



METRO

COMMUTER RAIL - DMU MAINTENANCE PROGRAM, OVERSIGHT OF HERZOG (19-01)

Terry Follmer, VP of Internal Audit

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EXECUTIVE SUMMARY

As part of our FY2017–2018 Audit Plan approved by the Capital Metro Board, we performed an audit of the DMU Vehicle Maintenance Program, to ensure critical contractual obligations are being performed according to contract specifications, and to determine if the Authority’s quality assurance oversight effectively monitors Herzog’s maintenance activities to ensure the safety and reliability of commuter rail vehicles. The audit results including the objective, scope, and conclusion are as follows.

Background

In March 2010, Capital Metro began commuter rail service on the Red Line between Downtown Austin and the City of Leander, TX. Capital Metro has contracted out the responsibility for operating the commuter rail service, as well as the preventive maintenance activities, to Herzog Transportation Services, Inc. The current Commuter Rail Operations Contract No. 137666 commenced on October 1, 2015, has a term of seven years for an award amount of \$117,580,749. Under this fixed cost contract, Herzog is responsible for providing maintenance and overhaul services for the company’s Diesel Multiple Unit (DMU) Fleet and locomotives, dispatching, operations, and signals. They are also responsible maintenance for the overhauls of the original fleet of six DMU was scheduled to go through their first major overhaul during FY16-17 at a total cost of \$4,942,195 which was completed in FY18.

Capital Metro has put in place a very specific and detailed contract covering Herzog’s required activities (i.e., Scope of Services), and compliance with the contract is critical to the success of the rail program. Another contractual tool that Capital Metro has put in place to ensure Herzog performance under this fixed cost contract is Performance Deficiency Credits (PDC – similar to liquidated damages) that covers more than 24 different areas and allows Capital Metro to assess a penalty (see Appendix A) and discount the monthly Herzog fixed cost payment for any deficiencies in performance. Rail Operations is responsible for overseeing and assessing these PDC’s. To ensure these contractual provisions are performed adequately, a Contract Monitoring Plan (CMP) has been developed by Capital Metro to identify the critical contractual terms and assign monitoring responsibilities, frequency, and methods to ensure satisfactory contractor performance. The CMP covers the monitoring, testing and oversight activities that Capital Metro performs and documents to validate that key contractual terms are being followed by Herzog.

Capital Metro has put in place various roles to help ensure the oversight, check and balances related to the monitoring of Herzog’s work. The critical role within the CMP is the Project Managers (PM) who are responsible for contract deliverables by Herzog. These positions are responsible for defining metrics, conducting measurements, and analyzing results. Additionally, the measurements and observations are used as a criterion in determining the success of contract management and are to be reviewed by the Director and Vice president, of Rail Operations. According to the CMP, the PM’s are to measure the contract quality by defining and performing the following:

1. Ensure contract monitoring are implemented.
2. Define how contract quality will be managed.
3. Define quality assurance activities.
4. Define acceptable monitoring standards.

There is a Contracting Officer Technical Representative (COTR) as defined in the June 11, 2018 letter (see Appendix F) sent to Herzog, and this role has been assigned to the Director of Rail Operations. The Director of Rail Operations also provides oversight of all Capital Metro Rail Operations and Maintenance contracts, with a focus on contract management, schedules, estimates, costs controls, documentation control and quality assurance/quality control. As the COTR, she also evaluates contractor performance as directed by the Contracting Officer (CO) and acts as a final review official for issues concerning contractor's performance. The Contracting Officer listed in the COTR is the Director of Procurement. Also, within Procurement a Contract Administrator (CA) has been assigned to this contract which is to "certify invoices with contractual terms and conditions" per the CA job description. The Director of Rail Operations (COTR) also has several positions (i.e., Program Managers covering Rail Transportation, Rail Fleet Services and Maintenance) who help her in the oversight and monitoring of the Herzog contract. The majority of the Capital Metro Rail Operations management team is new and has turned over in the last year.

Herzog is required to use Capital Metro systems to plan and document the performance of their work. The main Capital Metro systems used by Herzog are as follows: Spear asset management system (AMS); Railcomm System used for dispatching; Microsoft SharePoint to save all reports and documents required by the contract; Microsoft Office 365 for email, etc. In regard to the maintenance of Capital Metro's DMU fleet, the primary system used is Spear which supports the process of deploying, operating, maintaining, upgrading, and disposing of assets. Herzog utilizes the AMS system, to create work orders, part orders, record defects and repair information, view work performed service history, close work order, etc.. The contractor uses the AMS to record the inspections and detail any conditions found during the inspections. Herzog is required to record all inspection and repair part activity in the AMS, which creates monthly reports for FRA test compliance.

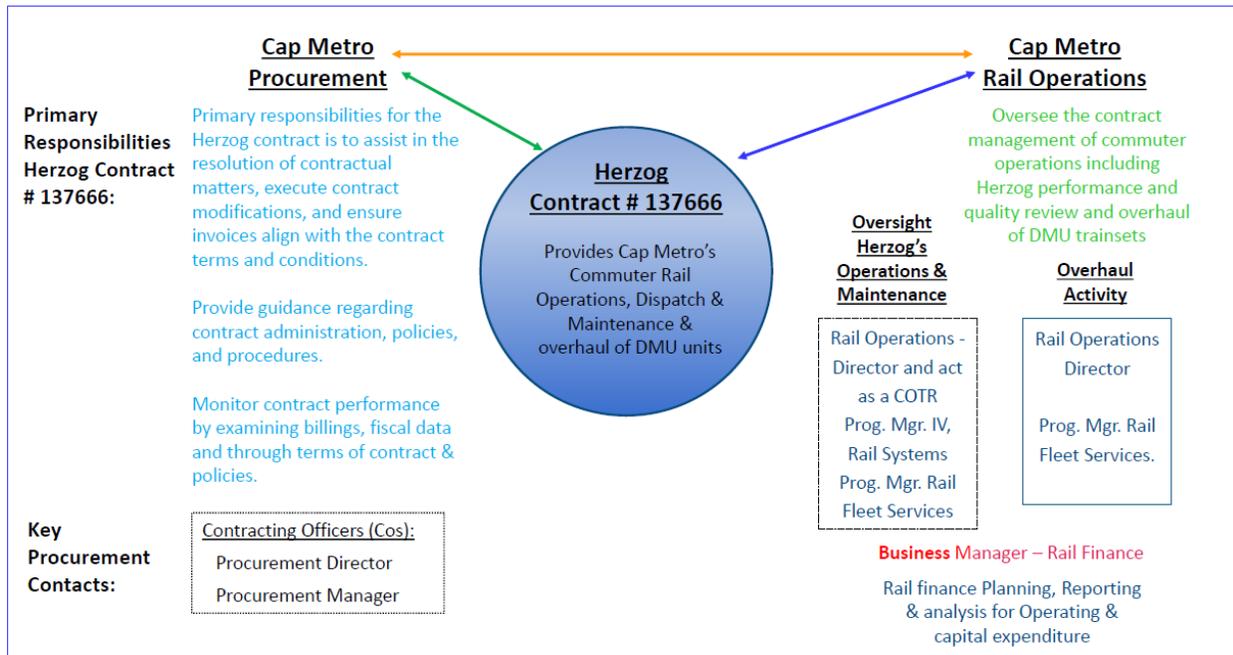
Audit Objective & Scope

The primary objective of this audit is to determine whether the DMU Vehicle Maintenance Program performed by Herzog follows contract terms and expenditures are allowable and appropriate. Additionally, the oversight and monitoring of contractor performance by Capital Metro was evaluated to ensure that controls in place and operating effectively to verify that the contractor is fulfilling key responsibilities and complying with contract terms.

The audit scope was limited to DMU maintenance on contract #137666 awarded to Herzog Transit Services, Inc. on July 8, 2015, with the effective date October 1, 2015, and those responsibilities directly delegated to this contractor, either implicitly or explicitly. The scope of this project covered Herzog's maintenance, quality assurance activities, and related billings for the fourteen-month period from May 2017 through June 2018.

We are displaying in Figure 1. Functional Relationships among CMTA departments and Herzog's Commuter Rail Operations Contract.

Figure 1. Functional Relationships among CMTA Departments and Herzog's



Source: Internal Audit analysis of CMTA information

Opinion

Internal controls require improvement in the following areas: contract monitoring plan (CMP) and documentation of Herzog performance monitoring; improving controls over invoice certification and ensuring all eligible incentives and disincentives are being assessed; revise job descriptions to support the Contract Monitoring Plan and drive compliance with the Herzog contract's Scope of Services; and increased oversight needed of the spare part prices and quantities in the asset management system. This is the first internal audit of the DMU maintenance program and management within Rail Operations has turned over significantly in the last year which we believe is a contributing cause to the weaknesses identified. The new Rail Operations team is committed to improving internal controls and oversight of Herzog, but the implementation of the FRA required Positive Train Control system will continue to be the top priority until 2019.

This audit was conducted in accordance with US Government Accountability Office's Generally Accepted Government Auditing Standards (GAGAS) and the Institute of Internal Auditor's International Standards for the Professional Practice of Internal Auditing. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The audit was conducted by the following staff members in the Capital Metro Internal Audit Department:

- Satish Parikh, Internal Auditor II (Project Lead)
- Terry Follmer, VP of Internal Audit

Recommendations to strengthen controls and improve accountability were provided to management. Management agrees with the internal audit recommendations and has provided target completion dates which are included in the detailed audit report below. A follow-up audit is performed semi-annually (i.e. May and November) to ensure management action plans for all issued audit reports are completed timely.

We appreciate the cooperation and assistance provided to us throughout this audit.

| <i>Issues & Risk</i> | <i>Recommendation</i> | <i>Management Action Plan</i> |
|--|---|--|
| <p>1. <u>CONTRACT INCENTIVES & DISINCENTIVES – TRACKING AND APPROVALS</u></p> <p>Exhibit H (see attached Appendix A) of the Herzog contract covers incentives and penalties based upon Herzog’s performance. There are more than 24 different types of payment adjustments covering everything from required maintenance (i.e., preventive, track, signal, etc.), on-time performance, reporting, and accidents, with disincentives ranging from \$300 per incident to \$1,000 per day for non-performance. The incentive and disincentives are meant to be adjustments made to the monthly fixed cost billings received from Herzog. We reviewed the controls related to Exhibit H (Payment Adjustments) and noted the following weaknesses:</p> <ul style="list-style-type: none"> • There is no checklist or documentation to show that all incentives and disincentives have been reviewed and taken by Capital Metro on the monthly invoice. • There are no delegated approval levels for disincentives identified and not taken, and decisions are made solely within Rail Operations. • Various reports on the required CDRL list (Appendix B) have not been received including annual audited financial statements and complete NTD reports for 2015 to current. • The design of controls to ensure that PDC’s are being identified evaluated are taken is not present. • Our review of transactions identified a month whereby a considerable Performance Deficiency Credit was identified but not taken. The former VP of Rail approved the deduction omittance on this invoice, but there is no written justification as to why the deduction was not taken. • There is no separate general ledger account to track incentives and performance deficiency credits. Instead, these adjustments are just netted against the invoice payment which minimizes transparency and analysis. | <p>The VP of Rail, COO and CFO will develop the following internal control enhancements:</p> <ol style="list-style-type: none"> a) A monthly Performance Deficiency Credit Checklist (PDC) will be designed that lists each type of PDC. b) The Monthly PDC Checklist will identify all eligible PDC’s, and if there is a difference between eligible PDC’s and PDC’s deducted from the invoice, there will be tiered authority levels based upon the materiality that may require approval from Legal, COO, CFO, and President. c) Rail Operations will prepare this monthly PDC Checklist which will be reviewed and approved by the COTR and submitted to Accounting with Herzog invoice for appropriate payment adjustment and record filing. d) Separate general ledger accounts should be created to track the incentive and PDC’s that either increase or decrease the amount paid to the contractor. Finance will enter the data into the AX system based upon the review sheets to be provided by Rail Operations. | <p>Management agrees with the recommendations.</p> <p><u>Target Completion Date:</u></p> <p>1/30/19</p> |

| <i>Issues & Risk</i> | <i>Recommendation</i> | <i>Management Action Plan</i> |
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| <p>2. INVOICE CERTIFICATION The monthly invoice from Herzog is a quite large fixed price (i.e., > \$1 million) and complex covering various items in the scope of services. We noted that all invoices paid had the proper electronic approvals in the AX ERP system, but no one with detailed knowledge of the activity was officially certifying the invoice. We noted that there were some DMU Overhaul charges that were inadvertently billed and paid in advance of the work being performed, but when this was discovered by Rail Operations and Procurement, this was not communicated to the Accounting Department for proper accounting treatment as a prepaid expense. During FY18 all prepaid DMU overhaul maintenance was completed and there is no balance due as of 9/30/18.</p> | <p>The Controller and Director of Rail Operations will improve internal controls over payments as follows:</p> <ul style="list-style-type: none"> a) An Invoice Certification form (see Appendix E for example) will be developed stating material and services billed have been received. b) Invoice certification form will be signed monthly by the COTR (i.e., Director of Rail Operations), and then submitted with invoice and Monthly PDC Checklist to Accounting for payment. c) An example of an Invoice Certification form is in Appendix E that Capital Metro may consider for prototyping their own form. | <p>Management agrees with the recommendations.</p> <p><u>Target Completion Date:</u></p> <p>1/30/2019</p> |

| <i>Issues & Risk</i> | <i>Recommendation</i> | <i>Management Action Plan</i> |
|--|--|--|
| <p>3. COMPLIANCE WITH CONTRACT MONITORING PLAN</p> <p>The Contract Monitoring Plan (CMP) “provides assurances of compliance” for the rail operations, dispatch, and maintenance performed by Herzog. The purpose of the CMP is to define and manage contract monitoring controls covering quality. We reviewed the CMP and noted the following weaknesses:</p> <ul style="list-style-type: none"> • There are six specific positions listed as Project Managers which serves as the key control position in the CMP functioning as quality assurance, however monitoring activities are not being documented as follows: all meetings are to be documented; “CMP random sampling forms” have not been created; routine inspections are to be documented; and the preventive maintenance “sampling database” had some quarters in FY18 with no documented testing by the Program Manager of Rail Fleet Services. • An Audit Inspection Report form (see Appendix C) has been developed to evidence contract compliance and quality controls as part of the CMP. We noted that this one-page form is not being used every quarter and has not been designed to capture sufficient audit inspection details. At the time of the audit, there was limited written documentation to evidence the execution of the CMP and related quality assurance activities. • The quality of Herzog’s Preventive Maintenance (PM) work was not evaluated and metrics were not developed to measure consistency. • Cap Metro Rail Operation does not have written policy and procedures for the department performance activities. • Rail Operations is over reliant on data provided by Herzog and is not documenting their oversight functions. • The CMP is to be reviewed and updated annually, but the CMP we received at the beginning of the audit was dated 6/1/16. <p>A contributing factor to the conditions noted above is the fact that the Rail Operations Department had significant personnel vacancies and turnover in the last year.</p> | <p>The Director of Rail Operations will implement the following CMP improvements:</p> <ol style="list-style-type: none"> Provide clarity in the CMP as to who are the Project Managers, and how this oversight will be split between the individuals responsible for rail operations, dispatch, signaling, and maintenance. An improved Audit Inspection Report form will be developed and implemented covering contract compliance and quality assurance monitoring activities. The types of inspections and how often this form should be completed and filed will be defined and implemented. Develop Rail Operation Policies and Procedures that are specific to the Herzog contract covering: quality performance review and sampling requirements; preventive maintenance and DMU overhauls; asset management and recordkeeping including part costs in accordance with the contract; safety; invoice certification; and how to use the Audit Inspection Report. The CMP will be redesigned to ensure appropriate contractual internal controls and data is being recorded, managed, and monitored to oversee contract compliance effectively. The CMP will be reviewed and updated annually. | <p>Management agrees with the recommendations.</p> <p><u>Target Completion Date:</u></p> <p>6/30/19</p> |

| <i>Issues & Risk</i> | <i>Recommendation</i> | <i>Management Action Plan</i> |
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| <p>4. <u>JOB DESCRIPTIONS & CONTRACTOR OVERSIGHT</u></p> <p>We reviewed the job descriptions for contractor oversight for both Rail Operations and Procurement, and compared to the Contract Monitoring Plan (CMP), COTR Letter and noted the following weaknesses:</p> <ul style="list-style-type: none"> • The Contract Administrator (CA) job descriptions in Procurement are listed with the responsibility of “certifying invoices agree with the contractual terms and conditions,” but they do not have the day to day oversight to perform this function adequately. • The job descriptions and CMP listed Rail Operation positions do not mention certifying invoices or escalating contract compliance issues to Procurement (i.e. Contract Administrator and Contracting Officer) for resolution. • The CA job description has the responsibility to monitor contract performance by examining invoices, contract terms, CMP to ensure contractor compliance; develop and monitor corrective actions for audit exceptions; but the CA position is not listed or described in the CMP and there is no continuous quality assurance reporting from the PM’s to the CA. | <p>The VP of Rail Operations and the Director of Procurement should implement the following improvements:</p> <ol style="list-style-type: none"> a) Review Herzog contract Scope of Services, with a detailed focus on the CDRL, PDC’s and monitoring plan. Using this information develop a RACI Matrix (example in Appendix D) for each line item and show who is Responsible, Accountable, Consulted, Informed (RACI) between the various positions in Capital Metro Rail Operations, Procurement, and Herzog. b) The roles and responsibilities of those who perform, and monitor contract and oversight activities of Herzog should be clearly defined in the job descriptions, CMP and/or RACI Matrix. c) The audit check list should be revised for quality performance review and clear oversight of monitoring performed. d) Define, assign, and document the roles and responsibilities of the key officials responsible for managing and oversight the Herzog contract. | <p>Management agrees with the recommendations.</p> <p><u>Target Completion Date:</u></p> <p>6/30/19</p> |

| <i>Issues & Risk</i> | <i>Recommendation</i> | <i>Management Action Plan</i> |
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| <p>5. <u>CONTRACTOR STAFFING CHANGES & REPORTING</u></p> <p>We noted the Monthly Staffing Report received from Herzog shows headcount for approximately 89 employees broken out by area (e.g., DMU maintenance; transportation, dispatch, etc.), but the report does not have columns to reflect new employees and terminations, and it is not shared with the IT Department. This additional information is necessary to ensure Capital Metro IT employees make the appropriate user access account changes for hiring and terminations. Discussions with the IT Service Desk disclosed that the required online Access Request form to be completed for all personnel changes is not being completed timely by Herzog. Therefore system access changes are being delayed creating unnecessary risk.</p> | <p>The VP of Rail will work with Herzog to achieve the following staff reporting changes:</p> <ul style="list-style-type: none"> a) The Monthly Staffing Report will include a column showing new hires and terminations and will be sent to the IT Service Desk and Security Departments to ensure all Herzog personnel changes for the month have been made. b) Herzog will submit staffing changes in real time directly to the IT Service Desk, Security and Rail Operations. An IT Access Request form will be submitted for any new hires, terminations or requested access changes to systems. | <p>Management agrees with the recommendations.</p> <p><u>Target Completion Date:</u></p> <p>12/31/2018</p> |

| <i>Issues & Risk</i> | <i>Recommendation</i> | <i>Management Action Plan</i> |
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| <p>6. <u>SPEAR ASSET MANAGEMENT SYSTEM & RECORDKEEPING</u></p> <p>Capital Metro uses an asset management system called Spear to maintain all asset records related to rail, bus, spare parts, and other assets. Spear supports the process of deploying, operating, maintaining, and upgrading and disposing of assets. The contact with Herzog requires them to make all updates in the Spear system for any changes in assets and maintenance performed. Herzog uses Spear to create work orders, parts orders, record inspections, and defects repair records, view service history, close work orders, etc. We noted the following issues/weaknesses:</p> <ul style="list-style-type: none"> • Although spare parts are owned by Herzog, we noted that crucial information like part prices and quantities on hand are not monitored by Capital Metro. Additionally, there is no oversight of any physical inventories performed by Herzog. However, the contract clearly states that Capital Metro “reserves the right” to buy back the parts from Herzog at the end of the contract “at the purchase price entered into the asset management system.” Furthermore, a deficiency in the record keeping and oversight will make the valuation of this inventory impossible if the Herzog contract is terminated. • Knowledge of spare parts usage and prices is necessary to help in future contract negotiations with Herzog. • We noted terminated employees whose access to the Spear system was not timely removed (see audit issue #5 above). • Watco is mainly a maintenance jobber, who sends the rail equipment to third parties to perform the repairs and overhauls. Ensuring maintenance records are accurately updated for third party work performed requires more attention. • Different accounting treatment as to the \$2.9 million in DMU parts and \$2.3 million Signal & Rail Parts given to Herzog on 10/1/15, which is being amortized over 5 years, versus the \$2 million in spare parts purchased and delivered to Herzog in September 2018 with the 4 new DMU’s which is being expensed as it is being consumed each month. • The Spear System will be replaced with the Infor system during FY19, so all asset management records need to be accurate for this implementation. | <p>The VP and Director of Rail Operations should consider the following internal control improvements:</p> <ol style="list-style-type: none"> a) For multiple reasons, Capital Metro has a vested interest in ensuring that the Herzog spare part records are accurate in both quantity and price. The highest risk is the parts previously provided by Cap Metro to Herzog, and management has a new position called Program Manager, Inventory Management to monitor these parts. All other parts are purchased by Herzog who has the risk of loss. At least once a year management should consider assurance services related to physical inventories and/or cycle counts to ensure the completeness and accuracy of the inventory. b) Personnel changes at Herzog must be reported timely to the IT Help Desk so that user access changes can be made within 24 hours. c) Evaluate controls to ensure that maintenance and repairs performed by third parties subcontracting with Herzog are timely and accurately updated into the Spear system. d) Accounting treatment for spare parts given to Herzog is not consistent. e) Ensure all fixed asset and spare parts data is complete and accurate in the Spear system before conversion/implementation to the Infor system. | <p>Management agrees with the recommendations.</p> <p><u>Target Completion Date:</u></p> <p>1/31/2019</p> |

| <i>Issues & Risk</i> | <i>Recommendation</i> | <i>Management Action Plan</i> |
|---|---|---|
| <p>7. <u>EVALUATE RESOURCE MANAGEMENT & STAFFING FOR PROPER OVERSIGHT OF HERZOG</u></p> <p>The Rail Operations staff has a very large statement of work with responsibility for oversight of Herzog activities (89 plus employees) related to DMU maintenance and overhauls, operations, dispatching, signals as well as Watco (20 plus employees) activities related to rail freight revenue and track maintenance. Additionally, Positive Train Control (PTC) is an additional project that Rail Operations are working to implement and the post implementation staffing to support PTC needs to be evaluated. In light of the findings (#1 to 6) in the report above, resource management should be evaluated for CA and Rail Operations staffing in order to address the other recommendations made in this audit report.</p> | <p>In concert with implementing the recommendations noted above (#1 to 6), the COO, VP of Rail and CFO should discuss resource management, staffing, and required skill sets to properly manage Herzog and other rail related contractors (i.e., Watco, MRS, etc.).</p> | <p>Management agrees with the recommendation.</p> <p><u>Target Completion Date:</u></p> <p>4/30/2019</p> |

Appendix A

Exhibit H of Herzog contract covering Incentive & Disincentives

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EXHIBIT H Revised - 1 PAYMENT ADJUSTMENTS

Summary of Performance Goals, Performance Incentives and Disincentives

The following performance matrix sets forth the performance goals that will be used by Capital Metro to measure performance under this contract. Certain incentives and disincentives will be applied based on performance by Contractor.

"Incentives" are defined as additional compensation allowed Contractor under the contract for meeting or exceeding the requirements. "Disincentives" or "PDC(s)" are defined as performance deficiency credits against amounts owing to Contractor for failure to meet contract requirements. Incentives and Disincentives shall be applied to the total invoiced amount on a monthly basis. Incentives and Disincentives are applied one month in arrears Performance goals, Incentives and Disincentives are set forth below.

Accidents. An accident is any contact with an object, vehicle or person which results in property damage or injury.

Passenger accidents are calculated as the total number of reported passenger accidents by the risk management department monthly, divided by the total passenger miles reported by the planning department monthly, times 10,000 miles.

| Passenger Accident Rate | Disincentive/Incentive |
|-------------------------|------------------------|
| 0 | 0.25% |
| .25 - .01 | 0.00% |
| .26 – 2 | - 0.25% |
| 2.01 and Above | -.0.50% |

Vehicle accidents are calculated as the total number of vehicle accidents, reported by risk management monthly. For the purpose of disincentives the contractor performance must be determined to be a contributing factor to the cause of the accident.

| Total Vehicle Accidents | Disincentive/Incentive |
|-------------------------|------------------------|
| 0 | 0.25% |
| 2 - 1 | 0.00% |
| 3 – 5 | - 0.25% |
| 6 and Above | -.0.50% |

Mean Distance Between Failures (MDBF) This performance goal will be measure by the total monthly vehicle miles provided by Capital Metro Planning Department, divided by the total number mechanical failures. All mechanical failures logged in the Capital Metro asset management system database regarding DMUs.

| MDBF | Disincentive |
|-----------------|--------------|
| 15,000 – 25,000 | 0.00% |
| 12,000 - 14,999 | - 0.25% |

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| 11,999 and below | - 0.50% |
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Customer Complaints. This performance goal will be measured per 20,000 passengers as measured by monthly counts of documented customer complaints. Ridership will be provided by the Capital Metro Planning Department. All complaints logged in the Capital Metro Customer Service database regarding Contractor's service will be counted in this measure.

| Complaint Rate | Disincentive |
|----------------|--------------|
| 3.0 and below | 0.0% |
| 5.1 – 8.0 | - 0.25% |
| 8.1 and Above | - 0.50% |

On-Time Performance. An on time trip is one that departs 0 minutes early and no more than 5 minutes and 59 seconds late departing from designated station, missed stations or annulled stations/trips.

| On-Time Performance Level | Disincentive |
|---------------------------|--------------|
| 96.00% and above | 0.0% |
| 90.00% - 95.99% | - 0.25% |
| 89.99% and Below | - 0.50% |

| Requirement | Incident | Disincentive/PDC |
|---------------------------|---|--|
| General Maintenance (all) | Failure to complete major repair work within the 30 calendar working days | A PDC of \$1000 per day until all repairs are completed and verified by Capital Metro |
| | Contractor shall maintain vehicles so that no repair requires the vehicle to be out of service more than 7 days during a fifteen (15) continuous, calendar day period | A PDC of \$1000 for each day on which Contractor fails to return a vehicle to service after exceeding 7 days out of service. |
| On Time Performance | Delay of freight or excursion rail operation. | A PDC of \$1,000 per incident the freight or excursion operation is delayed |
| Preventive Maintenance | Failed to perform Preventive maintenance (PM) Inspections as required for all revenue vehicles. | A PDC of \$1,000 per day per inspection performed later than scheduled. |
| Customer Complaints | Failure to respond to complaints within four (4) working days of receipt | A PDC of \$300 per day for each occurrence of a complaint response that fails to meet the response timeline |
| Vehicle Condition | Failure to remove a vehicle from service with out of service criteria. | A PDC of \$1000 per incident for each day a vehicle is operated with out of service criteria. |

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| Bridge Maintenance | Failure to maintain bridges at a load capacity of 286,000 pounds or better in accordance with the Bridge Management Safety Program. | A PDC will be assessed in the amount of \$5000 for each bridge that is not maintained load capacity of 286,000 pounds or better. |
| Bridge Maintenance | Failure to maintain bridges at CMTA level 3 or better in accordance with the Bridge Management Safety Program | A PDC will be assessed in the amount of \$5000 for each bridge that is not maintained at CMTA level 3 or better. |
| Cleanliness | Failure to maintain clean maintenance work areas (maintenance shop and Service Island) | A PDC of \$300 for each incident Contractor fails to clean facilities as required |
| Cleanliness | Failure to clean revenue vehicles according to standards at least 2 hours prior to peak departure times | A PDC of \$300 will be assessed for each incident in which Contractor fails to clean vehicles as required. (applies to both AM and PM peak) |
| Track Maintenance | Failure to maintain track at CMTA Class IV or better | A PDC \$20,000 will be for each track segment per week until the track is restored to CMTA Class IV or better. |
| Track Maintenance | Failure to corrected temporary speed restrictions within 30 days from the date imposed. | A PDC of \$1000 per day for every location where a slow order remains over 30 days. |
| Right of Way (ROW) Maintenance | Failure to remove trash, debris and graffiti, from the right of way | A \$500 PDC will be assessed per day for each location ROW defect remains after 24 hours. |
| Right of Way (ROW) Maintenance | Failure to remove vegetation and obstructions from the ROW within 5 days. | A \$1000 PDC will be assessed per day for each location ROW defect remains after 5 days of notification. |
| Right of Way (ROW) Maintenance | Failure to remove scrap rail from ROW within 30 days | A \$1000 PDC will be assessed per day for each location ROW rail after 30 days. |
| Signal Maintenance | Failure to maintain less than 5 signal defects within 7 consecutive days | A PDC of \$1000 will be assessed per defect greater than 5 within 7 days. |
| Signal Maintenance | More than 3 repeat defects within 30 consecutive days. | A PDC of \$2500 will be assessed per repeat defect greater than 3 within 30 consecutive days. |
| Signal Maintenance | Failure to correct defects within 30 days from FRA, TXDoT or CMTA | Contract will pay any associated fines plus PDC of \$1000 per day until defect is corrected past 30 days. |
| Staffing | Failure to fill vacated positions with Capital Metro approved persons within forty five thirty (45-30) of its becoming vacant | Capital Metro shall be issued a rebate, for each day over 45 days, equal to the salary and benefits cost of the staff member which position is not filled, plus PDC of \$1,000 per day for the general manager and \$500 per day for all other key staff. |

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| | | Capital Metro shall will assess a \$25,000 PDC, for each GM or direct reports that remains vacant over 30 days, per incident of vacancy. |
| Dress Code | Failure to comply with Capital Metro’s dress code | A PDC of \$300 for each incident in which a public-facing employee fails to wear the approved uniform while performing duties under this contract |
| Reporting | Contractor shall submit all reports required in this agreement on time | A PDC of \$1000 per day for each incident of failure to submit reports on time |
| Reporting | Failure to provide accurate reporting of all data | A PDC of \$1,000 for each incident in which the Contractor has inaccurately reported missed mileage, or fails to report a missed trip, or fails to report a mechanical roadcall |
| Training | Failure to ensure all employees complete the training requirements specified in the contract | A PDC of \$1,500 per day for each incident involving an employee that is assigned to work and has not completed the required training, as verified by a review of the employee’s training file. |
| Proper PPE | Failure to wear or provide proper PPE. | A PDC of \$500 per incident and per day for failure to provide and wear proper PPE. |

Appendix B

Contract Data Requirements List CDRL reports required

|  Commuter Rail, Dispatching, Operations and Maintenance | |  Transit Services Inc. |
|--|---|--|
| <p>Reporting Another important part of this activity is to work with CMTA staff to identify formats for all reporting requirements. We</p> | | <p>propose meeting with CMTA at regular intervals during the mobilization period to identify formats and desired content for all reports. The list of reports is identified in Table 2.2 .</p> |
| Contract Reporting | | Table 2.2 |
| Section | Report Type | Frequency |
| 17.13.4 | Audit Summary Report | Quarterly |
| 22.1 | Transportation Staffing Report | Daily |
| 22.2 | Track Outage Report | Weekly |
| 23.2 | Maintenance Production Report | Weekly |
| 23.2 | System-wide Service Property Inspection Report | Weekly |
| 12.26.4 | Maintenance Report | Weekly |
| 22.3 | Dispatcher Turnover | 3Xs Daily |
| 6.15.6 | Monthly Staffing Report | Monthly |
| 4.8 | Job Site Safety Inspections | Monthly |
| 10.22.1.1 | Supervisory Track and Right-of-Way Inspection Report | Monthly |
| 10.22.2 | Summary Track Inspection Report | Monthly |
| 11.29.1 | Signal and Train Control Tests and Inspection Reports | Monthly |
| 13.1 | FRA Operations Testing Plan Report | Monthly |
| 22.4.3 | Accident/Incident Report Summary | Monthly |
| 22.4.4 | Maintenance Report of Vehicle, Track, Bridges, Signals and Communications | Monthly |
| 16.7a | Long-Term Out-of-Service Status Report | Monthly |
| 16.9.5.4 | DMU Service Vehicle MDBF Report | Monthly |
| 22.4.8 | Training Schedule | Monthly |
| 13.1.3.14.7 | Training Report | Monthly |
| 22.4.9 | NTD Report | Monthly |
| 15.5.8 | Customer Comment and Complaint Report | Monthly |
| 6.4.1 | Organization Chart | Quarterly |
| 22.5.2 | Special Bridge Inspections | Quarterly |
| 22.5.3 | MOW Service Plan | Quarterly |
| 4.16.2.10 | Safety Performance Report | Quarterly |
| 5.9.3 | Security Issue and Incident Report | Quarterly |
| 7.4 | Transportation Service Plan | Annually |
| 22.6.2 | On-Time Performance Analysis Report | Annually |
| 22.6.3 | Railroad Improvement Recommendation List | Annually |
| 22.6.4 | Grade Crossing Improvement Plan | Annually |
| 22.6.5 | Flood Prone Locations and Mitigation Measures | Annually |
| 22.6.6 | NTP Annual Report | Annually |
| 10.28.1 | Bridge Maintenance and Repair Plan | Annually |
| 10.27.1 | Structure Inspection Report | Annually |
| 10.17.1 | Maintenance-of-Way Plan | Annually |
| 12.26.1 | Rail Vehicle Maintenance Plan | Annually |
| 11.11.6 | Signal System Failure Reduction Plan | Annually |

Appendix C

CMTA Audit Form referenced in the Contract Monitoring Plan

Capital Metro Railroad (CMTY)
 9315 Old McNeil Road
 Austin, TX 78758

CMTA Audit Form

| | | | | | | | |
|-------------------------------|--|--------|------|------------------------|--|---------|----|
| CMTA Auditor | | | | Signature | | | |
| Time | | | | Date | | | |
| Contractor | | Herzog | | ASTA | | Watco | |
| Subdivision (check one) | | West | East | | | Central | |
| Destination | | | | ROW | | | |
| Platform | | | | Train Ride | | | |
| Milepost | | | | Speed | | | |
| Description | | | | | | | |
| Notes | | | | | | | |
| Preventative | | | | Predictive | | | |
| Compliance | | Yes | | | | No | |
| Contractor Records Inspected | | Yes | | | | No | |
| Contractor Records Notes | | | | | | | |
| Corrective Action Taken | | Yes | No | Documentation Attached | | Yes | No |
| Corrective Action Notes | | | | | | | |
| Follow-up Inspection Required | | | | Yes | | No | |
| | | | | | | | |
| | | | | | | | |

Appendix D

Example of generic RACI Matrix

Responsible – Accountable – Consulted – Informed

| SAMPLE SharePoint RACI Chart | | | | | | | | | | |
|---|----------------------------|-------------------------|-----------------|------------|--------------------------|------------------------|---------------------------|------------------------|-------------------------------|-------------------------|
| SharePoint Go LIVE Documents | SharePoint Ops/Engineering | SharePoint Developer(s) | Project Manager | IT Manager | SP Designer (Consultant) | Support Desk Lead/SMEs | SP Architect (Consultant) | HR Director or Biz Rep | Marketing Director or Biz Rep | Other LOB or Department |
| <i>Business Requirements Document</i> | C | I | A | I | I | I | C | R | R | R |
| <i>Functional Design Doc</i> | R | C | A | C | I | I | C | I | I | I |
| <i>Branding Design & Page Layout Plans</i> | I | C | A | I | R | I | C | C | C | I |
| <i>Communication & Launch Plans</i> | C | I | A | R | I | | C | C | C | I |
| <i>Change Management & Control Process</i> | R | C | I | A | | | C | | | |
| <i>Operations & Maintenance Plan</i> | R | A | I | I | C | I | I | C | | |
| <i>Platform Security Doc & Review</i> | R | I | A | I | I | | C | | | |
| <i>Support Training Material</i> | R | | A | I | | C | C | | | |
| <i>End User Training</i> | C | | A | I | | R | C | C | C | C |
| Responsible for completing that step in the process | | | | | | | | | | |
| Accountable for ensuring that step is completed | | | | | | | | | | |

Appendix E

Appendix E – Example of generic Invoice Certification form

Certification:

I certify that:

- I have reviewed the Herzog Contract No. 137666 Commuter Rail - Operations, Dispatch & Maintenance operating agreement and all the items invoiced are defined in the operating agreement or current modifications; no additional modifications or clarifications are needed.
- I have obtained and reviewed all appropriate supporting documentation from the Herzog Transit Services, Inc. (HTSI); I have compared the HTSI railroad supporting documentation to Capmetro reports and data.
- I have recalculated the invoice and made appropriate reductions/additions to the invoice based on supporting evidence and documentation.
- I reviewed the Monthly PDC Checklist and identify all eligible PDC’s, and if there is a difference between eligible PDC’s and PDC’s deducted from the invoice, there will be tiered authority levels based upon the materiality that may require approval from Legal, COO, CFO and President.
- I have saved an electronic copy of the invoice, all supporting documentation, and audit checklist to the Rail Operations department SharePoint.
- I approve payment of this invoice.

Director, Rail Operations, Capmetro

Date

Note: Any exceptions to the Invoice Review Process, including invoiced items not audited and explain in detail. Otherwise, write N/A for not applicable.

Appendix F

Appendix F – COTR Letter to Herzog



Capital Metropolitan Transportation Authority
2910 East Fifth Street | Austin, Texas 78702
TEL 512.389.7460 | FAX 512.389.7594 | capmetro.org

June 11, 2018

Mr. Lance Davis
General Manager
Herzog Transit Services, Inc
9315-A McNeil Road
Austin, TX 78758

via email: ldavis@htsi.com

RE: Contracting Officer’s Technical Representative (COTR) on Contract 137666

Dear Mr. Davis:

The letter shall serve as notice that Ms. Muriel Friday will replace Mr. Danny Bailey as the Contracting Officer’s Technical Representative (COTR) for Contract 137666 effective today. Ms. Friday’s duties and responsibilities are as follows:

- Acts as the Authority’s focal point for all correspondence and discussions with Herzog, referred to hereafter as the Contractor, concerning technical direction; issues all technical directions that provide specific details and milestones.
- Ensures that all technical directions are properly documented to avoid misunderstandings and disagreements, avoid unnecessary costs, and generally to maintain proper control of the contract.
- Ensures that appropriate action is taken on technical correspondence pertaining to the contract and maintaining adequate files.
- Ensures that changes in the scope of work and any impact to delivery schedules are executed by contract modifications signed by the Contracting Officer (CO) before the Contractor proceeds with the changes.
- Ensures prompt review of draft and final reports so distribution of the reports can be made within the specified completion date of the contract, and assures prompt inspection and acceptance or rejection of other deliverable items or services.
- Informs the CO immediately of any indications that Contractor is behind schedule and coordinates corrective actions with the CO.
- Provides suggestions to the CO for improvements and changes that would facilitate better work performance or streamline processes to the advantage of the Authority and/or the Contractor.
- Furnishes to the CO a copy of Authority-Contractor conference reports and correspondence, including coordinating with the CO on the content of any contractually significant correspondence addressed to the Contractor in order to prevent possible misunderstanding or the creation of a condition that may be the basis of a later claim.
- Reviews the Contractor’s invoices to ensure that they accurately reflect the work completed in accordance with the requirements of the contract, including validating and certifying acceptance of deliverables.
- Negotiates changes for the Authority and presents the negotiated settlement to the CO for final approval and issuance of a Contract Modification.
- Furnishes the CO a notice of satisfactory or unsatisfactory completion of delivery or performance of the contract or any modification thereto.
- Tracks and reports equipment and system downtime to the CO.
- Reports promptly and directly to the Authority’s Ethics Officer and the CO, any suspected procurement fraud, bribery, conflicts of interest, and other improper conduct.
- Reviews and submits recommendations to the CO on subcontracts, considers the privities of the contract that exists between the prime contractor and subcontractor.
- Recommends to the CO approval/disapproval of the Contractor’s requests for public release of information regarding work being performed under the contract.
- Notifies the CO of inventions made by the Contractor during the performance of the contract.



Capital Metropolitan Transportation Authority
2910 East Fifth Street | Austin, Texas 78702
TEL 512.389.7460 | FAX 512.389.7594 | capmetro.org

- Furnishes the CO a formal request for contract termination, when required.
- Evaluates Contractor performance as directed by the CO and provides support to the CO and acts as final review official in subsequent issues concerning the Contractor's performance.
- Notifies the security office at contract completion for the timely collection of security badges.

Ms. Friday is prohibited from taking the following actions:

- Making commitments or promises to any Contractor relating to a contract.
- Writing contract requirements around the product or capacity of one source.
- Soliciting proposals.
- Modifying any of the stated terms of the contract.
- Issuing instructions (oral or written) to Contractor to start or stop work.
- Approving items of cost not specifically authorized by the contract.
- Directing changes (oral or written).
- Signing supplemental agreements.
- Taking any action with respect to termination, except to notify the CO that the action is desired and to assist with the process as requested.
- Authorizing delivery or disposition of Authority-furnished property.
- Giving guidance, either orally or in writing, that might be interpreted as a change in scope or terms of the contract.

Ms. Friday can be reached at Muriel.Friday@capmetro.org. If you have any questions concerning any of the elements of this letter please contact me.

Respectfully,

A handwritten signature in blue ink, appearing to read "Muhammad Abdullah".

Muhammad Abdullah
Procurement Director &
Contracting Officer

cc: Mr. David Dech, VP Rail Operations
Ms. Muriel Friday, Program Manager, Rail Operations
Ms. Anita Delbert, Procurement Manager
Mr. Kirk Perry, Contracts Administrator