

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN
THE CITY OF AUSTIN AND CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
(TRANSIT SPEED AND RELIABILITY PROJECT)**

This Interlocal Cooperation Agreement is made and entered into by and between the City of Austin, Texas, a Texas home-rule City and municipal corporation (the "City") and Capital Metropolitan Transportation Authority ("Capital Metro"), a political subdivision of the State of Texas organized under Chapter 451 of the Texas Transportation Code (individually referred to as a "Party", and collectively referred to as the "Parties"), upon the premises and for the consideration stated herein.

WHEREAS, the City and Capital Metro desire to cooperatively develop and construct a multi-modal transportation system that serves all users; and

WHEREAS, the City of Austin will (i) design, manage, construct, and maintain a group of subprojects that include but will not be limited to; sidewalk construction, accessibility improvements, bus stops, markings, signage, signals, pedestrian safety improvements, other traffic devices and improvements within the City right-of-way that will improve transit speed and reliability and safe access for Capital Metro customers, (ii) perform certain design services, and (iii) develop a model of downtown multi-modal traffic (collectively, the Project"). An initial list of subprojects is set forth in Appendix A; and

WHEREAS, Capital Metro will reimburse the City of Austin for certain costs as detailed in Appendix A; and

WHEREAS, the Parties intend to conform to this Agreement in all respects with the Interlocal Cooperation Act, Texas. Government Code Section 791.001, et seq.;

NOW, THEREFORE, the Parties agree as follows:

1. **Term and Termination.**

- a. This Agreement shall commence on the Effective Date and terminate on September 30, 2020, with the option of up to three (3) additional 12-month renewal periods, upon the mutual written agreement of the Parties.
- b. Any Party can elect to withdraw from the Agreement by providing the other Party at least sixty (60) days' written notice.

2. **Project Management.**

- a. The City will provide the project management services for the development and construction of the subprojects, as set forth herein.
- b. The Deputy Chief Executive Officer/Chief Operation Officer (the "Deputy CEO/COO") of Capital Metro will act on behalf of Capital Metro with respect to the Project, coordinate with the City, receive and transmit information and instructions, and will have complete

authority to interpret and define Capital Metro's policies and decisions with respect to the Project. Capital Metro may designate a Capital Metro Project Manager and may designate other representatives to act on behalf of Capital Metro with respect to the Project.

- c. The City's Austin Transportation Department Director (the "City's Director") will act on behalf of the City with respect to the Project, coordinate with Capital Metro, receive and transmit information and instructions, and will have complete authority to interpret and define the City's policies and decisions with respect to the Project. The City's Director may designate a City Project Manager and may designate other representatives to act on behalf of the City with respect to the Project.
- d. If a disagreement between the Parties arises hereunder and the disagreement is not resolved by the Parties' Project Managers, it shall be referred as soon as possible to Capital Metro's Vice President of Capital Projects and the City's Director for resolution. If the Directors do not resolve the issue, it shall be referred as soon as possible to the Assistant City Manager responsible for Transportation and Capital Metro's Deputy CEO/COO for resolution.

3. **Project Development.**

- a. The City will be responsible for the management of the development and construction of multiple "subprojects," including (i) engineering design, plans and specifications, accessibility improvements, markings, signage, signals, and other traffic devices or improvements within the City right-of-way, (ii) surveying, (iii) construction, (iv) inspection, testing, and any required permitting and environmental assessments and clearances associated with the Project, and (vi) acceptance of the completed work (the "Work") on the City portion.
- b. The plans and specifications for each subproject shall be in accordance with the design and construction standards applicable under Title 30, Austin City Code (Austin/Travis County Subdivision Regulations), unless otherwise agreed by the Parties.
- c. The City may select and contract for professional services with the most highly qualified engineering consultant in accordance with the requirements of Chapter 2254 of the Texas Government Code, using City procurement procedures. In the alternative, the Parties agree that the City may use an existing rotation list contract or in-house engineers to fulfill the engineering requirements on the subprojects. The cost of engineering will be included in the costs described below in Paragraph 9(b).
- d. The City and to the extent set forth herein, Capital Metro will be responsible for the review and approval of the engineering design, plans, specifications, construction inspection, and testing for the subprojects. In addition, the City and, to the extent set forth herein, Capital Metro will be responsible for the review and approval of any modifications to the engineering design, plans, and specifications of the subprojects, during the development and construction of the subprojects.
- e. Applicable City permit requirements and associated fees will be required for the subprojects. The Capital Metro Project Manager shall coordinate Capital Metro's review of

any permit application concurrently with the City's review and approval of engineering design, plans, and specifications for the subprojects.

- f. The Parties will participate in joint review meetings with representatives from all affected City and Capital Metro Departments to avoid and resolve conflicts in review comments. The Parties will provide a designated review team to expedite the review process for their respective portions of the Project.
 - g. If applicable, the City shall require the consultant to take any appropriate remedial action to correct any deficiencies with the Project design identified by Capital Metro.
4. **Project Bidding & Award of Construction Contract.** The City will be responsible for overseeing the solicitation of bids for the construction of the subprojects based on the approved plans and specifications if applicable. Bids shall be solicited by means of a competitive process and in accordance with the City's MBE/WBE policy or, as applicable, DBE policy and procedures. Prior to bids being solicited, the Parties' Project Managers shall agree on a method of tracking construction costs. To the extent feasible, construction costs will be calculated based on unit prices and actual quantities of the work. The City will notify Capital Metro of the lowest responsible bid and the amount of the bid and Capital Metro shall respond within five (5) working days. Upon written agreement of Capital Metro, the City will approve a firm unit-price or lump sum contract for the construction of the subprojects with the successful bidder. The Parties agree that the City may use its existing indefinite delivery indefinite quantity sidewalk construction contract(s) (or equivalent) to complete the construction.
5. **Additional Management Duties of the City.** City hereby covenants and agrees to provide the following services and deliverables, unless otherwise agreed to by the Parties' respective Project Managers:
- a. One (1) electronic set of construction plans and specifications for the subprojects at intervals to be agreed to by the Parties' Project Managers and for review and approval by the Transit Speed and Reliability Working Group (a City and Capital Metro coordination meeting for improvement of transit speed and reliability).
 - b. Written responses to Capital Metro's initial plan review comments within fourteen (14) working days of receipt from Capital Metro;
 - c. Written notice to Capital Metro of the schedule for design, advertisement for bids (if applicable), award of contract, and construction of the subprojects;
 - d. Written notice to Capital Metro of the bid tabs for the subprojects;
 - e. Written copy to Capital Metro of all contracts affecting the subprojects, including information regarding compliance with the City's MBE/WBE policy;
 - f. A monthly itemized statement to Capital Metro of disbursements made and debts incurred during the preceding month relating to the Capital Metro portion of the subprojects, including copies of invoices, statements, vouchers, or any other evidence of payment of debt and accompanying information regarding compliance with the City's MBE/WBE policy;

- g. Executed change orders to Capital Metro, jointly approved by Capital Metro and the City, related to the Capital Metro portion of the subprojects;
- h. Sufficient notice, documentation and opportunity for Capital Metro to review and jointly approve the construction contractor's application for final payment with accompanying information regarding compliance with the City's MBE/WBE policy;
- i. A copy to the Capital Metro Project Manager of any change order request related to the Capital Metro portion of the subprojects within two (2) working days of the City receiving them from the Contractor;
- j. Copies of construction contractor pay requests and change order requests related to the Capital Metro portion of the subprojects within five (5) days of receiving the approved Pay Applications and Change Order documents from Capital Metro;
- k. Coordination of utility relocations for the subprojects and funding to pay the costs of utility relocations required for the subprojects and that are not legally the responsibility of the utility owner;
- l. Acceptance upon satisfactory completion of construction and any applicable warranty or construction performance period; and,
- m. A copy to Capital Metro of the record drawings of the subprojects for Capital Metro's records.

6. **Management Duties of Capital Metro**. Capital Metro hereby covenants and agrees to provide:

- a. Review and approval of submitted plans and specifications for Capital Metro's portion of the subprojects by providing any comments within fourteen (14) working days of submittal, and follow-up review and approval of the City's responses to those comments within seven (7) working days, and work in good faith to resolve any outstanding issues;
- b. Review of any applicable permit applications required by Capital Metro for and work in good faith to resolve any outstanding issues;
- c. Review of any change order proposal by returning the change order request to the City within seven (7) working days of its receipt by the Capital Metro Project Manager, with a written recommendation for its disposition;
- d. At the option and expense of Capital Metro, Capital Metro may perform any additional inspection and testing on the subprojects in coordination with the City's inspectors and as agreed to by the City and Capital Metro Project Managers. Any such additional testing shall be scheduled to avoid delaying the construction of the subprojects to the maximum extent practical. In connection, Capital Metro will designate inspectors to make any such inspections, including any joint final inspection of the subprojects; Capital Metro's inspectors shall communicate any issues to the City's inspectors only, and City's inspectors will in turn communicate those issues to the construction contractor;

- e. Reporting of any deficiencies observed in the construction of the subprojects immediately to the City's Project Manager with an additional written report within two (2) working days;
 - f. Reviews and joint approvals of the construction contractor's application for partial and final payments by completing, executing, and returning pay requests related to the Capital Metro portion of the subprojects within five (5) working days of receiving them from the City;
 - g. Attendance at meetings at the request of the City's Project Manager;
 - h. Design review comments on the Capital Metro portion of the subprojects to the City at appropriate agreed-to intervals of design complete stages within one week of receiving design documents from the City;
 - i. Cooperation with the City to obtain applicable permits and environmental clearances for the Capital Metro portion of the subprojects is required;
 - j. Approval of the construction of the subprojects upon satisfactory completion of construction; and,
 - k. Acceptance of the subprojects upon satisfactory completion of any applicable warranty or construction performance period.
7. **Bond and Guarantee.** All construction contracts affecting the subprojects shall include a payment and performance bond acceptable to and in favor of and benefiting the City and Capital Metro for the full amount of the contract and a warranty by the contractor executed in favor of and benefiting the City and Capital Metro for a period of one (1) year from the date of acceptance of the subprojects. The City and Capital Metro will be named as co-obligees on the bonds.
8. **Liability.** To the extent allowed by Texas law, the City and Capital Metro agree that each entity is responsible for its own proportionate share of any liability for its negligent acts or omissions. In addition, the design consultant and construction contractor shall be required to provide workers compensation insurance, auto liability and general liability insurance in the standard amounts required by the City. The City and Capital Metro will be included as additional insureds on the general liability and auto insurance policies and a waiver of subrogation will be provided on the auto liability, general liability and worker's compensation coverages.
9. **Financial Obligations.**
- a. Capital Metro shall provide funding for the costs of subprojects (the "Cost of the Work") for a total cost not to exceed amount of \$3,000,000.00 according to the fiscal year allocation as set forth in Appendix A. Any funds not spent in a fiscal year can be carried over to the next fiscal year. Therefore, project implementation may extend until Fiscal Year 2021. Payment of the Cost of the Work shall be made forty-five (45) days after the delivery of an acceptable invoice for the work to Capital Metro, unless otherwise agreed to by Capital Metro and the City in writing. Additional funding will require the approval of Capital Metro's Board of Directors and a written amendment to this Agreement.

- b. The City shall provide funding for the cost of the subprojects over those provided by Capital Metro, and shall bear the cost of the maintenance of the subprojects. Any additional funding will require the approval of the City Council and a written amendment of this Agreement.
- c. Funds will be expended in proportion to the work performed on the subprojects with the goal that all prioritized subprojects listed in Appendix A are substantially complete by June 2018. If the City is diligently prosecuting the completion of the work, the time for completion will be extended as reasonable and necessary. Subsequent subprojects identified by Capital Metro and the City will retain unique schedules to completion dependent upon their complexity of design and construction.
- d. The City shall obtain the written approval of Capital Metro for all change orders affecting the design and construction of the subprojects prior to the City issuing the approved change order to the contractor, such approval shall not be unreasonably withheld or delayed.
- e. The Capital Metro Project Manager shall meet with the City's Project Manager to review the contractor's progress reports and invoices for the Capital Metro portion of the subprojects before approval by the City.
- f. For any such change orders, which are the responsibility of Capital Metro, as described above, and which cause the actual costs of design and construction of specific elements of Capital Metro's portion of the subprojects to exceed Capital Metro's funding, Capital Metro shall make its funds available to the City within ninety (90) days of receipt of invoice by the City. Such invoice shall be accompanied by the change order request from the construction contractor, which has been recommended for approval by the City and Capital Metro's Project Manager.
- g. Capital Metro agrees to pay delay damages, Prompt Payment Act claims, and any other associated costs incurred by the City under its construction contract for the improvements because of the non-payment of any accepted change order for the construction of a portion of the improvements which is the sole responsibility of Capital Metro and which has not been paid within forty-five (45) days of the date of submittal by the City.
- h. The City shall promptly notify Capital Metro of any such claim for damages by the construction contractor for non-payment of any acceptable change order as described above and the City and Capital Metro shall negotiate with the construction contractor for the resolution of the claim. If a decision is made to litigate such a claim, Capital Metro shall be solely responsible for any or all costs recited above, and the costs of litigation, including, but not limited to, attorney's fees, court costs, depositions, experts, the amount of any damages contained in a judgment or settlement, interest, and the costs of appeal.
- i. The City shall provide Capital Metro with an accounting of subproject payments and will make its records available at reasonable times to Capital Metro's auditors.
- j. The City shall timely pay submitted invoices for the Project based on work completed in accordance with the approved plans and specifications.

10. **Default.** A Party shall be in default under the Agreement if it fails to fully, timely and faithfully perform any of its material obligations which are expressly stated in the Agreement. In the event of default, the non-defaulting party may pursue all available legal and equitable remedies, subject to the dispute procedure set forth in section 13.
11. **Federal Funding.** To the extent that federal funding is being provided for the subprojects, consistent with federal grant practice, the City will be considered a "sub recipient" for purposes of compliance with federal contracting requirements, including the provisions of U.S. Department of Transportation Federal Transit Administration Circular FTA C 4220.1F and any other applicable federal contracting requirements. If federal funding is provided, the City will comply with the provisions of Exhibit "B", which is attached hereto and made a part hereof, and will require compliance with the applicable provisions in all its contracts and subcontracts related to the subprojects. In addition, Capital Metro and the City will coordinate with any federal grant administrators to determine the requirements that must be included in the City's professional consultant agreements and construction contracts.
12. **Schedule of Completion and Subsequent Subproject Selection Process.** A major Capital Metro service change will occur in June 2018. The goal is that subprojects prioritized in Appendix A are substantially complete by June 2018. The remainder of the projects on the list, should be complete by the end of the Fiscal Year 2018. Subsequent Transit Speed and Reliability subprojects will be chosen and prioritized by Capital Metro staff with input and approval from City of Austin staff. Construction of subsequent subprojects will consider Capital Metro and City of Austin resources, changes in conditions and opportunities, overall improvements to multi-modal conditions, and applicable planning and policy documents. Bi-weekly review of the subproject list and coordination of implementation will occur during the Transit Speed and Reliability Working Group (a City and Capital Metro coordination meeting for improvement of transit speed and reliability). An annual list of subprojects to be constructed will be finalized in October of each year, after each Parties' budget has been passed.
13. **Dispute Resolution.**
 - a. Should any dispute arise between the Parties to this Agreement that cannot be resolved by Capital Metro's Deputy CEO/ COO and the Assistant City Manager, the Parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either Party may make a written request for a meeting between representatives of each Party within ten (10) days after receipt of the request or such later period as agreed by the Parties. Each Party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of such a meeting and any subsequent meeting with respect to such a dispute shall be to attempt in good faith to negotiate a resolution of the dispute. If, within twenty (20) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, the Parties will, upon written notice of one Party to the other Party, given within ten (10) days following the expiration of such twenty (20) day period (a "Request for Mediation"), proceed directly to non-binding mediation as described below.
 - b. If the efforts to resolve such dispute through negotiation fail within the period set forth in the foregoing section, or the City and Capital Metro each waive the negotiation process, the

Parties may select, within twenty (20) days after the date of the Request for Mediation or mutual waiver of negotiation, as applicable, a mediator trained in mediation skills to assist with resolution of the dispute. The Parties agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the Parties fail to agree on a mediator within twenty (20) days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The mediation shall take place in Austin, Texas. The Parties agree to participate in mediation in good faith for up to thirty (30) days from the date of the first mediation session. The Parties shall share the costs of the mediator equally. In the absence of a separate written agreement of the Parties to the contrary, the results of this mediation shall not be binding on either of the Parties.

14. **General Provisions.**

- a. **Current Revenues.** Each Party's monetary obligations are for the performance of governmental functions or services and are payable only from the current revenues appropriated and available for the performance of those functions or services.
- b. **Good Faith.** The Parties agree to work together at all times in good faith, meet regularly, and keep each other informed as to activities of the other Parties, and maintain at all times formal representatives to serve as points of contact for communications.
- c. **Alteration.** This Agreement may not be altered, amended, or modified except with written agreement from all of the Parties.
- d. **Cost for Preparation.** Each Party will be responsible for all costs and expenses associated with the preparation and adoption of this Agreement and future actions related thereto.
- e. **Amendments.** The City's City Manager and Capital Metro's President/CEO or their designee will have the authority to negotiate and execute amendments to this Agreement without further action by the Austin City Council and Capital Metro Board of Directors to the extent necessary to implement and further the clear intent of the respective governing bodies, but not in such a way as would constitute a substantive modification of the Agreement's terms and conditions or otherwise violate Chapter 791 of the Texas Government Code. Any amendments that would constitute a substantive modification to the Agreement must be approved by each Party's governing body.
- f. **Counterparts.** This Agreement may be executed in multiple counterparts which, taken together, will collectively constitute a single agreement. The City shall retain all counterparts and file them with the City Clerk of the City of Austin. In making proof of such Agreement, any Party may obtain certified copies of all counter parts from the City Clerk. It will not be necessary to provide original counterparts.
- g. **Texas Public Information Act.** It will be the responsibility of each Party to comply with provisions of Chapter 552, Texas Government Code, ("Texas Public Information Act") and the Attorney General Opinions issued under that statute. Neither Party is authorized to

receive requests or take any other action under the Texas Public Information Act on behalf of the other Party. Responses to requests for confidential information shall be handled in accordance with the provisions of the Texas Public Information Act. The provisions of this section survive the termination or expiration of this Agreement.

- h. Venue and Applicable Law. This Agreement will be performed and enforced in Travis County, Texas, and will be construed in accordance with the laws of the State of Texas and the United States of America. Venue with respect to all disputes resides with the county or district courts of Travis County, Texas. All rules, regulations, and other requirements imposed by local, state, or federal law apply to the performance of the Parties under this Agreement.
- i. Force Majeure. In the event that the performance by the City or Capital Metro of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God, or the common enemy, or the result of war, riot, civil corruption, sovereign conduct, or the act of conduct of any person or persons not a party or privy hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence -to remedy the effects hereto.
- j. Notice. Any notice given hereunder by either party to the other shall be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper party, at the following addresses:

CITY: Rob Spillar, P.E., Director
Austin Transportation Department
3701 Lake Austin Boulevard
Austin, Texas 78703

WITH COPY TO: City Attorney
City of Austin Law Department 301 W. 2nd Street
Austin, Texas 78701

CAPITAL METRO: Vice President of Capital Projects
2910 E. 5th Street
Austin, Texas 78702

WITH A COPY TO: Chief Counsel
2910 E. 5th Street
Austin, Texas 78702

- k. Severability. Should any one or more provisions of this Agreement be deemed invalid, illegal, or unenforceable for any reason, such invalidity, illegality, or unenforceability shall not affect any other provision. Any provision that is held to be void, voidable, or for any reason whatsoever of no force or effect, shall be construed as severable from the remainder of this Agreement and shall not affect the validity of any other provisions of this Agreement, which shall remain in full force and effect.

- l. Headings. The headings in this Agreement are for referenced purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
- m. Number and Gender Defined. As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.
- n. Entire Agreement. This Agreement constitutes the entire agreement of the Parties regarding the scope and purpose of it. Any other agreement, statement, or promise related to its scope and purpose that is not contained in this Agreement shall not be binding except by subsequent written amendment to this Agreement signed by the Parties. The Recitals contained in this Agreement are incorporated herein for all purposes.
- o. Other Instruments. The Parties covenant and agree that they will execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.
- p. Invalid Provision. Any clause, sentence, provision, paragraph, or article of this agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.
- q. Effective Date. The Effective Date of this Agreement shall be the date of the last party to sign this Agreement.

CITY OF AUSTIN, TEXAS

By: _____

Robert Goode
Assistant City Manager

Date: _____

Approved as to form:

Angela Rodriguez
Assistant City Attorney

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

By: _____
Randy Clarke, President/CEO

Date: _____

Approved as to form:

Legal

Appendix A

- I. **Background** – Capital Metro has approximately 2,900 bus stops on the Fixed Route Bus Transportation System. Capital Metro is in the process of constructing improvements where needed to improve the speed and reliability of the fixed route service (“FRS”). Contracting with the City of Austin to manage and construct many of these improvements would provide for timely, efficient, and cost effective completion of the projects. Capital Metro is currently planning its largest service change in history. The June 2018 Service Change will impact over half of the existing bus stops. The subprojects identified in Section II below are critical to the implementation of the June 2018 Service Change.

- II. **FY 2018 Project Identification Prioritized for the June Service Change** – Capital Metro, with input and approval from the COA, has developed a list of FY 2018 subprojects that address major barriers to FRS Route changes to be implemented with the June 2018 Service Change. The City project team should work sequentially as much as practical to complete the following identified, high priority subprojects before June of 2018:
 1. Install traffic signal at Hogan Avenue and Montopolis Drive,
 2. Improve right turning movements on the southeast corner of 45th Street at Red River Street,
 3. Improve right turning movements on the northeast corner of 6th Street at Lamar Boulevard,
 4. Install a left-hand turn for westbound transit vehicles turning southbound from MLK Jr. Boulevard onto Guadalupe Street,
 5. Install a stop sign at Webberville Road and Govalle Avenue and possibly Govalle Avenue and Springdale Drive,

- III. **FY 2018 Project Identification Prioritized for after June Service Change:**
 1. Construct a bus pull-in along William Cannon Drive east of Brush Country Road,
 2. Install Transit Priority Lane Red Markings along Lavaca Street as it approaches MLK Jr. Boulevard and at the left-hand turn lane for westbound transit vehicles turning southbound from MLK Jr. Boulevard onto Guadalupe Street (Subject to FHWA approval). Alternately the installation of a contraflow northbound bus lane utilizing 18th and Guadalupe could be implemented
 3. Remove the median along Sandra Muraida Boulevard for southbound vehicles that are in the right-hand turn lane headed westbound on Lamar Boulevard.
 4. Contribute to a portion of the Downtown multi-modal study to forecast future needs.
 5. Funding for design services specific to Transit Speed and Reliability subprojects.

- IV. **FY 2018 Project Costs:** The City of Austin will design, manage, construct, and maintain the prioritized subprojects listed in Section II above. Capital Metro will reimburse the City of Austin for the actual construction costs as estimated below for the subprojects, a portion of the Downtown multi-modal model, and a portion of design, inspection, and other service fees, as shown below. If there are funds leftover from a project, those funds may roll over to address other prioritized projects as identified.

FY 2018 Project Priorities Before June Service Change	Improvement	Route Services	Capital Metro FY 2018 Contribution
1. Hogan Avenue at Montopolis Drive	Traffic Signal	17-C Chavez	\$250,000
2. 45 th Street at Red River Street	SE Corner	10-Red River	\$70,000
3. 6 th Street at Lamar Boulevard	NE Corner	5-Woodrow	\$76,000
4. MLK Jr. Boulevard at Guadalupe Street	Left-Turn	18-MLK	\$20,000
5. Webberville Avenue at Govalle Avenue and Govalle Avenue at Springdale Road	Stop Signs	300-Springdale	To be installed by City of Austin.
FY 2018 Project Priorities After June Service Change	Improvement	Route Services	Capital Metro FY 2018 Contribution
6. William Cannon Drive at Brush Country Road	Pull-In	333-Wm Cannon	\$50,000
7. Lavaca Street at MLK Jr. Boulevard	Red Pavement	Various	\$50,000
8. Sandra Muraida Boulevard	Curb	803 Rapid	\$4,000
9. Downtown Multi-Modal Traffic Model	Study	Various	\$360,000
10. Design, inspection, and other services specific to Transit Speed and Reliability projects.	Design	Various	\$120,000
Total Capital Metro FY2018 Contribution			\$1,000,000 *

*FY 2018 funds not spent by Capital Metro in FY 2018 may be carried over to FY 2019.

V. **Implementation** – Guided by the above list of subprojects, a Capital Metro project manager will conduct a site visit with the COA project manager at each location scheduled to receive improvements. The scope of work required for each subproject will be jointly established and the COA project manager will subsequently communicate this scope of information to project construction contractor(s) for scheduling and construction of these improvements. During construction, the Capital Metro project manager may be a project resource, as available, to assist with project related issues; however, the primary responsibility for project implementation, management, and completion will be the COA project management team and construction contractor(s). It is a project goal that subprojects are scoped in advance so that there is limited “downtime” for contractor(s) between completion of a given subproject and start of the next subproject.

VI. **Transit Speed and Reliability Working Group**. Bi-weekly review of the subproject list and coordination of implementation will occur during the Transit Speed and Reliability Working Group (a City and Capital Metro coordination meeting for improvement of transit speed and reliability).

VII. **Details of Work** – Typical work components for the subprojects are expected to be (but are not limited to):

- a. sidewalk construction,
- b. accessibility improvements,
- c. markings,
- d. signage,
- e. signals,
- f. pedestrian safety improvements, and
- g. other traffic devices and improvements within the City right-of-way that will improve transit speed and reliability or safe access for Capital Metro customers.

All improvements are to be constructed to City of Austin Standard Specifications and Details and in compliance with applicable ADA requirements.

In some cases, passenger comfort facilities (such as bus stop shelters) may be required and in these instances the specification/detail for required foundation work will be provided by Capital Metro. The subsequent installation of shelters, benches, and litter containers will be done by Capital Metro unless otherwise provided.

VIII. **Special Considerations** – FRS service will continue at all bus stops where construction is being conducted. To enable this process, the Capital Metro project manager is to be contacted in advance, and relative to the need, will coordinate the temporary closure or relocation of the bus stop within proximity to the area of construction. Attention to excellent customer service and customer safety is of utmost importance and would be major considerations under this process.

IX. **Capital Metro FY 2019 and FY 2020 Allocation** – Capital Metro has allocated an amount not to exceed \$1,000,000 for fiscal year 2019 and an amount not to exceed \$1,000,000 for fiscal year 2020 for subprojects to be performed during those years for projects to be established by Capital Metro and the City as set forth in Section IX.

X. **FY 2019 and FY 2020 Subproject list** - Beginning with FY 2019, an annual list of subprojects for FY 2019 and FY 2020 with cost allocation will be established and prioritized by Capital Metro staff with input and approval from City staff taking into consideration Capital Metro and City resources, changes in conditions, opportunities, overall improvements to multi-modal conditions, and applicable planning and policy documents. This annual list of subprojects will be finalized in October of every year, after each Party's budget has been adopted. Each annual project list shall be approved in writing by the City's Director of the Transportation Department, or their designee and Capital Metro's COO or their designee and appended to this Agreement.

Exhibit B
Federal Clauses

The City and its contractors will comply with the applicable federal contracting requirements set forth in this exhibit in providing services under this Agreement and all federally assisted contracts resulting from this Agreement. To the extent applicable, these provisions supersede and take precedence over any other clause or provision contained within this Agreement that may be in conflict therewith. For purposes of this Agreement, the term "Contractor" shall include the City of Austin and its contractors.

1. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- i. It is the policy of the Authority and the Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 C.F.R. Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 C.F.R. Part 26 applies to this Agreement.
- ii. The City and its contractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The requirements of 49 C.F.R. Part 26, and the Authority's DOT approved Disadvantaged Business Enterprise (DBE) program are incorporated in this Agreement by reference. Failure by the City or its Contractor to carry out these requirements is a material breach of the contract, which may result in the termination of this Agreement or such other remedy, as Capital Metro deems appropriate.

2. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION

- a. Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess for forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- b. Violation, Liability for Unpaid Wages, Liquidated Damages. In the event of any violation of the provisions set forth in paragraph (a) above, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under the contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work more than the standard workweek of forty (40) hours without payment of the overtime wages required by the provided set forth in paragraph (A) above.

- c. Withholding for Unpaid and Liquidated Damages. The Authority shall upon the Authority's own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.
- d. Payroll and Basic Records.
 - 1. The Contractor or subcontractor shall maintain payroll records during contract work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 209 C.F.R. § 5.5(a)(3) implementing the Davis-Bacon Act.
 - 2. The records to be maintained under paragraph (d)(1) of this clause shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Authority or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.
- e. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) above, and also a provision requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) above.

3. TITLE VI CIVIL RIGHTS ACT OF 1964

During the performance of this contract, the Contractor for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- a. Compliance with Regulations. The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter referred to as "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations)), which are herein incorporated by reference and made a part of this contract.
- b. Nondiscrimination. The Contractor, about the work performed by it during the contract, shall not discriminate on the grounds of race, color, or nation origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination

prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

- c. Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.
- d. Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directive issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities. as may be determined by the Authority or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Authority, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the Authority shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
 - withholding of payments to the Contractor under the contract until the contractor complies; and/or
 - cancellation, termination or suspension of the contract, in whole or in part.
- f. Incorporation of Provisions. The Contractor shall include the provisions of paragraph (1) through (f) above in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Authority or FTA may direct as a means of enforcing such revisions including sanctions for noncompliance: provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Authority, and, in addition, the United States to enter into such litigation to protect the interests of the Authority and the United States.

4. CLEAN AIR AND WATER ACT

- a. Definitions:
 1. "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. § 7401 et seq.).
 2. "Clean air standards," as used in this clause means:
 - i. any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738.

- ii. an applicable implementation plan as described in Section 110(d) of the Air Act [42 U.S.C. § 7410(d)];
 - iii. or an approved implementation procedure under Section 112(d) of the Air Act [42 U.S.C. § 7412(d)].
- 3. "Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. § 1342), or by, local government to ensure compliance with pre-treatment regulations as required by Section 307 of the Water Act (33 U.S.C. § 1317).
- 4. "Compliance," as used in this clause, means compliance with:
 - i. clean air or water standards; or a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.
- 5. "Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised, by a Contractor or subcontractor, sued in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee of the Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.
- 6. "Water Act," as used in this clause, means Clean Water Act (33 U.S.C. § 1251 et seq.).
- b. The Contractor agrees:
 - 1. It will not use any violating facilities;
 - 2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities";
 - 3. It will report violations for use of prohibited facilities to FTA; and
 - 4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401-7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

5. ENERGY POLICY AND CONSERVATION ACT

The Contractor agrees to comply with mandatory standards and policies relating to energy

efficiency, which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act.

6. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

7. BUY AMERICA PROVISION

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

8. CARGO PREFERENCE – USE OF UNITED STATES FLAG VESSELS

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

- a. to use privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates of United States-Flag commercial vessels;
- b. to furnish within twenty working (20) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipments originating outside of the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to the Division of National Cargo, Office of Market Development, Maritime Administration, D.C. 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

9. FLY AMERICA REQUIREMENTS

- a. Definitions. As used in this clause--

“International air transportation” means transportation by air between a place in the United

States and a place outside the United States or between two places both of which are outside the United States.

“United States” means 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b. When federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118 (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c. If available, the Contractor in performing work under this contract, shall use U.S.-flag carrier for international air transportation of personnel (and their personal effects) or property.

d. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons];

e. The Contractor shall include the substance of this clause; including paragraph (e), in each subcontract or purchase under this Agreement that may involving international air transportation.

10. ACCESS TO RECORDS AND REPORTS

a. This clause is applicable if this contract was entered into by means of negotiation and shall become operative with respect to any modification to this contract whether this contract was initially" entered into by means of negotiation or by means of formal advertising.

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

c. Retention Period. The Contractor agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that the Authority, the U.S. Department of Transportation, and the Comptroller General of the United States or any of

their duly authorized representatives shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontract, for making audit, examination, excerpts and transactions.

- d. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- e. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites performance under this contract as reasonably may be required.

11. RESTRICTIONS ON LOBBYING

The Contractor certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant , the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal; appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The language of this certification will be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

12. ACCESS REQUIREMENTS TO INDIVIDUALS WITH DISABILITIES

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq. and 49 U.S.C. § 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. 1612; and the following regulations and any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
2. U.S. DOT regulations, "Nondiscrimination based on Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
3. U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.P.R. Part 39;
4. Department of Justice (DOJ) regulations, "Nondiscrimination based ON Disability in State and Local Government Services," 28 C.F.R. Part 36;
5. DOJ Regulations, "Nondiscrimination based ON Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
6. General Services Administration regulations, "Construction and Alteration of Public Buildings," "Accommodations for the Physically Handicapped," 41 C.F.R. Part 101-10;
7. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
8. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for. the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
9. FTA regulations, "Transportation for Elderly and Handicapped Persons, "49C.F.R. Part 609.

13. SEISMIC SAFETY REGULATIONS

The City and its Contractors agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor follows the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

14. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim,

statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.
- c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

15. PRIVACY ACT

- a. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restriction and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the contract.
- b. The Contractor agrees to include the above clause in each subcontract associated with this contract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

16. NO OBLIGATION TO THIRD PARTIES

- a. The Contractor acknowledges and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Contractor, or any other party (whether a Party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

17. NOTICE OF FEDERAL REQUIREMENTS

- a. The Contractor shall at times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in Capital Metro's grant agreement with the FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.
- b. The Contractor is advised that Federal requirements applicable to this contract as set forth in federal law, regulations, policies, and related administrative practices may change during the performance of this contract. Any such changes shall also apply to this contract.

18. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS- FTA CIRCULAR 4220.1F

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Capital Metropolitan Transit Authority (Capital Metro) requests, which would cause Capital Metro to be in violation of the FTA terms and conditions.

19. COPELAND ANTI-KICKBACK ACT

The Contractor shall comply with the requirements of 29 C.F.R., Part 3, which are incorporated by reference in this contract.

20. DAVIS-BACON ACT (40 U.S.C. § 3141-3148 (2002))

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

Flow Down: Applies to third party contractors and subcontractors

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

a. Minimum wages

1. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
2. i. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - a. Except with respect to helpers as defined as 29 C.F.R. § 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

- b. The classification is utilized in the area by the construction industry; and
 - c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - d. With respect to helpers as defined in 29 C.F.R. § 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- ii. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - iii. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- iv. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- 3. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bonafide fringe benefit or an hourly cash equivalent thereof.
 - 4. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
 - 5. i. The contracting officer shall require that any class laborers or mechanics which are not listed in the wage determination and which is to be employed under the contract shall

be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- a. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- b. The classification is utilized in the area by the construction industry; and
- c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

iv. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

have ceased.

- c. **Payrolls and basic records** - Payrolls and basic records relating thereto shall be maintained by the contractor during the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
1. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all the information required to be maintained under Section 5.5(a)(3)(i) of Regulations 29 C.F.R. Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
 2. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - i. That the payroll for the payroll period contains the information required to be maintained under 29 C.F.R. Part 5 and that such information is correct and complete;
 - ii. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. Part 3;
 - iii. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

3. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
4. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
 - i. The Contractor or subcontractor shall make the records required under paragraph (a)(3)(I) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. § 5.12.

d. Apprentices and trainees

1. Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work performed. In addition, any apprentice performing work on the job site more than the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the

Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

2. Trainees - Except as provided in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage the on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program; the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
3. Equal employment opportunity - The utilization of apprentices, trainees and journeying under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.
- e. **Compliance with Copeland Act requirements** - The Contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this contract.
- f. **Subcontracts** - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. Part 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. Part 5.5.
- g. **Contract termination: debarment** - A breach of the contract clauses in 29 C.F.R. Part

5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. § 5.12.

- h. **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- i. **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes even the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- j. **Certification of eligibility**
 - 1. By entering this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by section 3(a) of the Davis-Bacon Act or 29 C.F.R. §(a)(1).
 - 2. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).
 - 3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

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

a. Applicability to Contracts

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

b. Flow Down

These requirements flow down to all contractor and subcontractor tiers.

c. Recovered Materials

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource

Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247.

23. WORKPLACE SAFETY

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

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

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

24. VETERAN'S EMPLOYMENT

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