

**NORTHERN VIRGINIA TRANSPORTATION COMMISSION
REQUEST FOR PROPOSALS**

Project Title: Envision Route 7 Conceptual Engineering Scope of Work

Request RFP No. 18-01

Contact: Dan Goldfarb, PE

Tel: (571) 483-3232

Email: dangoldfarb@novatransit.org

Electronic copies of RFP: www.novatransit.org

Issue Date: March 26, 2018
Optional Pre-Proposal Conference: April 6, 2018 at 2:00 PM
Proposal Due Date/Time: May 4, 2018 at 2:00 PM
Location: NVTC, 2300 Wilson Boulevard, Suite 620,
Arlington, VA 22201

DESCRIPTION OF WORK: The Northern Virginia Transportation Commission (NVTC) is requesting proposals from qualified firms to conduct a conceptual engineering study for the Envision Route 7 Bus Rapid Transit (BRT) along the entire length of the defined study corridor. The consultant will be required to develop planning level drawings of the BRT alignment, right-of-way requirements, and roadway geometry (e.g., typical sections and critical vertical clearance) along the corridor. The development of a concept level design will help identify and allow for mitigation strategies of possible fatal flaws or locations of concerns, including issues related to right-of-way and/or structural limitations that would (or would not) accommodate the proposed BRT (e.g., exclusive lane, etc.). This conceptual planning level design is similar to an approximately 10 percent level of design detail.

OPTIONAL PRE-PROPOSAL CONFERENCE: An optional pre-proposal conference will be conducted at NVTC on April 6, 2018 at 2:00 PM EST. Attendance is not required. Please RSVP to Mr. Dan Goldfarb, of NVTC by April 2, 2018 (or by March 30, 2018 if you require special accommodations at the meeting) and provide the number of persons from your organization that will attend and contact information should NVTC need to change the location due to space constraints. The purpose of this conference is to allow potential Offerors an opportunity to ask questions and receive answers about this solicitation. You are encouraged to submit written questions to be discussed at the conference in advance to Mr. Goldfarb at NVTC to help ensure more complete answers. Questions also may be presented orally or in writing at the meeting. Questions and answers will be posted as they are available on NVTC's website. Directions to the NVTC office are available on NVTC's web site at <http://www.novatransit.org>. If the Offeror does attend the pre-proposal conference, he or she should bring a copy of the RFP. Any changes resulting from this conference will be issued in a written addendum to the solicitation. Offerors should contact Dan Goldfarb (dangoldfarb@novatransit.org) at NVTC to place their name on the project distribution list to be assured of receiving any addenda.

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 June 7, 2018, with project completion anticipated within about 12 months of notice to proceed.

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Section A

Instructions to Offerors

1. PURPOSE OF RFP/SCOPE OF WORK:

The purpose of this RFP is to procure professional engineering services to conduct a Conceptual Engineering Study for the Envision Route 7 BRT along the entire length of the corridor (Mark Center, Alexandria to Tysons Corner). A detailed scope of work follows in Section B.

- 2. EXPLANATION TO OFFERORS:** A request for any explanation desired by an Offeror regarding the meaning or interpretation of this RFP, specification, or other solicitation documents must be in writing and submitted at least three weeks prior to the proposal due date to allow sufficient time for a reply to reach all Offerors. Questions submitted after this date will not be answered. Questions and answers will be posted as they are available on NVTC's websites.

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-line and furnished to all prospective Offerors known to NVTC.

- 3. 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.

- 4. 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.

5. SUBMISSION OF PROPOSAL AND PROTECTION OF PROPRIETARY INFORMATION:

One original and six paper copies plus one electronic original on a CD or USB flash drive of the proposal in response to this RFP are due not later than 2:00 PM on May 4, 2018. NVTC reserves the right to reject any and all proposals received after that time. NVTC also reserves the right to waive irregularities. Separate technical and price proposals must be submitted.

Submit proposals to NVTC's Contract Manager for the project:

Dan Goldfarb, PE
Transit Planner
Northern Virginia Transportation Commission
2300 Wilson Boulevard, Suite 620
Arlington, Virginia 22201

A proposal may be mailed or delivered in person to NVTC not later than 2:00 P.M. and must arrive on time. Delivery of proposals can be made between 9:00 A.M. and 4:00 P.M. prior to the due date/time.

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 # 18-01 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.

6. **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.

7. **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 in ranked order according to the scores of the TET. NVTC shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. 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 the first ranked Offeror 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 meeting, NVTC will request the selected Offeror to submit a binding Cost Proposal. If negotiations with the top-ranked Offeror are not successful, discussions will commence with the next highest ranked Offeror, and negotiations will continue in this manner until an agreement is reached.

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

In addition to any verbal notice that NVTC may make to Offerors, Proposal results will be posted on NVTC's website at www.novatransit.org. NVTC will post the "Notice of Intent to Award" on its website 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 www.novatransit.org. The successful Offeror will be notified in writing by NVTC.

8. **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.
9. **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.
10. **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.
11. **PROTEST OF AWARD:** An Offeror wishing to protest a decision to award a contract must submit the protest, in writing, to NVTC no later than 10 days after the public decision by the commission to award the contract. The protest must include the basis for the protest and the relief sought. Within 10 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.
12. **CONTRACT AWARD AND BOND REQUIREMENTS:** The Offeror whose proposal is accepted shall, within the time established in RFP #18-01, 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.
13. **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.
- 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 # 18-01, 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. 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, fax, 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.

14. **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 will review and evaluate the Proposals using the following scale:

| Points | Guidance |
|---------------|---|
| 9 - 10 | <u>Outstanding:</u> Meets all of the requirements / exceeds expectations / excellent probability of success in achieving all objectives / very innovative. |
| 6 - 8 | <u>Above Average:</u> Exceeds minimum requirement / sound response / very good probability of success. |
| 4 - 5 | <u>Average:</u> Meets minimum requirement / has a reasonable probability of success. |
| 2 - 3 | <u>Fair:</u> Partially responsive / falls short of meeting basic expectations / has a low probability of success. |
| 1 | <u>Poor:</u> Inadequate / fails to meet the requirement. |
| 0 | <u>Failure:</u> 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 and expertise of the proposed firm(s) to include experience in performing the scope of work. | 10 | 15 | 150 |
| C. | Knowledge and qualifications of the proposed Project Manager including. | 10 | 30 | 300 |
| D. | Knowledge and qualifications of the proposed personnel for the project team including depth of experience in BRT planning and knowledge of operations. | 10 | 20 | 200 |
| E. | Approach to address project advancement and cost savings in project delivery. | 10 | 10 | 100 |
| TOTAL POINTS | | | | 1000 |

15. 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.

16. REVISIONS PRIOR TO DATE SET FOR RECEIPT OF PROPOSALS: NVTC reserves the right to revise or amend RFP # 18-01 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. Copies of such amendments as may be issued, will be furnished to all prospective Offerors and 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.

17. **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.
18. **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.
19. **DRPT REQUIREMENTS:** 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.
20. **ADDITIONAL INFORMATION:** NVTC reserves the right to ask any Offeror to clarify its offer.
21. **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.

22. **SMALL, WOMEN, MINORITY AND SERVICE DISABLED VETERANS OWNED BUSINESS:** 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 disabled veterans owned businesses DBE participation is an integral component of the consultant selection procedure for this RFP.
23. **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.
24. **PROJECT MANAGER AND PROJECT OFFICER:** For this project, the following individuals will serve as managers and officer:

Project Manager
 Dan Goldfarb, PE
 Transit Planner
 NVTC

Project Officer
 Katherine A. Mattice
 Executive Director
 NVTC

25. **PROCUREMENT SCHEDULE**

Please note that dates are tentative and may change without notice.

| <u>Date</u> | <u>Activity</u> |
|--------------------------|--|
| March 26, 2018 | Issue RFP |
| April 6, 2018 at 2:00 pm | Pre-proposal Conference |
| May 4, 2018 at 2:00 pm | Proposal Due Date |
| May 18, 2018 | NVTC notifies top firm of intent to recommend contract award |
| May 31, 2018 | Notice of Award |
| June 14, 2018 | Contract Signed and Notice to Proceed |
| June 30, 2019 | Phase 1 Project Completion |

26. **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."
27. **EXECUTION OF CONTRACT:** The successful Offeror shall execute the contract and furnish the Insurance Certificates to NVTC within 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.

Section B

Scope of Work

Introduction

The Envision Route 7 project recently completed the Envision Route 7 Phase II Study. The key findings from Phase II were that that a Bus Rapid Transit (BRT) along Route 7 from Mark Center to Tysons, via the East Falls Church Metro Station is a viable transit solution for the corridor providing added connectivity and multimodal choices. The key activities in the Phase II work were to estimate the potential demand and forecast the ridership, compare possible alternative modes, determine possible funding mechanisms and strategies, and provide a high-level cost estimate for both capital and operating cost. The BRT showed high demand across all trip purposes. The service would benefit not only commuters with key connections to Mark Center, Tysons, and Metro; but serve other trip purposes including shopping and recreational trips. The travel demand forecast showed approximately two-thirds of the new riders traveling for non-work purposes. The Phase II Study focused on determining which mode best serves the corridor, where and if the BRT should deviate from Route 7.

The next step for the Envision Route 7 effort, is to conduct a conceptual engineering study. The conceptual engineering study will help to refine the project cost, identify potential areas of concern, develop a potential staging strategy, and provide guidance on preserving the required right-of-way. This study will be identifying right-of-way that could be utilized by the BRT and guide jurisdictions in their subarea and sector planning. This conceptual engineering study is a logical next step in the process. This study is estimated to cost approximately \$300,000 and is to take one year to complete.

This conceptual engineering study will involve the development of planning level drawings of the BRT alignment, right-of-way requirements, and roadway geometry (e.g., typical sections and critical vertical clearance) along the corridor. The development of a concept level design will help identify and allow for mitigation strategies of possible fatal flaws or locations of concerns, including issues related to right-of-way and/or structural limitations that would (or would not) accommodate the proposed BRT (e.g., exclusive lane). This conceptual planning level design will be based around the idea of an approximately 10 percent level of design detail.

The purpose of this effort is limited in scope. There will need to be additional studies after this phase that focus on traffic impacts, operational concerns (e.g., median or curb running, etc.), as well as legislative required environmental work. As the project nears the final design stages a service planning study will be needed to determine station configurations and locations and other related details. The Envision Route 7 Phase III Conceptual Engineering Study covers a critical step by identifying right of way concerns for advancing a BRT along Route 7. The Envision Route 7 project will provide additional high-quality transit for Tysons and key centers along the R

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The overall objectives of this study are:

- To continue the planning for high quality transit mode along Route 7 from Tysons to Mark Center;
- To identify right-of-way needs and develop a conceptual foot print for the proposed BRT along Route 7 as outlined in the Envision Route 7 Phase II report; and
- To provide a guidance for the local jurisdictions as they pursue redevelopment along the corridor.

Tasks

Task 1: Base Map Development and Data Compilation

Activity

The consultant will compile a list of available GIS data required for mapping and conceptual planning level of design. An electronic base map will be developed by obtaining and utilizing current base map and right of way information. The base mapping background should consist of aerial imagery of the corridor. The consultant will be responsible for compiling the data. The consultant will need to coordinate with the jurisdictional staff and the Virginia Department of Transportation Northern Virginia District to obtain the GIS data and aerial imagery. NVTC will help assist with facilitating this coordination.

Product

GIS incorporating the required base map and data for the conceptual engineering work. A technical memorandum outlining the data in the GIS, the architecture of the GIS, and the source of the information.

Task 2: Compile Relevant Development and Highway Design Plans

Activity

The consultant will compile the relevant development and future highway plans that would impact the BRT corridor. This will include but is not limited to redevelopment of Route 7 in Tysons, the Falls Church's high school site redevelopment, East Falls Church Metro Station, Seven Corners, Bailey's Crossroads, Skyline, West End Transitway, and any other similar redevelopment sites or projects along the corridor. The consultant will also review any plans pertaining to highway improvements and expansion along the corridor. This data will be incorporated into the project GIS.

Product

A technical memorandum listing all additional future plan data that is incorporated into the GIS as well as sources documentation for the information.

Task 3: Station Location Recommendations

Activity

In addition to the alignment, the conceptual planning level design will identify potential locations for stations and possible type of stations (e.g., a bus stop or a larger transfer center), but further development of station concepts will not be part of this scope. Under the conceptual planning level design, a relative station footprint for each station type will be assumed based on other similar BRT projects (for cost estimating purposes). This study will not produce site-specific locations and layout plans will not be developed for the assumed sites. The study will identify key locations within the guidelines for station spacing. The travel demand forecasting and ridership presented in the Phase II report will

be used as an input to this task.

Product

A technical memorandum identifying station stop location, cost information, and guidelines for station design.

Task 4: Develop Concept Level Drawings

Activity

Planning level design drawings for the BRT along the corridor will be developed to a planning level. The drawings should provide enough detail to review and identify potential engineering issues or concerns related to right-of-way. This conceptual level drawings will be developed to show the alignment of the BRT on the current right-of-way and roadway. The goal of the drawings will be to help provide context and identify right-of-way needs. This will include developing typical cross sections (e.g., exclusive right-of-way, in-street, at-grade, etc.) to show new construction as well as associated modifications to existing roadways and structures.

This task will also include conceptual level evaluation of key structures (e.g., bridges, overpasses, etc.) along the corridor. The suitability of each structure type to accommodate the needs of the BRT will be evaluated. The task will also utilize information from other jurisdictional planning and engineering efforts along Route 7 including work completed for Route 7 in Tysons as well as engineering work completed for the West End Transitway at the southern terminus.

Product

Design drawings of the corridor. The CAD drawings shall show the following features:

- BRT runningway lane configuration alignments with options for curb and/or median running
- Typical sections
- Proposed channelization of all lanes - dimensions clearly labeled.
- Vehicle and pedestrian crossings and related protections
- Identification of locations for potential stations
- Right of way limits obtained from GIS data
- Identification of parking impacts
- Identification of utilities, and storm water management requirements
- Identification of structure footprints for roadways that could involve reconstruction or replacement of roadway due to the transit project.

Task 5: Determine Right-of-Way Needs

Activity

Under this task, the preliminary limits of rights-of-way will be estimated using available Geographic Information System (GIS) and Task 1 and 2 mapping data. Using the available right-of-way information, a concept level evaluation of the alternative will be performed for potential impacts on existing buildings, infrastructure, businesses, residents and community activities, and additional right-of-way needs. A concept level analysis of possible impacts on utilities will be conducted based on readily available information. This task will include identifying areas where right-of-way could be set aside for the BRT as future development or redevelopments happen.

Product

A technical memorandum outlining corridor needs and areas where there are right-of-way issues or other design issues.

Task 6: Capital Costs Estimates

Activity

Capital costs estimates will be developed using the most current version of FTA's *Standard Cost Categories for Capital Projects* (SCC) worksheet format. The summed costs will be factored by an accepted contingency rate, accepted program design and management rate and the anticipated construction year of expenditure (YOE).

Product

A technical memorandum presenting the cost worksheets and all assumptions.

Task 7: Report

A final report will be written. It should be a narrative and visual description of major elements such as stations, track location, key structures and locations, traffic analysis, and cost estimation. The consultant shall take all the technical memorandum and create a final document based on these memoranda. The final report will need to include 10 hard copies and electronic files associated with the report and the project. The consultant will develop a draft report and the project technical team will review the document and provide comments. The comments will be incorporated into the final document.

Task 8: Project Management

The consultant will provide bi-weekly meetings via telephone with the project manager and if warranted the project management team. The project management team includes the

jurisdictional members of the Technical Advisory Committee (TAC). These meeting will include a project update and identify any up-coming deliverables or activities. Progress reports will be required monthly. The progress reports should outline on-going activities and the current budget. The report should identify any issue or concerns and present the project budget burn rate.

The consultant should also plan on meetings with the project management team after completion of each task. The purpose of these meetings will be to allow the project management team oversight and input on the technical memoranda as well as upcoming activities.

Section C

Deliverables and Payments

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 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 address shown below:

Northern Virginia Transportation Commission
Attn: Dan Goldfarb, PE
2300 Wilson Boulevard, Suite 620
Arlington, Virginia 22201
DanGoldfarb@novatransit.org

With a copy to:
Northern Virginia Transportation Commission
Attn: Accounts Payable
2300 Wilson Boulevard, Suite 620
Arlington, Virginia 22201
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.
 - g. Total Invoice Amount
 - h. Total Cumulative Amounts of Invoices
 - i. Contractor’s Signature
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 10% 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 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 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 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 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 D

Contractor Terms and Conditions

1. **CONTRACT REQUIREMENTS:** 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, or state procurement law, the inconsistency shall be resolved by the following order of precedence:
 - a) Virginia's Public Procurement Act, as amended
 - b) Contract Terms and Conditions
 - c) Contractor's Accepted Proposal
 - d) Request for Proposal (RFP)

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 supervising and directing the work under this contract and all subcontractors that it may utilize, using its best skill and attention. Subcontractors who perform work under this contract shall be responsible to the contractor. Contractor agrees that it is as fully responsible for the acts and omissions of its subcontractors and of persons employed by the contractor as it is for the 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 days after the occurrence of the event giving rise to the claim or within ten 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 days from the receipt of the claim from the contractor. If the contractor is not satisfied with the decision or resolution of the Contract Manager, the contractor may file a formal dispute with regard to the claim with the Executive Director of NVTC within 30 days of the decision of the Contract 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 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 disputes 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 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, 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 30th) 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, 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 supplies or services.
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 acts or omissions of contractor or the 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, 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, 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 veterans 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 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.

Completed Operations Liability coverage shall continue in force for one year after completion of work.

- c. 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, its 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 10 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 acts and omissions of the subcontractors and of persons employed by them as it is for 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 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.

Section E

Section E

Required Attachments to Proposal

- 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 Disadvantaged Business Enterprise Participation Statement

ATTACHMENT A

NORTHERN VIRGINIA TRANSPORTATION COMMISSION INSURANCE COVERAGE REQUIRED

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 Employer's Liability All States Endorsement USL&H Endorsement Voluntary Compensation | 1. Statutory Limits of the Commonwealth of Virginia: Yes \$100,000 Statutory Statutory Statutory |
| ___ | ___ | <u>X</u> | 2. | General Liability Products Complete Operations Contractual Liability Personal Injury Independent Contractors XCU Prop. Damage Excl. Deleted | 2. \$1,000,000 Combined Single Limit Bodily Injury and Property Damage Each Occurrence |
| ___ | ___ | <u>X</u> | 3. | Automobile Liability Owned, Hired & Non- Owned Motor Carrier Act End. | 3. \$500,000 Combined Single Limit Bodily 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 | |

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

RFP SUBMISSION FORM

A. SUBMITTING BUSINESS ENTITY IDENTIFICATION & OWNERSHIP DISCLOSURE

Company: _____

Contact Person: _____

Title: _____

Address: _____

Telephone No.: _____

Indicate which of the following apply:

Corporation _____

Partnership _____

Sole Proprietor _____

Small Business _____

Disadvantaged Business Enterprise (DBE) _____

Certified by _____

Organized under the laws of the State of _____

Principal place of business located at _____

Authorized to do business in VA Yes _____ NO _____

B. VIRGINIA CONFLICTS OF INTEREST & 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 Virginia State and Local Government Conflict of Interests Act, and Sections 2.2-4300 et. seq. of the Code, the Virginia Public Procurement Act.

The Offeror () is () 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.

C. OTHER INFORMATION

1. General character of work performed by your firm:

2. Has your firm every failed to complete any work awarded to you? If yes, explain.

3. Has your firm ever defaulted on a contract? If yes, explain.

4. Indicate the names of subcontractors, if any, proposed for this project, anticipated role, anticipated level of effort, address, phone number, and contact person. Indicate if the subcontractor is a certified Disadvantaged Business Enterprise (DBE) and by whom they are certified.

D. CERTIFICATION

I certify that this proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a 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 Request For Proposal and certify that I am authorized to sign for the Proposer.

Signature _____ Date _____

Name (Printed) _____ Title _____

ATTACHMENT C
CERTIFICATION OF PRIMARY PARTICIPANTS REGARDING DEBARMENT,
SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

(The Contractor)

or

(Subcontractor)

certifies, by submission of this bid/proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by an federal department or agency.

(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/offer).

(PrimeContractor)_____

or

(Subcontractor)_____

certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 ET. SEQ. are applicable thereto.

Signature of Authorized Official

Name (Printed)

Title of Authorized Official

Date

ATTACHMENT D
SMALL, WOMEN, MINORITY AND SERVICE DISABLED VETERANS OWNED
BUSINESS PARTICIPATION STATEMENT

While there is no goal established for the utilization of Small, Women, Minority and Service Disabled Veterans Owned Businesses, the commission also commits itself to involve these entities in contracting opportunities. To ensure that these entities have the maximum practicable opportunity to compete for contract and subcontract work, we ask that you describe below, how your organization will assist the commission with its commitment.

**ATTACHMENT E
SCHEDULE OF SMALL, WOMEN, MINORITY AND SERVICE DISABLED
VETERANS OWNED BUSINESS PARTICIPATION**

Name of Offeror

Project Name

Name of Contractor

Address

Phone Number

Type of Product/Services Provided/SOW Tasks and Contract Items to be Provided

Projected Dates for Work Commencement/Completion

Contract Amount

The undersigned will enter into a formal agreement with the above Contractors for work listed in the schedule conditioned upon execution of a contract.

Offeror Date

MASTER AGREEMENT

FOR USE OF

COMMONWEALTH TRANSPORTATION FUNDS

GRANTEE: Northern Virginia Transportation Commission

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THIS MASTER AGREEMENT (hereinafter referred to as the “Agreement”), is made and executed as of the _____ day of _____, 2012 between the Virginia Department of Rail and Public Transportation, (hereinafter referred to as the “Department”), acting by and through its Director, and Northern Virginia Transportation Commission, (hereinafter referred to as the “Grantee”). This Agreement sets out the terms and conditions for the receipt of grants supported by the Commonwealth Transportation Funds and shall govern and be incorporated by reference in all Project Agreements approved by the Department. The terms of this Agreement shall apply to all Grant Transactions from the date of this Agreement forward until a new Master Agreement for the Use of Commonwealth Transportation Funds (“New Agreement”) is executed.

By signing this Agreement, the Grantee agrees to adhere to separate requirements issued by the Department as follows:

- A. Grant administration requirements to administer the grant after award as provided in the Grantee Handbook
- B. Maintenance of Asset Inventory through the Department’s On-Line Grant Administration System (OLGA)
- C. Performance Reporting through OLGA.

ARTICLE 1. DEFINITIONS

A. **Application** means the proposal submitted by or on behalf of the Grantee for State financial assistance, including any amendment thereto, with all explanatory, supporting, and supplementary documents filed with and accepted by the Department and approved by the Commonwealth Transportation Board (“CTB”).

- B. **Contractor** means private contractor(s), including consultants, which may be engaged by Grantee to perform work.
- C. **Designated Representative(s)** means a person or persons appointed by the Grantee or the Department to represent, in whole or in part, the party in issues associated with this Agreement and associated Project Agreements.
- D. **Director** means the Director of the Department.
- E. **Force Majeure Event(s)** means fire, flood, war, rebellion, riots, strikes, or acts of God, which may affect or prevent either party from timely or properly performing its obligations under this Agreement.
- F. **Grant Transaction** means any action associated with completing a project that has been approved for State funding, such as executing a Project Agreement, requesting Reimbursements, requesting project extensions, purchasing, etc.
- G. **Major Capital Project** means any capital project with a total cost in excess of \$10 million.
- H. **Peer review** means a process used by the Grantee in the planning, design and implementation of capital projects to solicit a second opinion where it can be useful to decision makers.
- I. **Project** means the overall purpose for which Department grant funds are awarded, and shall include operations, planning studies, vehicles, equipment, facilities, etc.
- J. **Project Agreement** means an agreement executed by the parties that includes the total cost of the Project, the Department and the Grantee participation, Project time period, and any subsequent amendments thereto. Project Agreements are subordinate to and shall incorporate by reference all terms and conditions of this Agreement.
- K. **Project Equipment** means any tangible personal property with a value of \$5,000 or more.
- L. **Project Facilities** means any real property constructed or purchased with State financial assistance under this Agreement.

M. **Project Reimbursement Form** means the form provided by the Department to the Grantee to use for reimbursement of eligible Project costs incurred by the Grantee.

N. **Reimbursement** is defined as the expenditure having been incurred but not necessarily having been paid. Payment of State funds under this Agreement shall not exceed the sum identified in the Project Agreement or amendments thereto.

O. **Single Audit** is an annual audit where all non-Federal entities that expend \$500,000 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, Federal Office of Management and Budget (OMB) Circular A-133, the OMB Circular Compliance Supplement and Government Auditing Standards.

P. **Value Engineering** means the systematic, multi-disciplined approach designed to optimize the value of each dollar spent on a Project. To accomplish this goal, a team of architects, engineers, or other professionals identify, analyze and establish a value for a function of an item or system. The objective is to satisfy the required function at the lowest total costs (capital, operating and maintenance) over the life of a project consistent with the requirements of performance, reliability, maintainability, safety and aesthetics.

ARTICLE 2. PROGRAMS AND FUNDING

Section 2.1 This Agreement contains requirements that must be adhered to by the Grantee for all State funds received from the Department.

Section 2.2 Funding is subject to annual appropriation by the General Assembly, allocation by the CTB, and execution by both parties of this Agreement and associated Project Agreement satisfactory to the Director. For any of the grants administered by the Department, the CTB or the Virginia General Assembly may change the percentage of the local share that can be financed by State aid for public transportation to a higher or lower percentage than that 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 Virginia General Assembly. All expenditures incurred prior to the date of the change will be governed by the previous share.

Section 2.3 In the event that the Grantee receives subsequent allocation(s) of State funding from another source or receives Federal funding applicable to the Project's budget governed by this Agreement and any associated Project Agreement, the allocation(s) of State funds shall be reduced by the amount of the subsequent allocation(s) of State funding or Federal funding. Grantees shall notify the Department in writing when subsequent allocation(s) of State funding or Federal funding are received.

Section 2.4 The Grantee agrees that it will 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(s) governed by this Agreement, to assure payment of the total Project cost. 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 being refunded or reduced. The Grantee's obligation to provide the local share is calculated on the Project as a whole.

ARTICLE 3. REIMBURSEMENT OF GRANTEE

Section 3.1 Payment to the Grantee of the Department's share of the Project cost shall be made on a schedule for Project Agreements involving operating costs and on a Reimbursement basis for all other Project Agreements. The final Reimbursement request must be submitted to the Department within 90 calendar days following the end date of the Project.

Section 3.2 The Grantee shall submit Reimbursement requests no more frequently than once a month and within 90 calendar days from the date the expense has been incurred using the form provided by the Department. Reimbursement requests must be supported by third party evidence. Subject to approval

by the Department for payment, Reimbursement will be made within 30 calendar days of receipt of the request by the Department.

Section 3.3 Incomplete Reimbursement requests or those not adequately supported with documentation may result in a delayed or a partial Reimbursement to the Grantee.

Section 3.4 Any expenditures reimbursed to the Grantee by the Department subsequently found not to be in accordance with the provisions of this Agreement, associated Project Agreements, or Federal, State, or local law will be repaid to the Department by the Grantee within 60 calendars days of such notice.

Section 3.5 The Grantee shall remit payment to contractors/vendors within five business days of receipt of the Reimbursement from the Department. Should the Grantee be unable to meet this requirement for any reason, the Grantee must immediately notify the Chief Financial Officer of the Department in writing and deposit funds received in an interest bearing account. Interest proceeds must be utilized toward the Project as additional state funding requiring the appropriate local match. The Department may require the repayment of the funds depending on the revised date that the Grantee will remit payment(s) to its contractors/vendors. If the Grantee fails to comply with this requirement, the Department will require the Grantee to submit Reimbursement requests only after payment has been made by the Grantee to its contractors/vendors.

Section 3.6 The Grantee is responsible for payment of all contractors. The Grantee shall attach to each Reimbursement request copies of contractors' invoices.

Section 3.7 With the exception of debt service specifically identified in a Project Agreement, a Project amendment may not be made for the purpose of providing any Reimbursement for any interest payment or charge made pursuant to this Article, nor may any cost Reimbursement claim include any amount for Reimbursement for any such interest charge.

ARTICLE 4. ALLOWABLE COSTS

Section 4.1 The Grantee agrees to incur obligations against and make disbursements of Project funds in accordance with Project Agreements, all provisions of this Agreement, and any other requirements referenced herein. Funding provided pursuant to each Project Agreement shall be for the reimbursement of eligible Project costs as listed in the Project Agreement and for no other purpose. Funds shall be spent on a pro rata basis as identified in each Project Agreement with respect to each partner's funding share. All purchases made as a matter of this Agreement and each Project Agreement shall be charged at the actual cost(s) with no Grantee markups.

Section 4.2 Eligible Project costs must meet the following requirements:

- A. Be necessary in order to accomplish the activities in the approved Project Agreement;
- B. Be reasonable in amount for the goods or services purchased;
- C. Be actual net costs 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 approved Project Agreement;
- E. Be in accordance with OMB Circular A-87;
- F. Be based on a cost allocation plan that has been approved in advance by the Department if they are indirect costs.

The Department shall make the final determination as to what costs are eligible.

ARTICLE 5. LAPSE OF FUNDS

Section 5.1 A Project Agreement obligates the Grantee to undertake and complete a Project within the period of availability as defined in the Project Agreement. Funds will cease to be available at the end of the Project's period of availability.

Section 5.2 By marking the final Project Reimbursement Form “Final” the Grantee is certifying in writing that the Project has been completed.

Section 5.3 Sixty calendar days after payment of the final Project Reimbursement Form, the Department will withdraw any remaining Commonwealth funds.

Section 5.4 Any work necessary in connection with the Project, which is not specifically provided for as work by this Agreement, shall be the responsibility of the Grantee.

ARTICLE 6. MAINTENANCE OF RECORDS

Section 6.1 The Grantee and its subcontractors shall maintain all books, documents, papers, accounting records, and any other evidence, supporting their activities and the costs incurred. Such information shall be made available for audit and inspection at Grantee’s respective offices at all reasonable times during the Project Agreement period and for a period of four years from the end of the state fiscal year (i.e., June 30) in which the final payment is made for a Project Agreement by the Department to the Grantee, except for records pertaining to facilities and land. Records for facilities shall be kept for the useful life of the facility and records for the land shall be kept in perpetuity. Copies of such information shall be furnished by the Grantee to the Department upon request.

ARTICLE 7. AUDIT AND INSPECTION OF RECORDS

Section 7.1 The Grantee and its subcontractors shall permit the authorized representatives of the Department to inspect and audit all records of the Grantee and its subcontractors relating to the performance of this Agreement or any Project Agreement.

Section 7.2 All Grantees must follow the requirements of OMB Circular A - 133, *Audits of States, Local Governments, and Non-Profit Organizations*. A Single Audit is required when an entity spends Federal funds of \$500,000 or more in a year. Recipients must maintain auditable records and adequate

supporting documentation. Recipients spending less than \$500,000 of Federal assistance during any one fiscal year are not required to have a Single Audit performed unless specifically requested by the Department. However, the Department reserves the right to require any recipient of State funds, regardless of amount, to have an audit performed on any matter relating to a Project funded by the Department through a Project Agreement, and to designate the scope of such audit.

Section 7.3 If an independent Certified Public Accountant, other auditor, the Department, or any other party conducting an authorized audit finds the recipient not to be in compliance with any provision of this Agreement, Project Agreement or any relevant Federal or State law or regulation, the recipient must provide a satisfactory corrective action plan to DRPT within 60 days of notification of that finding. The scope of any audit conducted must include expenditures made by subrecipients of the grant, including consultants, subconsultants, and any other recipients of pass-through funds.

Section 7.4 The Grantee agrees that following the completion of any audit performed in accordance with this Article, it will promptly refund to the Department within 60 calendar days any payments that (1) are found by the Department to be unsupported by acceptable records, or (2) are found by the Department to be in violation of any other provisions of this Agreement or associated Project Agreement. Acceptable records are defined as original documents (such as timesheets, travel reimbursements, invoices, etc.) that were used to generate amounts on the reimbursement forms submitted to the Department. The Department also may require the Grantee to furnish certified reports of all expenditures under any subcontracts.

Section 7.5 All Grantees must submit audited financial statements to the Department within six months following the Grantee's fiscal year end. Send a copy (emails are preferred) to:

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

ARTICLE 8. REQUEST FOR PROPOSALS AND SUBCONTRACTOR APPROVAL

Section 8.1 The Department reserves the right to review and approve, in advance, any request for proposals or solicitation to bid to any prospective contracting organizations. 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 its rights, duties, obligations, or responsibilities under this Agreement unless and until authorized to do so in writing by the Department.

ARTICLE 9. ASSIGNMENTS

Section 9.1 Assignment of any portion of this Agreement shall have the prior written approval of the Department.

ARTICLE 10. TERM, ENTIRE AGREEMENT, AND AMENDMENT

Section 10.1 This Agreement shall be effective immediately upon its execution.

Section 10.2 This Agreement, the associated Project Agreements and the requirements referenced herein constitute the entire and exclusive agreement between the parties relating to all specific matters covered herein. 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.

Section 10.3 The execution of this Agreement and any associated Project Agreements may include electronic signatures using Personal Identification Number (PIN) based access.

Section 10.4 In order to effect a uniform set of rules governing the Grant Transactions, the Grantee and the Department hereby agree to vacate the terms of any and all previous Master Agreements for the Use

of Commonwealth Transportation Funds and to replace those terms with the terms of this Agreement for all Grant Transactions, effective as of the date of this Agreement.

Section 10.5 A New Agreement must be executed annually prior to the recommendations by the Department to the CTB for the award of funds anticipated under the terms of this Agreement.

ARTICLE 11. NOTICES AND DESIGNATED REPRESENTATIVE

Section 11.1 All notices or communications with respect to this Agreement shall be in writing and shall be deemed delivered upon delivery by hand, upon the next business day if sent prepaid overnight delivery service, or on the third business day following mailing by U.S. Mail, certified, postage prepaid, return receipt requested, to the addresses set forth below or such other addresses as may be specified by delivery of prior notice by a party to the other parties.

Designated
Representative:

Department: William S. Pittard, Chief Financial Officer
600 East Main Street, Suite 2102
Richmond, VA 23219
steve.pittard@drpt.virginia.gov

Kevin B. Page, Chief Operating Officer
600 East Main Street, Suite 2102
Richmond, VA 23219
kevin.page@drpt.virginia.gov

Grantee:

NAME AND TITLE

ADDRESS

E-MAIL ADDRESS

ARTICLE 12. TERMINATION OF AGREEMENT OR PROJECT AGREEMENT

This Agreement or the associated Project Agreement shall be terminated upon the occurrence of any of the following:

Section 12.1 The Grantee may terminate the Project at any time by notifying the Department in writing 30 calendar days in advance. If such termination occurs, the Grantee shall repay the Department all funds received according to the provisions of this Article.

Section 12.2 The Grantee may terminate the Agreement at any time it is determined by Virginia law that the Department has materially breached this Agreement and has failed to cure such breach within 90 calendar days. Should such occur, the Grantee shall be entitled to whatever remedies may be provided for by law. However, this provision does not constitute a waiver of the Department's sovereign immunity. Furthermore, the Grantee will not be required to repay any funds that have been provided by Department pursuant to this Agreement.

Section 12.3 Upon 30 calendar days notice to the Grantee, the Department may terminate, in whole or in part, the funding under this Agreement at any time it is determined that Grantee has materially breached this Agreement and has failed to cure said breach after 90 calendar days notice, or if the Department in its sole judgment determines that compliance within 90 calendar days is not reasonable, then within such time period as the Department may agree. The Department shall notify the Grantee promptly in writing of such a determination and the effective date of the termination. The Grantee may request reconsideration by notifying the Department within 30 calendar days of the date of the Department's notification. The Department shall not terminate funding until after the request has been reconsidered but may withhold funds in the interim. Following the request for reconsideration, the decision of the Department will be made within 45 calendar days and will be final. If this Agreement is terminated by the Department for the Grantee's material breach, the Grantee will repay the Department

all funds received for the Project. Such payment shall be made within 60 calendar days following notification by the Department of the amount to be repaid.

Section 12.4 Upon 30 calendar days notice to the Grantee, the Department may terminate, in whole or in part, the funding under this Agreement at any time if (1) the Department fails to secure the necessary budgetary appropriation or allocation to fulfill its obligations under this Agreement, (2) the Grantee becomes insolvent, (3) the Grantee fails to apply provided funds as intended under this Agreement or the Project Agreement, or (4) statutory changes affecting the program under which these funds were provided render funding this Agreement impossible. The Department shall notify the Grantee promptly in writing of such a determination and the effective date of the termination. The Grantee may request reconsideration by notifying the Department within 30 calendar days of the date of the Department's notification. The Department shall not terminate funding until after the request has been reconsidered but may withhold funds in the interim. Following the request for reconsideration, the decision of the Department will be made within 45 calendar days and will be final.

Section 12.5 Should the Project be terminated by the Department as a result of lack of funds or statutory changes, the Department will exercise best efforts to seek funds to be used to defray costs of shutting down the Project and the Grantee need not repay any funds already paid to the Grantee if such funds represent eligible Project costs that the Grantee has incurred. The Grantee shall take all actions necessary to ensure that the Department is repaid all funds associated with this Agreement or the Project Agreement should the Grantee become insolvent or declare bankruptcy or if the Grantee fails to apply funds as intended under this Agreement or the Project Agreement.

Section 12.6 Delays caused by Force Majeure events during construction shall not be deemed a breach or default under this Agreement. Upon the occasion of a Force Majeure event, as determined by the Department, which makes it impossible for the Project to be constructed and/or moots the need for the Project, the Department may terminate this Agreement at its discretion. Force Majeure events occurring

during the performance period of this Agreement will automatically result in day-for-day extension(s) to the performance period if any is specified in this Agreement or the Project Agreement.

Section 12.7 All reimbursements from the Grantee may also require the payment of interest, using the prevailing statutory legal rate of interest established by the Virginia General Assembly, calculated from the date payment is made by the Department to date of repayment by the Grantee.

ARTICLE 13. LIABILITY WAIVER

Section 13.1 The Grantee shall be responsible to the extent allowable by law for all damage to life and property due to its activities and those of its employees in connection with the work performed under this Agreement or a Project Agreement. Even if the Grantee is not allowed by law to indemnify, the Grantee shall carry sufficient insurance which is acceptable to the Department in the Department's sole discretion to cover the risks for work performed under this Agreement and the associated Project Agreement for the Grantee, its employees, agents, contractors and subcontractors. In lieu of carrying insurance for its agents, contractors or subcontractors, the Grantee may require all its agents, contractors or subcontractors who perform any work or activity of any type in connection with this Agreement or a Project Agreement to carry insurance sufficient to cover the risks for all damage to life and property due any and all activities in connection with the work performed under this Agreement and the associated Project Agreement. However, such insurance does not relieve the Grantee of the burden of carrying insurance to cover the actions of its employees. Such insurance, purchased by either the Grantee or its agents, contractors or subcontractors, shall list the Commonwealth of Virginia, the Department, the Virginia Department of Transportation and the officers, agents and employees of these entities as additional insureds. Payment of any funds by the Department shall not waive any of the rights of the Department contained in this section nor release the Grantee from any responsibilities or duties contained in this Agreement or a Project Agreement. Further, to the extent allowable under Virginia

law, it is expressly understood that the Grantee shall indemnify, defend and hold harmless the Commonwealth of Virginia, the Department, the Virginia Department of Transportation, its officers, agents, and employees from and against all damages, claims, suits, judgments, expenses, actions and costs of every name and description, arising out of or resulting from any negligent act or omission in the performance by the Grantee or its subcontractors of the work covered by this Agreement or a Project Agreement. The obligations of this section shall survive the termination or completion of this Agreement or a Project Agreement.

ARTICLE 14. CONFLICT OF INTEREST

Section 14.1 The provisions of the Virginia Conflict of Interest Act for State and Local Governments, § 2.2-3100 *et seq.* of the *Code of Virginia* (1950), shall apply for any Grantee that is a local or state government, or a local or state governmental agency, commission, or authority.

Section 14.2 The following shall apply to all Grantees not subject to the Virginia Conflict of Interest Act for State and Local Governments, § 2.2-3100 *et seq.* of the *Code of Virginia* (1950):

1. The following definitions shall apply concerning conflict of interest provisions in this Agreement and any 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 subcontract, which involves the payment of funds appropriated by the General Assembly of Virginia distributed pursuant to or subject to this Agreement or any 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 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

Section 15.1 The Grantee warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Grantee, to solicit or secure the Project Agreement, and that it has not paid or agreed 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. For breach or violation of this warranty, the Department shall have the right to terminate this Agreement or any Project Agreement, without liability, in accordance with Article 12.

ARTICLE 16. NON-DISCRIMINATION

Section 16.1 In the solicitation or awarding of any contracts directly related to this 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.

Section 16.2 During the performance of this 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.

Section 16.3 In all solicitations, either by competitive bidding or negotiation made by the Grantee for work to be performed under a subcontract, including procurement of materials or equipment, each potential subcontractor or supplier 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

Section 17.1 During the performance of this 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

Section 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.

ARTICLE 19. PERSONS WITH DISABILITIES

Section 19.1 The Grantee, its agents, employees, assigns or successors, and any persons, firms or agencies of whatever nature with whom it may contract or make an agreement 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

Section 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. SPECIAL CAPITAL PROVISIONS

Section 21.1 The American 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. Grantees that provide paratransit services 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, participate in interviews or any other reviews to gain the complementary certification. If the visitor needs service beyond the sixty days in a calendar year, he or she must go through the paratransit system’s qualification process.

Section 21.2 The purchase of all Project Equipment and services and the construction of any Project Facilities financed in whole or in part pursuant to this Agreement shall be undertaken by the Grantee in accordance with the Department's standard procurement procedures, 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.

Section 21.3 The Grantee agrees that the equipment and facilities funded under this Agreement and the associated Project Agreements shall remain in service in the area and be used for the purpose for which they were purchased for the duration of their useful lives. If any Project Equipment or Facilities are not used in this manner, the Grantee shall immediately notify the Department. The Department shall have the option of requiring the Grantee either to relinquish 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 of the equipment based upon the ratio of participation by the Department. In the case of Project Facilities, the Grantee shall remit to the Department the proportional share of the fair market value of the facilities purchased under this Agreement and the associated Project Agreement, based upon the ratio of participation by the Department pursuant to this Agreement and the associated Project Agreement. The Grantee shall keep records of the use of the Project Equipment and Facilities for review by the Department upon request.

Section 21.4 The Grantee shall permit the Department or its authorized representatives to inspect at any time all vehicles, facilities and equipment purchased or constructed by the Grantee as part of the Project; all transportation services rendered by the Grantee using such vehicles, facilities and equipment; and all relevant Project data and records.

Section 21.5 The Grantee shall maintain, in amount and form satisfactory to the Department, and in accordance with the laws of the Commonwealth of Virginia, such insurance or self-insurance as will be adequate to protect Project Facilities or Equipment and persons using such Facilities or Equipment throughout the period of required use. The Department will be named as insured in the insurance policy

on any vehicles or facilities purchased with funds provided under this Agreement and each Project Agreement.

Section 21.6 In contracting for construction or facility improvements, the Grantee shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds, except for contracts exceeding \$250,000. For those contracts exceeding \$250,000, the minimum requirements shall be as follows:

- A bid bond from each bidder from a surety company selected by this bidder which is 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 on the part of the contractor for one hundred percent (100%) of the contract price. This performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract in strict conformity of the plans, specifications, and conditions of this contract.
- A payment bond on the part of the contractor for one hundred percent (100%) of the contract price. This payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- In lieu of a bid, payment or performance bond, a bidder may furnish a certified check in the face amount required for the bond.
- Grantee may seek Department approval of its bonding policy and requirements if they do not comply with these criteria.

Section 21.7 Any motor vehicles purchased under this grant will 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).

Section 21.8 A debt service payment including interest on local or agency bonds that complies with the requirements of Article 4 “Allowable Costs” of this Agreement is an allowable capital cost under this Agreement and any associated Project Agreement.

Section 21.9 When any motor vehicle is purchased with funds supplied by the Department pursuant to this Agreement or any Project Agreement hereunder, the Department reserves the right, at 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.

Section 21.10 Service life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. Minimum normal service lives for buses and vans are

- A. Large, heavy-duty transit buses (approximately 35'-40', and articulated buses): at least 12 years of service or an accumulation of at least 500,000 miles.
- B. Medium-size, heavy-duty transit buses (approximately 30'): 10 years or 350,000 miles.
- C. Medium-size, medium-duty transit buses (approximately 30'): 7 years or 200,000 miles.
- D. Medium-size, light-duty transit buses (approximately 25-35'): 5 years or 150,000 miles.
- E. Other light-duty vehicles such as small buses and regular and specialized vans: 4 years or 100,000 miles.

Section 21.11 For Major Capital Projects in excess of \$10 million, the Department requires Value Engineering (“VE”), and encourages the application of VE techniques to all construction projects. A Major Capital Project is usually identified during the grant review process. VE on 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 need to conduct more than one VE study over their duration. Grantees with Major Capital Projects are required to submit a VE report to the Department indicating the results of their VE efforts upon completion of the Value Engineering phase.

- a. The Department may also require that VE be performed on individual projects under the \$10 million threshold.
- b. Grantees are encouraged to conduct VE on all construction Projects including bus maintenance and storage facilities whose costs are estimated to exceed \$2 million, as well as on those Projects regarding revenue railcar acquisition and rehabilitation.

Section 21.12 The Department encourages the Grantee to use the peer review process 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. Although the Grantee is encouraged to conduct peer review with all capital projects, the Department may require peer review in some instances.

- a. Grantees are 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 project size and scope. 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. MISCELLANEOUS PROVISIONS

Section 22.1 No member, officer, or employee of the Department, during his tenure or one year thereafter, shall have any interest, direct or indirect, that is prohibited by Virginia law in this Agreement or associated Project Agreement.

Section 22.2 This Agreement shall, in all respects, be governed by the laws of the Commonwealth of Virginia.

Section 22.3 Grantees must comply with all of the requirements specified in the Project Agreements, as well as all related and relevant Federal and State laws and regulations.

Section 22.4 If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable, it shall not affect the legality or validity or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be binding upon the parties.

Section 22.5 All provisions of this Agreement shall be binding upon the parties and their respective successors and assigns.

Section 22.6 If the Department requests, the Grantee agrees to 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.

ARTICLE 23. INCORPORATION OF PROVISIONS

Section 23.1 All covenants and provisions of this Agreement shall be made expressly a part of any subcontracts executed by the Grantee, and shall be binding on the subcontractors, their agents, and employees.

ARTICLE 24. UNAUTHORIZED ALIENS

Section 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.

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: _____
DIRECTOR DATE

WITNESS: _____
(NAME AND TITLE) DATE

NORTHERN VIRGINIA TRANSPORTATION COMMISSION

BY: _____
CHIEF EXECUTIVE OFFICER DATE

WITNESS: _____
(NAME AND TITLE) DATE