

0330 - SHUTTLE
UT AUS CN: 2021_2657

**AGREEMENT
BETWEEN
THE UNIVERSITY OF TEXAS AT AUSTIN
AND
THE CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

This Interlocal agreement ("Agreement" or "Contract") is made and entered into effective as of September 1, 2021 (the "Effective Date") by and between THE UNIVERSITY OF TEXAS AT AUSTIN, an agency and institution of higher education organized under the laws of the State of Texas ("UNIVERSITY") and the CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY ("CAPITAL METRO"), a political subdivision of the State of Texas, created and exercising its authority in accordance with Chapter 451, Texas Transportation Code, acting by and through its duly authorized President/CEO or designee. The Interlocal Cooperation Contract ("Agreement") is entered into by and between the parties identified above pursuant to authority granted in and in compliance with the *Interlocal Cooperation Act*, Chapter 791, Texas Government Code.

WITNESSETH:

WHEREAS, since 1989, UNIVERSITY and CAPITAL METRO have entered into a series of agreements for the provision of transportation services provided by CAPITAL METRO; and

WHEREAS, UNIVERSITY and CAPITAL METRO have significantly benefited mobility in Austin through such cooperative provision of shuttle bus transportation service; and

WHEREAS, UNIVERSITY and CAPITAL METRO desire to enter into a long-term commitment to continue to meet the mobility needs of UNIVERSITY community to the mutual benefit of UNIVERSITY and CAPITAL METRO; and

WHEREAS, UNIVERSITY and CAPITAL METRO enter into this Agreement pursuant to authority granted under and in compliance with the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code; and

NOW THEREFORE, in consideration of the mutual covenants and promises made by the parties hereto, it is agreed as follows:

ARTICLE I: DEFINITIONS

- A) Circular Route: Routes which circulate riders throughout a community. These routes are generally shorter than radial service and are non-linear, connecting multiple origins and destinations in the local area and penetrating into communities where regular fixed-route services cannot travel; a route which circulates the University Campus around the areas of most concentrated use

- B) Inter-campus Shuttle Route: A route which circulates the University Campus around the areas of most concentrated use and connects the main University campus with off-site campus locations
- C) Non-UT Shuttle Services: All services that may be offered by CAPITAL METRO other than those to be provided under this Agreement, including, but not limited to, these transit services:
- ☐ E-Bus
 - ☐ Local fixed routes
 - ☐ Limited
 - ☐ Flyer
 - ☐ Express
 - ☐ Metro Rail
 - ☐ Metro Access
 - ☐ Bus Rapid Transit
- D) Performance Standards: A set of practices that measure, among other items, safety, timeliness, cleanliness, hours of operation, schedules of maintenance, customer satisfaction and cost of operation
- E) Revenue Vehicles: Buses used to complete the UT Shuttle routes
- F) Radial Route: Direct and non-stop service to the University Campus from areas of concentrated student population
- G) University Campus: the main campus of the University
- H) UT Shuttle Services: The shuttle bus transportation services described in Article IV of this Agreement

ARTICLE II: SUBJECT OF AGREEMENT

- A) CAPITAL METRO will provide UT Shuttle Services for UNIVERSITY, utilizing equipment furnished by CAPITAL METRO, and operated in a manner consistent with the Performance Standards contemplated in Article V of this Agreement.
- B) CAPITAL METRO will provide all Revenue Vehicles required for UT Shuttle Services. CAPITAL METRO will directly or through subcontract provide required drivers, fuel, vehicle maintenance, storage, supervisory and management services, and all other goods and services needed to provide the UT Shuttle Services.

ARTICLE III: TERM OF AGREEMENT

The term of this Agreement shall be for a three-year term as follows:

Year One:	September 1, 2021 to August 31, 2022
Year Two:	September 1, 2022 to August 31, 2023
Year Three	September 1, 2023 to August 31, 2024

“Contract Year” shall mean each twelve (12) month period beginning on September 1 and ending on August 31 during the term of this Agreement.

ARTICLE IV: DESCRIPTION OF THE SERVICE

A) CAPITAL METRO shall provide the shuttle bus transportation services, hereinafter referred to as the “UT Shuttle Services” under this Agreement as follows:

- a. approximately nine routes,
- b. (6) six of which will be Radial Routes and
- c. (3) three of which will be Circular Routes.
- d. All changes in service will be governed by Article VII: ***Changes in Service.***

B) UT Shuttle Services hours will generally be from 6:45 a.m. until 11:30 p.m., Monday through Sunday. CAPITAL METRO will provide UT Shuttle Services approximately 225 days of service per Contract Year, with fluctuations in service level to account for the University’s schedule (full semester, finals, summer session, etc.). All other Non-UT Shuttle Services will be offered at CAPITAL METRO’s standard operating hours.

C) UT Shuttle Services is designed to ensure campus-specific public transportation options are available where demand exists. Demand includes UNIVERSITY student populations above 3% and service between UNIVERSITY campuses or satellite locations, as defined in Article VII, Paragraph F. Service should mirror express service with limited stops and frequencies levels that do not fall below 45 minutes. Service should match the academic calendar and UNIVERSITY business hours. Additions or deletions of service will be made per Article VII of this Agreement.

D) UNIVERSITY students, faculty and staff may utilize the identification card issued to them by the UNIVERSITY to access all bus, rail and paratransit services provided by CAPITAL METRO. UNIVERSITY and CAPITAL METRO will work cooperatively to facilitate the use of UNIVERSITY identification cards in current and future CAPITAL METRO fare collection technology.

E) CAPITAL METRO shall monitor and compile ridership data for UNIVERSITY identification cards. At a frequency agreed by the parties, CAPITAL METRO will provide UNIVERSITY with a report of the data collected from the UNIVERSITY identification cards. UNIVERSITY will review the report and determining the classification (faculty, staff, student, etc.) for each record and return the information to CAPITAL METRO. UNIVERSITY agrees to work proactively with CAPITAL METRO to eliminate the use of expired or unauthorized UNIVERSITY identification cards.

ARTICLE V: PERFORMANCE OF THE SERVICE

A) In order to assure delivery of the UT Shuttle Services in a quality manner, consistent with the objectives of the parties, CAPITAL METRO agrees to perform all UT Shuttle Services

in compliance with all applicable federal, state and local, laws, regulations, and ordinances and establish and monitor Performance Standards for the UT Shuttle Services.

- B) CAPITAL METRO will maintain a staff of properly trained and experienced personnel and subcontractors to ensure satisfactory performance under this Agreement. CAPITAL METRO will cause all CAPITAL METRO employees, representatives, agents and subcontractors who are directly in charge of the UT Shuttle Services to be duly registered and/or licensed under all applicable federal, state and local, laws, regulations, and ordinances. CAPITAL METRO will assign a designated representative who will be responsible for the administration and coordination of the UT Shuttle Services. CAPITAL METRO agrees to cause its employees, representatives, agents, or subcontractors who will be present on University's premises or in University's facilities while performing the UT Shuttle Services to become aware of, fully informed about, and in full compliance with all applicable University rules and policies, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.
- C) Upon selection of an operator subcontractor to operate the bus shuttles for the UT Shuttle Services and prior to the final subcontract award, CAPITAL METRO will provide University with (i) information reflecting the operational history of the operator subcontractor including safety records; (ii) compliance history relating to all applicable state and federal laws including but not limited to licensure requirements and environmental requirements; and (iii) employment practices relating to criminal background checks and drug and alcohol testing, (iv) procedures for the issuance of identification badges and (v) any other information reasonably requested by University.
- D) CAPITAL METRO will monitor system access and all routes for individuals with disabilities to ensure that all shuttle routes and other routes frequently used by UNIVERSITY students are fully compliant with all ADA regulations and meet the needs of individuals with disabilities.
- E) The Parties will develop and mutually agree on Performance Measures on as needed basis. Performance Standards will, at a minimum, include on-time performance, missed service, customer complaints, accidents, miles between road calls, and preventive maintenance measures. CAPITAL METRO is responsible for all actions and work performed by its subcontractors.
- F) To ensure compliance and attainment of the agreed upon Performance Standards, CAPITAL METRO will report monthly to University Parking and Transportation Services in a systematic manner that can be audited by UNIVERSITY.
- G) The Performance Standards will be formally reviewed by UNIVERSITY and CAPITAL METRO periodically throughout the life of this Agreement and are subject to revision by written mutual consent of UNIVERSITY and CAPITAL METRO.

ARTICLE VI: VEHICLES

- A) CAPITAL METRO shall furnish Revenue Vehicles as required to operate the UT Shuttle Services, and shall provide any additional transportation services requested by UNIVERSITY and agreed to in writing by CAPITAL METRO.

- B) All Revenue Vehicles will be equipped with air-conditioning, wheelchair lifts, or other means of wheelchair access, front and rear loading doors, two-way radios, bike racks and destination signs.
- C) Revenue Vehicles will be maintained in a quality manner to assure delivery of a safe, reliable, on time and clean service for the passenger. CAPITAL METRO will ensure that the average age of the bus fleet available for assignment to University-specific routes will be no greater than two years above the average age of Capital Metro's overall bus fleet.
- D) Advertising on Revenue Vehicles will be in accordance with CAPITAL METRO policies. Should the University raise concerns over a particular advertisement, CAPITAL METRO will take reasonable steps to ensure that the vehicle(s) with that advertisement installed are not utilized to operate UT Shuttle services.
- E) The amounts charged each Contract Year by Capital Metro under Article IX of this Agreement will be reduced by an amount equal to the greater of (i) thirty-five percent (35%) of gross revenue net of expenses generated from such advertising on the interior and exterior of Revenue Vehicles per Contract Year, or (ii) One Hundred Thousand Dollars and No Cents (\$100,000) as dedicated funding for the "Sure Walk" program.

ARTICLE VII: CHANGES IN SERVICE

- A) CAPITAL METRO will implement an on-going data collection and service analysis program which will provide the basis for annual service change analysis. All service change and bus stop requests for UT Shuttle Services will be directed to CAPITAL METRO for evaluation. Results of the evaluation process will be presented to UNIVERSITY for approval. Changes in service that impact more than twenty-five percent (25%) of the route structure or schedule will be evaluated by CAPITAL METRO and presented to UNIVERSITY at least one month in advance of any public presentation on the change proposal.
- B) CAPITAL METRO, in conjunction with UNIVERSITY, will periodically conduct an operational and customer satisfaction survey for all services and programs offered to students.
- C) Both major and minor changes in service require advance written approval of UNIVERSITY and CAPITAL METRO. Major changes in service will require solicitation of input from student representatives (or the appointed committee), a formal public hearing and will require action by the Board of Directors of CAPITAL METRO.
- D) Circular Routes and Inter-campus Shuttle Routes will be agreed upon by UNIVERSITY and CAPITAL METRO as service demand dictates. Other services agreed upon by the parties may also be included.
- E) UT Shuttle Radial Route service is designed to directly serve the University Campus from areas where student population warrants such direct and non-stop service. UNIVERSITY and CAPITAL METRO will coordinate all UT Shuttle Radial Route service changes. Existing Radial Route service will continue until it does not meet a minimum productivity of thirty (30) passengers per hour during peak periods. At such time, UNIVERSITY and CAPITAL METRO will work together to identify either a planned route adjustment to

improve productivity or a plan for transitioning the ridership to a regular mainline fixed route service.

- F) CAPITAL METRO will provide new Radial Route service in areas when all of the following characteristics exist:
- a. Student Population Concentration of greater than 3.0% of total student population (approximately 1,500 students).
 - b. Service time from first to last stop on the “off campus” portion of the route is less than 10 minutes.
 - c. Round trip travel time is 45 minutes or less (run time only, excluding layover and recovery time).
- G) New UT Shuttle Radial Route service will typically be planned to accommodate the following service characteristics:
- a. Minimum Level of Frequency of approximately 15 minutes. A smaller frequency will be employed if demand exceeds available capacity.
 - b. Operating span of service from at least 7:00 a.m. to 7:00 p.m., Monday through Friday.

ARTICLE VIII: CLASSIFICATION OF PASSENGERS

The UT Shuttle Services shall be available at no fee to UNIVERSITY students, faculty and staff with the presentation of a valid UNIVERSITY identification card. These services shall also be open and available to the public and shall not be restricted to students of UNIVERSITY; however, non-affiliated UNIVERSITY persons will be required to pay the published CAPITAL METRO fare.

ARTICLE IX: CONSIDERATION

- A) UNIVERSITY agrees to pay CAPITAL METRO the following amounts over the three-year term, minus the amount set forth in Article VI(E) of this Agreement:

Year One: \$6,850,000

Year Two: \$7,000,000

Year Three: \$7,200,000

- B) The total estimated amount of the three-year Agreement shall not exceed \$21,050,000.
- C) Payments shall be made to CAPITAL METRO by UNIVERSITY within thirty (30) days of presentation of statement of charges for service rendered during the completed billing period. Billing periods will be a minimum of one month in length. Payments made to CAPITAL METRO by UNIVERSITY under this Agreement will (1) will fairly compensate CAPITAL METRO for the UT Shuttle Services performed, (2) be made from current revenues available to UNIVERSITY, and (3) be based on cost recovery, pursuant to §791.035, *Texas Government Code*.

- D) This Agreement is not valid for amounts which exceed five million dollars (\$5,000,000) until this Agreement is approved by the Board of Regents of The University of Texas System.**

ARTICLE X: INSURANCE

- A) Exhibit A of this Agreement describes the insurance coverage required to be provided by CAPITAL METRO or its subcontractors. Should CAPITAL METRO elect to provide the driving or other services described in this Agreement through third party subcontractors, CAPITAL METRO shall require the subcontractors to maintain at all times during the period covered by this Agreement insurance issued by a company authorized to do business in the State of Texas and approved by UNIVERSITY, with the minimum requirements as set forth in Exhibit A of the Agreement. Proper Certificates of Insurance reflecting said insurance coverage in accordance with Exhibit A of the Agreement shall be furnished to UNIVERSITY. The Insurance Company(ies) providing all such insurance for subcontractors shall have an A.M. Best Rating of A-IV or better or otherwise be approved by the University regardless of whether Capital Metro or a third-party contractor shall provide the service described in this Agreement.
- B) Should CAPITAL METRO elect to directly provide the UT Shuttle Services, CAPITAL METRO shall maintain at all times during the period covered by this Agreement liability and property damage coverage as defined in Exhibit A or as mutually agreed by University and CAPITAL METRO in writing by contract amendment. CAPITAL METRO at its option may provide this insurance coverage through a self-insurance program or pool and will provide a statement of self-insurance to University.

ARTICLE XI: MAINTENANCE OF RECORDS

- A) In accordance with CAPITAL METRO's record management policies, CAPITAL METRO agrees to maintain records or documentation that shall reflect the following:
- 1) number of buses operated on any given day
 - 2) number of revenue trips operated
 - 3) number of hours operated by each bus on each route or schedule
 - 4) number of passenger complaints received
 - 5) number of vehicle and passenger accidents
 - 6) number of road calls
 - 7) the estimated percentage of trips operating on schedule (within the 0-5 minute window as compared to the scheduled time of departure)
 - 8) information regarding preventive maintenance activity
 - 9) vehicle load information
 - 10) any other additional information CAPITAL METRO may elect to include or UNIVERSITY may reasonably require
- B) Reports summarizing the above information shall be provided monthly to UNIVERSITY. Reports shall be made available to the President's Shuttle Bus Committee through University Parking and Transportation Services upon request. UNIVERSITY shall have complete access to such records and documentation at any and all reasonable times during the business day for the purpose of examination, and may at its own expense, cause an audit to be made of CAPITAL METRO's records or documentation, as same pertains to service provided under this Agreement. CAPITAL METRO agrees to cooperate with the properly designated UNIVERSITY official charged with inspecting and auditing said records and documentation.

C) CAPITAL METRO understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "**Auditor**"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c) of the *Texas Education Code*. CAPITAL METRO agrees to cooperate with the Auditor in the conduct of the audit or investigation, including providing all records requested. CAPITAL METRO will include this provision in all contracts with subcontractors.

ARTICLE XII: CONFIDENTIAL INFORMATION

- A) CAPITAL METRO understands that in connection with this Agreement and the performance of the UT Shuttle Services, CAPITAL METRO may have access to, may obtain or be given information concerning or relating to UNIVERSITY's students. CAPITAL METRO agrees and acknowledges that such information may be protected under the federal laws known as the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g ("FERPA"), as such may be amended from time to time together with the regulations promulgated and in effect thereunder from time to time. Any and all such information that is protected under FERPA is hereafter referred to as "Confidential Information." Confidential Information shall include information in any and all formats and media and shall include the originals and any and all copies and derivatives of such information. For the purpose of this Agreement, CAPITAL METRO shall follow and be bound by the interpretation and application that UNIVERSITY gives to the provisions of FERPA.
- B) From and after the effective date of this Agreement, CAPITAL METRO shall have the right to use, shall have access to and shall use the Confidential Information only in the performance of the UT Shuttle Services and for no other purpose whatsoever and only if and when required for that performance. CAPITAL METRO shall permit access to and the use of Confidential Information only by CAPITAL METRO employees who are assigned to participate in the performance of the UT Shuttle Services, unless otherwise authorized by UNIVERSITY by prior written direction. CAPITAL METRO acknowledges that upon receipt of Confidential Information relating to UNIVERSITY students, the re-release of such information is prohibited by FERPA.
- C) All Confidential Information received by CAPITAL METRO is the property of UNIVERSITY and shall be returned to UNIVERSITY or destroyed upon completion or termination of this Agreement. CAPITAL METRO shall provide to University a document attesting to the destruction of these records within thirty (30) days of termination of Agreement.
- D) CAPITAL METRO shall not, in any manner whatsoever, disclose, permit or cause use of or provide access to Confidential Information to any person or entity except as part of the performance of the UT Shuttle Services and then only with and in accordance with the prior written consent of UNIVERSITY'S representative designated for the UT Shuttle Services. CAPITAL METRO agrees to cause its employees, subcontractors and agents to be bound by the terms of this Section.

- E) CAPITAL METRO'S obligations with respect to Confidential Information shall survive the expiration or the termination of the term of this Agreement and all amendments thereto.
- F) CAPITAL METRO understands that UNIVERSITY does not waive any exceptions to disclosure with respect to the general public and to the extent that FERPA conflicts with state law, the federal statute prevails. CAPITAL METRO and UNIVERSITY will also comply with the Texas Public Information Act requirements.
- G) CAPITAL METRO shall forward to the Custodian of Records of The University of Texas at Austin, Senior Vice President, Darrell Bazzell, at P.O. Box 8179, Austin, Texas 78173-8179 any request for disclosure of Confidential Information to a person or entity other than UNIVERSITY or its employees.

ARTICLE XIII: LEGALITY OF CONTRACT

The operation by CAPITAL METRO under this Agreement shall be performed in compliance with all the applicable ordinances of the City of Austin, laws of the State of Texas and the laws of the United States. This Agreement shall be binding on the parties hereto, their successors and assigns. CAPITAL METRO may not assign this Agreement without prior written consent of UNIVERSITY. This Agreement shall be construed and performed in accordance with the laws of the State of Texas and any action arising hereunder shall be brought in the court of competent jurisdiction in Travis County, Texas.

ARTICLE XIV: INDEMNIFICATION AND HOLD HARMLESS; LIABILITY

TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTIONS OF THE U.S. AND THE STATE OF TEXAS, THE PARTIES agree that each are responsible for their own proportionate share of any liability to the extent caused by the negligent acts or omissions or intentional misconduct of that party's employees, agents, contractors, or subcontractors arising out of, connected with, or as a consequence of that party's performance under this Agreement.

ARTICLE XV: CANCELLATION

If either party is in default under any term of this Agreement, then the non-defaulting party shall give the defaulting party written notice of such default and the defaulting party shall have ninety (90) days in which to cure such default. The failure of the defaulting party to cure any such default within ninety (90) days after written notice of same by the non-defaulting party shall give the non-defaulting party the right to terminate this Agreement immediately.

ARTICLE XVI: NOTICE

Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties as they appear below, but each party may change his address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated at the time of actual receipt; mailed notices shall be deemed delivered,

whether actually received or not, forty-eight (48) hours after deposit in a regularly maintained receptacle for United States mail.

Whenever written notice is required by any of the provisions of this Agreement, the notice shall be given by CAPITAL METRO to:

Director, Parking and Transportation Services
The University of Texas at Austin
P. O. Box 7546
Austin, Texas 78713

with a copy to:

Senior Vice President and Chief Financial Officer
The University of Texas at Austin
P.O. Box 8179
Austin, Texas 78713-8179

Or by UNIVERSITY to:

President/CEO
Capital Metropolitan Transportation Authority
2910 E. 5th Street
Austin, Texas 78702

with copy to:

Chief Counsel
Capital Metropolitan Transportation Authority
2910E. 5th Street
Austin, Texas 78702

ARTICLE XVII: SUSPENSION

Either party may suspend this Agreement at any time because of war, declaration of a state of national emergency, acts of God or public enemy, strike, work stoppage or slow down, or other cause beyond the control of such party, by giving the other party written notice of suspension and the reason for same. UNIVERSITY shall be obligated only to pay for services actually provided under this Agreement. Payments to be made and services to be rendered under this Agreement shall not become due during a period of suspension. UNIVERSITY may secure the services herein contemplated from another source during the period in which CAPITAL METRO suspends performance under this Agreement.

ARTICLE XVIII: ENTIRE AGREEMENT

This Agreement and any attachments, exhibits or Addenda contain the entire Agreement between the parties and supersede any prior understanding or written or oral Agreements between the parties concerning the subject matter herein. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless reduced to writing and signed by authorized representatives of the parties.

ARTICLE XIX: RELATIONSHIP OF THE PARTIES

This Agreement will not be construed as creating an employer- employee relationship, a partnership, or a joint venture between the parties.

ARTICLE XX: LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE XXI: WAIVERS

No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.

ARTICLE XXII: CONFIDENTIALITY AND SAFEGUARDING OF UNIVERSITY RECORDS; PRESS RELEASES; PUBLIC INFORMATION

Under this Agreement, CAPITAL METRO may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, "**University Records**"). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by applicable federal, state and local, laws, regulations, and ordinances, including the Gramm-Leach-Bliley Act (Public Law No: 106-102) and the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("**FERPA**"). If University Records are subject to FERPA, (1) UNIVERSITY designates CAPITAL METRO as a UNIVERSITY official with a legitimate educational interest in University Records, and (2) CAPITAL METRO acknowledges that its improper disclosure or redisclosure of personally identifiable information from University Records will result in CAPITAL METRO's exclusion from eligibility to contract with UNIVERSITY for at least five (5) years. CAPITAL METRO represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, as well as the Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which CAPITAL METRO protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all applicable federal, state and local, laws, regulations, and ordinances, including FERPA and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (4) comply with the University's rules, policies, and procedures regarding access to and use of University's computer systems. At the request of UNIVERSITY, CAPITAL METRO agrees to provide UNIVERSITY with a written summary of the procedures CAPITAL METRO uses to safeguard and maintain the confidentiality of University Records.

- A) **Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, CAPITAL METRO will provide written notice to UNIVERSITY within one

(1) business day after CAPITAL METRO's discovery of that use or disclosure. CAPITAL METRO will promptly provide UNIVERSITY with all information requested by UNIVERSITY regarding the impermissible use or disclosure.

- B) **Return of University Records.** CAPITAL METRO agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of UNIVERSITY will be (1) returned to University, with no copies retained by CAPITAL METRO; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, CAPITAL METRO will provide UNIVERSITY with written notice of CAPITAL METRO's intent to destroy University Records. Within five (5) days after destruction, CAPITAL METRO will confirm to UNIVERSITY in writing the destruction of University Records.
- C) **Disclosure.** If CAPITAL METRO discloses any University Records to a subcontractor or agent, CAPITAL METRO will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on CAPITAL METRO by this Section.
- D) **Press Releases.** Except when defined as part of the UT Shuttle Services, neither party will not make any press releases, public statements, or advertisement referring to the UT Shuttle Services, or release any information relative to the UT Shuttle Services for publication, advertisement or any other purpose without the prior written approval of the other party.
- E) **Public Information.** UNIVERSITY strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act*, Chapter 552, *Texas Government Code*.
- F) **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if UNIVERSITY reasonably determines that CAPITAL METRO has breached any of the restrictions or obligations set forth in this Section, UNIVERSITY may immediately terminate this Agreement without notice or opportunity to cure.
- G) **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

ARTICLE XXIII: BINDING EFFECT

This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

ARTICLE XXIV: RECORDS

Records of each party's costs pertaining to the UT Shuttle Services and payments will be available to the other party or their authorized representatives during business hours and will be retained for four (4) years after final payment or termination of this Agreement.

ARTICLE XXV: LIMITATION OF LIABILITY

Except for UNIVERSITY's obligation (if any) to pay CAPITAL METRO certain fees and expenses, neither party will have liability to the other party or to anyone claiming through or under the other party by reason of the execution or performance of this Agreement. Notwithstanding any duty or obligation of University to CAPITAL METRO or to anyone claiming through or under CAPITAL METRO, no present or future affiliated enterprise, subcontractor, agent, officer, director, employee, representative, attorney or regent of University, or The University of Texas System, or anyone claiming under University has or will have any personal liability to CAPITAL METRO or to anyone claiming through or under CAPITAL METRO by reason of the execution or performance of this Agreement.

ARTICLE XXVI: BREACH OF CONTRACT CLAIMS

The parties shall make every possible attempt to resolve in an amicable manner all disputes between the parties concerning the interpretation of this Agreement.

ARTICLE XXVII: UNDOCUMENTED WORKERS

The *Immigration and Nationality Act* (8 *United States Code* 1324a) ("**Immigration Act**") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("**I-9 Form**") as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, CAPITAL METRO is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. CAPITAL METRO represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

ARTICLE XXVIII: ETHICS MATTERS; NO FINANCIAL INTEREST

CAPITAL METRO and its employees, agents, representatives and subcontractors are subject to University's Conflicts of Interest Policy available at www.utexas.edu/vp/irla/Documents/HOP%20Conflicts%20of%20Interest%20Policy%204%20A%204.pdf University's Standards of Conduct Guide available at <http://www.utexas.edu/policies/hoppm/04.A.04.html> and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither CAPITAL METRO nor its employees, agents, representatives or subcontractors will assist or cause UNIVERSITY employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide, or applicable state ethics laws or rules. CAPITAL METRO represents and warrants that no member of the Capital Metro Board of Directors has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

ARTICLE XXIX: DISADVANTAGED BUSINESS ENTERPRISE SUBCONTRACTING PLAN

CAPITAL METRO will comply with USDOT 49 C.F.R. part 26 under the Disadvantaged Business Enterprise (DBE) program. CAPITAL METRO will provide UNIVERSITY documentation of any DBE subcontractors utilized under this Agreement.

ARTICLE XXX: RESPONSIBILITY FOR INDIVIDUALS PERFORMING WORK; CRIMINAL BACKGROUND CHECKS

Each individual who is assigned to perform the UT Shuttle Services will be an employee of CAPITAL METRO or an employee of a subcontractor engaged by CAPITAL METRO. CAPITAL METRO is responsible for the performance of all individuals performing the UT Shuttle Services. Prior to commencing the UT Shuttle Services and at all times during its provision of the Services, CAPITAL METRO will have an appropriate criminal background screening performed on all the individuals assigned to perform the UT Shuttle Services. CAPITAL METRO will determine on a case-by-case basis whether each individual assigned to perform the UT Shuttle Services is qualified to provide the services under this Agreement. CAPITAL METRO agrees not to knowingly assign any individual, whether employed by Capital Metro or a subcontractor engaged by CAPITAL METRO, to perform the UT Shuttle Services who has been convicted or placed on deferred adjudication for an offense that (a) would require the individual to register as a sex offender under Chapter 62, Code of Criminal Procedure, which includes, but is not limited to, such offenses as Continuous Sexual Abuse of Young Child; Sexual Assault; Aggravated Sexual Assault; or (b) constitute an offense under the laws of another state or federal law that is equivalent to an offense requiring such registration, unless Capital Metro determines on an individualized risk based assessment that such offense is not a disqualifying offense as determined in accordance with the then applicable Capital Metro Background Investigations and Driving Requirements and Reporting Policy. CAPITAL METRO certifies that those individuals assigned to provide UT Shuttle Services, whether employed by CAPITAL METRO or a subcontractor engaged by CAPITAL METRO, have undergone an appropriate criminal background screening in accordance with CAPITAL METRO's policies and procedures.

ARTICLE XXXI: AMENDMENTS

This Agreement may be amended only in writing by an instrument signed by an authorized representative of the parties.

ARTICLE XXXII: NO WAIVER OF IMMUNITIES

The parties are governmental entities within the State of Texas and nothing in this Agreement waives or relinquishes the right of the Parties to claim any exemptions, privileges and immunities as may be provided by law.

ARTICLE XXXIII: CERTIFICATIONS

The parties certify that: (a) the services specified above are necessary and essential and are properly within the statutory functions and programs of the affected governmental entity; (b) the proposed arrangements serve the interest of efficient and economical administration of the governmental function; (c) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under an Agreement given to the lowest responsible bidder nor is this Agreement prohibited by Texas Government Code, Chapter 791; and (d) this Agreement neither requires nor permits either party to exceed its duties and responsibilities or the limitations of its authority.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

By _____ Date _____

Randy Clarke, President/CEO

THE UNIVERSITY OF TEXAS AT AUSTIN

By  _____ Date 2021-07-10 | 06:03:56 PDT

Name and Title: Jay Hartzell, President

Exhibit A INSURANCE REQUIREMENTS

CAPITAL METRO, consistent with its status as an independent contractor will carry at least the following insurance in the form, with companies having an A.M. Best Rating of A-: VII or better, or some similar rating, in amounts (unless otherwise specified), as UNIVERSITY may require:

Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

Employers Liability - Each Accident	\$1,000,000
Employers Liability Disease- Each Employee	\$1,000,000
Employers Liability Disease - Policy Limit	\$1,000,000

Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation and other rights in favor of UNIVERSITY, its directors, officers, employees, agents, successors and assigns.

UNIVERSITY agrees that CAPITAL METRO may purchase insurance through the Texas Municipal League Risk Pool.

Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$2,000,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$4,000,000
Sudden Events Involving Pollution	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

Policy shall include independent contractor's liability, products and completed operations and contractual liability, covering, but not limited to, the liability assumed under the liability provision of this Contract, fully insuring Contractor's liability for bodily injury (including death) and property damage.

Business Automobile Liability Insurance covering all owned, non-owned or hired automobiles, with coverage for at least \$1,000,000 Combined Single Limit Each Accident for Bodily Injury and Property Damage.

CAPITAL METRO will deliver to UNIVERSITY:

Evidence satisfactory to UNIVERSITY in its sole discretion, evidencing the existence of all insurance after the execution and delivery of this Agreement and prior to the performance or continued performance of any services to be performed by Contractor under this Agreement.

Additional evidence, satisfactory to UNIVERSITY in its sole discretion, of the continued existence of all insurance not less than thirty (30) days prior to the expiration of any insurance or any material change in coverage stated above. and will provide that the policies will not be canceled until after thirty (30) days' unconditional written notice to UNIVERSITY. UNIVERSITY may terminate the Contract if required insurance is not provided. CAPITAL METRO is responsible for all policy

deductibles that might apply. Capital Metro's insurance will be primary and non-contributory to any insurance or self-insurance limits available to UNIVERSITY.

The insurance policies required in this Agreement will be kept in force for the periods specified below:

Commercial General Liability Insurance, Business Automobile Liability Insurance, will be kept in force until receipt of Final Payment by Contractor to UNIVERSITY and,

Workers' Compensation Insurance and Employer's Liability Insurance will be kept in force until the Work has been fully performed and accepted by UNIVERSITY in writing.

If CAPITAL METRO is using a subcontractor to provide drivers for their buses subcontractor will carry at least the following insurance in the form, with companies having an A.M. Best Rating of A-:VII or better, or some similar rating, in amounts (unless otherwise specified), as UNIVERSITY may require:

Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

Employers Liability - Each Accident	\$1,000,000
Employers Liability Disease - Each Employee	\$1,000,000
Employers Liability Disease - Policy Limit	\$1,000,000

Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation and other rights in favor of UNIVERSITY, its directors, officers, employees, agents, successors and assigns.

Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 50,000
Medical Expenses (any one person)	\$ 50,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$5,000,000
Products - Completed Operations Aggregate	\$1,000,000

Policy shall include independent contractor's liability, products and completed operations and contractual liability, covering, but not limited to, the liability assumed under the liability provision of this Contract, fully insuring Subcontractor's liability for bodily injury (including death) and property damage. Policy shall include Personal Injury Liability extended to claims arising from employees of subcontractors.

Business Automobile Liability Insurance covering all owned, non-owned or hired automobiles, with coverage for at least \$5,000,000 Combined Single Limit Bodily Injury and Property Damage. In its sole discretion, UNIVERSITY may accept, in satisfaction of all automobile liability insurance requirements under this Agreement, a liability coverage document issued to CAPITAL METRO through the Texas Municipal League Risk Pool providing \$5,000,000 automobile liability to any subcontractor and its employees, including but not limited to all operators or drivers performing

services under this Agreement, as covered parties in the operation of the revenue vehicles. CAPITAL METRO will make all necessary contracts, indemnities, endorsements, and warranties as may be required to establish the University of Texas, and the operators and drivers of the revenue vehicles, including operators and drivers provided by subcontract or otherwise, as covered parties under the automobile liability coverage. of the Texas Municipal League Risk Pool. All other provision of this insurance exhibit shall apply to coverage provided through the Texas Municipal League Risk Pool, as determined applicable by the UNIVERSITY.

Subcontractor will deliver to UNIVERSITY:

Evidence satisfactory to UNIVERSITY in its sole discretion, evidencing the existence of all insurance after the execution and delivery of this Agreement and prior to the performance or continued performance of any services to be performed by Contractor under this Agreement.

Additional evidence, satisfactory to UNIVERSITY in its sole discretion, of the continued existence of all insurance not less than thirty (30) days prior to the expiration of any insurance or any material change in coverage stated above. Insurance policies, with the exception of Workers' Compensation, and Employer's Liability, will name and the evidence will reflect University, its directors, officers, employees, agents, successors and assigns as an Additional Insured and will provide that the policies will not be canceled until after thirty (30) days' unconditional written notice to UNIVERSITY. UNIVERSITY may terminate the Contract if required insurance is not provided. Subcontractor's insurance will be primary and non-contributory to any insurance or self-insurance limits available to UNIVERSITY.

The insurance policies required in this Agreement will be kept in force for the periods specified below:

Commercial General Liability Insurance, Commercial Automobile Liability Insurance, Workers' Compensation Insurance and Employer's Liability Insurance will be kept in force until the Work has been fully performed and accepted by UNIVERSITY in writing.

Verification of all insurance coverages shall be sent to:

The University of Texas at Austin
Parking and Transportation Services
ATTN: Associate Director
P. O. Box 7546
Austin, Texas 78713