department of Labor Wage Determination(s). If work performed by worker is different than the classification agreed upon, the worker shall be paid no less than the minimum wage for work performed.

(b) Classification Definitions

Under the Davis-Bacon Act (DBA), there are not standard classification definitions. Rather, the classification description is that used by firms whose wage rates were found to be prevailing in the area and incorporated in the applicable wage determination. Although the Dictionary of Occupational Titles, previously published by the Employment and Training Administration, may be used as a reference, it should not be relied on for making employee classification determinations. It is incumbent on the Contractor to reach an agreement with laborers and mechanics as to their proper classification and to submit that agreement to the Contracting Officer for the officer's agreement; if the Contractor and laborers/mechanics are unable to reach agreement as to the proper classification, the Contractor must contact CapMetro.

(c) Minimum Wages: Contractor shall ensure that workers on the Project are paid not less than the prevailing wage rates, which includes fringe benefits, for the applicable type of construction (*i.e.*, Building, Highway, or Heavy). Contractor shall ensure that the wage rates are paid to workers performing at the site of the work, as defined by 29 CFR 5.2. If the Contractor, a Subcontractor, or a Sub-subcontractor will have any class of laborers or mechanics, including helpers, which is not listed in the attached Wage Determination(s) and that will be employed under the Contract, the Contractor and CapMetro shall comply with the conformance procedures set forth in 29 CFR 5.5.

(d) Contractor shall ensure that all laborers and mechanics, as defined by 29 CFR 5.2, performing Work for this Project are paid unconditionally, at least once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the U.S. Secretary of Labor under the

Copeland Act, Title 29 CFR, Part 3), the full amounts accrued at time of payment, computed at rates not less than the wage rates bound herein pertaining to type of Work being performed, regardless of the type of contractual relationship that may exist (or is alleged to exist) between the Contractor (or subcontractor) and laborer or mechanic. When Work is of such a nature that wage determinations for more than one type of construction are incorporated into the Contract, the Contractor shall ensure that each laborer and mechanic performing under the Contract is paid the wage rates from the applicable wage determination that CapMetro designated for the specific work performed by the mechanic or laborer. Contractor shall post wage determinations and any additional classifications and wage rates conformed through the applicable process and the Davis-Bacon poster at the site of the Work in a prominent, easily accessible place where they can easily be seen by all workers.

(e) **Overtime Requirements:** No Contractor, Subcontractor, or Sub-subcontractor contracting for any part of contract Work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he or she is employed on such Work, to work in excess of forty hours such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours in excess of forty hours in such workweek.

4. APPRENTICES

Contractor may permit Apprentices, as defined in 29 CFR 5.2, to be paid less than the predetermined rate for work they perform under the Contract only if the Apprentice employed pursuant and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by OA. Contractor shall ensure that Apprentices receive fringe benefits in accordance with the provisions of the applicable apprenticeship program or, if not specified in the program, with the wage determination for the applicable classification; if the Department of Labor has determined that a different practice prevails for the applicable apprentice classification, however, Contractor shall ensure that the Apprentice's fringe benefits are in accordance with that determination. The allowable ratio of Apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to Contractor as to Contractor's entire work force under the registered program or the ratio applicable to the locality pursuant to 29 CFR 5.5(a)(4)(i)(D). Contractor shall ensure that any employee listed on a payroll at an Apprentice wage rate, who is not registered as above, is paid the wage rate provided in the Contract for Work the employee actually performed. Additionally, Contractor shall ensure that any Apprentice performing work on the job site in excess of the ratio permitted under the regulations must be paid not less than the applicable wage rate on the wage determination for the work actually performed. Contractor, Subcontractor, or Sub-subcontractor shall furnish to CapMetro written evidence of registration of the program for Apprentices as well as of the appropriate ratios and wage rates, for the area of construction prior to using any Apprentice on this Contract.

5. WITHHOLDING OF PAYMENTS

(a) The term "prime contractor" as used in this Section 3 is defined in 29 CFR 5.2.

(b) CapMetro may, upon its own action, or must, upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from Contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in 29 CFR 5.5(a) for violation of this Contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor. The necessary funds may be withheld from the Contractor under this Contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the Contract, or upon the Contractor's failure to submit the required records as discussed in 29 CFR 5.5 paragraph (a)(3)(iv), the Federal Government may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

6. RECORDS AND CERTIFIED PAYROLLS

- (a) Contractor shall keep records required by 29 CFR 5.5(a)(3), including:
- (1) The specified employee information,
 - (2) The records relating to fringe benefits,
 - (3) The records relating to apprenticeship,
 - (4) Certified payrolls, which must be provided to CapMetro on a weekly basis using CapMetro's Certified Payroll Reporting software. In the event that CapMetro's Certified Payroll Reporting software is inaccessible at the time the weekly Certified Payrolls are ready to be submitted to CapMetro, the Contractor shall submit the Certified Payrolls directly to CapMetro's Contracts Administrator, and
 - (5) Contracts, subcontracts, and related documents.
- (b) Contractor shall make the records required by 29 CFR 5.5(a)(3)(i) through (iii), including records maintained by Subcontractors and Sub-subcontractors, and any other documents that CapMetro or the U.S. Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by 29 CFR 5.1, available for inspection, copying, or transcription by authorized representatives of CapMetro or the U.S. Department of Labor, and must permit such representatives to interview workers during working hours on the job. Contractor shall ensure that payrolls and other records required by 29 CFR 5.5 are maintained during term of Contract and preserved for a period of three (3) years after all the work on the Contract is completed for all laborers and mechanics (including guards and watchpersons), working on the Contract.
- (c) In addition to the actions that the U.S. Department of Labor may take or require if Contractor retaliates against any worker or job applicant in accordance with 29 CFR 5.5(a)(11) or 5.5 (b)(5), in instances where the retaliation has been confirmed, CapMetro will apply a rebuttable presumption that the Contractor is not a responsible entity for at least six months; the presumed non-responsibility may be shortened or extended based on the applicable facts.

7. DESIGNATION OF SPECIFIC WORK TO INCORPORATED WAGE DETERMINATIONS

- (a) Heavy Construction Wage Rates shall be used for the following work:
RFP 807701 IDIQ Railroad Construction and Rehabilitation Services

8. WAGE RATES

The Labor Rates applicable to this project are in General Decision Number TX20260007 01/02/2026, which follow

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

"General Decision Number: TX20260007 01/02/2026

Superseded General Decision Number: TX20250007

State: Texas

Construction Type: Heavy

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClennon and Williamson Counties) Construction Projects

Modification Number	Publication Date
0	01/02/2026

SUTX2011-006 08/03/2011

	Rates	Fringes
CEMENT MASON/CONCRETE		
FINISHER (Paving and Structures).....	\$ 12.56	
ELECTRICIAN.....	\$ 26.35	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	\$ 12.94	
Structures.....	\$ 12.87	
LABORER		
Asphalt Raker.....	\$ 12.12	
Flagger.....	\$ 9.45	
Laborer, Common.....	\$ 10.50	
Laborer, Utility.....	\$ 12.27	
Pipelayer.....	\$ 12.79	
Work Zone Barricade		
Servicer.....	\$ 11.85	
PAINTER (Structures).....	\$ 18.34	
POWER EQUIPMENT OPERATOR:		
Agricultural Tractor.....	\$ 12.69	
Asphalt Distributor.....	\$ 15.55	
Asphalt Paving Machine.....	\$ 14.36	
Boom Truck.....	\$ 18.36	
Broom or Sweeper.....	\$ 11.04	
Concrete Pavement		
Finishing Machine.....	\$ 15.48	
Crane, Hydraulic 80 tons		
or less.....	\$ 18.36	
Crane, Lattice Boom 80		
tons or less.....	\$ 15.87	
Crane, Lattice Boom over		
80 tons.....	\$ 19.38	
Crawler Tractor.....	\$ 15.67	

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

Directional Drilling
Locator.....\$ 11.67
Directional Drilling
Operator.....\$ 17.24
Excavator 50,000 lbs or
Less.....\$ 12.88
Excavator over 50,000 lbs...\$ 17.71
Foundation Drill, Truck
Mounted.....\$ 16.93
Front End Loader, 3 CY or
Less.....\$ 13.04
Front End Loader, Over 3 CY.\$ 13.21
Loader/Backhoe.....\$ 14.12
Mechanic.....\$ 17.10
Milling Machine.....\$ 14.18
Motor Grader, Fine Grade....\$ 18.51
Motor Grader, Rough.....\$ 14.63
Pavement Marking Machine...\$ 19.17
Reclaimer/Pulverizer.....\$ 12.88
Roller, Asphalt.....\$ 12.78
Roller, Other.....\$ 10.50
Scraper.....\$ 12.27
Spreader Box.....\$ 14.04
Trenching Machine, Heavy....\$ 18.48

Servicer.....\$ 14.51

Steel Worker

Reinforcing.....\$ 14.00
Structural.....\$ 19.29

TRAFFIC SIGNALIZATION:

Traffic Signal Installation
Traffic Signal/Light Pole
Worker.....\$ 16.00

TRUCK DRIVER

Lowboy-Float.....\$ 15.66
Off Road Hauler.....\$ 11.88
Single Axle.....\$ 11.79
Single or Tandem Axle Dump
Truck.....\$ 11.68
Tandem Axle Tractor w/Semi
Trailer.....\$ 12.81

WELDER.....\$ 15.97

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave
for Federal Contractors applies to all contracts subject to the
Davis-Bacon Act for which the contract is awarded (and any
solicitation was issued) on or after January 1, 2017. If this
contract is covered by the EO, the contractor must provide
employees with 1 hour of paid sick leave for every 30 hours
they work, up to 56 hours of paid sick leave each year.
Employees must be permitted to use paid sick leave for their
own illness, injury or other health-related needs, including
preventive care; to assist a family member (or person who is
like family to the employee) who is ill, injured, or has other
health-related needs, including preventive care; or for reasons
resulting from, or to assist a family member (or person who is

like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than "SU", "UAVG", "SA?", or "SC?" denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio.

The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The "SU" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The "SA" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION

"

EXHIBIT I – AUTHORIZATION OF WORK PRODUCT

DESCRIPTION: IDIO Railroad Construction and Rehabilitation Services

CONTRACT NO.: 500323

Authority's Contracting Officer (CO)

A. The CO for administration of this Contract is Jeffery Yeomans

B. Phone: 512-369-7727

C. Email: jeffery.yeomans@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 Surya Dhanekula

B. Phone: 512-945-6344

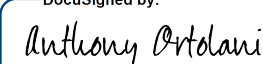
C. Email: surya.dhanekula@capmetro.org

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

DocuSigned by:

1587B142E149430...

Contractor

6/12/2026

Date

E-SIGNED by Surya Dhanekula
on 2026-06-30 15:05:27 CDT

CapMetro's Project Manager (PM)

June 30, 2026

Date

E-SIGNED by Jeffery Yeomans
on 2026-06-30 13:03:08 CDT

CapMetro's Contracting Officer (CO)

June 30, 2026

Date