



**REQUEST FOR PROPOSALS**

**FOR**

**Consultant Services for Envision Route 7 Phase 4-2 Mobility Analysis Study**

**Northern Virginia Transportation Commission**

**December 17, 2024**

**Request for Proposal: 24-05**

**NORTHERN VIRGINIA TRANSPORTATION COMMISSION  
REQUEST FOR PROPOSALS**

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**PROJECT TITLE:** Envision Route 7 Phase 4-2 Mobility Analysis Study

**REQUEST FOR PROPOSAL ID:** RFP 24-05

**CONTACT:** Scott Kalkwarf, Director of Finance and Administration  
Northern Virginia Transportation Commission  
2300 Wilson Blvd., Suite 230  
Arlington, VA 22201  
[scottkalkwarf@novatransit.org](mailto:scottkalkwarf@novatransit.org)

**ISSUE DATE:** December 17, 2024

**DESCRIPTION OF WORK:**

The Northern Virginia Transportation Commission (NVTC) is requesting proposals from qualified firms to provide consulting services for NVTC's Envision Route 7 Phase 4-2 Mobility Analysis Study, which will further planning towards eventual construction of a high-frequency, high-capacity bus rapid transit service that includes enhanced bus stops and boarding islands. The study will:

- Examine the project corridor from Seven Corners in Fairfax County to the Mark Center in Alexandria, completing the entire corridor's mobility analysis
- Identify trends and examine issues related to traffic congestion
- Conduct extensive community conversations around BRT
- Analyze roadway options in the City of Falls Church
- Identify Alexandria BRT southern terminus (Southern Towers vs. Mark Center).

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL:** NVTC has established a DBE participation goal for this contract of **8.42%**. A bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet this goal.

**OPTIONAL PRE-PROPOSAL CONFERENCE:**

An optional pre-proposal conference will be conducted by NVTC, virtually on January 6, 2025 at 1:00 PM. Attendance is not required. Please RSVP to [scottkalkwarf@novatransit.org](mailto:scottkalkwarf@novatransit.org) at least two days prior to the conference and provide an e-mail address and contact information so NVTC can provide the meeting link.

The purpose of this conference is to allow potential Offerors an opportunity to ask questions and receive answers about this solicitation. A summary of the conference, including questions and answers, will be posted following the conference on NVTC's website <https://novatransit.org/procurement/>.

**QUESTIONS**

All questions must be submitted in writing to [scottkalkwarf@novatransit.org](mailto:scottkalkwarf@novatransit.org) , by 12:00 PM on January 13, 2025. Material questions will be answered and posted on January 17, 2025 on NVTC's website <https://novatransit.org/procurement/> .

**TYPE OF CONTRACT:** Fixed Price. The final price of the contract will be determined following a review of proposals and contract negotiations.

**NOTICE OF AWARD:** Notice of contract award(s) made as a result of this solicitation is expected to be on or about April 2025, with project completion September 2026.

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## Section A

### Instructions to Offerors

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**1. PURPOSE OF RFP/SCOPE OF WORK:**

The purpose of this RFP is to procure services to conduct a planning study . A detailed scope of work follows in Section C.

**2. COMPETITIVE NEGOTIATION FOR NON-PROFESSIONAL SERVICES:**

This solicitation is a competitive negotiation for non-professional services and defined by the Virginia Public Procurement Act. The content of the proposals is not public record until a Notice of Intent to Award has been issued. The opening of Proposals is therefore not public.

**3. PROPOSAL AND CONTRACT REQUIREMENTS:**

NVTC follows Virginia procurement laws. Accordingly, all applicable State requirements will apply. Offerors are expected to become familiar with these requirements and shall not submit Proposals if unable to execute a Contract containing such provisions.

Funds for this project are provided in part by the Virginia Department of Rail and Public Transportation (DRPT). Accordingly, all applicable DRPT and Commonwealth of Virginia requirements will apply, including regulations, policies, procedures and directives. The Master Agreement with DRPT is provided in Section G.

Federal funds will also be used for the subsequent Contract. Federal requirements are subject to change. The Offeror is responsible for complying with the most current regulations. The Offeror agrees that the most recent of such Federal requirements will govern the administration of the Contract at any particular time during performance of the Contract, unless NVTC issues a written determination otherwise.

**4. OBLIGATION OF CONTRACTOR:**

Before submitting a Proposal, the Offeror shall be responsible for reading and examining the solicitation documents including these Instructions to Offers. Submission of a Proposal shall be deemed verification of such reading and examination by Offer.

When submitting a Proposal, the Offeror shall explicitly state in writing any exceptions to any liability provision or Term and Condition contained in the Request for Proposal. If no exceptions are taken to the solicitation, the Offeror shall make a statement of “no exceptions.”

By submitting a Proposal, the Offeror agrees that it has satisfied itself from a personal investigation of the conditions to be met, that the obligations herein are fully understood, and no claim may be made, nor will there be any right to cancellation or relief from the Contract because of any misunderstanding or lack of information.

**5. POINT OF CONTACT:**

All inquiries or correspondence regarding this RFP shall be directed to the NVTC Director of Finance and Administration whose name and contact information appear on the first page of this solicitation.

Communications relating to this RFP to anyone other than the NVTC Director of Finance and Administration are prohibited during the RFP response period. **Do not contact NVTC Project Manager(s), consultants or any NVTC personnel other than the NVTC Director of Finance and Administration regarding this solicitation.**

**6. SUBMISSION OF WRITTEN QUESTIONS:**

All questions and requests for clarification regarding the meaning or interpretation of this RFP and other solicitation documents, or any ambiguities, discrepancies, inconsistencies, or conflicts in or between any of the technical, pricing, or contractual provisions, must be submitted no later than the date and time specified in Section B of this RFP. Questions and clarifications requested after such time will not be answered unless NVTC elects, at its sole discretion, to do so. Material questions and answers will be posted by the date specified in Section B of this RFP to NVTC's website <https://novatransit.org/procurement/>.

It shall be the obligation of the Offeror to exercise due diligence to discover and to bring to the attention of NVTC, at the earliest possible time, any ambiguities, inconsistencies, or conflicts in or between any of the technical or contractual provisions in the RFP.

Any change made by NVTC will be in the form of an amendment to the RFP and will be posted on NVTC's website <https://novatransit.org/procurement/>.

**7. WRITTEN COMMUNICATIONS:**

NVTC will assume no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of the contract, unless included in this RFP, the contract, the specifications or related documents or amendments thereto.

**8. PROPOSAL PREPARATION COSTS:**

This RFP does not commit NVTC to an award, or to pay any costs associated with the preparation and/or submission of any proposal. NVTC will not reimburse any costs incurred by Offerors in responding to this RFP or in competing for contract award.

**9. SUBMISSION OF PROPOSAL AND PROTECTION OF PROPRIETARY INFORMATION:**

The proposal shall be submitted electronically in PDF format by the date and time specified in Section B through NVTC's procurement portal <https://tinyurl.com/novatransitRFP>. NVTC reserves the right to reject any and all proposals received after that time. NVTC also reserves the right to waive informalities. Separate technical and price proposals must be submitted.

Consistent with state statutes, NVTC will provide all reasonable precautions to ensure that proprietary information remains within the review process. The Offeror shall attach to any proprietary information the following legend and identify the specific reason(s) for this designation as permitted in the Code of Virginia:

*Specific data as indicated are furnished pursuant to RFP #24-05 and shall not be disclosed outside of NVTC, be duplicated, or used, in whole or in part, for any purpose other than to evaluate the proposal. The reasons for protecting these data are defined in the Code of Virginia. This restriction does not limit NVTC's right to use information contained in these data if it is or has been obtained by NVTC from another source.*

Except for the foregoing limitation, NVTC may duplicate, use and disclose in any manner and for any purpose whatsoever and have others do so, all data furnished in response to this RFP.

**10. PROPOSAL ACCEPTANCE PERIOD:**

The proposal shall be binding upon the Offeror for 120 calendar days following the proposal submission date. Any proposal on which the Offeror shortens the acceptance period may be rejected, unless extended by mutual agreement between NVTC and the Offeror.

**11. INTERVIEWS (OPTIONAL):**

NVTC reserves the right to conduct interviews with short-listed firms, based on the results of the Technical Evaluation Team's (TET) evaluation, prior to making a selection. The date for interviews is specified in Section B.

The interviews will provide an opportunity for Offerors to clarify their Proposal in response to questions from the TET. This is a fact-finding and explanation session only and does not include negotiations. As interviews are optional for NVTC, Offerors must treat their Proposals as a final product.

Upon selection of the most technically qualified Offeror(s), NVTC shall commence negotiations.

**12. AWARD OF THE CONTRACT:**

A. GENERAL

NVTC may cancel this RFP or reject Proposals at any time prior to an award and is not required to furnish a statement of the reason why a particular Proposal was not deemed to be the most advantageous (Code of Virginia, § 2.2-4359D).

## B. AWARD SELECTION

A Technical Evaluation Team (TET) will review the Proposals using written score sheets. Offerors will be ranked in order according to the scores of the TET. NVTC shall engage in individual discussions with two (2) or more Offerors deemed fully qualified, responsible and suitable among those submitting Proposals, on the basis of the factors specified in the evaluation criteria. Final selection shall be made of one (1) Offeror deemed to be the best for the project on the basis of the evaluation factors.

## C. NEGOTIATIONS

- i. Negotiations shall commence with each of the selected Offerors to achieve a binding price and agreement on Contract terms. Price shall be considered, but need not be the sole or primary determining factor.
- ii. Following the negotiations, NVTC will request each of the selected Offerors to submit a Best and Final Offer (BAFO)

## D. AWARD DOCUMENTS

The award document will be a Contract incorporating by reference the Request for Proposals, Terms and Conditions, Contract Provisions, Scope of Work/Services and/or Technical Specifications, and the Contractor's Proposal as negotiated.

## E. NOTICE OF INTENT TO AWARD

NVTC will post the "Notice of Intent to Award" on its website at <https://novatransit.org/procurement/> for a minimum of ten (10) calendar days. The "Notice of Intent to Award" shall not be construed as a "Notice-To-Proceed (NTP)."

## F. NOTICE OF AWARD

A "Notice of Award" will be posted on NVTC's website at <https://novatransit.org/procurement/>. The successful Offeror will be notified in writing by NVTC.

### **13. DELAYS IN AWARD:**

Delays in award of a contract, beyond the anticipated starting date, may result in a change in the contract period indicated in the solicitation. If this situation occurs, NVTC reserves the right to award a contract covering the period equal to or less than the initial term indicated in the solicitation.

### **14. REJECTION OF PROPOSALS:**

NVTC expressly reserves the right to reject any or all proposals or any part of a proposal, and resolicit the services in question, if such action is deemed to be in the best interest of NVTC.



**15. SINGLE PROPOSAL:**

If a single conforming proposal is received, a price and/or cost analysis of the Proposal shall be made by NVTC.

- It should be recognized that a price analysis through comparison to other similar contracts shall be based on an established or competitive price of the elements used in the comparison.
- The comparison shall be made to the cost of similar projects and involve similar specifications.

**16. PROTEST OF AWARD:**

An Offeror wishing to protest a decision to award a contract must submit the protest, in writing, to the NVTC Director of Finance and Administration no later than ten (10) calendar days after either the decision to award or the award, whichever occurs first. The protest must include the basis for the protest and the relief sought. Within ten (10) calendar days after receipt of the protest, the Executive Director of NVTC will issue a written decision stating the decision on the protest and the reasons for the action taken. This decision is final. Further action, if desired by an Offeror, must be taken by instituting action as provided by the Code of Virginia. (see Code of Virginia, § 2.2-4360)

If the project is funded in whole or in part by grants from the Federal Transit Administration (FTA), FTA will only review protests regarding the alleged failure of NVTC to have written protest procedures; an alleged failure to follow those procedures; or violation of Federal law or regulation. A protestor must exhaust all administrative remedies with NVTC before pursuing a protest with FTA. Any party wishing to file a protest with the FTA should do so no later than five (5) calendar days after a final decision is rendered under NVTC's protest procedure. Further details regarding this process may be found in the FTA Circular C4220.1F, Chapter 7.

**17. CONTRACT AWARD AND BOND REQUIREMENTS:**

The Offeror whose proposal is accepted shall, within the time established in this RFP, enter into a written contract with NVTC. There will be no bond requirements for this project. In lieu of the usual performance and payment bonds, NVTC will retain 5% of the payments until completion of the project.

**18. REQUIREMENTS OF THE SEPARATE TECHNICAL AND PRICE PROPOSALS:**

**The technical proposal shall include:**

- A. Title Page - show the name of the Offeror's firm, local address, telephone number, name of contact person and date.
- B. Table of Contents.
- C. Letter of Transmittal summarizing the proposal (1 page maximum).

D. Technical Approach and Work Plan (25 pages maximum):

This section should describe the recommended approach and work plan regarding the assistance to be provided. The proposal must address in depth the Offeror's plans to meet the requirements of each of the tasks and activities outlined in the Scope of Work of this RFP. The work plan must include a task-by-task/sub-task-by-sub-task schedule of the time required to complete the project. In the cost proposal the work plan steps should be supported by the proposed hours the Offeror agrees to commit to the task. This schedule must identify the major milestones, project deliverables, and estimated total time to complete each task for the entire project. The schedule shall include progress reporting and project meetings with adequate time for NVTC to review and approve contractor deliverables.

Each Offeror shall cover all of the requirements of the work as given in Section B of this RFP, in the Contract Terms and Conditions, and any other contract documents described in Sections C and D, and provide sufficient specific information to effectively demonstrate the Offeror's technical capability to perform all work required under these specifications. The Offeror shall submit information to enable NVTC to ascertain how the proposal will meet the specifications contained herein and in accordance with the Evaluation Criteria.

- E. Proposed Quality Assurance Program (2 pages maximum). The quality assurance program should clearly describe how the Offerors will manage and control all proposed activities. Offerors should explain how the management and administrative processes will ensure that appropriate levels of attention are given so that work is properly performed as proposed. This section shall include a work plan and schedule and a project management plan that will detail the lines of authority and communication and will support all of the project requirements and logically lead to the deliverables required in the RFP.

F. Project Staffing (Qualifications and Experience)

This section must include the qualifications of the key personnel that will be assigned to this project. At a minimum, the proposal should designate a project manager, and include the organization, functional discipline, and responsibilities of project team members.

Resumes of no more than one page each should be provided for all key personnel proposed.

The Offeror should clearly state if it is proposing to subcontract any of the work herein. The names of subcontractors are to be provided and by proposing such firm(s) or individuals, the Offeror assumes full liability for the subcontractor's performance.

G. Firm(s) Experience and Capabilities

The purpose of this section is to provide NVTC with an overview description of the Offeror's company plus the Offeror's commitment to performing the services set forth in the RFP. The Offeror must also specify, in a similar manner,

the qualifications of any subcontractors to be used in this proposed project.

Offerors shall identify a minimum of three projects performed over the last five years, similar or equivalent in size and scope to the work described in the solicitation. Project descriptions, limited to one page each, should describe relevant work previously performed by the Offeror and proposed subcontractors. In addition to a concise description of the technical work performed under the contract, project descriptions should include the name of the client, contact person, title, address, phone and fax numbers, and direct email address. Project descriptions should also provide the contract number and contract value and the time period of performance.

H. A list of names, titles, telephone numbers and email addresses of persons authorized to conduct negotiations.

I. Acknowledgment of receipt of all NVTC amendments to this RFP in the Technical proposal.

J. Exceptions to the Solicitation

State whether the General Provisions are accepted as presented in this solicitation or if exceptions are taken; identify exceptions taken to the solicitation; provide rationale in support of the exception and fully explain its impact, if any, on the performance, schedule, price and specific requirements of the solicitation; and relate each exception specifically to each section/paragraph and/or specific part of the solicitation to which the exception is taken. If no exceptions are taken to the solicitation, the offeror shall make a statement of "no exceptions."

K. Attachments

Attachment A: NVTC Insurance Coverage Required

Attachment B: RFP Submission Form

Attachment C: Certifications

Attachment D: Small, Women, Minority and Service Disabled Veterans Owned Business Participation Statement

Attachment E: Schedule of Small, Women, Minority and Service Disabled Veterans Owned Business Participation

**The separate price proposal shall include:**

- a) Title page – name of the firm, local address, telephone number, email, name of contact person and date.
- b) Exhibit showing a non-binding estimate of the hours to be worked by named individuals, their firms, and their hourly rates broken down by task and sub-task and the associated total costs including all estimated out-of-pocket costs and fees. Costs must include all items such as professional time, travel, data processing, forms, printing, and other expenses included in the proposed cost.

## 19. EVALUATION CRITERIA:

### GENERAL

Proposals will be evaluated based on the evaluation criteria as stated below. A 1000-point scale will be used to create the final evaluation recommendation. When assessing points, a 1-10 scale will be utilized and multiplied by the weight assigned.

#### A. SCORING METHODOLOGY

The Technical Evaluation Team (TET) will review and evaluate the Proposals using the following scale:

<b>Points</b>	<b>Guidance</b>
9 - 10	<b><u>Outstanding</u></b> : Meets all of the requirements / exceeds expectations / excellent probability of success in achieving all objectives / very innovative.
6 - 8	<b><u>Above Average</u></b> : Exceeds minimum requirement / sound response / very good probability of success.
4 - 5	<b><u>Average</u></b> : Meets minimum requirement / has a reasonable probability of success.
2 - 3	<b><u>Fair</u></b> : Partially responsive / falls short of meeting basic expectations / has a low probability of success.
1	<b><u>Poor</u></b> : Inadequate / fails to meet the requirement.
0	<b><u>Failure</u></b> : No response / the information is missing altogether.

B. EVALUATION CRITERIA

The following criteria and weighting scheme will be utilized to evaluate Proposals:

Evaluation Criteria		Maximum Points	Weight	Maximum Score
A.	Project approach and management plan including a clear understanding of the project scope and technical requirements.	10	25	250
B.	Capability, experience, and expertise of the proposed firm(s) in performing the tasks indicated in the scope of work.	10	15	150
C.	Knowledge and qualifications of the proposed Project Manager including depth of experience and understanding of planning concepts and theory.	10	30	300
D.	Knowledge and qualifications of the proposed personnel for the project team including depth of experience in BRT planning and traffic analysis.	10	20	200
E.	Approach to addressing project advancement and cost savings in project delivery.	10	10	100
<b>TOTAL POINTS</b>				<b>1000</b>

**20. QUALIFICATIONS OF OFFERORS:**

NVTC may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to furnish the item(s) and the Offeror shall provide NVTC all such information and data for this purpose as may be requested. NVTC reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Offeror fails to satisfy NVTC that such Offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or goods contemplated therein.

**21. REVISIONS PRIOR TO DATE SET FOR RECEIPT OF PROPOSALS:**

NVTC reserves the right to revise or amend this RFP prior to the date set for receipt of proposals. Such revisions and amendments, if any, will be announced by an amendment or amendments to this RFP. Such amendments as may be issued will be posted on NVTC's website. If the revisions and amendments require material changes, the date set for receipt of proposals may be postponed by such number of days that, in the opinion of NVTC, will enable Offerors to revise their proposals. In such cases, the amendment will include an announcement of the new date for receipt of proposals.

**22. ACKNOWLEDGEMENT OF AMENDMENTS:**

Offerors are required to acknowledge receipt of all amendments to this RFP in the Technical proposal. Failure to acknowledge all amendments may cause the proposal to be considered not responsive to this RFP.

**23. KEY PERSONNEL:**

Certain skilled, experienced, professional and/or technical personnel are essential for successful accomplishment of the work to be performed under the contract. These are defined as "Key Personnel" and are those persons whose resumes were submitted as part of the technical proposal for evaluation. Key personnel are expected to work on the contract for its duration, so long as they continue to be employed by the contractor, unless removed from work on the contract with the consent of, or at the request of, NVTC.

**24. ADDITIONAL INFORMATION:**

NVTC reserves the right to ask any Offeror to clarify its offer.

**25. CONFLICT OF INTEREST:**

The successful Offeror and their officers and employees shall comply with the provisions of the Virginia Conflict of Interest Act (2.2-3100 et. seq., VA Code Ann.), the terms of which are incorporated herein by reference.

NVTC is intent on avoiding conflicts of interest associated with the award of the contract(s). To this end, Offerors must identify existing and prospective contractual relations they have (or could have) which could present sources of conflict as part of the proposal submission.

**26. SMALL, WOMEN, MINORITY AND SERVICE DISABLED VETERANS OWNED BUSINESS:**

NVTC believes it is imperative to maximize the participation of small businesses, including those owned by women, minorities, and service disabled veterans, in all of our contracting opportunities. To that end, where it is practicable for any portion of the awarded contract to be subcontracted, the Offeror is encouraged to offer such business to small, women-owned, minority, and/or service disabled veteran-owned businesses.

**27. INSURANCE CHECKLIST:**

A checklist of required insurance coverage is included as Attachment A and identified as "NVTC Insurance Coverage Required." Items marked "X" are required to be provided. A certificate of insurance indicating these coverages should accompany the Offeror's response to the RFP. If insurance is incomplete, the Offeror should provide a letter from

its insurance agent stating that the Offeror is eligible to obtain insurance to the prescribed limits, should a contractual offer be extended. Technical proposals must note any desired exceptions to the insurance coverage. Offerors may submit proposed alternatives.

**28. PROJECT MANAGER AND PROJECT OFFICER:**

For this project, the following individuals will serve as managers and officer:

Project Manager

Vikram Sinha  
Senior Program Manager  
NVTC

Project Officer

Katherine A. Mattice  
Executive Director  
NVTC

**29. NOTICE OF AWARD:**

The successful Offeror will be notified in writing by mail or otherwise that its proposal has been accepted and that it is to be awarded the contract. The notice of award should not be construed as a "Notice to Proceed."

**30. EXECUTION OF CONTRACT:**

The successful Offeror shall execute the contract and furnish the Insurance Certificates and Form W-9 Request for Taxpayer Identification Number and Certification to NVTC within ten (10) calendar days after the Notice of Award has been issued. The contract will be in writing and shall be executed in the number of copies required by NVTC. One fully executed original shall be delivered to the Contractor. A Notice to Proceed will not be issued until the contract has been executed and all supporting materials are received by NVTC. Contract performance shall begin on the date set forth in the written Notice to Proceed.

**31. FAILURE TO EXECUTE CONTRACT:**

Should the successful offeror fail to execute the Contract within ten (10) calendar days after receipt and submit the required Insurance Certificates, NVTC may, at its option, determine that the Offeror has abandoned the Contract, and, thereupon, the Proposal and acceptance shall be null and void. NVTC may also seek all available remedies at law and equity.

**32. NOTICE-TO-PROCEED (NTP):**

A "Notice-To-Proceed" (NTP) will be issued separately upon execution of the Contract. Contract performance shall begin on the date set forth in the written NTP. The NTP shall start the time for which the Contractor is responsible for completion.

**Section B**  
**Procurement Schedule**

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<u>Date</u>	<u>Activity</u>
December 17, 2024	Issue RFP
January 6, 2025, 1:00 PM	Pre-proposal Conference
January 13, 2025, 12:00 PM	Submission of Written Questions
January 17, 2025	Answers to Material Questions Posted
January 31, 2025, 5:00 PM	Proposal Due Date
February 2025	Interviews (optional)
April 2025	NVTC notifies top firm of intent to recommend contract award
April 2025	Notice of Award
April 2025	Contract Signed and Notice to Proceed
September 2026	Project Completion



## Section C

### Scope of Work

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#### **Scope of Work: Envision Route 7 Phase 4-2 Mobility Analysis Study**

#### **INTRODUCTION**

Since 2010, NVTC has served as the primary planning agency for the Route 7 Bus Rapid Transit (BRT) project, overseeing, and coordinating Envision Route 7 efforts such as planning studies and stakeholder governance decisions. Because NVTC serves as a regional coordinator and advocate for the region's transit operators and jurisdictions, it is well positioned to lead a BRT project that crosses four jurisdictions. The next step in the Envision Route 7 BRT project will be the Phase 4-2 Mobility Analysis Study from Seven Corners to the Mark Center, the final geographic segment of Phase 4's overall analysis of the mobility impacts and benefits of the proposed BRT from Tysons to the Mark Center.

The BRT route is proposed to go from the Spring Hill Metro Station in Tysons along Route 7 to the City of Falls Church where it would divert off the corridor and connect with the East Falls Church Metro Station. The results of the travel demand forecast show high ridership with an East Falls Church Metro Station connection. South of the East Falls Church Metro Station, the BRT would continue to Seven Corners and then reconnect with Route 7. The BRT is proposed to continue south on Route 7 until it intersects the West End Transitway in the City of Alexandria, where it would use that facility to connect with Mark Center. Figure 1 shows a map of the corridor and the proposed alignment. Further background on the project, including the reports from previous phases, is at: <https://novatransit.org/programs/route7/>

The overall goal of the Phase 4-2 Mobility Analysis Study is to evaluate and determine the mobility benefits and impacts resulting from the proposed BRT from Seven Corners to the Mark Center. This effort will require the development of a traffic micro-simulation model using PTV's Vissim software. Fairfax County Department of Transportation (FCDOT) has already developed a model from Tysons to the City of Falls Church (Cube Travel Demand Model) and a model exists for Phase 4-1, which consists of the 3.5-mile section in the City of Falls Church. This effort will take the model files and add approximately 4.5 miles onto the current network. This effort will require the development and calibration of the micro-simulation traffic and validation of the entire modeled corridor.

The overall Phase 4-2 study objectives for this segment of Route 7 from Seven Corners to the Mark Center are:

- To determine the mobility benefits of BRT along Route 7;
- To gain a better appreciation of the traffic impacts of BRT along Route 7;
- To gain an understanding of the traffic operational issues with a BRT operating along Route 7; and
- To facilitate the public understanding of how a BRT would operate along Route 7.
- Determine if BRT should be median running or curbside running in Fairfax County and if any portion can operate in mixed-traffic.

Furthermore, there are two additional tasks associated with the work:

- Falls Church Analysis: BAT vs. HOV, queue jump layout/cross-section
- Investigate BRT southern terminus in City of Alexandria

This study will provide respective jurisdictions and bus operators with the information needed to make choices that will improve bus service and mobility for the region. There will be extensive conversations with the community, project partners, and jurisdictional staff. Outreach with the stakeholders along this segment of the project area has not happened since the initial phases of the project. As a result, it will be important for external facing documents to describe the benefits of transit in general in addition to the proposed BRT route. The Envision Route 7 Phase 4-2 Mobility Analysis Study will build upon the work done by FCDOT’s Route 7 Bus Rapid Transit Study, herein referred to as “Phase 4-0”, and NVTC’s Phase 4-1 Mobility Analysis and is estimated to take 18 months to complete.

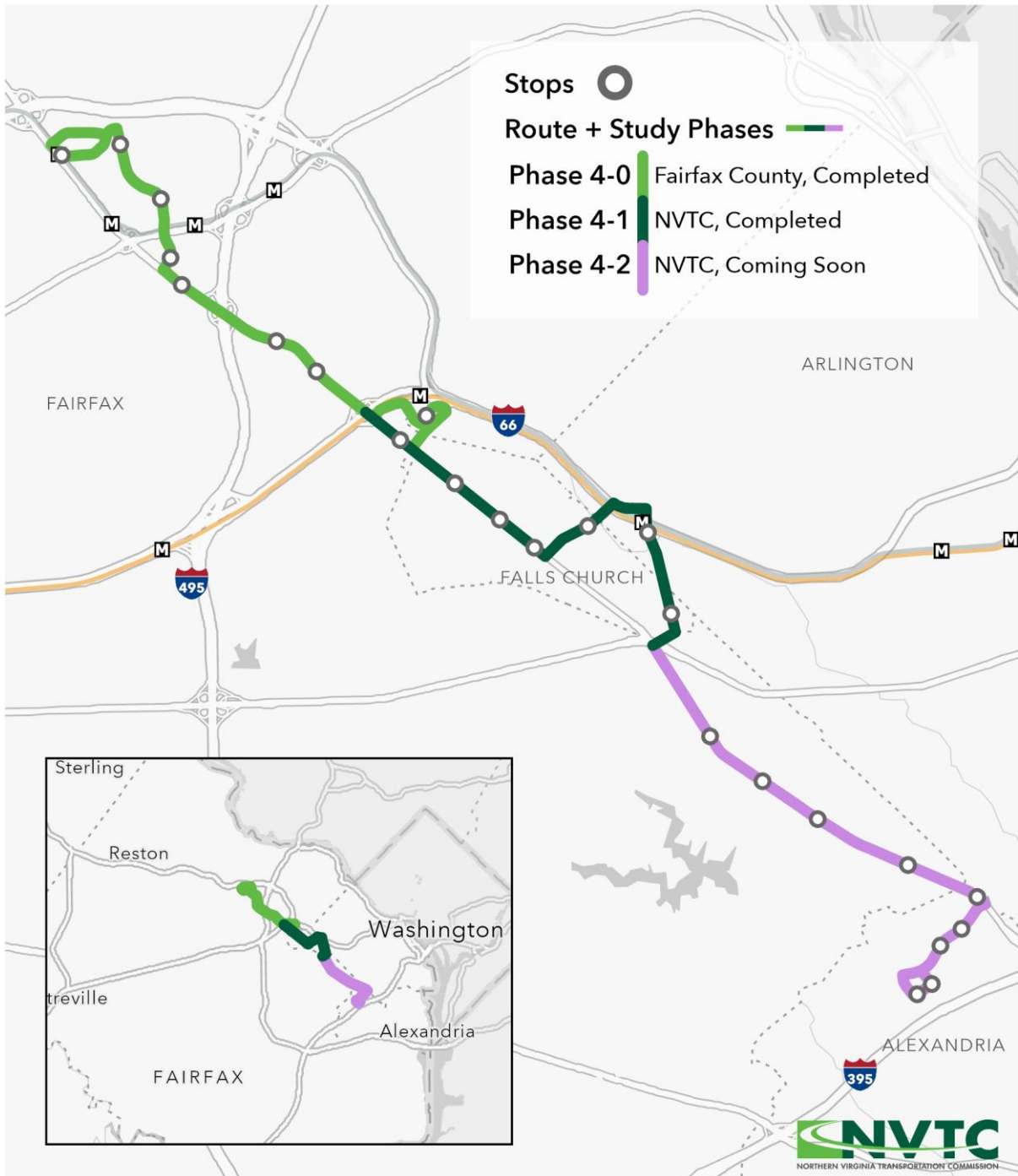


Figure 1 Envision Route 7 BRT Corridor

## **WORK PROGRAM**

### **Task 1: Project Management**

The NVTC project manager will collaborate closely with the consultant team project manager to monitor the project scope, schedule and budget.

To achieve this, the consultant team project manager will meet with the NVTC project manager at least every two weeks to discuss topics including but not limited to status of project and deliverables, invoicing, areas of concern, opportunities for efficiency, project budget, and other project and/or administrative tasks. The consultant will also attend a meeting with Fairfax County DOT and VDOT in the first 45 days of project initiation and come prepared to discuss the study and deliverables.

Progress reports will be required monthly. The progress reports should outline on-going activities and the current budget. The report should identify any issues or concerns and present the project budget burn rate. The project manager will be provided with a report summarizing work after completion of each task. The purpose of these meetings will be to allow the project manager oversight and input on the technical memoranda as well as upcoming activities.

The consultant shall brief the Project Technical Advisory Committee (PTAC) with Project Manager present after each milestone/deliverable and seek input. These meetings will consist of representatives from the jurisdictions and other stakeholders. The consultant shall take direction only from the NVTC Project Manager.

#### Deliverables

- Kick-off meeting
- Introductory meeting with Fairfax County DOT and VDOT
- Monthly progress reports to Project Manager
- Detailed project schedule
  - Schedule of deliverables (based on tasks in the scope of work and information provided at the kick-off meeting)
- Up to 8 briefings of the PTAC held virtually

### **Task 2 – Data Collection**

The data collection for this effort is extensive because of the nature of the traffic micro-simulation modeling. The additional network to be added to the current model is 4.5 miles in length and will require counts at a minimum of 29 intersections along with a minimum of four 24-hour vehicle counts locations. The consultant may suggest additional counts if it is thought that more count data will be required. Traffic counts should be collected according to VDOT TOSAM Section 6.2.1: Traffic Count Data Collection Best Practices, including vehicle classification.

#### 24-Hour Traffic Counts

Twenty-four-hour traffic volumes will be collected at high traffic locations in the study area using Automatic Traffic Recorders (ATR) connected to pneumatic tubes or other similar technology. This data will be collected in 15-minute increments and used to calibrate the traffic model as well as for the post processing of the travel demand forecast. It will be used to identify peak traffic periods and hours.

At a minimum, 24-hour counts should be collected at the following four (4) locations:

- Route 7 and Patrick Henry Drive
- Route 7 and Carlin Springs Road
- Route 7 and Beaugard Street
- Beaugard Street and Seminary Road
- Mark Center Ave and Seminary Road

Intersection Turning Movement Counts

Intersection turning movement counts will be conducted at a minimum of 29 signalized and unsignalized intersections listed below. These counts will capture the morning and evening peak period movements of vehicles, pedestrians, and bicycles at all approaches to the intersections. The count data should provide classified vehicle data in 15-minute intervals.

Turning Movement Counts will be collected at the following intersections.

1	Roosevelt & Wilson Blvd	11	Leesburg Pk & Payne St	21	Beauregard St & King St
2	Castle Rd & Leesburg Pk	12	Leesburg Pk & Crossroad Center Way	22	Beauregard St & Berkley St
3	Leesburg Pk & Patrick Henry Dr	13	Leesburg Pk & Carlin Springs Rd	23	Beauregard St & W Braddock Rd
4	Leesburg Pk & Peace Valley Ln	14	Leesburg Pk & Gorham St	24	Beauregard St & Fillmore Ave
5	Leesburg Pk & Row St/ Rio Dr	15	Leesburg Pk & S Jefferson St	25	Beauregard St & Seminary Rd
6	Leesburg Pk & Munson Hill Apt	16	Leesburg Pk & Skyline Dr	26	Seminary Road & Mark Center Dr
7	Leesburg Pk & Nevius St	17	Leesburg Pk & S George Mason Dr	27	Southern Towers Rd & Graham Bldg.
8	Leesburg Pk & Glenmore Dr	18	Leesburg Pk & 14th St	28	Southern Towers Rd & Sherwood Bldg.
9	Leesburg Pk & Magnolia Ave	19	Leesburg Pk & Dawes Ave	29	Southern Towers Rd & Stratford Bldg.
10	Leesburg Pk & Charles St	20	Leesburg Pk & Chesterfield Rd		

Travel Time and Queue Length

Travel Time and queue length will be collected during the morning and evening peak hours along Route 7 in the study area and will be used to calibrate the traffic model. At a minimum, this data should be collected by performing 10 test runs in each direction along the corridor by teams of two technicians equipped with laptops and GPS-based software. The survey crew will also record general observations of queue lengths, impacts of bus stops and bicycle/pedestrian movements, and heavy vehicles, etc. as supplementary information to be provided with the software output. If an alternative method of collecting the data can be implemented and shown to be as accurate or better, then the consultant may propose that methodology.

At a minimum, specific queue length measurements should be done for the following five (5) key intersections:

- Roosevelt and Wilson Blvd.
- Leesburg Pk & Glen Carlyn Drive
- Leesburg Pk & S Jefferson St.
- Leesburg Pk & Glen Carlyn Dr.
- Leesburg Pk & S George Mason Dr.

Transit

Transit related data will be compiled for the 4.5 miles of the study corridor located between Seven Corners and the Mark Center. The data will be on all existing transit service(s) and can come from previous

studies and bus and rail schedules. Ridership, including stop-level bus boardings, will be gathered and assessed from passenger counts provided by Fairfax County, City of Alexandria/DASH and WMATA. The transit data will be used to calibrate the traffic model.

#### Deliverable

The data collected in Task 1 will be properly documented so that it can be used in later phases of the Envision Route 7 BRT project. This will include documentation of data collection dates and results, in addition to serving as a reference for later analysis. A brief technical memorandum and any data source files should be included as the task deliverable.

#### **Task 3 – Balance Existing Traffic Volumes**

The traffic count data should be reviewed and refined to present a set of balanced traffic movements throughout the entire length of the study corridor. The study corridor is defined as the area from Seven Corners to the Mark Center. The balance count data should represent the morning and evening peak periods as well as the peak hours.

#### Deliverable

The deliverable for Task 2 should include a technical memorandum and sketches showing the final balanced traffic volumes for the existing count data.

#### **Task 4 - Develop Existing Traffic Simulation Model**

Using the Vissim files from Phase 4-0 and 4-1, which will be provided by NVTC, the consultant should add on any additional roadway network required to adequately cover the 4.5 miles of BRT and highway from Roosevelt Boulevard and Wilson Boulevard via Route 7 to King Street and Beauregard Street and then south to the Mark Center. All necessary network elements should be added to model the BRT and traffic flow in the study corridor. BRT treatments to be modeled include both center running and curb running BRT within the Fairfax County/ Virginia Department of Transportation (VDOT) portion of the subject area. Since Envision Route 7 will utilize the West End Transitway within Alexandria, modeling within Alexandria is not anticipated. NVTC recognizes there may be a need to fine-tune the existing model to ensure calibration and consistency with a new, larger model that will be developed for the existing condition of the project corridor. The forecast volumes were developed using the county's travel demand forecast model. The assignment results were post-processed and used in the Vissim traffic simulation model. The route choice was performed in the travel demand forecast model. The existing model should be evaluated and refined as needed to ensure calibration and consistency with the existing condition for the work.

The development of existing conditions simulation models requires a proper calibration effort that accurately reflects the existing observed field conditions. The calibration effort should be conducted focusing on the following elements per guidance from the VDOT Traffic Operations and Safety Analysis Manual (TOSAM).<sup>1</sup>

- *Simulated Traffic Volume* – compares the traffic volumes at critical links within the model to field counts.
- *Simulated Vehicle Travel Time* – compares simulated vehicle travel times to those collected in the field along specified segments.
- *Simulated Transit Speed* – compares simulated transit speed to those collected in the field for the specified transit routes. Note that speed was used instead of travel time since the length of the

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<sup>1</sup><https://www.vdot.virginia.gov/doing-business/technical-guidance-and-support/technical-guidance-documents/traffic-operations-and-safety-analysis-manual/>

segment in which the transit travel time was collected is different than the simulated segment length

*Simulated Queue Length* – compares average and maximum queue lengths at critical links to field measurements. **Error! Reference source not found.** The project’s minimum calibration targets for the quantitative measures as documented in Section 5, Microsimulation in TOSAM.

#### Deliverables

The deliverables for this task will include a technical memorandum outlining the results of the calibration and what modifications were made to model parameters and inputs to calibrate the model. The memorandum should also present the results of the calibration effort.

The deliverable should consider the following roadway designs, as well as the risks and opportunities for each:

- Center running bus lanes treatment
- Curb bus lane treatment
- No build (control)

All model files will be provided to NVTC at the end of the project.

#### **Task 5 – Future Years Traffic Simulation and Analysis**

Determining the benefits and impact of the Envision Route 7 BRT on future roadway operations along the corridor is important for building consensus and support in the community. For the BRT to be a success, the communities impacted by its construction and operation will need to see the benefits it will bring to their communities. To better understand the operations and impacts, the traffic model will be used to determine a set of measure(s) of effectiveness. This will include but is not limited to the following measures:

- Intersection Level of Service;
- Seconds of delay;
- Queue length at intersections noted in Travel Time and Queue Length section;
- Travel times and average speeds for automobiles and transit; and
- Person throughput, vehicle miles traveled, and person miles of travel.

Other measures, if feasible, include greenhouse gas reduction, transit ridership, and safety enhancements or other factors at suggestion of consultant.

#### Deliverables

The deliverables for this task will include a technical memorandum outlining the results of the simulation and providing quantitative analysis along with more qualitative observations. The memorandum should be in depth enough to address issues related to traffic benefits and impacts at the macroscopic system level as well as the individual traveler microscopic level specifically addressing residents and business needs along the corridor.

#### **Task 6 – Public Outreach**

Phase 4-2 of the Envision Route 7 BRT project will require a multifaceted outreach program that both covers the technical complexities of the task while also providing easily understood traffic operation benefits and impacts to the stakeholders along the corridor. The objective of the outreach effort will be to engage decision-makers, stakeholders, and the public to educate and inform them of the features and benefits of this type of premium transit service and obtain their feedback on the project. An additional

objective of the outreach task is to create momentum for the project by demonstrating the benefits in a way that is easy to understand and comprehend.

The public effort will have at minimum two periods of formal outreach opportunities. There will need to be an initial outreach effort at the start of the project in Fairfax County and a similar kick-off meeting with the City of Alexandria, including specific outreach with Southern Towers Apartment Complex aimed at the Stratford and Sherwood Buildings. For the Falls Church task, there will be no public outreach.

The initial meeting will be to present to the community the goals and objectives of the Phase 4-2 study effort and begin a comment period allowing residents to provide qualitative feedback on the project corridor. The second round of outreach with each jurisdiction will be to present the results of the analysis and gather feedback. Virtual meetings and other online engagement such as recorded videos and feedback portals are expected to augment and enhance traditional public engagement. The consultant should present innovative ways to engage the public and accomplish the goals of the public outreach task. Traditional public meetings are acceptable but given the low participation at these types of events, open house meetings should not be the only element of the public outreach task.

The consultant shall develop and maintain a comprehensive plan and schedule for community relations and outreach. The consultant shall coordinate meeting logistics, draft notices, conduct presentations and document public meetings as requested. In accordance with the work program, the consultant will support the development of information for consumption by the public and stakeholders. Public outreach will require community conversation in multiple languages; therefore, translation services for the most spoken languages will be required (Spanish plus additional languages as needed) for both verbal and written communication. NVTC will push information out via NVTC branded social media and will continue to host the project website. The consultant will create new materials and NVTC will post materials supplied by the consultant.

#### Deliverables

The deliverables for this task will include a memorandum outlining the methods and results of the public outreach effort. The memorandum should present metrics on the effectiveness of the effort as well as detail the elements used for the outreach.

Activities include:

1. Two (2) kick-off meetings, one in Fairfax County and one in the City of Alexandria.
2. A Virtual portal or other method to accept public comment in a qualitative manner.
3. Up to 10 informal/conversational meetings with community organizations along the corridor, focused on underrepresented groups.
4. A second series of meetings within Fairfax and Alexandria to present findings.

Metrics of effectiveness include number of participants engaged, number of staff attending, engagement opportunities attended, along with a summary of the input received.

#### **Task 7: Report**

A final report will be written that focuses on bus priority options for the Fairfax County project area. It should be a narrative and visual description of the traffic impacts and mobility benefits of the Envision Route 7 project on the corridor. The consultant shall take all the technical memorandum and create a final document based on these memoranda. The final report will need to include all electronic files associated with the report as well as the modeling and public outreach. The consultant will develop a draft report. The PTAC will review the document and provide comments. The comments will be incorporated into the final document. The final report is expected to be grammatically correct and follow

NVTC's document style guide.

#### Deliverables

A final report including all electronic files associated with the report and the project. The final report will provide detailed technical information for review by Fairfax County and VDOT. The report should include both text as well as easily understandable tables, visuals, graphs, etc. to explain the findings and an Executive summary. The selected consultant team should plan for up to two iterations of the report between the draft and final version. NVTC will design and produce a visually compelling front and back cover.

#### **Task 8: Falls Church Restricted Traffic Lane Analysis and Queue Jump Geometric Analysis**

As a follow-up task to Phase 4-1, the consultant will determine the benefits and impacts of a high-occupancy vehicle (HOV) lane versus dedicated bus lanes within Falls Church. The specific segments are Broad Street from Haycock Road to N. Washington Street and N. Washington Street from Broad Street to Gresham Place. The analysis will build on Phase 4-1 analysis by showing impacts on travel time through the jurisdiction for each restricted traffic lane treatment. Additionally, an analysis of the feasibility of a queue jump at Broad Street and N. Washington Street will be undertaken to further a recommendation from the Phase 4-1 report to allow the jurisdiction to choose a bus priority treatment to benefit the project corridor. The analysis will consider large vehicle turns and the width of the existing roadway to determine feasibility. A sub-committee of the PTAC will review the document and provide comments. Public engagement will not occur as part of this task. The final report is expected to be grammatically correct and follow NVTC's document style guide.

#### Deliverables

A memo will be provided that will serve as a decision document for Falls Church that outlines advantages and disadvantages of restricted traffic lanes and geometric analysis. Visuals to help illustrate location of bus priority treatments as well as appearance will be included. The memo will be backed up with detailed technical information. The selected consultant team should plan for up to two iterations of the memo between the draft and final version. NVTC will design and produce a visually compelling front and back cover.

#### **Task 9: City of Alexandria BRT Terminus analysis - Southern Towers vs. Mark Center**

Using information collected from the Data Collection and Public Outreach Tasks, the consultant will analyze ridership, demand, and community feedback to suggest a terminus for the Envision Route 7 BRT corridor. The choice is between the Mark Center and Southern Towers and will require conversations with residents, commuters as well as key stakeholders including Washington Headquarters Services, which provides administrative functions for the Department of Defense. The consultant will be asked to assist NVTC and the City of Alexandria in the public outreach for this task.

#### Deliverables

A memo will be provided that will serve as a decision document for Alexandria and the potential operator that outlines advantages and disadvantages of Mark Center versus Southern Towers as a terminus for Envision Route 7. The report should include both text as well as easily understandable tables, visuals, graphs, etc. to explain the findings and an Executive summary. The selected consultant team should plan for up to two iterations of the memo between the draft and final version. NVTC will design and produce a visually compelling front and back cover.



**Potential Effort Estimate by task:**

The percentages for each task are for general guidance only and may be adjusted in consultant team proposals.

		Estimated Hours
Task 1	Project Management	250 hours
Task 2	Data Collection	100 hours
Task 3	Balance Traffic Volumes	120 hours
Task 4	Develop Existing Traffic Simulation Model	855 hours
Task 5	Future Years Traffic Simulation and Analysis	455 hours
Task 6	Public Outreach	400 hours
Task 7	Report	350 hours
Task 8	Falls Church Restricted Traffic Lane Analysis and Queue Jump Geometric Analysis	150 hours
Task 9	City of Alexandria BRT Terminus Analysis - Southern Towers vs. Mark Center	100 hours

## Section D

### Contractor Deliverables and Payments

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**1. PAYMENT TERMS:**

Monthly progress payments will be made to the firm receiving the contract award (hereinafter known as "Contractor") by NVTC for work performed satisfactorily according to project milestones. The contractor should submit monthly progress reports simultaneously with its invoices. Payment for amounts withheld shall be made within 45 calendar days of receipt and acceptance of all products at the conclusion of the project by NVTC.

**2. INVOICES:**

Invoices for services delivered and accepted shall be submitted by the contractor directly to the payment addresses shown below:

Northern Virginia Transportation  
Commission Attn: Vikram Sinha  
2300 Wilson Boulevard, Suite 230  
Arlington, Virginia 22201  
[vikramsinha@novatransit.org](mailto:vikramsinha@novatransit.org)

With a copy to:  
Northern Virginia Transportation Commission  
Attn: Accounts Payable  
2300 Wilson Boulevard, Suite 230  
Arlington, Virginia 22201  
[colethiaquarles@novatransit.org](mailto:colethiaquarles@novatransit.org)

Invoices at a minimum shall contain the following information:

- a. Name, Address, Email, and Telephone Number of Contractor
- b. NVTC Contract Number
- c. Invoice Number
- d. Date of Invoice
- e. Period and Description of Services Rendered
- f. Hours by Employee Keyed to Specific Tasks in the Scope of Work, with Associated Costs and Fees, Plus Documented Expenses. [customize to project].
- g. Total Invoice Amount
- h. Total Cumulative Amount of Invoices

**3. PROGRESS PAYMENTS:**

Payment will only be made for work that has been delivered and for which NVTC has taken title or otherwise accepted, if applicable. NVTC will withhold 5% of each progress payment until contractor completes and submits final work product for each of the phases.

**4. LIQUIDATED DAMAGES:**

No specific amount of liquidated damages will apply although NVTC reserves the right to seek appropriate compensation for delays beyond the contractual schedule or failure to perform that are attributable to contractor performance.

**5. AVAILABILITY OF FUNDS:**

It is understood and agreed between the parties herein that NVTC shall be bound thereunder only to the extent of the funds appropriated for the purpose of this contract.

**6. PAYMENT TO SUBCONTRACTOR:**

A contractor is hereby obligated:

- a. To pay the subcontractor within seven (7) calendar days of the contractor's receipt of payment from NVTC for the proportionate share of the payment received for work performed by the subcontractor under the contract; or
- b. To notify NVTC and the subcontractor, in writing, of the contractor's intention to withhold payment and the reason.

The contractor is obligated to pay the subcontractor interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) calendar days following receipt of payment from NVTC, except for amounts withheld as stated in Section (b) above. The date of mailing of any payment by U.S. mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of NVTC.

Contractor agrees to return any retainage payments to each subcontractor within 30 calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may occur only for good cause following written approval of NVTC. This clause applies to both DBE and non-DBE subcontractors. Work may be credited toward DBE goals only when payments are actually made to DBEs.

**7. AUTHORIZED FUNDING:**

If at any time contractor has reason to believe that the costs to NVTC that will accrue in the performance of the contract/task order(s) in the next succeeding 30 calendar days, when added to all other payments previously accrued, will exceed 75% of the then current total authorized funding, contractor shall notify NVTC to that effect in writing, advising of the estimate of additional funds required for completion of the contract/task order. NVTC shall not be obligated to reimburse contractor for any work performed, if in the performance thereof the total funding then allotted to the contract/task order will be exceeded.

NVTC shall not be obligated to pay the contractor any amount in excess of the ceiling price reflected in the contract and/or task order until the NVTC Executive Director shall have notified the contractor in writing that the price has been increased and shall have specified in the notice a revised price that shall constitute the price for performance under this contract/task order.

## Section E

### Contractor Terms and Conditions

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**1. CONTRACT REQUIREMENTS:**

Federal Transit Administration (FTA) and Commonwealth of Virginia funds originating with DRPT will be used for this contract. NVTC also follows Virginia procurement laws. Accordingly, all applicable federal and state requirements will apply. Contractors are expected to become familiar with these requirements. NVTC will provide a contract containing these provisions for execution by the contractor. Contractors should not expect to use their own standard contracts for this engagement. Commonwealth of Virginia requirements are subject to change; the contractor is responsible for complying with the most current regulations.

The final contract will contain the provisions set forth below unless otherwise agreed upon.

**2. APPLICABLE LAW AND COURTS:**

Any contract resulting from this solicitation shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The contractor shall comply with applicable federal, state, and local laws, rules and regulations.

**3. PRECEDENCE OF TERMS:**

In the event of an inconsistency between the Request for Proposal, the Contract Terms and Conditions, other included documents, the Federal Transit Administration (FTA) Master Agreement, and state procurement law, the inconsistency shall be resolved by the following order of precedence:

- a) Federal Transit Administration Master Agreement (31) (May 2, 2024) and FTA Circular 4220.IF, dated November 1, 2008, as amended
- b) Virginia's Public Procurement Act, as amended
- c) Contract Terms and Conditions
- d) Request for Proposal (RFP)
- e) Contractor's Accepted Proposal

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Commonwealth of Virginia, whether or not expressly set forth in these contract provisions. All contractual provisions required by the Commonwealth, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all Commonwealth of Virginia mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any NVTC requests which would cause NVTC to be in violation of the terms and conditions.

**4. OBLIGATION OF CONTRACTOR:**

By accepting the award, the contractor agrees that it has satisfied itself from a personal investigation of the conditions to be met, that the obligations herein are fully understood, and no claim may be made nor will there be any right to cancellation or relief from the contract because of any misunderstanding or lack of information.

**5. ASSIGNMENT OF CONTRACT AND SUBCONTRACTING:**

Contract/task order(s) shall not be assignable by the contractor in whole or in part without the written consent of NVTC. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish to NVTC the names, qualifications and experience of the proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by his subcontractor(s) and shall assure compliance with all requirements of the contract.

**6. CONTRACTOR RESPONSIBILITIES:**

Contractor shall be responsible for completely performing, supervising and directing the work under this contract and all subcontractors that it may utilize, using the skill and attention ordinarily used by members of the same profession practicing in the Washington, D.C. metropolitan area for similar work. Subcontractors who perform work under this contract shall be responsible to the contractor. Contractor agrees that it is as fully responsible for the negligent acts and omissions of its subcontractors and of persons employed by the contractor as it is for the negligent acts and omissions of its own employees.

**7. CONTRACTUAL DISPUTES AND CLAIMS:**

In accordance with Section 2.2-4363, VA Code Ann., this provision shall be followed for consideration and handling of all disputes and claims by the contractor under this contract. Section 2.2-4365, VA Code Ann. Is not applicable to this contract. Under no circumstances is this section an administrative appeals procedure governed by Section 2.2-4365, VA Code Ann. Because Section 2.2- 4365, VA Code Ann. Is not applicable to this procurement.

Notice of the intent to submit a claim setting forth the basis for any claim shall be submitted in writing within ten (10) calendar days after the occurrence of the event giving rise to the claim or within ten (10) calendar days of discovering the condition giving rise to the claim, whichever is later. In no event shall any claim arising out of this contract be filed after submission of the request for final payment by the contractor.

Claims by the contractor with respect to this contract shall be submitted in writing in the first instance for consideration by the Project Manager. The decision of the Project Manager shall be rendered in writing within 30 calendar days from the receipt of the claim from the contractor. If the contractor is not satisfied with the decision or resolution of the Project Manager, the contractor may file a formal dispute with regard to the claim with the Executive Director of NVTC within 30 calendar days of the decision of the Project Manager. The Executive Director of NVTC shall reduce his/her decision to writing and shall mail or otherwise furnish a copy of his/her decision to the contractor within 30 calendar days of the receipt of the claim from the contractor. The decision of the Executive Director of NVTC shall be final and binding.

Should any decision-maker designated under this procedure fail to make a decision on a claim within the time period specified, then the claim is deemed to have been denied by the decision-maker. Pending a final determination of a claim, the contractor shall proceed diligently with the performance of the work under this contract.

In accordance with the provisions of Section 2.2-4363, VA Code Ann., full compliance with this dispute and claim resolution procedure set forth in this Section shall be a precondition of the filing of any lawsuit by the contractor against the Commission arising out of the contract.

**8. DEFAULT:**

In case of failure to deliver goods or services in accordance with the contract terms and conditions, NVTC, after written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that NVTC may have.

**9. TERMINATION FOR CONVENIENCE OR DEFAULT:**

NVTC may terminate this contract, or any portion of it, by serving a thirty-day (30) prior written notice of termination on the contractor. The notice shall state whether the termination is for convenience of NVTC or for the default of the contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. In both instances the contractor shall account for any property in its possession paid for from funds received from NVTC, or property supplied to the contractor by NVTC. If the termination is for default, NVTC may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. If for convenience, the contractor shall promptly submit its termination claim to NVTC and the parties shall negotiate the termination settlement to be paid the contractor.

If the termination is for the convenience of NVTC, the contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, NVTC determines that the contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, NVTC, after setting up a new work schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.

The contractor shall include provisions for termination for convenience of NVTC in any subcontract and shall specifically include requirements that subcontractors make all reasonable efforts to mitigate damages which may be suffered. Failure to include such provisions shall bar the contractor from any recovery from NVTC whatsoever of loss or damage sustained by a subcontractor as a consequence of termination for convenience.

**10. ANTITRUST:**

By entering into a contract, contractor conveys, sells, assigns, and transfers to NVTC all rights,

title and interest it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by NVTC under said contract.

**11. ACCESS TO RECORDS:**

The contractor agrees to provide NVTC, DRPT, FTA, or any other authorized representatives access to any books, documents, papers and records of the contractor that are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than four years from the end of NVTC's fiscal year (June 30<sup>th</sup>) in which the final payment is made under this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the contractor agrees to maintain same until NVTC, DRPT, FTA, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. The contractor agrees to permit NVTC to reproduce project documents by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

**12. TESTING/INSPECTION:**

NVTC reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to specifications.

**13. RELEASES, LICENSES, PERMITS AND AUTHORIZATIONS:**

It is the contractor's responsibility to obtain all releases, licenses, permits and other usage authorizations for all matters within its ordinary sphere of activity, including photographs, copyrighted materials, artwork or any other property or rights belonging to third parties obtained by the contractor for use in performing services for NVTC, and shall save NVTC harmless from all claims, demands, expenses (including reasonable attorney's fees), liabilities, suits, and proceedings (including any brought in or before any court, administrative body, arbitration panel or other tribunal) against or involving NVTC on account of or arising out of such use.

**14. WARRANTY:**

All materials and equipment furnished by the contractor shall be fully guaranteed against defects in material and workmanship in accordance with the most favorable commercial warranties the contractor gives any customer for such materials and equipment.

**15. RIGHTS IN DATA:**

The term "subject data," as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this contract. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog



item identifications, and related information. The term “subject data” does not include financial reports, cost analyses, and similar information incidental to contract administration.

All “subject data” first produced in the performance of this contract shall be the sole property of NVTC. The contractor agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such data. Except for its own internal use, the contractor may not publish or reproduce subject data, in whole or in part, or in any manner or form, nor authorize others to do so without the written consent of NVTC, until such time NVTC may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

**16. IMMIGRATION REFORM AND CONTROL ACT OF 1986:**

Contractor certifies that it does not and will not, during the performance of this contract, employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.

**17. INDEMNIFICATION:**

Contractor shall not seek to hold liable NVTC, or any of its officers, agents and employees for any claims of any nature whatsoever arising out of this contract or arising out of the activities funded in whole or in part by the contract. The Contractor shall defend, indemnify, save, and hold harmless NVTC, and its officers, agents, and employees against all claims and liability, including cost and expenses, due to the negligent acts or omissions of contractor or the negligent acts or omissions of contractor’s subcontractors, agents or employees. Contractor agrees to maintain insurance to protect NVTC and its officers, agents, and employees from liability arising out of this contract in a form and amount satisfactory to NVTC.

**18. ETHICS IN PUBLIC CONTRACTING:**

Contractor certifies that its proposal is made without collusion or fraud and that he/she has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that he/she has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

Contractor also must ensure that there is no real or perceived conflict of interest during the term of the contract.

**19. DEBARMENT STATUS:**

By submitting this proposal, the contractor certifies that it is not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor is it an agent of any person or entity that is currently so debarred. Contractor further certifies that it will refrain from awarding any subcontract to a debarred or suspended subcontractor.

**20. CIVIL RIGHTS:**

Contractor certifies to NVTC that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, the Americans with Disabilities Act, and §2.2-4311 of the Virginia Public Procurement Act (VPPA). The following requirements apply to the underlying contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, religion or disability. In addition, contractor agrees to comply with applicable federal implementing regulations and other implementing requirements.
- (2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
  - (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq. (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, disability, religion or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, contractor agrees to comply with any implementing requirements.
  - (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and federal transit law at 49 U.S.C. § 5332, contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, contractor agrees to comply with any implementing requirements.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, contractor agrees to comply with any implementing requirements.

Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Contractor, in all solicitations or advertisements for employees placed by or on behalf of contractor, will state that contractor is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

(2) Contractor will include these Civil Rights provisions above in every subcontract or purchase order over \$10,000 and all subcontracts financed in whole or in part with federal assistance, modified only if necessary to identify the affected parties.

**21. SMALL, WOMEN, MINORITY AND SERVICE DISABLED VETERANS OWNED BUSINESS:**

Where it is practicable for any portion of the awarded contract to be subcontracted, the contractor is encouraged to offer such business to small, women, minority and/or service disabled veteran-owned businesses.

Contractor or his/her subcontractor shall not discriminate on the basis of race, color, sex, gender, national origin or ethnicity in the performance of this contract. Contractor or his/her subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration contracts. Failure by the contractor or his/her subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as NVTC deems appropriate.

**22. ENVIRONMENTAL REGULATIONS:**

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**23. INSURANCE REQUIREMENTS:**

A checklist of required insurance coverage is attached and identified as "NVTC Insurance Coverage Required." Items marked "X" are required to be provided. A certificate of insurance indicating these coverages must accompany the bid submission. A copy of the declarations page is acceptable for errors and omissions insurance. If insurance is incomplete, the prospective contractor should provide a letter from its insurance agent stating that the prospective contractor is eligible to obtain insurance to the prescribed limits, should a contractual offer be

extended. No contract shall be finalized and no work shall commence until NVTC's insurance requirements are met.

Contractor agrees to include the provisions of the foregoing clause in every subcontract or purchase order so that the provisions will be binding upon each subcontractor or vendor.

1. Contractor shall be responsible for its work and every part thereof, and for all materials, equipment, and property of any and all description used in connection therewith. Contractor assumes all risks of direct and indirect damage or injury to any person or property wherever located, resulting from any action, omission, commission, or operation under the contract, or in connection in any way whatsoever with the contracted work.
2. Contractor shall, during the continuance of all work under the contract provide and agree to maintain the following unless omitted from the attached "Insurance Checklist":
  - a. Workers' Compensation and Employers' Liability insurance under the Commonwealth of Virginia statutory requirements, to protect the firm from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
  - b. General Liability insurance in the amount prescribed by NVTC, to protect the contractor, its subcontractors, and the interest of NVTC, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form General Liability endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required.
  - c. Completed Operations Liability coverage shall continue in force for one year after completion of work.
  - d. Automobile Liability insurance, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the contractor. In addition, all mobile equipment used by the contractor in connection with the contracted work will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy.
3. Liability insurance may be arranged by General Liability and automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
4. The contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.

5. NVTC, the Commonwealth of Virginia, the Department of Rail and Public Transportation, and their officers, agents and employees shall be named as additional insured in the General Liability policies and stated so on the Certificate.
6. The contractor will provide an original, signed Certificate of Insurance, evidencing such insurance and such endorsements as prescribed herein, and shall have it filed with the NVTC Executive Director before a contract is executed and any work is started.
7. The contractor will secure and maintain all insurance policies of its subcontractors, which shall be made available to NVTC on demand.
8. The contractor will provide on demand, certified copies of all insurance coverage on behalf of the contract within ten (10) calendar days of demand by NVTC. These certified copies will be sent to NVTC from the contractor's insurance agent or representative.
9. No change, cancellation, or non-renewal shall be made in any insurance coverage without 30 days written notice to the NVTC Executive Director. The contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished to the NVTC Executive Director.
10. Insurance coverage required in these specifications shall be in force throughout the contract term. Should the contractor fail to provide acceptable evidence of current insurance within five days of written notice at any time during the contract term, NVTC shall have the absolute right to terminate the contract without any further obligation to the contractor, and the contractor shall be liable to NVTC for the entire additional cost of procuring the incomplete portion of the contract at time of termination.
11. Compliance by the contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the contractor and all subcontractors of their liabilities and obligations under this hearing or under any other section or provisions of the contract.
12. Contractual and other liability insurance provided under the contract shall not contain a supervision, inspection, or services exclusion that would preclude NVTC from supervising and/or inspecting the project as to the end result. The contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors and any person employed by the subcontractor.
13. Nothing contained herein shall be construed as creating any contractual relationship between the subcontractor and NVTC. The contractor shall be as fully responsible to NVTC for the negligent acts and omissions of the subcontractors and of persons employed by them as it is for the negligent acts and omissions of persons directly employed by it.
14. Precaution shall be exercised at all times for the protection of persons (including employees) and property.

15. Contractor and all subcontractors and sub-subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to the contract.
16. If the contractor does not wish to meet the specifications of these insurance requirements, alternate insurance coverage proposed by the contractor, may be considered by the NVTC Project Officer.

**24. CHANGES:**

By written notice to the contractor, NVTC may from time to time make changes within the general scope of the contract, in the services to be provided by the contractor, the method or place of delivery, or the place of performance. Changes may also be made by mutual agreement between the parties in writing. The contractor shall promptly comply with the notice and shall perform all services in conformity to the notice.

If any such change causes an increase or decrease in the contractor's cost of performance or the time required for performance, an equitable adjustment in the contract price and/or the time allowed for performance of the contract shall be negotiated and the contract modified accordingly by written supplemental agreement. Any claim by the contractor for adjustment under this clause must be asserted by written notice to NVTC within 30 calendar days from the date of receipt by the contractor of the change notice. If the parties fail to agree to an adjustment, the question of an increase or decrease in the contract price or time allowed for performance shall be resolved in accordance with the procedures for resolving disputes provided by the disputes clause of the contract, or if there is none, in accordance with the disputes provision of the Commonwealth of Virginia's Vendor's Manual. Neither the existence of a claim, a dispute, submission of the dispute or the dispute resolution process, litigation or any portion of this provision or changes shall excuse the contractor from promptly proceeding with performance of the contract as changed by the notice.

**25. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

This Contract is subject to certain provisions required by the U.S. Department of Transportation, as set forth in FTA Circular 4220.1.F, which are attached herein. All FTA-mandated terms control in the event of a conflict with any other provisions of this Contract. The Contractor must not perform any act, fail to perform any act or refuse to comply with any NVTC requests if doing so would cause NVTC to violate the FTA terms and conditions.

The Contractor must include this clause without modification in each subcontract(s) that is financed in whole or in part by the FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor(s) who will be subject to the provisions.

## **Section F**

### **Attachments to Proposal**

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Attachment A: NVTC Insurance Coverage Requirements

Attachment B: Representations, Certifications and Other Statements of Bidders/ Offerors

Attachment C: Federal Transit Administration (FTA) Third Party Contract Provisions

Attachment D: Disadvantaged Business Enterprise (DBE) Provisions and Forms

# **ATTACHMENT A**

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## **NVTC Insurance Coverage Requirements**

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**ATTACHMENT A**

**NORTHERN VIRGINIA TRANSPORTATION COMMISSION  
INSURANCE COVERAGE REQUIREMENTS**

Items marked "X" are required to be provided if award is made to your firm. See specification section entitled "Insurance Requirements." Contractor's Insurance Agent shall mark a "check" ("Yes" or "No") as to availability of insurance. Note: If you have answered "No" to any of the requirements, provide written explanation on a separate sheet.

		COVERAGE REQUIRED			LIMITS (FIGURES DENOTE MINIMUM)
Yes	No	Required			
___	___	<u>X</u>	1.	Workers' Compensation and Employers' Liability; Admitted in Virginia	1. Statutory Limits of the Commonwealth of Virginia: Yes
___	___			Employer's Liability	\$1,000,000
___	___			All States Endorsement	Statutory
___	___			USL&H Endorsement	Statutory
___	___			Voluntary Compensation	Statutory
___	___	<u>X</u>	2.	General Liability	2. \$1,000,000 Combined
___	___			Products	Single Limit Bodily
___	___			Complete Operations	Injury and Property
___	___			Contractual Liability	Damage Each Occurrence
___	___			Personal Injury	
___	___			Independent Contractors	
___	___			XCU Prop. Damage Excl.	
___	___			Deleted	
___	___	<u>X</u>	3.	Automobile Liability	3. \$1,000,000 Combined
___	___			Owned, Hired & Non-Owned	Single Limit Bodily
___	___			Motor Carrier Act End.	Injury and Property
___	___				Damage Each Occurrence
___	___	___	4.	Professional Errors and Omissions	4. \$_____ Limit Each Occurrence
___	___	___	5.	Garage Liability	
___	___	___	6.	Garage keepers' Legal Liability	
___	___	___	7.	Fire Legal Liability	
___	___	___	8.	Other Insurance: [adapt for project]	
___	___	<u>X</u>	9.	NVTC named as additional insured on General Liability (This coverage is primary to all other coverages NVTC may possess)	
___	___	<u>X</u>	10.	30 day cancellation notice required	

- |   |   |          |  |    |             |
|---|---|----------|--|----|-------------|
| — | — | <u>X</u> | 11. Best's Guide Rating - A:VI or Better, or Equivalent    |    |             |
| — | — | <u>X</u> | 12. The Certificate must state Bid/RFP # and Bid/RFP Title |    |             |
| — | — | <u>X</u> | 13. Umbrella Liability                                     | 13 | \$2,000,000 |

**OFFEROR AND INSURANCE AGENT STATEMENT**

We understand the Insurance Requirements of these specifications and will comply in full if awarded this Contract.

OFFEROR	INSURANCE AGENCY
SIGNATURE	SIGNATURE

# **ATTACHMENT B**

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## **Representations, Certifications and Other Statements of Bidders/Offerors**

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Company Name \_\_\_\_\_

## REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF BIDDERS/OFFERORS

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The following forms shall be completed with signatures and incorporated with the Bid/Proposal.

ATTACHMENT NO.	TITLE
A.	Company Information Questionnaire
B.	Conflict of Interest Certification
C.	Trade Secrets or Proprietary Information
D.	Certification of Primary Participants Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion
E.	Certification of Restrictions on Lobbying
F.	Disadvantaged Business Enterprise Statement

**THESE FORMS SHALL NOT BE RETYPED**

**A. COMPANY INFORMATION QUESTIONNAIRE**

**1. Business Entity Identification & Ownership Disclosure**

Company: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

**Check ( ) which of the following applies:**

Sole Proprietor:                      Partnership:                      Limited Partnership:

Corporation:                      Limited Liability Corporation:                      Joint Venture:

Organized under the laws of the State of: \_\_\_\_\_

Commonwealth of Virginia License No.: \_\_\_\_\_

Federal Identification No.: \_\_\_\_\_

SAM.gov Unique Entity ID No.: \_\_\_\_\_

Principal Place of Business: \_\_\_\_\_

**Check ( ) which of the following applies:**

Small, Woman-owned and Minority-owned Business (SWaM):

\*Certified by: \_\_\_\_\_

Disadvantaged Business Enterprise (DBE):

\*Certified by: \_\_\_\_\_

**\*(The SWaM and/or DBE certification must be attached to the DBE statement included herein.)**

**2. Virginia State & Local Government Conflicts of Interest and Public Procurement**

This solicitation is subject to the provisions of Section 2.2-3100 et. seq., of the Code of Virginia (1950), as amended, (The Code), the State and Local Government Conflict of Interests Act, Section 2.2-4300 et. seq. of the Code, the Virginia Public Procurement Act, the Virginia Governmental Frauds Act(Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.).

The Bidder/Offeror is ( ) or is not ( ) aware of any information bearing on existence of any potential conflicts of interest or violation of ethics in public contracting. If yes, explain below.

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**3. Other Information**

A. General nature of the services performed and/or goods provided by the company:

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B. Indicate the length of time the company has been in business providing this type of service and/or product?

\_\_\_\_\_ Years \_\_\_\_\_ Months

C. Has the company ever failed to complete any work awarded to it? If yes, explain.

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D. Has the company ever defaulted on a contract? If yes, explain.

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E. The Bidder/Offeror certifies, to the best of its knowledge and belief that the Bidder/Offeror and/or any of its principals, Subcontractors or any persons associated therewith in the capacity of owner, partner, director, officer or any other position:

- (1) is ( ) or is not ( ) currently under suspension, debarment, voluntary exclusion, or determined ineligible by any Federal agency;
- (2) has ( ) or has not ( ) been suspended, debarred, voluntarily excluded, or determined ineligible by any Federal agency within the last three (3) years;
- (3) has ( ) or has not ( ) a proposed debarment pending;
- (4) has ( ) or has not ( ) been indicted, convicted, or had a civil judgment rendered against it or them by a court competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years; or
- (5) has ( ) or has not ( ) read and is ( ) or is not ( ) in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under. The Bidder/Offeror also certifies that its Subcontractors are in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under.

For any condition noted, indicate: 1) to whom it applies, 2) initiating agency, and 3) date of action.  
*(Attach additional sheets of paper if necessary.)*

**CERTIFICATION**

I certify that this Bid/Proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a Bid/Proposal for the same services, materials, supplies or equipment, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of the State and Federal law and can result in fines, prison, sentences, and civil damage awards.

I hereby certify that the responses to the above representations, certifications, and other statements are accurate and complete. I agree to abide by all conditions of this Invitation for Bids/Request for Proposals and certify that I am authorized to sign for the Bidder/Offeror.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (Printed): \_\_\_\_\_ Title: \_\_\_\_\_



**4. FIRM AND SUBCONTRACTOR CONTACT INFORMATION FOR THIS PROJECT**

**Program Manager:** \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

**Contract Administrator:** \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

**Subcontractor:** \_\_\_\_\_

**Point of Contact:** \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

*(Attach additional sheets if there are multiple subcontractors)*

**B. CONFLICT OF INTEREST CERTIFICATION**

I, whose name is subscribed below, a duly authorized representative and agent of the entity submitting this bid/proposal to NVTC in response to this solicitation and on behalf of the Bidder/Offeror certify that:

1. Neither the Bidder/Offeror nor any affiliated entity has, within the past five years, been employed by or represented a deliverer of services that reasonably could be expected to be considered for purchase by NVTC as a result of this solicitation;
2. If the Bidder/Offeror is awarded a contract under this solicitation and during the term of that contract prepares an invitation for bid or request for proposal for or on behalf of NVTC, the Bidder/Offeror must not (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any potential bidder or offeror information concerning the procurement that is not available to the public.
3. The Bidder/Offeror will not solicit or accept any commissions or fees from vendors who ultimately furnish services to NVTC as a result of any contract award made as a result of this solicitation.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Bidder's/Offeror's Name (Printed): \_\_\_\_\_ Title: \_\_\_\_\_

**C. TRADE SECRETS OR PROPRIETARY INFORMATION**

Trade secrets or proprietary information submitted by a Bidder/Offeror in connection with a procurement transaction will not be subject to public disclosure under the Virginia Freedom of Information Act. However, a Bidder/Offeror seeking to protect submitted data or materials from disclosure must, before or upon submission of the data or materials, identify the data or materials to be protected and state the reasons why protection is necessary.

Please mark one:

- No, the Bid/Proposal that I have submitted does not contain any trade secrets and/or proprietary information.
  
- Yes, the Bid/Proposal that I have submitted does contain trade secrets and/or proprietary information.

If “yes,” you must clearly identify below the exact data or materials to be protected and list all applicable page numbers of the Bid/Proposal that contain such data or materials:

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State the specific reason(s) why protection is necessary:

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A Bidder, Offeror or Contractor shall not designate as trade secrets or proprietary information its entire Bid or Proposal.

If you fail above to identify the data or materials to be protected or to state the reason(s) why protection is necessary, you will not have invoked the protection of Section F of §2.2-4342 of the Code of Virginia. Accordingly, upon the award of a contract, the Bid/Proposal will be open for public inspection consistent with applicable law.

**(This certification must be executed by the Contractor and Subcontractors)**

**D. CERTIFICATION OF PRIMARY PARTICIPANTS REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION**

\_\_\_\_\_  
(The Contractor)

or

\_\_\_\_\_  
(Subcontractor)

This contract is a covered transaction for purposes of 2 CFR Part 1200. The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. and must include the requirement in any lower tier covered transaction it enters into.

By signing and submitting its Bid or Proposal, the Bidder or Offeror certifies as follows:

The certification in this clause is a material representation of fact relied upon by NVTC. If it is later determined that the Bidder or Offeror knowingly rendered an erroneous certification, in addition to remedies available to NVTC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder or Offeror agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this Bid or Proposal is valid and throughout the period of any contract that may arise from this offer. The Bidder or Offeror further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or Local department or agency;
- (b) Have not within a three (3) year period preceding this Bid/Proposal been convicted of or had a civil judgment rendered against them or commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or contract under a public transaction: violation of Federal or State antitrust statute or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses

- enumerated in paragraph (b) of this certification; and
- (d) Have not within a three (3) year period preceding this Bid/Proposal had one (1) or more public transactions (Federal, State, or Local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this Bid/Proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to five (5) years, or both.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Name (Printed) of Contractor's Authorized Official

\_\_\_\_\_  
Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

I am unable to certify to the above statements.  
(If the Prime Contractor or Subcontractor is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this Bid/Proposal).

(Prime Contractor) \_\_\_\_\_

or

(Subcontractor) \_\_\_\_\_

**(This certification must be executed by the Contractor and Subcontractors)**

**E. CERTIFICATION OF RESTRICTIONS ON LOBBYING**

I, \_\_\_\_\_ hereby certify on behalf  
(Name of the Firm's Official)

of \_\_\_\_\_ that:  
(Name of the Firm/Contractor)

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. No federal assistance funds shall be used for activities designed to influence Congress or State Legislature on legislation or appropriations, except through proper, official channels.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contract under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

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

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

By: \_\_\_\_\_  
Signature

Name and Title: \_\_\_\_\_



# **ATTACHMENT C**

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## **Federal Transit Administration (FTA) Third Party Contract Provisions**

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## **Solicitation Provisions/Required Contract Clauses**

### **Contract Subject to Federal Financial Assistance/Application of Provisions and Clauses**

This Contract/project is funded in whole or in part by grants from the Federal Transit Administration (FTA) of the United States Department of Transportation. The award of any contract is subject to the requirements of financial assistance contracts between the Northern Virginia Transportation Commission (hereinafter referred to as "NVTC") and the U.S. Department of Transportation requiring compliance with purchasing procedures and standards as set forth in various federal statutes and regulations including 49 CFR Part 18, and Federal Transit Administration (FTA) Circular 4220.1F. The Contractor/Bidder/Offeror is required to comply with all terms and conditions prescribed for third-party contracts by the U.S. Department of Transportation, Federal Transit Administration (FTA).

Contractor/Bidder/Offeror is responsible for ensuring its compliance with all applicable FTA requirements. Additionally, Contractor/Bidder/Offeror is responsible for ensuring that subcontractors, at as many tiers of the Project as required, perform in accordance with the terms, conditions and specifications of the contract, including all applicable FTA requirements.

Upon request of NVTC or FTA, Contractor/Bidder/Offeror shall provide evidence of the steps it has taken to ensure its compliance with the FTA requirements, as well as evidence of the steps it has taken to ensure subcontractor performance, and/or submit evidence of each subcontractor's compliance at all tiers.

The following solicitation provisions and required contract clauses will be incorporated by reference in any contract resulting from this solicitation issued by NVTC. These solicitation provisions and required contract clauses are in addition to other General Specifications, Special and Technical Specifications, Bidding or Proposal Procedures, and Bid or Proposal Forms set forth in other sections of this solicitation which may also be incorporated by reference in any resulting contract. Some provisions and clauses require the Bidder/Offeror to execute and submit certain required certifications with the Bid/Proposal or contract, which are included herein. Failure to execute and submit required certifications with the Bid/Proposal or contract documents may render a Bid/Proposal non-responsive or a contract null and void.

Clauses may not be listed in consecutive numerical order as only those provisions and required clauses that apply to this contract/project have been referenced.

**1. FLY AMERICA REQUIREMENTS**  
**49 U.S.C. § 40118**  
**41 CFR Part 301-10**  
**48 CFR Part 47.4**

**Applicability to Contracts**

Applicable to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.

**Flow Down Requirements**

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

**Fly America**

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

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

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

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

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

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

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

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

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

**2. ENERGY CONSERVATION REQUIREMENTS**  
**42 U.S.C. 6321 et seq.**  
**49 CFR Part 622, subpart C**

**Applicability to Contracts**

Applicable to all contracts.

**Flow Down**

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

**Energy Conservation** - The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**3. CLEAN WATER REQUIREMENTS**  
**33 U.S.C. 1251**  
**2 CFR Part 200, Appendix II (G)**

**Applicability to Contracts**

Applicable to all contracts and subcontracts exceeding \$150,000.

**Flow Down**

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

**Clean Water** - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251-1387. The Contractor agrees to report each violation to NVTC and understands and agrees that NVTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

**4. CLEAN AIR**  
**42 U.S.C. 7401 et seq**  
**40 CFR 15.61**  
**2 CFR Part 200, Appendix II (G)**

**Applicability to Contracts**

Applicable to all contracts exceeding \$150,000.

**Flow Down**

The Clean Air requirements flow down to all subcontracts which exceed \$150,000.

**Clean Air** - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to

the Clean Air Act, as amended, 42 U.S.C. §§ 7401 - 7671g. The Contractor agrees to report each violation to NVTC and understands and agrees that NVTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

**5. LOBBYING**  
**31 U.S.C. 1352**  
**49 CFR Part 20**  
**2 CFR 200.450**  
**2 CFR Part 200 Appendix II (J)**

**Applicability to Contracts**

Applicable to all contracts exceeding \$100,000.

**Flow Down**

The Lobbying requirements mandate the maximum flow down, pursuant to the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

**Mandatory Clause/Language**

Clause and specific language therein are mandated by 49 CFR Part 20.

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110 (d).
- Language in Lobbying Certification is mandated by 49 CFR Part 20, Appendix A which provides that contractors file the certification.
- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]**

- Contractors who submit a Bid/Proposal for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**The certificate entitled *Certification of Restrictions on Lobbying* (included in the Representations, Certifications and Other Statements of Bidders/Offerors Attachment) must be completed and submitted with the Bid/Proposal.**

## 6. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

49 CFR 18.36 (i)

49 CFR 633.17

2 CFR 200.334 - 2 CFR 200.337

### **Applicability to Contracts**

Applicable to all contracts as listed below.

### **Flow Down**

The record keeping and access requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

**Access to Records** - The following access to records requirements apply to this Contract:

1. **Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
2. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information, including such records and information the contractor or its subcontractors may regard as confidential or proprietary, related to performance of this contract in accordance with 2 CFR § 200.337.
4. **Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required in accordance with 2 CFR § 200.337.

**7. FEDERAL CHANGES**  
**49 CFR Part 18**

**Applicability to Contracts**

Applicable to all contracts.

**Flow Down**

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

**Federal Changes** – The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between NVTC and FTA, as they may be amended due to changes in federal law, regulation, other requirements, or guidance during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

**8. RECYCLED PRODUCTS**  
**42 U.S.C. 6962**  
**40 CFR Part 247**  
**Executive Order 12873**  
**2 CFR Part 200.322**

**Applicability to Contracts**

Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

These regulations apply to all procurement actions involving items designated by the EPA, where the Contractor purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year exceeds \$10,000.

**Flow Down**

These requirements flow down to all contractors and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

**Recovered Materials** - The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**9. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

**Applicability to Contracts**

Applicable to all contracts.

(1) NVTC and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal

Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to NVTC, the Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**10. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

**49 CFR Part 31**

**31 U.S.C. 3801 et seq.**

**18 U.S.C. 1001**

**49 U.S.C. 5323**

**Applicability to Contracts**

Applicable to all contracts.

**Flow Down**

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

**Program Fraud and False or Fraudulent Statements or Related Acts.**

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**11. TERMINATION**  
**NVTC Contractor Terms and Conditions**

**Applicability to Contracts**

Applicable to all contracts exceeding \$10,000.

*Refer to Section E, Contractor Terms and Conditions, "Termination for Convenience or Default."*

**12. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**  
**2 CFR Part 1200**  
**2 CFR Part 180**

**Applicability to Contracts**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.

**Debarment and Suspension**

A covered transaction (see 2 C.F.R. §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), "Debarment and Suspension." The Third Party Contractor agrees to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Contractor:

- (1) Complies with federal debarment and suspension requirements; and
- (2) Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200.

The certificate entitled *Certification of Primary Participants Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion* (included in the RFP as Attachment C) must be completed and returned with the Bid/Proposal.

**13. CIVIL RIGHTS REQUIREMENTS**  
**29 U.S.C. § 623, 42 U.S.C. § 2000**  
**42 U.S.C. § 6101, 42 U.S.C. § 12112**  
**42 U.S.C. § 12132, 49 U.S.C. § 5332**  
**29 CFR Part 1630, 41 CFR Parts 60 et seq.**

**Applicability to Contracts**

Applicable to all contracts.

**Flow Down**

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.



**Civil Rights** - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, Federal transit law at 49 U.S.C. § 5332, and U.S. DOT regulation "Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of the Title VI of the Civil rights Act," 49 C.F.R. Part 21, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, age, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Promoting Free Speech and Religious Liberty. In accordance with 2 C.F.R. § 200.300, the Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

(4) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary, to identify the affected parties.

#### 14. EQUAL EMPLOYMENT OPPORTUNITY

##### Applicability to Contracts

Applicable to all contracts.

##### Flow Down

The Equal Employment Opportunity requirements flow down to all third party contractors and their contracts at every tier.

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant

thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**15. BREACHES AND DISPUTE RESOLUTION**  
**NVTC Contractor Terms and Conditions**

**Applicability to Contracts**

Applicable to all contracts exceeding \$100,000.

*Refer to Section E, Contractor Terms and Conditions, "Contractual Disputes and Claims."*

**16. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**  
**49 CFR Part 26**

**Applicability to Contracts**

Applicable to all DOT-assisted contracting activities.

**Flow Down**

The DBE contracting requirements flow down to all third party contractors and their contracts at every tier.

**Disadvantaged Business Enterprises**

a. It is the policy of NVTC and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBEs"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of NVTC to:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To ensure that only firms fully meeting the eligibility requirements of the DBE program are permitted to participate as DBEs;
3. To help create a level playing field on which DBEs can fairly compete for DOT-assisted contracts;
4. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
5. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by NVTC and its subrecipients;
6. To assist in the development of firms that can compete successfully in the marketplace outside of the DBE program; and
7. To ensure that the DBE program is narrowly tailored in accordance with applicable federal, state and local laws.

b. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. NVTC shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, NVTC may consider during its review of the Bidder's/Offeror's submission package, the Bidder's/Offeror's documented history of non-compliance with DBE requirements on previous contracts with NVTC.

c. NVTC's goal for DBE participation for this contract is set at **8.42%**. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than 8.42%** of the total Contract price. A bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet this goal.

d. The contractor and subcontractor(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the

award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as NVTC deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidates damages; and/or
4. Disqualifying the Contractor from future bidding as non-responsible.

**Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).**

e. The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than seven (7) days after the Contractor's receipt of payment for that work from NVTC. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

1. The Contractor shall be obligated to pay interest to a subcontractor on all monies owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from NVTC for work performed by a subcontractor under the Contract, except for amounts withheld for retainage.
2. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the provisions of this section may not be construed as an obligation by NVTC. A contract modification may not be made for the purpose of providing reimbursement for any such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

f. The Contractor shall utilize the specific DBEs listed unless the Contractor obtains NVTC's written consent; and that, unless NVTC's consent is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

g. The contractor must promptly notify NVTC, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without the prior written consent of NVTC. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include, but are not limited to, when a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

**17. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**  
**FTA Circular 4220.1F**

**Applicability to Contracts**

Applicable to all contracts.

**Flow Down**

The incorporation of FTA terms has unlimited flow down.

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200) and by the USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NVTC requests which would cause NVTC to be in violation of the FTA terms and conditions.

**18. ACCESS FOR INDIVIDUALS WITH DISABILITIES**

**Applicability to Contracts**

Applicable to all contracts.

The Contractor agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Contractor agrees to comply with applicable implementing Federal regulations and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing.

**19. SAFE OPERATIONS OF MOTOR VEHICLES**

**23 U.S.C. part 402**

**Executive Order No. 13043 Executive Order No. 13513**

**U.S. DOT Order No. 3902.10**

**Applicability to Contracts**

The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third party agreements supported with Federal assistance.

**Flow Down**

The Safe Operation of Motor Vehicles requirements flow down to all third party contractors at every tier.

**Seat Belt Use-** The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or NVTC.

**Distracted Driving-** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle the Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this contract.

**20. NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE OR OTHER LEGAL MATTERS**

**Applicability to Contracts**

Applicable to all contracts exceeding \$25,000.

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify NVTC, which will promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which NVTC is located.

The Contractor must include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the award, the accompanying Underlying Agreement between the FTA and NVTC, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

**Additional Notice to U.S.DOT Inspector General.** - The Contractor must promptly notify NVTC, which will promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which NVTC is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the project is subject to this Agreement or another agreement with NVTC involving a principal, officer, employee, agent, or Third-Party Participant of the Contractor. It also applies to subcontractors at any tier.

Knowledge, as used herein, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this

provision, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.

## 21. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

### Applicability to Contracts

Applicable to all contracts.

### Flow Down

This requirement flows down to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

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

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

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

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also § 200.471.



# **ATTACHMENT D**

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## **Disadvantaged Business Enterprise (DBE) Provisions and Forms**

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## **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROVISIONS AND FORMS**

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### **1. Definitions and Interpretations**

NVTC will utilize the following definitions to identify Disadvantaged Business Enterprise (DBE) Program eligibility standards. The following definitions and any other definitions related to the DBE program have the same meaning as defined in 49 CFR Part 26.

(a) "Disadvantaged Business Enterprise" or "DBE" means a for profit small business concern: (1) which is at least 51 percent owned by one or more socially or economically disadvantaged individuals, or in the case of a corporation in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(b) "Small Business Concern" means, with respect to firms seeking to participate as DBEs in USDOT-assisted contracts, a small business as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in section 26.65(b).

(c) "Socially and Economically Disadvantaged Individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and includes any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese cultures or origin, regardless of race;
- (3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands, Republic of Palau, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (5) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
- (6) Non-minority American Women;
- (7) "Tribally-owned concern" means any concern at least 51 percent owned by an Indian tribe;
- (8) "Any individual groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA) at such times as the SBA designation becomes effective; and
- (9) Any individual who NVTC finds to be socially and economically disadvantaged on a case-by-case basis.

(d) "USDOT" means the U.S. Department of Transportation including the Federal Transit Administration (FTA).

(e) "Good Faith Efforts" means efforts to achieve a DBE goal or other requirement that, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the DBE program requirement.

## **2. DBE Policy**

NVTC is committed to an active effort to involve Disadvantaged Business Enterprises (DBE) in contracting opportunities and encourages participation in procurement activities. Where it is practicable for any portion of the awarded Contract to be subcontracted to other suppliers, the prospective Contractor is encouraged to offer such business to minority and/or women-owned businesses.

Bidders/Offerors must state any plans to utilize such businesses and the manner in which they may be utilized under the resultant Contract.

The prospective Contractor and Subcontractors, their agents, employees, assignees or successors, any persons, firms, or agency of whatever nature with whom it may contract or make agreement, in connection with the Contract shall cooperate with NVTC in meeting its commitment and goals with regard to the creation of a level playing field for DBE. The prospective Contractor shall use best efforts to ensure DBE shall have a level playing field to compete for subcontract work under this Contract. Reference: Federal Regulations Sec. 49 CFR 26.49.

## **3. Banks and Financial Institutions**

The Contractor is encouraged to utilize the services of disadvantaged, minority and woman-owned banks and financial institutions.

To date, NVTC has identified the following such institutions that are located in the NVTC relevant market area of the District of Columbia, Maryland and Virginia:

Industrial Bank  
4812 Georgia Avenue, NW  
Washington, DC. 20011

The Harbor Bank of Maryland  
25 W. Fayette Street  
Baltimore, Maryland 21201

Movement Bank (Formerly First State Bank)  
201 North Union Street  
Danville, Virginia 24541

## **4. Certification and Directory of DBEs**

(a) All prospective DBEs must be certified through a Unified Certification Program (UCP). NVTC recognizes certification by the Virginia Department of Small Business and Supplier Diversity (SBSD), the Metropolitan Washington Airports Authority (MWAA) and the Washington Metropolitan Area Transit Authority (WMATA).

(b) Each DBE firm will be verified as a certified DBE through one of the UCP Directories listed above and they each maintain online DBE directories of all firms certified. These online directories and appropriate forms to apply for DBE certification are available at the following website addresses:

SBSD's website: <https://www.sbsd.virginia.gov/>

MWAA's website: <https://www.mwaa.com>

WMATA's website: <https://wmata.com>

(c) The eligibility of a DBE certified joint venture will be determined on a project-by-project basis by NVTC.

(d) Bidders/Offerors are reminded that only certified DBEs may participate in NVTC contracts in such capacities. If Bidders/Offerors propose using a DBE not currently certified, it is strongly urged that a UCP be contacted well in advance of the date set for receipt of Bids/Proposals to enable review of the proposed DBE's eligibility.

## **5. DBE Participation**

For the purpose of this Contract, NVTC will accept only DBEs who are:

(a) Certified, at the time of Bid opening or Proposal evaluation, by SBSB, MWAA and/or WMATA; or

(b) An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or

(c) Certified by another agency approved by NVTC.

## **6. DBE Modifications, Substitutions or Termination**

This provision applies to all modifications, substitutions and termination under this Contract. The Contractor will be required to comply with this provision to the extent needed to achieve the DBE goals agreed to at the time of contract award.

(a) If a Prime Contractor wishes to terminate or substitute a DBE Subcontractor listed as fulfilling its contract goal, and then performs the work of the terminated DBE Subcontractor with its own forces, an affiliate, a non-DBE Subcontractor or with another DBE Subcontractor, it must submit written documentation prior to the termination or substitution of the DBE Subcontractor to NVTC's DBE Coordinator. This will include any changes to items of work, material, services, or DBE firms that differ from those identified on the **Intent to Perform as a DBE Subcontractor** form(s) (Exhibit B) on file with the DBE Coordinator. The Bidder/Offeror/Contractor must provide any and all documentation and information as may be requested with respect to the requested change. NVTC may provide written consent only if the Contractor has good cause to terminate the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

(1) Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE Subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five (5) days to respond to the notice and advise of the reasons why it objects to the proposed termination.

(b) The Bidder's/Offeror's/Contractor's documentation shall include the specific reasons for the proposed change. Specific reasons that are acceptable include but are not limited to: the DBE was not able to perform; the DBE was unable to produce acceptable work; and/or the DBE has submitted an unreasonable escalation in price. In the case of a DBE Subcontractor being substituted by another DBE Subcontractor, the Contractor should include the name, address, certification number and principal office of the proposed DBE firm. After providing an opportunity for NVTC's DBE Liaison Officer to make a recommendation, the DBE Coordinator will approve or disapprove the change.

(c) If the change involves replacing a DBE that is terminated or has otherwise failed to complete its work on a Contract, the Bidder/Offeror/Contractor must make good faith effort to replace one DBE with another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the DBE goal. The substitute DBE firm must be certified by a UCP in order for the Bidder/Offeror/Contractor to receive credit toward fulfilling its DBE participation goal for the Contract. In the event that the Bidder/Offeror/Contractor is unable to contract with another DBE firm, good faith effort documentation must be

provided to the DBE Coordinator describing the unsuccessful attempts to locate a substitute DBE. In all situations, the Contractor may not terminate or substitute a DBE Subcontractor without the prior written consent of the DBE Coordinator.

(d) The Bidder/Offeror/Contractor must submit a new Intent to Perform as a DBE Subcontractor form for the substitute DBE firm(s) with the request for change, to verify that the new DBE firm(s) is certified by a UCP. The DBE Coordinator shall notify the Bidder/Offeror/Contractor in writing of his or her decision as expeditiously as possible. If the Contract has been awarded and the DBE Coordinator approves the proposed substitution in writing, the Contractor shall provide a copy of the executed subcontract agreement with the proposed DBE firm to the DBE Coordinator within ten (10) business days of its receipt of the substitution approval.

(e) If the change involves a modification, the Contractor must submit, if applicable, the Intent to Perform as a DBE Subcontractor form specified for contract modifications for any DBE Subcontractor affected by this change. This form may be obtained from the DBE Coordinator.

(f) If the Contractor does not comply with this provision, NVTC may elect to apply contract remedies as defined in 49 CFR Part 26, or other contract remedies, as appropriate. Additionally, the DBE Coordinator may order that the profits from the terminated portion of the DBE subcontract be forfeited by the Contractor.

## **7. Demonstration of Good Faith Effort**

(a) If a Bidder/Offeror is unable to meet the DBE goal, it shall nevertheless be eligible for award of the Contract if it can demonstrate to the DBE Coordinator that it has made a good faith effort to meet the DBE goal. The Bidder/Offeror shall submit to NVTC the **Evidence of Good Faith Efforts Form** (Exhibit C) which documents the steps it has taken to solicit participation from DBE firms. This form should be submitted when the initial response to NVTC's solicitation is due. All Contractors, including DBE Prime Contractors, are required to submit good faith efforts documentation, if necessary. In evaluating a Bidder's/Offeror's good faith effort submission, NVTC will only consider those documented efforts that occurred prior to the good faith efforts determination. The types of actions that NVTC will consider as part of the Bidder's/Offeror's good faith efforts include, but are not limited to, the following:

- (1) Documented communication with NVTC's DBE Liaison Officer (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
- (2) Pre-bid/pre-proposal meeting attendance. At the pre-bid/pre-proposal meeting, NVTC generally informs potential Bidders/Offerors of DBE subcontracting opportunities;
- (3) The Bidder's/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
- (4) Written notification to DBEs encouraging participation in the proposed Contract; and
- (5) Efforts made to identify specific portions of the work that might be performed by DBEs.

(b) The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBEs for elements of the Contract:

- (1) The names, addresses and telephone numbers of DBEs that were contacted;
- (2) A description of the information provided to targeted DBEs regarding the specifications and bids/proposals for portions of the work;

- (3) Efforts made to assist DBEs contacted in obtaining bonding or insurance required by the Bidder/Offeror or NVTC.

(c) In the event that a firm submitted by a Bidder/Offeror in accordance with the requirements of the Submission of DBE Utilization Forms and Related Documentation provision cannot be certified, the Bidder/Offeror will be notified and given an opportunity to substitute that firm with a certified DBE firm. The Bidder/Offeror will have ten (10) calendar days from the date of notification to accomplish the substitution. In the event the Bidder/Offeror is unable to contract with another substitute DBE firm, the good faith efforts that the Bidder/Offeror made in attempting to contract with a substitute DBE firm must be documented to the DBE Coordinator at the end of the same ten (10) calendar day period.

(d) NVTC will look not only at the different kinds of efforts that the Bidder/Offeror has made, but also the quantity and intensity of those efforts. Efforts that are merely pro forma are not good faith efforts to meet the goal (even if they are sincerely motivated) if, given all relevant circumstances, the Bidder's/Offeror's efforts could not reasonably be expected to produce a level of DBE participation sufficient to meet the goal.

(e) Bidders/Offerors are reminded that the issue of whether or not the Bidder/Offeror has met or exceeded the established goal and/or demonstrated good faith efforts may be considered a matter of the Bidder's/Offeror's responsibility. NVTC will only award contracts to Bidders/Offerors determined to be responsible. The DBE Coordinator, after affording NVTC's DBE Liaison Officer an opportunity to make a recommendation, shall be responsible for determining the sufficiency of a Bidder's/Offeror's good faith effort to meet contract goals.

(f) A Bidder/Offeror that the DBE Coordinator determines is not responsible may request administrative review and reconsideration under NVTC's Procurement Regulations. As part of any reconsideration, if requested, the Bidder/Offeror may elect to meet in person with NVTC's DBE Coordinator to discuss credit toward meeting the DBE goal or whether the Bidder/Offeror made adequate good faith efforts.

## **8. Administrative Reconsideration**

(a) Within 30 days of being informed by NVTC that it is not responsive because it has not documented sufficient good faith efforts, a Bidder/Offeror may request administrative reconsideration. A Bidder/Offeror should make this request in writing to the NVTC reconsideration official at the address provided below:

Kate Mattice, Executive Director  
Northern Virginia Transportation Commission (NVTC)  
2300 Wilson Blvd., Suite 230  
Alexandria, Virginia 22201

(b) The obligation of the Bidder/Offeror is to make good faith efforts. The Bidder/Offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. The DBE Coordinator is responsible for determining whether a Bidder/Offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. NVTC will ensure that all information is complete and accurate and adequately documents the Bidder's/Offeror's good faith efforts before NVTC commits to the performance of the Contract by the Bidder/Offeror.

(c) The reconsideration official will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts. As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with NVTC's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. NVTC will send the Bidder/Offeror a written decision on reconsideration, explaining the basis for finding that the

Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process may not be appealed to the Department of Transportation.

## **9. Payment Documentation**

Concurrently with the submission of each invoice or request for a progress payment under this Contract, the Contractor shall provide a breakdown of the amounts paid to DBEs identified by the Contractor to participate in this Contract. The breakdown shall be provided on the attached **Monthly DBE Subcontractor Progress Report** (Exhibit D). As provided elsewhere in this Contract, NVTC may withhold all or part of any payment otherwise due the Contractor if the Contractor fails to submit the **Monthly DBE Subcontractor Progress Report** and/or make prompt payments to its subcontractors, suppliers, materialmen or laborers.

## **10. Contract Compliance**

NVTC shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, it will be the responsibility of the Contractor to submit semi-annual written reports to NVTC that summarize the total DBE value for this Contract. These reports shall provide the following details:

- (a) DBE utilization established for the Contract;
- (b) Total value of expenditures with DBE firms for the six (6) month period;
- (c) The value of expenditures with each DBE firm for the six (6) month period by race and gender;
- (d) Total value of expenditures with DBE firms from inception of the Contract; and
- (e) The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

The Contractor is required to maintain records and documents of payments to DBEs for three (3) years following the performance of the Contract and will make these records available to NVTC upon request.

## **11. Sanctions for Noncompliance with NVTC's DBE Program Provisions**

Failure of the Contractor to carry out NVTC's DBE program provisions shall constitute a breach of contract and may result in termination of the Contractor for default or such remedy as NVTC may deem appropriate. NVTC reserves the right to apply legal and contract remedies available under Federal, State and Local law, including but not limited to, responsibility determinations in future contracts, suspension and debarment procedures as outlined in 49 CFR Part 29, and forfeiture of profits as provided for elsewhere. NVTC will bring to the attention of the U.S. Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps provided in 49 CFR Section 26.107.

## **12. Submission of DBE Utilization Forms and Related Documentation**

- (a) Each Bidder/Offeror shall submit to NVTC a **Summary of Subcontractors/Subconsultants/Suppliers** (Exhibit E) that indicates the percentage value of the total Contract amount to be supplied by Disadvantaged Business Enterprises under this Contract. **The DBE certification must be attached to the DBE statement.**
- (b) If the prospective Contractor is not itself, nor plans to utilize an authorized DBE, the prospective Contractor shall **write "NO DBEs" on the DBE Form** and submit the form.
- (c) Each Bidder/Offeror shall submit an executed **Intent to Perform as a DBE Subcontractor** form for each proposed subcontractor, listed in the Summary of Subcontractors/Subconsultants/Suppliers, when the initial

response to NVTC's solicitation is due. If a Bidder/Offeror does not meet NVTC's DBE participation goal, the **Evidence of Good Faith Efforts** form should also be submitted when the initial response to NVTC's solicitation is due. The submission of this information is considered an issue of responsibility, and NVTC may not award a Contract to any Offeror who has not supplied this documentation.

- (d) The **Intent to Perform as a DBE Subcontractor** form for each proposed Subcontractor shall constitute a representation by the Bidder/Offeror to NVTC that it believes such firm is ready, willing, and able to perform the work indicated. It shall also represent a commitment by the Bidder/Offeror that if it is awarded the Contract, it will enter into a subcontract with such Subcontractor for the work described at the approximate price set forth in the **Intent to Perform as A DBE Subcontractor** form. No work shall be included in the schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE.
- (e) If the DBE Subcontractor participation changes after the forms have been submitted, but prior to award of the Contract, the Bidder/Offeror will be required to immediately notify the DBE Coordinator of the changed amount and the reason(s) for the change. The modification and substitutions of DBE firms that occur shall be governed by DBE Modification or Substitutions provision stated herein.
- (f) If awarded the Contract, the successful Bidder/Offeror may not deviate from the DBE **Summary of Subcontractors/Subconsultants/Suppliers** form submitted in response to the IFB/RFP. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by NVTC.
- (g) Except as authorized by the DBE Coordinator, the successful Bidder/Offeror shall enter into formal agreements with the subcontracting firms shown in the submitted **Intent to Perform as a DBE Subcontractor** form(s) within ten (10) business days after receipt of a Contract executed by NVTC. The successful Bidder/Offeror (Contractor) shall provide the DBE Coordinator a copy of each agreement within three (3) business days of execution.
- (h) If a Bidder/Offeror is a DBE and lists itself on the **Intent to Perform as a DBE Subcontractor** form, it is required to perform the work indicated with its own work force.



**EXHIBIT B**

**INTENT TO PERFORM AS A DBE SUBCONTRACTOR FOR A CONTRACT AWARD**

All DBE subcontracting firms to be used on this solicitation must fill out this form.

DBE firms participating in NVTC's contracting opportunities must have "current" certification status with a Unified Certification Program (UCP) prior to award of this contract. If NVTC determines that the firm is not an eligible DBE firm for NVTC contracts and subcontracts, the Prime Contractor will be notified of the ineligibility of the listed firm. The submission of this form is considered an issue of responsibility and NVTC will not award a Contract to any Bidder/Offeror who has not supplied this documentation.

1. NVTC Solicitation #: \_\_\_\_\_
2. Name of **DBE** Subcontracting Firm \_\_\_\_\_.
3. Has the **DBE** Subcontractor been certified as a DBE by a UCP agency? \_\_\_\_\_
4. The **DBE** Subcontractor is prepared to perform the following described work and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both):  
\_\_\_\_\_  
and at the following percentage \_\_\_\_\_%.

BY: \_\_\_\_\_ DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_  
(Signature of **DBE** subcontracting Owner, President or Authorized Agent)

\_\_\_\_\_  
PHONE: \_\_\_\_\_  
(Print or Type - Name of Signature of Owner, President or Authorized Agent of **DBE** subcontracting firm)

**DECLARATION OF PRIME CONTRACTOR**

I HEREBY DECLARE AND AFFIRM that I am the \_\_\_\_\_  
(Title of Declarant)

and a duly authorized representative of \_\_\_\_\_  
(Name of Prime Contractor)

to make this declaration and that I have personally reviewed the material and facts set forth in this Intent to Perform as a DBE Subcontractor form. To the best of my knowledge, information and belief, the facts and representations contained in this form are true, the owner or authorized agent of the subcontracting firm signed this form in the place indicated, and no material facts have been omitted.

Except as authorized by the DBE Coordinator, the undersigned will enter into a formal agreement with the listed DBE subcontracting firm for work as indicated by this form within ten (10) business days after receipt of the Contract executed by NVTC. The undersigned will provide the DBE Coordinator a copy of that agreement within three (3) business days of execution.

The Prime Contractor designated the following person as their DBE Liaison Officer:

\_\_\_\_\_  
(Name-Please Print) (Phone)

Pursuant to 49 CFR Section 26.107, any person [entity] who makes a false or fraudulent statement in connection with participation of a DBE in any USDOT-assisted program or otherwise violates applicable Federal statutes and may be referred to the U.S. Department of Transportation, and possibly the U.S. Department of Justice, for prosecution.

Name of Declarant: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT C**  
**EVIDENCE OF GOOD FAITH EFFORTS FORM**  
**(SUBMIT THIS FORM ONLY IF DBE GOAL CANNOT BE FULFILLED)**

If a Bidder/Offeror does not meet NVTC's DBE participation goal, it shall be eligible for award of the Contract if it can demonstrate that it has made a good faith effort to meet the DBE goal. If necessary, the Bidder/Offeror shall submit this form to document the good faith efforts attempt made in soliciting participation from DBE firms. In order to show that good faith efforts were made, the Bidder/Offeror must demonstrate the methods it used to seek DBE participation, in accordance with the Regulations Regarding the Determination of Good Faith Efforts Participation.

NVTC Solicitation #: \_\_\_\_\_ Current Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Project Name: \_\_\_\_\_

Offeror (Firm): \_\_\_\_\_ Telephone: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Email: \_\_\_\_\_

Address: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_

To determine whether a Bidder/Offeror has demonstrated good faith efforts to reach the DBE participation goal on the above referenced project, NVTC will consider, at a minimum, evidence of Good Faith Efforts as described in the table below.

YES ( )	NO ( )	EVIDENCE OF GOOD FAITH EFFORTS
		<b>PRE-BID / PRE-PROPOSAL MEETING(S):</b> The Bidder/Offeror attended the pre-bid or pre-proposal meetings scheduled by NVTC to discuss, among other matters, DBE participation opportunities.
		<b>ADVERTISEMENT:</b> The Bidder/Offeror advertised in general circulation, trade association, and/or minority/women-focus media concerning subcontracting opportunities.
		<b>WRITTEN NOTICE(S):</b> The Bidder/Offeror provided written notice to a reasonable number of DBEs that their interest in the contract was being solicited in sufficient time to allow DBEs to participate effectively.
		<b>FOLLOW-UP:</b> The Bidder/Offeror followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested.
		<b>SMALL CONTRACTS:</b> The Bidder/Offeror selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down the contract into economically feasible subcontracts to facilitate DBE participation).
		<b>INFORMATION:</b> The Bidder/Offeror provided interested DBEs with adequate information about the plans, specifications, scope of work and requirements of the contract.
		<b>GOOD FAITH NEGOTIATIONS:</b> The Bidder/Offeror negotiated in good faith with interested DBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested DBE firms.
		<b>ASSISTANCE EFFORTS:</b> The Bidder/Offeror made efforts to assist interested DBEs in obtaining bonding, lines of credit, insurance, etc., as required by NVTC or the Bidder/Offeror.
		<b>ASSISTANCE IN OBTAINING SUPPLIES:</b> The Bidder/Offeror made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
		<b>WRITTEN NOTICE(S):</b> The Bidder/Offeror obtained written documentation from a bona fide surety company indicating that bonding was denied and for what reason(s), prior to the DBE being rejected as a potential Subcontractor for failing to obtain Bidder/Offeror-required bonding. Documentation furnished by a surety company will be subject to verification by NVTC.

		<b>COMMUNITY RESOURCES:</b> The Bidder/Offeror effectively used the services of available minority and women community organizations, contractor groups; Federal, State and Local business assistance offices; and other organizations that provide assistance in the identification of DBEs.
		<b>OTHER – PLEASE EXPLAIN:</b>

I certify that the information contained in this Evidence of Good Faith Efforts Form is true and correct to the best of my knowledge. I further understand that any willful falsification, fraudulent statement or misrepresentation will result in appropriate sanctions which may involve debarment and /or prosecution under applicable State and Federal laws.

Print Name/Title of Person Completing this Form: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT D**

MONTHLY DBE AND NON-DBE SUBCONTRACTOR PROGRESS REPORT FOR

MONTH ENDING \_\_\_\_\_, 20\_\_\_\_

**INSTRUCTIONS:** After the award of a Contract, this Report must be filed by the 15<sup>th</sup> of each month to report Subcontractor participation during the preceding month.

- 1) Prime Contractor: \_\_\_\_\_ 2) Project Name: \_\_\_\_\_  
 3) Contract Number: \_\_\_\_\_ 4) Contract Amount (as Amended) \$: \_\_\_\_\_  
 5) Total Amount Received to Date: \$ \_\_\_\_\_ 6) Total Amount Owed: \$ \_\_\_\_\_ 7) Amount of This Invoice: \$ \_\_\_\_\_  
 8) Total Value of DBE Contracts: \$ \_\_\_\_\_ 9) Committed DBE %: \_\_\_\_\_% 10) Actual DBE Participation % to Date: \_\_\_\_\_%

11) Name of Subcontractor	12) DBE (Y/N)	13) Work Status This Reporting Period	14) Description of Work	15) Amount & Date of Last Payment Made to Subcontractor	16) Amount of Subcontract Award	17) Amount Paid to Date	18) % Paid to Date	19) Amount Invoiced this Reporting Period
		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete						
		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete						
		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete						
		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete						
		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete						
		<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete						

I certify the information furnished above is correct to the best of my knowledge and represents a current status of the Prime Contractor's DBE subcontracting activity for the period covered by this report. Further, those Subcontractors due payment pursuant to the terms of their subcontracts will be paid within seven (7) days after the Prime Contractor's receipt of payment from NVTC.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**MONTHLY DBE AND NON-DBE SUBCONTRACTOR PROGRESS REPORT**  
**INSTRUCTIONS FOR CONTRACTORS HOW TO FILL**  
**OUT PROGRESS REPORT FORM**

The DBE Subcontractor Progress Report form is to be filled out by the Contractor and submitted with each invoice. The instructions below correspond to each item on the reverse side of the form.

**1. Prime Contractor**

Fill in your company's name.

**2. Project Name**

Fill in the name of the project.

**3. Contract Number**

Fill in the contract number assigned to your project by NVTC.

**4. Contract Amount (as Amended)**

Fill in dollar amount of original contract plus/minus the dollar amount agreed upon at a later date as a result of contract modifications, if applicable.

**5. Total Amount Received to Date**

Fill in the dollar amount you have received from NVTC to date.

**6. Total Amount Owed**

Fill in the dollar amount of the contract minus amount paid to you by NVTC.

**7. Amount of This Invoice**

Fill in the dollar amount of the invoice being submitted to NVTC this reporting period.

**8. Total Value of DBE Contracts**

State the total committed dollar value to all DBE Subcontractors for the duration of the contract.

**9. Committed DBE Percentage**

Fill in the percentage of DBE participation you committed to obtain in the contract.

**10. Actual DBE Participation % to Date**

Dollar amount paid to all DBE firms divided by dollar amount received by Contractor from NVTC.

**11. Name of Subcontractor**

Name all Subcontractors (use additional sheets as necessary).

**12. DBE (Y/N)**

State whether the Subcontractor is a DBE firm or not.

**13. Work Status This Reporting Period**

Check the box stating whether the DBE Subcontractor is actively working on the project, is currently inactive on the project or if they have completed their work on the project.

**14. Description of Work**

State the work performed by the DBE Subcontractor.

**15. Amount and Date of Last Payment Made to Subcontractor**

State the amount and date of last payment made to each DBE Subcontractor. Submit evidence of payment (i.e. cancelled check, check register, etc.).

**16. Amount of Subcontract Award**

State the committed dollar value to the DBE Subcontractor for the duration of the contract.

**17. Amount Paid to Date**

Add all amounts paid to each DBE Subcontractor to date.

**18. Percent Paid to Date**

Dollar amount paid to the DBE Subcontractor divided by the amount committed to them.

**19. Amount Invoiced this Reporting Period**

Fill in how much of the invoice from this reporting period will be paid to each DBE Subcontractor.



**Section G**

**MASTER AGREEMENT FOR**

**USE OF**

**COMMONWEALTH TRANSPORTATION FUNDS**

**GRANTEE: Northern Virginia Transportation Commission**



This Master Agreement (“Agreement”), is made and executed as of the 9<sup>th</sup> day of July, 2020 between the Virginia Department of Rail and Public Transportation (“Department”), acting by and through its Director, and the Northern Virginia Transportation Commission (“Grantee”) (collectively Department and Grantee referred to as “Parties”). On a case by case basis, the Parties will enter into a project specific agreement (“Project Agreement”) that includes the overall purpose for which grants are awarded (“Project”), the total cost of a Project, the Department and Grantee participation, Project time period, and any subsequent amendments thereto. This Agreement constitutes the terms and conditions governing receipt of grants supported by Commonwealth transportation funds and governs and is incorporated by reference in all Project Agreements approved by the Department. The terms of this Agreement shall apply to all actions such as executing a Project Agreement, requesting reimbursement, requesting extensions or other actions taken pursuant to complete a Project (“Grant Transactions”) from the date of this Agreement until a new Master Agreement for the use of Commonwealth transportation funds is executed by the Department and the Grantee.

## **ARTICLE 1. PROGRAMS AND FUNDING**

**§ 1.1** This Agreement contains requirements that must be adhered to by the Grantee for all grants received from the Department.

**§ 1.2** Funding is subject to annual appropriation by the Virginia General Assembly (“General Assembly”), allocation by the Commonwealth Transportation Board (“CTB”), and execution by the Parties of this Agreement and an associated Project Agreement. For any grants administered by the Department, the CTB or the General Assembly may change the percentage of the local share that can be financed by Commonwealth transportation funds to a higher or lower percentage than set forth in the Project Agreement. In the event such a change occurs, the applicable percentage will be the new

percentage set by the CTB or the General Assembly. All Eligible Project Costs incurred prior to the date of the change will be governed by the previous percentage.

**§ 1.3** In the event that the Grantee receives a subsequent allocation of funding from the Commonwealth of Virginia (“Commonwealth”) other than the Department, or receives Federal funding for a Project, the allocation of grant funds originally allocated for that Project shall be reduced by the amount of the subsequent allocation of Commonwealth or Federal funding. Within thirty (30) days of receipt, the Grantee shall notify the Department in writing when a subsequent allocation of Commonwealth or Federal funding is received.

**§ 1.4** The Grantee shall provide funds from sources other than Federal funds, except as may otherwise be authorized by Federal statute, in an amount sufficient, together with the grant funding governed by this Agreement, to assure payment of the total cost of the Project. The Grantee further agrees that no refund or reduction of the amount so provided will be made at any time, unless there is at the same time a refund and/or de-obligation to the Department of a proportional amount of the grant funds paid or to be paid by the Department. The Grantee is obligated to provide its share of Project cost as detailed in the Project Agreement.

**§ 1.5** Payment of funds by the Department pursuant to a Project Agreement shall not exceed the Department funding amount identified in the applicable Project Agreement.

## **ARTICLE 2. ELIGIBLE PROJECT COSTS**

**§ 2.1** The Grantee agrees to incur costs in accordance with Project Agreements and this Agreement (“Eligible Project Costs”). The Department shall provide reimbursement of Eligible Project Costs submitted by the Grantee in proportion to the percentage of total funding to be provided by the Department pursuant to the Project Agreement. All expenses for which the Grantee seeks reimbursement by the Department shall be charged at the actual cost(s) to the Grantee with no Grantee markup.

§ 2.2 Eligible Project Costs must meet the following requirements:

- A. Be necessary in order to accomplish the Project as identified in an associated Project Agreement;
- B. Be reasonable for the goods or services purchased;
- C. Be actual net costs charged to the Grantee (i.e., the price paid minus any refunds, rebates, salvage, or other items of value received by the Grantee which have the effect of reducing the cost actually incurred and paid);
- D. Be incurred during the time period specified in the associated Project Agreement;
- E. Be in accordance with 2 C.F.R. Pt. 200 Subpart E;
- F. Be based on a cost allocation plan that has been approved in advance by the Department if the costs are indirect costs;
- G. Be documented in accordance with the terms of this Agreement;
- H. Be treated uniformly and consistently under generally accepted accounting principles; and
- I. There must be sufficient remaining allocated Commonwealth transportation funds pursuant to the associated Project Agreement to make the requested reimbursement.

Costs incurred by the Grantee to correct deficiencies in a Project, including costs related to the Grantee's failure to comply with the terms of this Agreement or a Project Agreement, do not qualify as Eligible Project Cost.

The Department shall make the final determination as to whether costs submitted for reimbursement qualify as Eligible Project Costs.

### **ARTICLE 3. REIMBURSEMENT OF GRANTEE**

**§ 3.1** Some Projects involving operating costs will require payment based on a schedule. Payment schedules for such projects will be detailed in the Project Agreement. The Department will make payment to the Grantee of the Department's share of scheduled payments as outlined in the Project Agreement. For other Projects not subject to a schedule of payments, grant funds will be distributed by the Department to the Grantee on a reimbursement basis.

**§ 3.2** The Grantee shall submit requests for reimbursement using the form ("Project Reimbursement Form") provided by the Department through the Department Online Grant Administration System ("OLGA"). The Grantee shall submit Project Reimbursement Forms no more frequently than once a month and within 90 days from incurrence of Eligible Project Costs. Project Reimbursement Forms must be supported by third party evidence. The Department shall have the right to request additional details. The Grantee shall provide information within 30 days of the Department's request for additional information. The Department will make reimbursement of approved Eligible Project Costs within 30 days of the Department's receipt and approval of Grantee's Project Reimbursement Form. The Grantee shall submit its final reimbursement request to the Department within 90 days of expiration of funding for the Project Agreement.

**§ 3.3** The Department shall have the right, in its sole discretion, to withhold reimbursement for Project Reimbursement Forms or line items in Project Reimbursement Forms found to be incomplete or not in conformance with the requirements of this Agreement or the associated Project Agreement. The Department will notify the Grantee of the basis for withholding total or partial reimbursement and will work with the Grantee to resolve disputed items.

**§ 3.4** Reimbursement by the Department is not a waiver of Department's claim that said cost violates this Agreement or Project Agreement. Reimbursement is not a final decision by the Department as to validity of the cost as an Eligible Project Cost.

**§ 3.5** Any reimbursement paid to the Grantee by the Department not in accordance with the provisions of this Agreement, associated Project Agreement, or Federal, State, or local law, shall be repaid to the Department by the Grantee within 60 days of the Department's written notice to the Grantee of the repayment obligation.

**§ 3.6** The Grantee is responsible for payment of all third-parties performing work on behalf of the Grantee ("Contractors"). The Grantee shall attach copies of Contractors' invoices to each Reimbursement request.

**§ 3.7** The Grantee shall remit payment to Contractors within five business days of receipt of reimbursement from Department. If, for any reason, the Grantee cannot remit payment to Contractor within five days, the Grantee shall immediately notify the Chief Financial Officer of the Department ("CFO") in writing, inform the CFO of the date Grantee will remit payment to its Contractors, and deposit the reimbursement funds received in an interest bearing account. The Grantee shall use all interest proceeds toward the Project, reducing the funding obligation of the Department outlined in the Project Agreement. Depending upon the Grantee's revised Contractor payment date, the Department may require the Grantee to repay the funds to the Department. If the Grantee fails to comply with this provision, the Department will require the Grantee to prepay Contractors prior to submitting Project Reimbursement Forms.

**§ 3.8** With the exception of debt service specifically identified in a Project Agreement, the Grantee may not seek reimbursement for interest payments or charges on debt financing vehicles used to fund Projects.

#### **ARTICLE 4. LAPSE OF FUNDS**

§ 4.1 A Project Agreement obligates the Grantee to undertake and complete a Project within the period from the Project Start Date to the Project Expiration Date as identified in the Project Agreement. The Department shall not provide any Reimbursement for any expenses incurred after the Project Expiration Date.

§ 4.2 The Grantee's submission of a Project Reimbursement Form marked "Final," is Grantee's certification that it has completed the Project.

§ 4.3 The Department will withdraw any remaining Commonwealth transportation funds allocated for the Grantee's Project for which a final Project Reimbursement Form has been submitted and paid. Withdrawn funds will be allocated to other projects.

#### **ARTICLE 5. MAINTENANCE OF RECORDS**

§ 5.1 The Grantee shall maintain all books, accounting records, and any other documents supporting the Grantee's activities and costs for every Project Agreement. The Grantee shall maintain such records for four years from the end of the state fiscal year (June 30) in which the final payment is made. The Grantee shall maintain records pertaining to facilities for the Useful Life of the facility. The Grantee shall maintain records pertaining to land in perpetuity. The Grantee shall require Contractors to similarly maintain their books, accounting records, and any other documents supporting the Contractors' activities and costs incurred, and require Contractors contain a similar provision in their contracts with subcontractors.

#### **ARTICLE 6. AUDIT AND INSPECTION OF RECORDS**

§ 6.1 The Grantee and Contractors shall permit the authorized representatives of the Department to inspect and audit their records related to the performance of this Agreement. Acceptable records are original documents (such as timesheets, travel reimbursements, invoices, receipts, etc.) that are the basis

of entries on the Payment Reimbursement Forms. The Department may require the Grantee to furnish certified reports of all expenditures under any contracts or subcontracts.

**§ 6.2** The Grantee must follow the requirements of 2 C.F.R. pt. 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” A Single Audit<sup>1</sup> is required when an entity spends \$750,000 or more of Federal funds in a year. The Grantee must maintain auditable records and adequate supporting documentation. Grantees spending less than \$750,000 of Federal assistance during any one fiscal year are not required to undergo a Single Audit unless specifically requested by the Department. The Department reserves the right to require any recipient of State funds to undergo an audit the scope of which will be defined by the Department and performed on any matter relating to a Project Agreement.

**§ 6.3** If an independent Certified Public Accountant, other auditor, the Department, or any other party conducting an authorized audit finds the Grantee to be out of compliance with any provision of this Agreement, any Project Agreement, or any relevant Federal, State, or local law or regulation, the Grantee must provide a satisfactory corrective action plan to the Department within 60 days of notification of that finding. The scope of any audit conducted must include expenditures made by Contractors and any other recipients of pass-through funds.

**§ 6.4** The Grantee agrees if any audit finds payments by the Department were (1) unsupported by acceptable records, or (2) in violation of any other provisions of this Agreement or associated Project Agreement, within 60 days of audit findings, the Grantee will promptly refund unsupported payments or payments found in violation.

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<sup>1</sup> Single Audit is an annual audit where all non-Federal entities that expend \$750,000 or more of Federal awards in a year are required to obtain an annual audit in accordance with the Single Audit Act Amendments of 1996, 31 U.S.C. § 7501 *et seq.*, and applicable U.S. DOT “Single Audit” requirements of 2 C.F.R. pt. 1201, which incorporate by reference 2 C.F.R. part 200.

§ 6.5 The Grantee must submit audited financial statements to the Department within six months following the end of the Grantee’s fiscal year to:

Virginia Department of Rail and Public Transportation  
Attention: Audit Manager  
600 East Main Street, Suite 2102  
Richmond, VA 23219

§ 6.6 The Grantee shall include language consistent with this Article in its contracts with Contractors to provide the Department the same access to Contractors’ books and records, and requiring the Contractors to include language consistent with this Article in all subcontracts.

#### **ARTICLE 7. PROCUREMENT OF SERVICES**

§ 7.1 If the Grantee is not subject to the Virginia Public Procurement Act, then the Grantee shall utilize, and require its Contractors to utilize, competitive processes as follows:

- .1 for procurement of professional services as defined by § 2.2-4301 of the *Code of Virginia* (1950), as amended – a competitive negotiation process acceptable to the Department that is similar to applicable portions of the process set forth in §§ 2.2-4302.2 and 2.2-4303.B of the *Code of Virginia* (1950), as amended. Additional information regarding procedures for procurement of professional services can be found at §§ 2.2 and 3.1 of the most recent edition of the Commonwealth’s Construction and Professional Services Manual (“CPSM”);
- .2 for procurement of construction services, a nonprofessional service as defined by § 2.2-4301 of the *Code of Virginia* (1950), as amended – a competitive bidding process acceptable to the Department that is similar to applicable portions of the process set forth in §§ 2.2-4302.1 and 2.2-4303.D of the *Code of Virginia* (1950), as amended. Additional information regarding procedures for procurement of construction services can be found at § 7.1 of the most recent edition of the CPSM; and



.3 for procurement of nonprofessional services other than construction services as defined by § 2.2-4301 of the *Code of Virginia* (1950), as amended – a competitive sealed bidding or a competitive negotiation process acceptable to the Department that is similar to applicable portions of the processes set forth in §§ 2.2-4302.1, 2.2-4302.2, and 2.2-4303.C of the *Code of Virginia* (1950), as amended.

§ 7.2 The Department reserves the right to review and approve, in advance, any request for proposals or solicitation to bid. The Department also reserves the right to require that the Grantee not execute any contract, amendment, or change order thereto, or to obligate itself in any manner with any third party with respect to the Grantee’s rights, duties, obligations, or responsibilities under this Agreement or any Project Agreement unless and until authorized to do so in writing by the Department.

#### **ARTICLE 8. ASSIGNMENTS**

§ 8.1 Assignment of any portion of this Agreement or of any Project Agreement must be preapproved by the Department in writing.

#### **ARTICLE 9. TERM, ENTIRE AGREEMENT, AND AMENDMENT**

§ 9.1 This Agreement shall be effective immediately upon its execution.

§ 9.2 This Agreement, and associated Project Agreements, constitute the entire and exclusive agreement between the Parties relating to all specific matters covered therein. All prior or contemporaneous verbal or written agreements, understandings, representations, and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose.

§ 9.3 The execution of this Agreement and any associated Project Agreements may include electronic signatures using Personal Identification Number (PIN) based access.

§ 9.4 In order to effect a uniform set of terms governing Grant Transactions, effective as of the date of this Agreement, the Grantee and Department agree the terms of this Agreement supersede any and all

previous Master Agreements previously entered between the parties. Any ongoing Project Agreements will be governed by the terms of this Agreement.

**ARTICLE 10. NOTICES AND DESIGNATED REPRESENTATIVE**

**§ 10.1** All notices or communications with respect to this Agreement and associated Project Agreements shall be in writing and shall be deemed delivered (a) by hand, upon day of delivery, (b) by prepaid overnight delivery service, upon the next business day or (c) by U.S. Mail, certified, postage prepaid, return receipt requested, on the third business day following mailing. All notices or communications with respect to this Agreement and associated Project shall be delivered to the addresses set forth below or such other addresses as may be specified by a party.

Designated  
Representative:

Department:

Virginia Department of Rail and Public Transportation  
600 East Main Street, Suite 2102  
Richmond, VA 23219  
Attention: Chief Financial Officer  
Chief of Public Transportation

Grantee:

Katherine A. Mattice, Executive Director

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NAME AND TITLE  
2300 Wilson Blvd., Suite 230  
Arlington, VA 22201

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ADDRESS  
KateMattice@novatransit.org

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E-MAIL ADDRESS

**ARTICLE 11. TERMINATION OF PROJECT AGREEMENT**

**§ 11.1 Grantee's Termination for Convenience.** At any time, the Grantee may terminate a Project Agreement for its convenience by providing written notice to the Department. The termination will be

effective 30 days after the Department's receipt of the Grantee's notice. Upon such termination, the Grantee will repay all funds received from the Department pursuant to the Project Agreement.

## **§ 11.2 Grantee's Termination for Cause**

**§ 11.2.1** The Grantee may terminate a Project Agreement for cause by providing written notice to the Department.

**§ 11.2.2** The Department will have 90 days from receipt of the Grantee's notice, or such longer time as agreed by the Parties, to cure the breach ("Department's Cure Period"). If the breach remains uncured at the end of the Department's Cure Period, the termination shall be effective the day after expiration of the Department's Cure Period.

**§ 11.2.3** If a Project Agreement is validly terminated pursuant to Section 11.2, the Grantee will not be required to repay funds disbursed by the Department and are confirmed as Eligible Project Costs by the Department's audit.

## **§ 11.3 Department's Termination for Convenience**

**§ 11.3.1** At any time, the Department may terminate a Project Agreement for its convenience by providing written notice of termination to the Grantee. Upon receipt of notice, the Grantee shall cease all Project work as soon as is practicable and refrain from entering into contracts in furtherance of the Project. The termination shall be effective 10 Days after the Grantee's receipt of the Department's notice.

**§ 11.3.2** If the Department terminates a Project Agreement pursuant to Section 11.3, the Grantee will not be required to repay funds disbursed by the Department prior to the effective date of the termination and are confirmed Eligible Project Costs by the Department's audit. The Grantee may seek reimbursement for Eligible Project Costs for which it has not previously sought reimbursement incurred prior to the effective date of the termination.

§ 11.3.3 The Grantee waives all claims for damages and expenses related to a termination by the Department pursuant to Section 11.3.

#### **§ 11.4 Department's Termination for Cause**

§ 11.4.1 The Department may terminate a Project Agreement for cause by written notice to the Grantee upon the Grantee's breach, insolvency, or assignment for benefit of creditors.

§ 11.4.2 The Grantee shall have 30 Days from receipt of notice, or such longer time as agreed by the Parties, to cure or provide assurances acceptable to Department of solvency ("Grantee's Cure Period"). If the breach remains uncured at the end of the Grantee's Cure Period, the termination shall be effective the day after expiration of the Department's Cure Period.

§ 11.4.3 If the Department terminates a Project Agreement for cause, the Grantee shall repay the Department all funds received pursuant to a Project Agreement, and shall not be entitled to further repayment. The Grantee shall make such payment within 60 days following effective day of termination.

### **ARTICLE 12: FORCE MAJEURE**

§ 12.1 Force Majeure Event means fire, flood, war, rebellion, terrorism, riots, strikes, or acts of God, which may affect or prevent either Party from timely or properly performing its obligations under this Agreement.

§ 12.2 Delays caused by a Force Majeure Event shall not be deemed a breach or default under this Agreement. A Force Majeure Event will automatically result in a day-for-day extension to the performance period if any is specified in the Project Agreement. If the Department determines a Force Majeure Event renders Project Completion impossible or impractical, the Department may terminate the Project Agreement pursuant to Section 11.3.

§ 12.3 Within five days of occurrence, the Grantee will provide the Department written notice and documentation of the Force Majeure Event requesting relief necessary, and detailing required additional investigation, and analysis to determine extent of delay and remedy. Within 15 days of receipt of the Grantee's submission, the Department shall review the submission and determine whether the Grantee is entitled to the requested relief. Within 30 days of the Department's determination, the Grantee may appeal by requesting Director review. The Director's written decision is final.

### **ARTICLE 13. LIABILITY AND INSURANCE**

§ 13.1 The Grantee shall be responsible for damage to life and property, including environmental pollution and/or contamination, arising from (a) its Contractors, subcontractors, agents and employees activities related to this Agreement or any associated Project Agreement and (b) any subsequent use of the Project.

§ 13.2 The Grantee shall carry sufficient insurance or have a sufficient self-insurance program to cover the risks for work performed under this Agreement and any associated Project Agreement. If the Grantee's insurance fails to cover agents, Contractors or subcontractors, the Grantee will require agents, Contractors and subcontractors performing work on Projects to carry insurance sufficient to cover risks associated with activities associated with a Project. Insurance purchased by the Grantee, its agents, Contractors, or subcontractors, shall list the Commonwealth, the Department, the Virginia Department of Transportation, and the officers, agents and employees of these entities as additional insureds.

§ 13.3 To the extent allowable by law, the Grantee shall indemnify, defend and hold harmless the Commonwealth, the Department, the Virginia Department of Transportation, and their officers, agents, and employees of these entities from and against all damages, claims, suits, judgments, expenses, actions and costs of every name and description, arising out of or resulting from any act or omission by the Grantee, its Contractors, subcontractors, agents or employees in the performance of the work

covered by this Agreement or associated Project Agreement. Nothing in this Agreement shall constitute a waiver of sovereign immunity of any Party.

§ 13.4 The obligations of this Article shall survive the termination or completion of this Agreement and any Project Agreement and the Department's payment.

#### ARTICLE 14. CONFLICT OF INTEREST

§ 14.1 The State and Local Government Conflict of Interests Act, § 2.2-3100 *et seq.* of the *Code of Virginia* (1950), as amended, shall apply if the Grantee is a local or state government, or a local or state governmental agency, commission, or authority.

§ 14.2 The following shall apply if the Grantee is not subject to the State and Local Government Conflict of Interests Act, § 2.2-3100 *et seq.* of the *Code of Virginia* (1950), as amended:

.1 The following definitions shall apply concerning conflict of interest provisions in this Agreement and any associated Project Agreement:

“Contract” or “agreement” means any agreement, including any contract or subcontract, whether written or not, to which the Grantee is a party, or any agreement on behalf of the Grantee, including any contract or subcontract, which involves the payment of funds appropriated by the General Assembly of Virginia distributed pursuant to or subject to this Agreement or any associated Project Agreement.

“Employee” means any person employed by the Grantee, whether full time or part time.

“Thing of pecuniary value” means any thing having a monetary value including gifts, loans, services, securities, tangible objects, and business and professional opportunities.

.2 Other than the salary and remuneration received from the Grantee as a normal attribute of employment with the Grantee, no employee of the Grantee shall solicit, offer to accept, or accept, any money or other thing of pecuniary value or financial benefit or advantage, for the employee or for any other person, especially for any of the following reasons:

- a. in consideration of the use of the employee's position or status with the Grantee to obtain for any person or business any employment with or any contract with the Grantee or with any Contractor, subcontractor, or supplier of the Grantee, including any consulting or professional services contract.
- b. from any person or business other than the Grantee for performing any services for the Grantee in connection with any projects funded pursuant to or subject to this Agreement or any Project Agreement written hereunder.
- c. from any person or business other than the Grantee for rendering any decision or directing any course of action in connection with any Projects funded pursuant to or subject to this Agreement or any Project Agreement.

.3 If any contract is obtained in violation of this Article or if the terms of this Article are violated, the Department may require the Grantee to take whatever legal action is necessary to rescind, void, invalidate, or cancel such contract or other action taken and/or to recover any funds paid in violation of the provisions of this Article, and remit recovered funds to the Department.

#### **ARTICLE 15. COVENANT AGAINST CONTINGENT FEES**

§ 15.1 The Grantee warrants that it has not, and shall not, employ or retain any company or person, other than a bona fide employee working solely for the Grantee, to solicit or secure a Project Agreement, and that it has not, and shall not, pay or agree to pay any company or person, other than a bona fide

employee working solely for the Grantee, any fee, commission, percentage, brokerage fee, or other considerations, contingent upon or resulting from the award or making of a Project Agreement. Upon breach or violation of this Article, the Department shall have the right to terminate this Agreement or any Project Agreement pursuant to Section 11.4 of this Agreement.

#### **ARTICLE 16. NON-DISCRIMINATION**

**§ 16.1** In the solicitation or awarding of any contracts directly related to this Agreement or any associated Project Agreement, the Grantee shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by Virginia law relating to discrimination in employment.

**§ 16.2** During the performance of this Agreement or any associated Project Agreement, the Grantee agrees as follows: (a) the Grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by Virginia law relating to discrimination in employment. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; (b) the Grantee, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, will state that the Grantee, where applicable, is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

**§ 16.3** In all solicitations, either by competitive bidding or negotiation made by the Grantee for work to be performed under a contract, including procurement of materials or equipment, each potential Contractor shall be notified by the Grantee of the Grantee's obligations under this Agreement and the



regulations relative to nondiscrimination on the grounds of age, race, religion, sex, color, disability or national origin.

#### **ARTICLE 17. DRUG-FREE WORKPLACE**

§ 17.1 During the performance of this Agreement and any Project Agreement, the Grantee agrees to (a) provide a drug-free workplace for its employees; (b) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (c) state in all solicitations or advertisements for employees placed by or on behalf of the Grantee that the Grantee maintains a drug-free workplace; and (d) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

#### **ARTICLE 18. SMALL, WOMEN, AND MINORITY (SWAM) BUSINESSES**

§ 18.1 The Grantee is encouraged to seek and use Small, Women, and Minority (“SWAM”) enterprises in relation to any Project Agreement issued pursuant to this Agreement. § 2.2-4310 of the *Code of Virginia* (1950), as amended, addresses SWAM enterprises.

## **ARTICLE 19. PERSONS WITH DISABILITIES**

§ 19.1 The Grantee, its agents, employees, assigns or successors, and Contractors, shall comply with the provisions of the Virginians with Disabilities Act (§ 51.5-40 through § 51.5-46 of the *Code of Virginia* (1950), as amended), the terms of which are incorporated herein by reference.

## **ARTICLE 20. NONRESTRICTIVE CLAUSE**

§ 20.1 Solicitation documents will be based upon clear and accurate descriptions of the technical requirements for the material, product, or service to be procured. The descriptions will not contain features that unduly restrict competition.

## **ARTICLE 21. SPECIFIC PROJECT CONSIDERATIONS**

§ 21.1 The Americans with Disabilities Act (“ADA”) established universal access by requiring complementary paratransit services to be provided for visitors if they have been certified as “ADA paratransit eligible” by a public entity. If the Grantee provides paratransit services, the Grantee must honor the certification of a visitor qualified by another public entity for a period of 60 days during a calendar year. The visiting rider shall not have to provide any additional documentation, or participate in interviews or any other reviews to gain the complementary certification. If the visitor needs service beyond the 60 days in a calendar year, the visitor must go through the paratransit system’s qualification process.

§ 21.2 Any motor vehicles purchased under this grant shall comply with Motor Vehicle Safety Standards as established by the United States Department of Transportation and with the Motor Vehicle Standards of the *Code of Virginia* (Title 46.2).

§ 21.3 The Department requires a systematic, multi-disciplined approach design to optimize the value of each dollar spent on a Project through the engagement of a team of architects, engineers or other professionals to identify, analyze and establish a value for a function of an item or system Value

Engineering (“VE”) for any project with a total cost in excess of \$10 million (“Major Capital Projects”). A Major Capital Project is usually identified during the application review process. VE for a Project should be performed early in the design process before major decisions have been completely incorporated into the design, at or near the end of preliminary engineering (“PE”) or at 30 percent of design. Some large or complex projects may require more than one VE study over their duration. For Major Capital Projects, upon completion of the VE phase, the Grantee shall submit the VE report to the Department. The Department may also require that VE be performed on individual Projects that do not qualify as Major Capital Projects. The Grantee is encouraged to conduct VE on all Projects for construction, including bus maintenance and storage facilities, as well as on those Projects regarding revenue railcar acquisition and rehabilitation.

**§ 21.4** The Department encourages the Grantee to confer with other transit operations and maintenance experts in order to benefit from their experiences and to improve the performance of the process or product being reviewed (“Peer Review”). Although the Grantee is encouraged to conduct a Peer Review with all capital projects, the Department may require Peer Review in some instances.

**§ 21.5** The Grantee is encouraged to perform crime prevention reviews during the design phase of all Department-funded transit facilities with particular focus on the incorporation and use of crime prevention through environmental design techniques. This review should be carried out as a project intended to improve and increase the safety and security of an existing or planned transit system or facility for both transit patrons and transit employees. The level of the review should complement the size and scope of the Project. Local crime prevention professionals should be included in the review process. Review documentation should remain on file by the Grantee and be available for Department review upon request.

## **ARTICLE 22. SPECIAL CAPITAL PROVISIONS**

§ 22.1 The purchase of all equipment and services, and the construction of any facilities financed in whole or in part pursuant to a Project Agreement (“Project Equipment” and “Project Facilities”), shall be undertaken by the Grantee in accordance with Article 7 of this Agreement, Virginia law, and accepted good business practices. All plans, specifications, estimates of costs, award of contracts, performance and acceptance of work, and procedures in general are subject at all times to all applicable laws, rules, regulations, and orders. The Department reserves the right to review and approve all solicitations for purchase of equipment, facilities, and services prior to their issuance by the Grantee.

§ 22.2 The Grantee agrees that the Project Equipment and Project Facilities shall remain in service in the area and be used for the purpose for which they were purchased for the duration of the Useful Life. Useful Life will be defined by the Grantee utilizing Generally Accepted Accounting Principles, Internal Revenue Service or other industry practice standard agreeable to Department. If any Project Equipment or Project Facilities is not used for the intended purpose defined in the Project Agreement during the Project Equipment’s and Project Facilities’ Useful Life, the Grantee shall immediately notify the Department. In the case of Project Equipment, the Department shall have the option of requiring the Grantee either to transfer title to the Project Equipment to the Department or to remit to the Department an amount equal to a proportional share of the fair market value remaining in the Project Equipment based upon the Department’s ratio of participation detailed in the Project Agreement. In the case of Project Facilities, the Grantee shall remit to the Department the proportional share of the remaining fair market value of the Project Facilities based upon the ratio of the Department’s participation detailed in the Project Agreement. The Grantee shall keep records of the use of the Project Equipment and Project Facilities for review by the Department upon request.

§ 22.3 At any time, the Grantee shall permit the Department or its authorized representatives to inspect all vehicles, Project Facilities and Project Equipment; all transportation services rendered by the Grantee using such vehicles, Project Facilities or Project Equipment; and all relevant Project data and records.

§ 22.4 The Grantee shall maintain, in amount and form satisfactory to the Department, and in accordance with the laws of the Commonwealth, such insurance or self-insurance adequate to protect Project Facilities or Project Equipment and persons using such Project Facilities or Project Equipment throughout their use. The Department will be named as an additional insured.

§ 22.5 With regard to contracts for construction or facility improvement totaling less than \$250,000, the Grantee shall follow its own requirements relating to bid guarantees, performance and payment bonds.

For contracts in excess of \$250,000, the Grantee shall adhere to the following minimum requirements:

- A bid bond from each bidder from a surety company legally authorized to do business in Virginia. The amount of the bid bond shall not exceed five percent (5%) of the bid price. This bid bond is a guarantee that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- A performance bond for 100% of the contract price.
- A payment bond for 100% of the contract price.
- In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check in the amount required for the bond.
- The Grantee shall seek Department approval of its bonding policy and requirements if they do not comply with these criteria.

§ 22.6 When any motor vehicle is purchased with funds supplied by the Department pursuant to this Agreement or any associated Project Agreement, the Department reserves the right, in its sole discretion, to require that a lien or security interest be placed upon the title of said vehicle to secure the amount of

the funds supplied by the Department, with the lien or security interest to be perfected and recorded upon the certificate of title in the manner prescribed by law, with the certificate of title to be sent to the Department.

### **ARTICLE 23. MISCELLANEOUS PROVISIONS**

§ 23.1 This Agreement and any Project Agreement shall, in all respects, be governed by the laws of the Commonwealth without giving effect to its principles of conflicts of law. Nothing in this Agreement or any Project Agreement shall constitute a waiver of sovereign immunity. Any legal action concerning this Agreement or any Project Agreement shall be brought in a Circuit Court of the Commonwealth.

§ 23.2 The Grantee shall comply with all of the requirements specified in an associated Project Agreement, as well as all related and relevant Federal, State, and local law and regulations.

§ 23.3 If any term or provision of this Agreement or any Project Agreement is determined to be invalid, illegal or unenforceable, it shall not affect the legality, validity, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement or any Project Agreement shall be binding upon the Parties.

§ 23.4 All provisions of this Agreement and any Project Agreement shall be binding upon the Parties and their respective successors and assigns.

§ 23.5 Upon the Department's request, the Grantee shall appoint one principal representative selected by the Department to the oversight board of any public transit service provider on which the Commonwealth is not already represented by a principal member and which benefits from state funding provided to the Grantee. If the members of an oversight board are determined through public election, or if complying with this requirement will violate a federal or state statute or General Assembly authorization, this provision shall not apply.

§ 23.6 The Grantee shall adhere to the current grant administration requirements issued by the Department and if required by the Department maintenance of asset inventory and performance reporting through OLGA.

§ 23.7 Any repayment by the Grantee to the Department for funds granted by the Department pursuant to this Agreement and any associated Project Agreement shall also require the payment of interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly, calculated from the date Reimbursement was made by the Department to date of repayment by the Grantee.

§ 23.8 All covenants and provisions of this Agreement shall be made expressly a part of any contracts executed by the Grantee, and shall be binding on the Contractors, their agents, and employees.

#### **ARTICLE 24. UNAUTHORIZED ALIENS**

§ 24.1 The Grantee certifies that it does not, and that it shall not, during the performance of this Agreement and any Project Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986 (the Act). The Grantee will also contractually require any Contractors who participate in any Project funded pursuant to this Agreement and any Project Agreement to comply with this provision. Unauthorized alien means, with respect to the employment of an alien (which is defined as any person not a citizen or national of the United States), at a particular time, that the alien is not at that time either (a) an alien lawfully admitted for permanent residence, or (b) authorized to be so employed by the Act or by the United States Attorney General.

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IN TESTIMONY THEREOF, the Parties have caused this Agreement to be executed, each by its duly authorized officers, all as of the day, month, and year first written.

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION**

BY: Jennifer L. Mitchell 7/9/2020  
DIRECTOR DATE

WITNESS: Bridget Orr Executive Assistant 7/9/2020  
(NAME AND TITLE) DATE

**NORTHERN VIRGINIA TRANSPORTATION COMMISSION**

BY: John A. Mahan 7/3/2020  
CHIEF EXECUTIVE OFFICER DATE

Scott Kalkwarf EXECUTIVE DIRECTOR  
WITNESS: Scott Kalkwarf 7/3/2020  
(NAME AND TITLE) DATE  
SCOTT KALKWARF  
DIRECTOR OF FINANCE & ADMINISTRATION