



REQUEST FOR PROPOSAL
FOR
MOBILITY ON DEMAND RIDESHARE SERVICE

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PART 1
REQUEST FOR PROPOSAL

1.1 Invitation: VIA Metropolitan Transit (hereinafter "VIA") is seeking proposals from responsible firms for **VIA RFP #21-201, Mobility on Demand (MOD) Rideshare Service.**

1.2 Introduction: VIA is a Metropolitan Transit Authority created according to Chapter 451, Texas Transportation Code ("VIA") to provide public transportation services for the citizens of Bexar County. The system's legal name is VIA Metropolitan Transit (VIA). VIA is a Political Subdivision of the State of Texas and governed by a Board of Trustees who are appointed by its County and Municipal Governments. VIA provides fixed route transit service, paratransit service for mobility-impaired customers, special event and park and ride service. In total, VIA's service area is approximately 1,200 square miles.

Our Mission: VIA Metropolitan Transit provides regional multimodal transportation options that connect our community to opportunity, support economic vitality and enhance quality of life throughout our region.

VIA's Board-adopted Supplier Diversity Policy:

VIA is committed to enhancing business/supplier diversity opportunities for all who want to do business with VIA. It is fundamental to VIA's commitment to the local economy to allow competition in order to grow and develop a portfolio of critical and valued business partners. VIA believes that generating open competition brings value and an ability to leverage the best resources in the marketplace. Supplier diversity increases VIA's access to creativity and innovation.

VIA believes that it is the responsibility of VIA's Procurement process and the responsibility of every staff member at VIA who secures products and services and who makes purchasing decisions for the Agency to strive to meet this commitment. The VIA Board of Trustees supports VIA's Procurement overall objectives which focus on obtaining the best quality and service at minimum cost and which guard against favoritism and profiteering at public expense. VIA seeks to provide equal opportunities for all businesses to participate. It is an integral element of each VIA staff member's responsibility to look to minority and small business firms for contracting opportunities. Broadening the supplier pool means better service and value for VIA.

Small Business Enterprise Goal: VIA has established an SBE participation goal of 7%.

1.3 Procurement Schedule:

1.3.1 Summary of Salient Dates: Following are the salient tentative dates of the procurement process:

<u>Date</u>	<u>Time*</u>	<u>Event</u>
<u>February 24, 2021</u>		Request for Proposal Issued.
<u>March 5, 2021</u>	<u>10:00 a.m.</u>	Pre-proposal Conference will be held by teleconference.
<u>March 10, 2021</u>		Last Day to Submit Request for Clarifications and/or Modifications to the Procurement/Contract Documents.
<u>April 13, 2021</u>	<u>4:45 p.m.</u>	Deadline for submitting Proposal Package.

*Unless a specific time is indicated, the time shall be 4:45 (VIA's close-of-business).

1.3.1 Inquiry and Questions: Effective immediately upon release of the Request for Proposal (RFP), and until notice of contract award, all official communications from proposers regarding the requirements of this RFP shall be directed to the Contracting Officer (See section 4.6 Code of Ethics). Proposal Packages should be submitted to, and any requests and all questions should be directed to:

VIA Metropolitan Transit
Procurement Department
Attn: Albert Gonzalez
800 W. Myrtle, Suite 203
San Antonio, Texas 78212
Telephone: 210-362-2408
E-mail: albert.gonzalez@viainfo.net

- 1.3.2 A Pre-Proposal Conference:** will be held via teleconference at 10:00 A.M., on, March 5, 2021. Firms wishing to participate may request more information by sending an email to albert.gonzalez@viainfo.net no later than 4:45 PM, March 4, 2021. Firms that RSVP via email prior to the deadline will receive dial-in information and a power point presentation for the conference. All prospective proposers are encouraged to attend.
- 1.3.3 Request for Clarification and/or Modifications:** Proposers must submit requests for changes to or approval of equals, clarifications and modifications of the specifications in writing as provided in Section 4.2, Proposers Requests and Appeals, of the contract documents. The RFP documents (which will ultimately form the Contract) can only be modified in writing. The Contracting Officer must receive requests for changes to, or approval of equals, clarifications or modifications to the RFP no later than 4:45 p.m., on the date indicated above. Those requests may be emailed to the above address. The Contracting Officer will issue a response to those requests to all prospective proposers via email, and copies will be posted on VIA's internet site (via.mwdsbe.com). Proposers are responsible for ensuring that they have received all modifications and incorporated any changes in their proposals.
- 1.3.4 Preparation of Proposals:** Proposers shall submit in separate sealed packages, one (1) unbound original and 8 bound copies of the technical proposal, one unbound original of the price proposal; and an electronic copy of the technical proposal in PDF format. The technical proposal package shall be labeled "**Technical Proposal – Mobility on Demand Rideshare Service**" and the price proposal envelope shall be labeled "**Price Proposal – Mobility on Demand Rideshare Service**" and addressed to the Contracting Officer as indicated above.
- 1.3.5 Receipt of Proposal:** Prior to the time and date indicated in section 1.3.1 entitled, "Summary of Salient Dates all Proposal Packages shall be delivered to the Contracting Officer at the address indicated in section 1.3.2 entitled "Inquiry and Questions. Proposal Packages received after the time and date specified shall not be considered, except as provided in section 1.6 entitled "Late Submissions.
- 1.3.6 Amendment and/or Postponement:** VIA reserves the right to postpone, for its own convenience, the deadline for submitting proposals. Further, VIA reserves the right to unilaterally revise or amend the scope of services up to the time set for submitting proposals. Such revisions and amendments, if any, shall be announced by addenda to this solicitation. Copies of such addenda shall be furnished to all prospective proposers and a copy will be posted on VIA's internet site. The deadline for submitting proposals shall be at least five (5) working days after the last addendum and the addendum shall include an announcement of the new date, if applicable, for submitting proposals. Proposers are requested to acknowledge receipt of all addendums as part of the technical proposal. Failure to acknowledge an addendum will not automatically disqualify a proposer, but failure to address any changes in the proposal may lead to a lower score than would otherwise be the case. Any Proposer whose proposal has already been submitted to VIA when the decision to postpone is made will be afforded the opportunity to revise or withdraw their proposal.
- 1.4 Acceptance Period:** Proposals shall remain valid for a period of sixty (60) calendar days from the date of submission. If a Best and Final Offer has been requested of the Offeror/Proposer, the Proposal shall remain valid for a period of up to sixty (60) additional days from the date of submission of the Best and Final Offer.

1.5 Evaluation and Selection of Proposals:

1.5.1 General:

1.5.1.1 Separate Packages: Proposers are required to respond to this RFP with two separate packages: a technical proposal and a price proposal. VIA's Evaluation Committee will first evaluate the technical proposals and determine which are technically acceptable. These will be ranked within a technical competitive range. Price proposals will be opened only for those firms within the technically competitive range.

1.5.1.2 Responsiveness: In order for a Proposer to be eligible to be awarded the Contract, the Proposal must be responsive to the RFP, and VIA must be able to determine that the proposer is responsible to perform the Contract satisfactorily. Responsive Proposals are those complying in all material aspects of the solicitation. A Proposer may, at any time after the submission of the Proposal, be requested to submit further written evidence verifying that the firm(s) meets the criteria necessary to be determined a responsible Proposer. Refusal to provide requested information may result in the Proposer being declared nonresponsive, and the Proposal may be rejected.

Proposers are expected to agree with the terms contained or referenced herein. Proposers should therefore not make any changes to these terms, nor restate any provisions in their Proposal or supporting material. However, if the Proposer has any specific exceptions, such exceptions should be set forth in a separate letter included with its response to the RFP. VIA is under no obligation to entertain or accept any such specific exceptions.

VIA will accept proposals that offer exceptions to VIA's general terms and conditions. VIA may negotiate such exceptions with Proposers that fall within the overall competitive range. Should VIA and a proposer fail to come to acceptable terms, that proposer shall be eliminated from consideration for contract award.

1.5.1.3 Organization of Technical Proposal Materials: To enhance the comparability and facilitate evaluation, all proposals must be organized addressing each of the evaluation criteria as set forth in the following section entitled "Evaluation of Technical Proposal." VIA will appoint an Evaluation Committee to evaluate all proposals submitted for this project.

The proposal must have eleven (11) tab dividers labeled in accordance with this format. Proposals should be submitted in three-ring binders. To be acceptable, proposals shall not be more than 100 pages single-sided or 50 pages double-sided with both using twelve (12) point or greater font size. The total pages does not include the table of contents, cover letter, resumes, required forms, and brochures. Each resume shall be a two (2) page maximum, double-sided using twelve (12) point or greater font size.

Proposals shall be formatted as follows:

1. Table of Contents
2. Cover Letter - This letter should be on company letterhead and addressed to VIA with a statement of the Proposer's basic understanding of VIA's needs. The names, the business address and telephone numbers of your firm's officers, directors and associates along with the names and addresses of any parent or subsidiary of your company. Your information should describe the nature of the work and the line of authority of these individuals as they relate to this project. Please clearly state which services within the scope your firm proposes to provide and which services will be subcontracted. Include the name, office address, email and telephone number of your firm's primary point of contact. As appropriate, also include the names and qualifications of subcontractors and/or associates that will assist on this project.
3. Statement of Project Understanding - Describe your firm's understanding of VIA's existing

conditions, challenges, and needs. Clearly state your understanding of the project goals, needs, and any significant opportunities or constraints. Briefly discuss how your proposed approach aligns with VIA's stated goals and objectives. Acknowledge the requirement to meet all FTA rules and regulations including the Substance Abuse Prevention Program and National Transit Database reporting requirement. **(2 page limit response)**

4. **Project Approach** - Provide a clear statement of the general approach to be undertaken on the project, including the level of effort required for the work proposed. Submittals are to propose a comprehensive Mobility on Demand Rideshare program approach, describing a specific operational model per each zone, technology platform, service territory, vehicle acquisition scheme, use of VIA purchase vehicles when applicable and marketing coordination and performance monitoring plan. If your proposal requires a modification or addition to the Scope of Work in the interest of innovation, please state this here and describe why your approach varies and is innovative.

The proposal may include demand-response ride share service, micro transit or ridesourcing etc. A turnkey solution is desired, and proposals should address provisions for the items included in the Scope of Work.

Please address each of the following questions/considerations in the Project Approach section:

- A. *Service Model Overview:* Include information on schedule and zone operations. Describe how the operational model would function from the perspective of the Operator, VIA, and the User.
1. What is innovative about your proposed approach?
 2. Why is your proposed approach the best fit for VIA? Explain your reasoning for proposing the specific service model in your approach.
 3. How many participants or people do you estimate will be reached by the project? Explain.
 4. Describe the user experience and process for a user requesting a ride. Can the platform support various booking modes and multiple zones?
 5. Does your model provide curb to curb service for people with disabilities, booking trips with bicycles and /or a guaranteed pick-up/drop-off within a certain distance or walkable timeframe? Explain.
 6. Is your model based on flexible service, fixed stops, virtual stops, or a mix of all? Explain the benefit of this approach.
 7. Describe how customer service is handled.
 8. Provide an estimate of anticipated ridership at one month, six months and one year.
- B. *Service Area and Operating Hours:* Describe and include a map showing the proposed service areas and stop locations, if applicable.
1. What days and hours of operation does your approach propose?
 2. How flexible are the proposed service/coverage areas?
 3. Do you propose to integrate fixed stops? If so, how?
 4. How will you determine if a service area needs to be revised?
 5. Do you propose any modification to the proposed identified innovation zone area?
 6. Do you propose any modification to the adjacent fixed route(s)? If so, please explain.
- C. *Fleet:* Describe type and quantity of vehicles required to serve the proposed zone coverage area(s)/location(s).
1. Are the vehicles owned, leased or sub-contracted?
 2. Is the proposed fleet all the same vehicle type or a mix? Why?
 3. How many wheelchair accessible vehicles are proposed?
 4. How old are the vehicles?

5. Are the vehicles able to be branded specifically for VIA?
 6. Describe your ability to scale the number of vehicles up or down based on demand.
 7. Describe your ability to scale up for special events such as Fiesta, Spurs games etc.
 8. Describe the approach to fleet maintenance and storage.
 9. In the event VIA is able to provide vehicles (up to 30% of the total fleet need), what would be your approach for integration of VIA fleet?
- D. *Technology Platform and Hardware Requirements: Describe the features and functionality of the technology platform and hardware requirements.*
1. What technology platform will enable the On-Demand service component of the project?
 2. Is the technology capable of providing a fully automated scheduling, dispatching, and reservation system for a demand responsive service?
 3. Describe if/how your platform handles fare collection. Would your system be able to integrate with third party fare collection systems? Would your system be able to accept VIA's smart card for fare payment? Describe the ability of the system to allow different fare structures (i.e., senior fare, student fare).
 4. How do you propose to share data gathered with VIA?
- E. *Operator(s): Describe who you propose would operate the Service, both the system and the vehicles.*
1. Describe the role of the operator in determining route or who to pick up in your platform. Does the operator have the ability to decide if they will or will not pick up a rider?
 2. Describe the background check process and training for vehicle operators.
 3. What information does the user see about the operator? Can a rider choose another operator?
 4. How will insurance and liability coverage be provided?
- F. *Performance Evaluation Plan: Describe the procedures and methodologies that can be used to calculate and compile results for service zones. Discuss details of reporting capabilities of technology platform or software, ease of use, list specific types of data that can be collected/shared with VIA to improve transportation planning.*
1. When/how often should the service zone be assessed for performance?
 2. Describe the data this platform collects and any reports that can be generated from it including standard reports (if applicable). Describe to what extent data collection and reporting can be customized to suit the agency's needs. Can this customization be performed by the agency?
 3. Can the service be modified if the program/project is not performing as intended? If so, how?
 4. Confirm the following data needed to measure performance can be provided:
 - Ridership – total, by type of rider, by revenue hour
 - Travel times
 - Trip denial rate
 - Booking abandonment rates
 - Percentage of time average wait time thresholds are met.
 - Revenue – total, by type of rider
 - Vehicle performance and reliability
 - Calls for customer service and types of call
 - Trip booking using the technology and by the telephone
- G. *Accessibility: Discuss any limitations to your proposed service model.*
1. How would the service accommodate limited mobility residents, such as seniors or physically impaired users?

2. How would the service accommodate unbanked users?
 3. How would the service accommodate users who do not have a Smartphone or data plan?
 4. How would the proposed service enhance connections to other mode choices, such as existing fixed route transit?
- H. *Marketing Coordination*: Describe Proposer's expectation from VIA for marketing and promoting the new service within VIA service area.
1. Include examples of marketing strategies employed for other services.
- I. *System and User Training and Support*: Describe the program used to train operators and dispatchers/schedulers. Describe how VIA will be trained to use any dashboard/reporting tools.
1. Describe the technical support available if operators need assistance while providing service.
 2. Describe the technical support available if VIA needs assistance using backend tools or creating reports.
5. Program Plan – The Proposer shall prepare a Program Plan, describing steps in the overall review, analysis and delivery of the service in the first year in accordance with the Scope of Work. In the interest of innovation, the Proposer is encouraged to modify the item included in the Scope of Services or include additional tasks that it feels should be included to develop a successful Rideshare Service, accompanied by an explanation for the modification or addition. Clearly indicate who will be responsible for specific tasks and services included in the Work Plan.

This Plan shall contain the following elements, but will not be limited to:

- Work elements separated into tasks and phases
 - Identification of key staff by work activity
 - Identification of schedule start and stop dates for each activity.
 - Expected deliverables / results
 - Key milestones
6. Project Timeline - Provide a schedule for performing the tasks identified in the Scope of Work and based on VIA's desire to start the service in the two zone in Fall 2021.
7. Relevant Experience/Past Performance/References/Key Team Members - Please provide (i) a brief description of the history and background of your firm, (ii) the nature and scope of the firm's experience, if any, in handling projects for public transit or transportation agencies and (iii) how many years the firm has been in business.

Describe the firm's direct experience on at least three (3) projects of similar size, scope and complexity completed in the past five years. Provide the name, address and telephone number of persons who may be contacted as references. Proposer shall also include dates, locations, costs, and project managers for these previous projects. Proposer shall similarly discuss the qualifications of all other firms proposed to be utilized in the performance of the work if joint venture partners are proposed or if subcontractors are to be used for substantial portions of the work.

Please also provide firm size, number of employees, primary type of business, other affiliated businesses or services, and other descriptive material. This shall also include the following information: Your firm's legal name, address, telephone number, fax number, e-mail, and web address. Provide a written description of your firm's knowledge areas and relevant experience. Specifically, please cite any experience or knowledge of the following:

- Public transportation planning and operations
- Implementing projects funded through Federal Transit administration

(FTA) funds

- Implementing demand responsive, innovative mobility systems, including overall project outcomes and lessons learned
- Implementing automated scheduling, dispatch, and reservations systems, including setting accuracy and performance criteria
- Incorporating passenger fare (cash, non-cash) as part of the fare payment
- Marketing new service to an auto-centric market

Include an organizational chart and an explanation, should more than one function be performed by an individual. Submit abbreviated resumes featuring experience, qualifications and skills for key staff most relevant to this RFP. Resumes should include dates, number of years of experience in both their field of expertise and with the proposed firm, as well as other relevant information. Include the expected amount of involvement for each Proposer team member.

Describe your firm's available resources and capability for actually undertaking and performing the work. Provide a written narrative describing your firm's ability and specific approach to providing the services requested in this RFP. Indicate if specific tasks will be subcontracted. Any changes in key personnel after the award of the contract must be approved by VIA before the change is made.

8. Data Collection/Reporting

9. Scalability of Service/Quality Control/Performance Monitoring

10. Other Information - Since the preceding sections are to contain only the data that is specifically requested, any additional information that is considered essential to the proposal should be included in this section. If there is not additional information to present, state "There is no additional information we wish to present."

Proposers may also include a brief description of suggested approaches to develop financial partnerships to help fund the service. This information may be based on past experience and/or new and innovative suggestions.

Proposers must submit the service delivery concept and price estimates for all zones identified in Exhibits 2, 3,4,5 and 6.

Proposals that include the use of unionized labor must clearly state all terms and conditions that may influence the Project operations.

11. Required Forms (Forms from Part 9 of the RFP document)

1.5.2 Evaluation of Technical Proposal:

1.5.2.1 Initial Evaluation: All proposals will be initially evaluated and ranked based on weighted evaluation criteria listed below or that may be issued in addenda. Evaluation criterion is deemed to include any unstated "sub-criterion" that logically might be included within the scope of the stated criterion.

1.5.2.2 Review: The technical submittals shall be reviewed and evaluated by the Evaluation Committee on the basis of the 100 point rating system. The technical evaluation shall be based on the responsiveness of the technical submittal to the needs of VIA and to the requirements of the technical specifications with a maximum numerical rating as indicated herein.

1.5.2.3 Evaluation Form: Each member of the Evaluation Committee shall complete an evaluation form for each technical proposal submitted. The final technical rating for each proposal

shall be based on the average of the total score compiled by members of the Evaluation Committee.

CRITERIA	WEIGHT
A. Statement of Project Understanding:	10
B. Project Approach/Program Plan /Project Timeline: Proposal addresses full scope of services necessary to deploy the Mobility on Demand Rideshare Service, including service plan, technology, vehicles and operators for each zone. Proposed Pilot aligns with stated VIA goals. To include approach, understanding, and organization of tasks, understanding of interrelationship of critical tasks, deliverables, clearly identifies who is proposed to complete each task (proposing firm, subcontractor). The Proposer shall prepare a Program Plan that address approach to each zone implementation including the overall review, analysis and delivery of the service in first year.	35
C. Relevant Experience/Past Performance/References/Key Team Members: Proposal demonstrates successful past performance developing and implementing a similar project. Firm and team member qualifications will be considered. Previous experience with FTA funding will also be acknowledged. Provide resumes for the identified members of the team.	25
D. Data Collection/Reporting: Proposal describes a plan for measuring zone performance, including indicators that are tied to project goals, such as ridership, origin/destination data, or other relevant metrics. Technology platform interface enables VIA to access all service related ridership and performance data and create standard and customizable reports with ease.	15
E. Scalability of Service Quality Control/Performance Monitoring: Coupled with tracking performance of the program to ensure success, proposal identifies plan to modify the service & zone if it is not performing as intended, to better serve demand, or resolve unanticipated issues. This section should address the expansion of the service from one zone to fifth zone identified in the exhibits. Contractor's internal controls, communications with VIA for adequate and timely responses, and provide assurance for complete delivery of services.	15
TOTAL 100	

1.5.2.4 Technical Evaluation: Following an initial evaluation and ranking of all technical proposals submitted, VIA will identify those firms technically qualified to perform the work regardless of price. If VIA determines that a Proposal is not technically sufficient, or a Proposer is not technically qualified, that Proposal will not be evaluated further.

1.5.2.5 Further Discussions/clarification: After determining which of the technical proposals are within the competitive range, the Committee will determine whether acceptance of the most favorable initial proposal without discussion is appropriate and in the best interest of VIA or whether negotiation should be conducted with all proposers within the competitive range. If the Committee determines it is in the best interest of VIA to enter into negotiations with the proposers in the competitive range, the committee may submit, only to the proposers in the competitive range, questions regarding their proposals which it feels are appropriate for discussion or which need additional clarification. Proposers shall be prepared to respond, in writing, to all questions within the time frame provided by the Technical Evaluation Committee. If deemed necessary by the Committee, oral interviews and discussions with the proposers may be required.

1.5.2.6 Re-evaluation (if necessary): When discussions (if conducted) have been completed, the technical proposals from the proposers in the competitive range shall be re-evaluated and ranked on the basis of documented changes and modifications to the proposals. All changes or modifications to the proposal must be documented in writing to be considered in the re-evaluation.

1.5.3 Evaluation of Price Proposal:

1.5.3.1 Opening of Price Proposal: VIA will evaluate the Price Proposals of those firms who are determined to be technically acceptable to perform the work and ranked within the technically competitive range.

1.5.3.2 Scoring: The Selection Committee's recommendation for award of this contract shall be based on the highest total points for each submittal. This number shall be arrived at by adding the average total rating for the Technical Proposal to the point rating determined for the Price Proposal:

$$\frac{\text{Lowest Price}}{\text{Firm's Price}} \times 40 \text{ points} = \text{Price Score}$$

The price score of Firm B is shown in the following example:

<u>Firm</u>	<u>Price Proposal</u>	<u>Price Score</u>
A	\$100	40.00 points
B	\$125	32.00 points
C	\$115	34.78 points

$$\frac{\$100.00 \text{ (Lowest Price, Firm A)}}{\$125.00 \text{ (Firm B Price)}} \times 40 \text{ points} = 32 \text{ points}$$

1.5.4 Combined Proposal Scoring: The sum total points scored on both the technical (100-point maximum) and price (40-point maximum) will be considered in the determination of the overall competitive range and contract award.

An example of the combined scoring follows:

<u>Firm</u>	<u>Technical Score</u>	<u>Price Score</u>	<u>Total Score</u>
A	89 points	40.00 points	129.00 points
B	86 points	32.00 points	118.00 points
C	93 points	34.78 points	127.78 points

In this example, Firm A is the highest rated firm in the overall competitive range.

1.5.5 Interviews, Discussions, and Negotiations:

1.5.5.1 Interviews: The committee will determine whether acceptance of the most favorable initial proposal without discussion is appropriate, or whether interviews and/or discussions should be conducted with all Proposers within the competitive range. VIA personnel may visit the Contractor's work facility during the evaluation period.

1.5.5.2 Negotiations: The committee or designated members of the committee may negotiate with each Proposer whose proposal falls within the overall competitive range. Each Proposer remaining within the overall competitive range at the close of negotiations may be allowed to submit a "Best and Final Offer."

1.5.6 Best and Final Offer: The best and final offer will contain all information and documents necessary to state the Proposer's entire proposal without reference to the original proposal or to any supplements that may have been submitted during negotiations. All Proposers that submit best and final offers will be evaluated by the committee, or designated committee members, based upon those best and final offers.

1.5.7 Contract Award: Award will be made to the responsible firm whose proposal is most advantageous to VIA. Accordingly, VIA may not necessarily make an award to the Proposer with the highest technical ranking nor award to the Proposer with the lowest Price Proposal if doing so would not be in the overall best interest of VIA.

1.6 Late Submissions:

1.6.1 Receipt Prior to Award: Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:

- (a) was sent by registered or certified mail and postmarked not later than the fifth calendar day before the date specified for receipt of proposals (e.g., a proposal submitted in response to a solicitation requiring receipt of proposals by the 20th of the month must have been postmarked on or before the 15th); or
- (b) was sent by courier service which guaranteed delivery by the submittal deadline; or
- (c) is the only proposal received.

1.6.2 Postmark: The only acceptable evidence to establish the postmark date of a proposal or modification sent by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service.

1.6.3 Courier Delivery Date: The only acceptable evidence to establish the courier service guaranteed delivery date is a receipt or other documentary evidence which will establish that the proposal or modification was sent by a courier service to be timely delivered.

1.6.4 Time/date Stamp: The only acceptable evidence to establish the time and date of receipt at VIA is the time/date stamp on the proposal wrapper or other documentary evidence of receipt maintained by VIA.

1.7 Documents to be Submitted with Technical Proposal: The following documents/forms (attached hereto in the sections indicated) must be completed by the Offeror and submitted with the Technical Proposal. Failure to do so may deem the proposal as non-responsive.

1.7.1 Forms:

- 9.1.1** Offer and Certifications Form
- 9.1.2** Acknowledgment of Addenda
- 9.1.3** List of Similar Contracts/References **(This form must be submitted for all Subcontractors)**
- 9.1.4** Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion **(This form must be submitted for all Subcontractors)**
- 9.1.5** Business Questionnaire **(This form must be submitted for all Subcontractors)**
- 9.1.6** Conflict of Interest Questionnaire
- 9.1.7** Certificate of Interested Parties (Form 1295)
- 9.1.8** Contractor Utilization Plan – Small Business Enterprise (SBE)
(Proposed SBE firms must be certified with VIA by the proposal due date)
- 9.1.9** Intent to Perform for SBE Goal Requirement
- 9.1.10** Documentation of Good Faith Efforts – SBE Goal

9.1.11 VIA's Declaration of Agency Sustainability

1.8 Price Proposal Submission: As referenced in Part 1.5.1.3, Organization of Technical Proposal Materials above, Proposers must submit the service delivery concept, and price estimates for all zones identified in Exhibits 2, 3, 4, 5 and 6. Proposers must submit their Price Proposals utilizing the forms provided in this document as **Part 10, Price Proposal**.

1.9 Small Business Enterprise Goal: VIA has established an SBE participation goal of 7%. The SBE participation percentage is based on the scope of work for this project.

Please see Part 8, Small Business Enterprise Program for more information regarding VIA's SBE program. **Proposals that fail to meet this goal or to provide proper and acceptable documentation showing that a good faith effort was made to meet the goal will be deemed non-responsive.**

VIA encourages proposers to seek means of obtaining this goal. The SBE firms listed on Form 9.1.8, Contractor Utilization Plan – Small Business Enterprise must be certified with VIA in accordance with provisions of Part 8 of this document by the date of the deadline to submit proposals.

1.10 Proof of Insurability: Proposers must submit a copy of their current certificate of insurance (COI) with their proposal. If the COI does not include the required coverage and minimum limits as specified in the RFP, Proposers must also submit a letter from their insurance provider stating the provider's commitment to insure the Proposer, if awarded the contract, for the types of coverage and at the limits specified in the RFP.

PART 2 SCOPE OF WORK, TERMS AND CONDITIONS

2.1 Contract: Submission of a proposal constitutes an offer to perform the work specified and to be bound by the terms contained or referenced herein. Upon acceptance of the offer, and upon award of the Contract to the successful offeror (if any), this procurement solicitation document (entitled "Request for Proposal") together with the completed and executed forms required herein, and all attachments hereto, together with the documents listed below (incorporated into this Contract by reference) shall collectively constitute the Contract. In case of any conflict among these documents where the intended resolution is not clear, the order of precedence shall be:

- 1) Change Orders or Contract Modifications
- 2) Best and Final Offer
- 3) Negotiation Memorandum (if any)
- 4) Addenda to the RFP
- 5) VIA's Scope of Work, Terms and Conditions
- 6) Contractor's original proposal

2.2 Contract Period:

2.2.1 Commencement: The Contractor agrees to commence work within ten (10) business days from the date the Contract is awarded.

2.2.2 Performance Deadlines: Subject to any delays by strikes, fires, or other casualties, and any other causes of delay over which the Contractor may have no control, The Contractor agrees to use due diligence in completing the work set out in the scope of work.

2.2.3 Term: The term of the contract is for three years. Following the initial three-year term, VIA may, at its option, extend the contract for two (2) additional one-year terms.

2.2.4 Funding: Funds are not presently available for performance for all zones of this contract beyond the current fiscal year or five-year budget. The obligation for performance of this contract beyond the current fiscal year is contingent upon the availability of appropriated funds every year. No legal liability on the part of VIA Metropolitan Transit for any payment may arise due to funding.

2.3 General Information: The Contractor, in accordance and compliance with the terms, provisions and requirements of this Contract shall manage, perform, and provide all activities and services and produce all reports set out in the Scope of Work. Modifications or alterations to the Scope of Work may be made only pursuant to prior notification and written approval of VIA.

VIA Metropolitan Transit (VIA) is soliciting proposals from responsible private mobility service and technology providers to enter into an agreement to assist with the development and implementation of a demand response rideshare service delivery program for multiple zones, where VIA determines that fixed-route traditional transportation services are unavailable and/or not a viable option.

2.4 Scope of Work:

2.4.1 Background: VIA's mission is to provide regional multimodal transportation options that connect our community to opportunity, support economic vitality and enhance quality of life.

VIA's service area is approximately 1,210 square miles, which includes 98 percent of Bexar County and both incorporated and unincorporated areas therein, so the service area varies greatly in density, land use, and road connectivity.

2.4.1.1 Issue: Low-density suburban routes or routes serving outlying cities have relatively low ridership as a result of long travel times and small transit catchment areas.

Transit stops lack complementary multimodal options to help transit riders complete the first and last few miles to and from destinations.

2.4.1.2 Current Mobility on Demand “MOD” VIA Link Service: VIA’s current VIA Link zone in the northeast area of San Antonio provides trips from point to point within the zone and trips to the transit hub at Naco Pass Mobility Hub (Exhibit 2). Naco Pass Mobility Hub provides fixed-route service to major transit centers and to Downtown San Antonio. It is a turnkey contract where the Contractor provides the technology, service delivery, and customer service to support technology platforms and support trip booking for customers who may not use the cell phone app or website.

2.4.1.3 Previous Analysis and Zones Under Consideration: VIA completed a route-by-route study of VIA services to explore opportunities to increase ridership, enhance service efficiency and cost-effectiveness, and ultimately identified “MOD zones.”

In 2020, VIA further refined MOD zones under the Keep San Antonio Moving (KSAM) plan. Under KSAM plan, MOD zones under consideration include outlying suburban cities and/or areas with no transit service, areas of low-performing fixed routes, regional centers.

The primary strategy of a Mobility on Demand (MOD) zone was to replace low performing routes or route segments with innovative demand response shared-ride options. The secondary strategy was to expand transit mobility options in an area where fixed-route service is not cost-effective due to low demand.

2.4.2 Vision: VIA envisions an innovative and flexible transportation model aimed at encouraging Mobility on Demand, i.e., ridesharing and alternative transportation solutions to connect key areas of the VIA service areas for the general population. The service model shall be easily scalable with integrated real-time, dynamic operations technology and the selection of vehicles size and capacity based on demand. The technology shall enable a fully automated scheduling, dispatching, and reservation system for a demand responsive transportation service.

VIA is also rolling out a new mobility payment platform in 2021 with Masabi and Transit app and is seeking a tightly integrated payment experience in selected partner’s Mobility on Demand app, utilizing the Masabi fare payment engine. Additionally, since Transit app will be utilizing the same Masabi fare payment engine, the Contractor shall work with Transit app to allow trip planning across fixed and Mobility on Demand routes right within Transit app. The whole trip could be planned, booked, and paid right within Transit app.

Whether the Mobility on Demand service is used to begin a trip or complete a trip, or as a complete trip solution, riding the new service shall be intuitive and user-friendly. It shall also be designed to encourage the use of public transit, rather than single-occupancy vehicles. The project shall ultimately inform a broader planning effort for changes to the entire transit network. VIA requires that each of the zone types would have an appropriate, corresponding business model.

VIA requires small or medium-sized vehicles operating within a pre-defined zone whose service is initiated by passenger requests through a cell phone application or a phone call.

VIA aims to optimize transit network efficiency in MOD zones utilizing Mobility on Demand rideshare services while not precluding the exploration of other emerging micro-transit transportation technologies.

The various MOD zones may require different service delivery options. The denser areas shall follow a “many to many” service delivery allowing customers to travel from one location within the zone to another location. The outlying suburban cities and/or areas may require a “many to few” service delivery providing a connection from the outlying suburban cities and/ or areas to a specified transit

hub within VIA's fixed route network. MOD zones that cover areas of medium density and might have heavier fixed routes continuing through the area may explore "few-to-few" service delivery option connecting to the selected bus stops along the fixed routes.

The Contractor shall provide delivery options to meet the applicable requirements of the Federal Transit Administration (FTA) for VIA.

The project shall be funded locally but could be changed to include Federal funds as they become available. The service models and geographic extent of zones shall be scalable to match available funding.

Goals

- To improve mobility for all
- To expand mobility options in low-density areas
- To provide innovative first mile and last mile solutions to access fixed route transit
- To provide access to jobs, shopping, recreational facilities, educational institutions, and VIA's fixed route transit

Objectives

- Modify Mobility on Demand rideshare service as-needed based on monthly performance evaluation and monitoring
- Provide access to non-traditional transit service delivery options which allow the agency to respond to the demands of various ridership markets
- Provide cost-effective transportation services within the zones identified under KSAM plan
- Acquire data (ridership, operations, technology, customer service etc.) to allow for detailed analysis of service performance and opportunities for improvements
- Improve alternative transportation options compared to personal vehicles or traditional single occupancy door-to-door ride hail service through competitive or reduced travel times, convenience, and improved overall trip experience
- Provide a rapid response to fluctuating trip demand

2.4.3 Requirements: The following list represents requirements that the turnkey solution shall provide through a single contract. The Contractor may provide alternative solutions to meet the intent of requirements.

Zone management

- 7 days of service per week; outlying areas could be 5 days a week
- Dynamic modification or refinements of zone boundaries
- Addition or removal of the pick-up or drop-off locations
- Span of service comparable to fixed route service nearest the zone – fewer service hours may be proposed for Saturday & Sunday service and shall consider VIA special events service, if applicable
- The average pick-up time variation (search delay) from 6:00 am to 7:00 pm trips after the ride request is made (example, trip is requested for 11:00 am and trip offered 11:20 am, hence variation is 20 minutes) is expected to be
 - 20 minutes for zones where low-performing fixed routes are considered for replacement
 - 30 minutes for zones where outlying suburban areas
 - 60 minutes for zones where outlying suburban cities
- The average pick-up time variation (search delay) after 7:00 pm and prior 6:00 am trips after the ride request is made (example, trip is requested for 7:00 pm and trip offered 7:50 pm, hence variation is 50 minutes) is expected to be
 - 30 minutes for zones where low-performing fixed routes are considered for replacement or match the headway of the fixed-route anchoring the zone

- 30 minutes for zones where outlying suburban areas or match the headway of the fixed route anchoring the zone
 - 60 minutes for zones where outlying suburban areas or match the headway of the fixed route anchoring the zone
- VIA has On Time Performance parameters for the fixed route, The Contractor shall meet the On Time Performance comparable to the fixed route service.
- Ability to scale service based on demand, appropriate number of vehicles for ridership demand by time of the day
- Ride services to
 - General public
 - People with disabilities
 - Groups of predetermined eligible customers meeting specific criteria for participation set by VIA – for example eligible ADA paratransit customers
- Pick-up and drop off locations to be reasonable walk distance for general public from their booking pick-up / drop off address
- Pick-up and drop off locations to be at the curb for people with disability or for those requesting accessible trips

On-Demand Mobile Technology

- Real-time, dynamic service
- Software application/platform necessary for scheduling, dispatch, user interface, data collection and to the greatest extent feasible be usable by persons with disability.
- An app that shall be available in both Apple and Android formats.
- An alternative platform (such as web and telephone) must be available for customers to book trips if they are unable to access mobile devices
- Ability for riders to travel within identified MOD zone and /or to the identified transit stop location or other identified locations
- Ability for riders for group booking (example passenger booking a trip for him/her plus other passengers),
- Ability for riders to book multiple trips
- Data sharing and ownership by VIA
- Real time vehicle / ride tracking for passengers, if available
- VIA requires full access to and ultimate ownership of all data associated with the project. Data shall inform strategic transportation planning efforts.

Customized Service

- Ability to request a wheelchair/scooter accessible vehicle for the trip
- Ability to send special instruction while booking the trips such as bringing car seat or request for accessible trip
- Ability to request additional seat for non-paying passengers- including children, infants and companion, personal care attendant of VIAtrans riders
- Ability to request a vehicle with a bike rack for the trip
- Embed the web based VIA virtual assistant (chat bot) within the app for convenient 24/7 web based customer service.
 - <https://via-virtual-assistant.mybluemix.net/fullpage/>
- Service option for those without a smart phone, internet access, or credit card
- Customer service must be available during all hours when service is operational and during published booking times to assist with booking

Fare Payment Structures

Please refer to VIA's current fare payment structure and discount programs on VIA's website. Address how the proposer can accommodate these into the MOD service.

In addition, allow for the following options:

- Integration and utilization of the Masabi fare payment platform, allowing customers to pay for trips in the MOD app utilizing the Masabi payment platform, which offers advanced features, such as fare capping, cash payment options, stored value, advanced validators, and more. Masabi offers
- VIAtrans clients and their companion and personal care attendants can ride VIA Link for free
- Temporary or promotional fare discounts that passengers can access through the entry of a promotional code

Policy and Administrative Factors

- Ability to ensure VIA's service runs as smoothly as possible, ability to introduce a No-Show/Late Cancellation policy based on account activity
- Ability of the Contractor to provide VIA with ridership reports within an agreed upon time frame
- Ability to ensure an adequate supply of drivers at defined geographic areas and times
- Ability to coordinate with VIA Communications and Marketing Team on promoting programs to the public and designing and producing marketing materials for distribution to potential riders
- Availability of additional tracking measures of program success, such as ride information by location, reporting by time period, and trip origin and destination information
- Availability of the Contractor to work within current government regulatory framework and to adapt service proposals and promotional agreements to different public transportation funding sources
- Reporting, backend dashboard
- Vehicles – owned or leased by vendor including wheelchair accessible vehicles

Note – The Contractor shall provide a cost option for VIA to lease the vehicles (wheelchair accessible and regular) to the Contractor as well as a cost option for the Contractor to provide the vehicles:

- Operators
- Operation of service
- Storage of vehicles
- Maintenance of vehicles

2.4.4 Project Management: Project management shall be a continuous function and a key responsibility of the Contractor. The Contractor's Project Manager assigned to the project shall have the authority to make commitments and decisions that are binding on the Contractor and any Subcontractors. VIA will designate a Project Manager to coordinate all project activities. All communications between VIA and the Contractor shall be coordinated through their respective Project Managers. In the area of Project Management, the Contractor shall:

- Schedule and facilitate a kick-off meeting, key milestones interagency meetings, field reviews, advisory and/or stakeholder group meetings, and other project related meetings
- Prepare agendas, minutes, and sign in sheets for all meetings
- Maintain and update the work plan as approved by VIA Project Manager
- Develop and maintain an overall project schedule to ensure milestones are met in an efficient manner
- Oversee Subcontractor's (if any) activity. The Contractor's Project Manager will ensure that individuals performing tasks have appropriate skill levels and credentials
- Coordinate all required deliverables including, project operations, vehicle acquisition, installation and configuration of software and hardware, documentation and training, branding and marketing, and/or performance monitoring and reporting, per the final contract agreement

- Be available and responsive to requests for information, inspections or meetings related to FTA Third Party Oversight. As much as possible, these items will be scheduled ahead of time; however, time-sensitive issues may arise.

2.4.5 Work Plan: This plan shall include the schedule of activities needed to activate zone(s), decision required from VIA to finalize the service and operations plan for zone(s) including ongoing task such as monitoring service, integration with VIA's mobile app, fare structure, branding, marketing coordination and reporting to VIA. This Work Plan shall contain the following elements, but will not be limited to:

- Work elements separated into tasks and phases
- Identification of key staff by work activity and proposed location
- Identification of schedule start and stop dates for each activity
- Expected deliverables/results
- Key milestones (i.e., Project deployment, Performance Monitoring)

2.4.6 Performance Monitoring and Reporting: The Contractor shall provide regular reporting, as follows:

Provide Bi-Weekly Staff Briefings

The Contractor shall provide bi-weekly briefings to VIA Project Manager on completed tasks, deliverables, and all issues resolved during the 2-week period, with an explanation and new date for unmet tasks and deliverables. The briefing will also provide a forecast of activities and expected deliverables for the upcoming 1-month period. The bi-weekly briefing shall contain, at a minimum:

- Summary of Work Completed To-Date
- Updates to Project Schedule
- Status of Project and Deliverables
- Activities and expected deliverables for the upcoming month
- Red-flag issues
- Recommendations to improve the service delivery

Provide Monthly Performance Reports

Regular Performance Monitoring: Reporting and analysis tools shall be built into the technology platform and open to VIA for regular use. All data collected as part of the Project must be openly shared with VIA and is the property of VIA. The Contractor shall create custom reports as requested by VIA. Reports shall allow for daily, weekly, monthly assessment of the service so that changes can be made to improve service and ridership if deemed necessary by VIA or as identified by the Contractor in consultation with VIA. VIA uses PowerBI as their standardized reporting platform and would ideally like a simple way for VIA to retrieve data on a daily/nightly by an automated electronic process to store in a centralized VIA repository for PowerBI reporting.

Performance Evaluation Reports: The Contractor shall provide a Performance Evaluation Report at the end of each month of service for each zone. At 6 months and 12 months of service, a Summary Performance Evaluation Report shall be submitted that includes all past-performance measures and reporting to give a comprehensive overview of the success of the Project to date.

Report Content: Monthly Performance Evaluation Reports shall summarize the performance of the Project, using clear and measurable criteria that could include, but are not limited to:

- Demand summary (origin/destination, time of use, boarding's per revenue hour, total ridership, type of rider)
- National Transit Database (NTD) required reports
- Trip data (travel times, routes trip denial rate, booking abandonment rates, percentage of time that wait times/headways are met, separate times for search delay and wait time)

- from agreed pick up time)
- Revenue summary (total revenue, revenue broken down by types of riders (if applicable))
- Hardware performance and reliability
- Vehicle daily usage, maintenance, performance and reliability
- Status and success of marketing efforts (number of events, attendance, audience reach, etc.)
- Customer Service – number of calls, types of calls, resolution of feedback, etc.

Service Modification Plan (SMP)

If circumstances arise that merit modifications to the Project /zone service operations, a service modification request must be coordinated with VIA Project Manager and be submitted along with the monthly report, clearly delineating the problem(s), proposed solution(s), specific service changes, impact to the budget, and timeline for implementing changes. In the event of smaller changes to the work plan, the Project Manager of the Contractor shall specifically identify the change and communicate the change with VIA's Project Manager. This process shall be documented with a contract amendment if needed.

2.4.7 Final Service and Deployment Plan for Each Zone:

The Contractor shall coordinate with VIA Project Manager and staff to refine the service plan, for each MOD zones including specific stops, routes (if necessary), schedules, service coverage areas, and cost structure. Field visits shall be made to assess all proposed stop locations for safety, ADA access, and existing shelters and amenities. The plan shall also outline number of vehicles projected for use.

Service Plan shall address all elements of the requirement of this contract specified in 2.4.3 in addition to the above.

This section shall also include a detailed summary of the approach to be undertaken for development of this effort and individuals responsible for the deliverables. It must be based on the project understanding and Scope of Services but provide additional detail on the process to be used in delivering these services. The responsibilities of any subcontractors, if any, shall be clearly noted. The Contractor shall submit a draft plan for VIA Project Manager approval detailing all tasks necessary to deploy the project showing the relationship across all components. Include timelines and indicate responsible parties. Deployment Tasks shall include but are not limited to:

- Vehicle Procurement, lease, or Vehicle Availability
- Stop or Station Preparation (i.e., signage, installation of amenities)
- Operator Procurement and Training
- Administrative processes
- Test runs
- Promotional Events & Marketing
- Full-Service Deployment

The Contractor shall work closely with VIA to incorporate stakeholder and community feedback into the service model, as appropriate.

The final service plan shall be approved by VIA Project Manager for each zone.

2.4.8 Software, Hardware & Equipment Planning: The Contractor shall provide all software design, installation, training, and technical assistance, hardware and equipment required to deploy and manage the Project service.

Technology Platform Characteristics and Documentation:

VIA envisions a technology platform that can be used to, in real time, aggregate riders traveling from multiple origins to multiple destinations in an exceptionally efficient way that optimizes the balance between maximizing vehicle utilization across the fleet and maintaining excellent quality of customer experience.

VIA seeks to have provider directly integrate MOD trip planning within Transit app, where VIA customers can trip plan MOD journeys, bus travel, or combined bus and MOD journeys. Ideally, provider would allow full booking of the trip on the Transit app platform as well, but if not, the provider shall work with Transit app to link to the provider's MOD app for booking.

The platform shall support fully automated scheduling, dispatch, and reservations, allowing passengers to book trips in real-time via phone, internet, and mobile application. The administrative interface shall allow for real time monitoring and assessment of schedule adherence, vehicle breakdowns, and Contractor performance. It shall be accessible via standard web browsers and from any commonly used internet – enabled device and shall provide options to generate reports and extract operational data for analysis. At a minimum, software shall also be fully-compliant with federal accessibility requirements related to website design and usage.

Using the final Project service model and description of work above as a basis, the Contractor shall design and document processes and functionalities as they are to be implemented within the software component of the project. The Contractor shall document modules, platforms, and services that will be implemented to meet VIA's needs, desired service model, and work rules.

The Contractor shall be responsible for coordinating payment and fare integration with the Masabi payment platform across other agency applications, as necessary. VIA envisions that the payment system will be highly accessible and will include multiple forms of payment to accommodate residents that are unbanked, do not own a smart phone, or have low technology literacy, which is provided by Masabi. VIA would like the MOD app to utilize the Masabi fare payment platform within the MOD app, providing VIA customers a seamless payment network across all VIA apps and services. The Masabi payment platform has readily available SDK/API integration to allow for purchase of fare products seamlessly within the provider's mobility on demand App.

The Contractor shall include the cost of installing Masabi validators in all vehicles to be used with VIA Link, so that the vehicles can scan goMobile and Transit App Masabi tickets as fares. The validators shall also be able to accept smart cards and paper tickets when implemented by VIA, in addition to their support of EMV contactless credit cards. VIA will own the validators and be responsible for the procurement and licensing of said validators. The Contractor shall include a line-item amount for the installation of validators and a separate line item for the removal (uninstall) of validators. At the conclusion of the contract or at any time of VIA's discretion, all validators are to be removed and returned to VIA.

The above validator installation will be included as an option to be implemented by the Contractor at VIA's request if desired on award of the contract.

Hardware, Equipment & Vehicles

The Contractor shall provide all necessary hardware required to deploy the Project service. If transfer of equipment between vehicles is required, it shall be a well-documented and easy to follow process. The operator user interface shall be safe and easy to use and include audible and clear messaging indicating passenger updates and stop changes. Operator instructions shall be available in list, map, and turn-by-turn voice instructions to ensure safe operation.

Vehicle Acquisition & Operations Plan

The Contractor shall supply and maintain all necessary vehicles for the Project service. If the

Contractor does not own the necessary vehicles for the Rideshare Service as determined in the Service Model, vehicle acquisition by way of purchase, leasing, or other agreement shall be required by the Contractor. The Contractor shall work with VIA to develop a vehicle acquisition plan/availability that clearly outlines the fleet size, type, operations and maintenance needs and the VIA desired vehicles that accommodate limited mobility users and bicycle storage, as feasible. Vehicles used in the performance of this contract shall be no more than five (5) years old and/or have no more than 150,000 miles during any time during the initial term or subsequent renewals of this contract. Vehicle registration and vehicle identification numbers shall serve as proof of age. Vehicles must meet all EPA standards. The Contractor must specify the number of wheelchair-accessible vehicles needed to successfully implement the Project. All such vehicles must meet ADA (49 CFR Parts 37 and 38) standards.

The Contract shall have an option for to VIA lease the vehicles (wheelchair accessible and regular) to the Contractor. Should VIA choose this option, the Contractor shall maintain and store the vehicles as per vehicle manufacturer recommendation and VIA's approval.

Vehicle Operations

The Contractor shall ensure that all relevant Federal, State, and Local regulations are complied with, including training, certification, and/or licensure, as needed. The Contractor shall provide VIA with the following operator information no less than 10 days prior to the Rideshare Service start date. Prior to performing tasks as an Operator for the Rideshare Service, names of operators that have been added to the list, shall be provided to VIA.

- General information sheet for each operator
- Copy of current valid Texas driver's license
- Copy of Drug and Alcohol Training attendance/certification
- Copy of Defensive Driving Course attendance/certification
- Copy of Sensitivity Training attendance
- Copy of Criminal Background Check

Software and Hardware Installation Plan

The Contractor shall develop an installation plan that will be approved by the VIA Project Manager. The installation plan shall detail all the necessary tasks and the schedule to complete the installation of all software and hardware, as appropriate, including:

- A plan outlining all tasks necessary to prepare VIA for the software installation
- VIA staff and resources required during the installation, testing and acceptance activities
- The Contractor personnel and resources assigned to the data-related tasks, installation, testing and acceptance activities
- Timeline and sequence of all installation, data-related testing and acceptance tasks
- Timeline and sequence of all third party app (Transit, Masabi) integration, data-related testing and acceptance tasks
- Functional test procedures, including the use of persons with visual deficits
- Training curriculum, schedule and other training related requirements
- Mock Go-live and Go-live procedures
- Roll-out procedures
- Post-Go-Live procedures
- Problem Resolution Procedures

Install and Implement Software and Hardware Components

In conformance to the Technology Platform Documentation and Software and Hardware Installation Plan, the Contractor shall perform the following:

- Installation of the suite of modules contained in the software component
- Application of all configurations identified in the Software Solution Design
- Installation of necessary hardware on project vehicles
- Test suite of modules
- System acceptance testing
- Mock go-live
- Go live/roll out

2.4.9 System and User Training: The Contractor shall provide the Rideshare Service as a turnkey solution with minimal VIA staff resources needed to implement the service. However, the Contractor shall provide training and manuals for the VIA staff needed to monitor, assess, access data and develop reports using the dashboard and other tools provided by the Contractor. The Contractor shall also ensure the adequate and complete training of operators takes place prior to placing the operators on the Approved Operators List submitted to VIA.

Technical Support

The Contractor shall provide ongoing technical support for the duration of the three-year project and possible extension periods. The Contractor shall indicate the level of technical support and ongoing monitoring that shall be provided in order to ensure the system is functioning properly. Software upgrades shall be provided as soon as they are available. Technical support shall include but is not limited to:

Application and User Support

- Customer assistance for booking a trip using smart phone
- Customer assistance with trip tracking or “where is my ride”
- Phone and email responses to software failures or questions within 24 business hours
- Assistance with questions on use of approved software configuration and software version
- Availability of experts to confer on software new release installation and fixes to bugs
- Software upgrades

Customer Service

Customer service shall be available to riders anytime the Rideshare Service is in operation. VIA expects this service as part of the overall turnkey approach and will not have staff available to respond to customer service requests, feedback and complaints.

- Riders shall have immediate access to customer service assistance via mobile application or phone call at any point in time when service is in operation.
- Customer service concerns related to safety shall be addressed immediately and reported to VIA within two (2) hours.
- VIA shall have access to all customer service comments, questions, requests or complaints and Contractor’s responses thereto.

Marketing & Promotions Plan & Implementation

The Contractor shall work with VIA Project Manager and its’ Public Engagement Group to develop a comprehensive marketing and promotions plan based upon previous experience deploying a new transit, rideshare, or similar service. VIA will develop a brand and provide artwork that the Contractor shall use on their vehicles and for the service. VIA will promote this new service on its website, at special events and in the official VIA social media pages, while the Contractor shall identify how these efforts shall be augmented using their previous experience. VIA envisions a combination of hard copy marketing materials, promotional events and subsidies, and online advertising. Strategic and robust marketing of the Project will be critical to its success. The Contractor may propose concepts /ideas

to augment VIA's efforts to seek more ridership.

2.4.10 Substance Abuse Prevention Program: Drug and Alcohol Misuse Program: The Contractor shall have a comprehensive anti-drug use and alcohol misuse program in place that meets or exceeds all Federal requirements. The Drug and Alcohol Testing program shall include required training as well as pre-employment testing, reasonable suspicion testing, post-accident testing (when there is a human fatality, any individuals involved in the accident require immediate medical care away from the scene, or a vehicle is towed due to disabling damage), return to duty testing, random testing, and follow-up testing. The Contractor's Drug and Alcohol Program Manager (DAPM) shall attend a Transportation Safety Institute hosted Substance Abuse Management and Program Compliance course. A Department of Health and Human Services (DHHS) approved laboratory shall be used for all required drug testing. VIA shall have the right to audit the Contractor's records and drug testing program. The Contractor is responsible for all testing and cost for all drug and alcohol testing requirements and the Contractor shall not pass these costs to the employee.

Information about Program: The Contractor shall submit to VIA Project Manager; the following and obtain VIA's approval prior to contract award:

- A copy of the Contractor's anti-drug use and alcohol misuse policy and program.
- Name, address, and telephone number of the Medical Review Officer.
- Name, address, telephone number, and contact person at the drug testing facility.
- Name, address, and telephone number of Substance Abuse Professional (SAP).
- A roster of all employees with pre-employment drug testing results must be provided prior to contract commencement.

2.4.11 Other Requirements:

Public Transportation Agency Safety Plan Requirements (49 CFR Part 673):

The Federal Transit Administration (FTA) requires VIA to have an Agency Safety Plan (ASP) including the processes and procedures necessary for implementing a Safety Management System (SMS) as per the Public Transportation Agency Safety Plan (PTASP). The Contractor shall also have an ASP to include a SMS or comply with VIA's ASP and SMS Program. Failure to comply with the PTASP requirements will result in VIA withholding outstanding invoices and payments due to the Contractor until compliance is met. The Contractor must have a person assigned to be familiar with all the requirement related to PTASP. The Contractor shall be responsible to complete all required reports associated with PTASP requirements. The Contractor must maintain the information necessary to complete reports for PTASP for a period of three years after the close of the fiscal year.

- The Contractor shall ensure that each employee subject to the Substance Abuse Prevention Program receives a copy of Substance Abuse Prevention Program and confirms acceptance.
- Required Substance Abuse Awareness Training per 49 CFR 655.14(b) training shall be conducted before performing a safety-sensitive function.
- Required training for all employees who supervise or direct safety-sensitive employees.
- A negative drug and alcohol screen result from the MRO must be received before any employee performs a safety-sensitive function.
- Provide monthly updated Employee Roster (including terminated employees) with the following:
 1. Employee Name
 2. Employee last 4 digits of SS Number
 3. Employer's Employee Number, if available
 4. Date MRO confirmed negative pre-employment drug and alcohol screen
 5. Date of required training
 6. Date employee began performing safety-sensitive function

7. Employment termination date

- Complete annual MIS Reports per 49 CFR 655 and submit to VIA by February 15 following the reporting period.
- Report all positive drug or alcohol results to VIA's Safety Department within twenty-four (24) hours.
- Report all accidents subject to post-accident testing to VIA within twenty-four (24) hours of occurrence.
- Other reporting documentation as required
- A copy of all drug and alcohol summary of results (spreadsheet from collection agency) shall be sent to VIA within 5 calendar days of the Contractor receiving the results.

National Transit Database Reporting Requirements

The Federal Transit Administration (FTA) requires VIA to submit reports to the National Transit Database. The Contractor shall be responsible for the preparation of the segment of the annual and monthly report that pertains to the service provided by the Contractor. The reporting requirements may change at any time. The Contractor is required to complete all monthly and annual reports requested by VIA on the date determined by VIA. Failure to submit the information requested by VIA on or before the due date will result in VIA withholding outstanding invoices and payments due to the Contractor until the information requested is submitted.

The Contractor must have a person assigned to be familiar with all requirements and forms to be submitted to the National Transit Database. The Contractor shall be responsible to complete all required reports on the National Transit Database website. Information is to be collected between October-September every year. The Contractor must maintain the information necessary to complete the reports for the National Transit Database for a period of three years after the close of the fiscal year.

Background Checks

The Contractor must conduct background checks from a reputable source to include national criminal conviction records and sex offender records. The Contractor is responsible for this cost and cannot pass this cost to the employee.

- The Contractor shall conduct Local, County, State-wide and Federal background checks on all safety sensitive personnel prior to employment and once annually thereafter. The background check shall include an examination of criminal history from any county and State in which the applicant resided within the past seven years.
- All operators who are expected to operate or maintain a vehicle in the Project Mobility Rideshare service, including Field Supervisors and mechanics, must have continuous possession of a valid Driver's License in the U. S. for the past 3 years and current possession of valid Texas Class C Driver's License.
- All operators shall have no felony criminal convictions related to violence or drugs or prior "Driving While Intoxicated" or "Driving Under the Influence" (DWI/DUI) convictions within the past 5-years.

Applicants terminated from VIA, or from a previous employer due to drug and alcohol usage shall not be eligible for hire.

2.4.12 Transitioning Service: The Contractor shall include a detailed transition plan. This plan must include timeframes and major milestones for each major task of the implementation. This shall include, but not be limited to; hiring of staff, occupancy of facilities, utilities, telephones and vehicles (all shall be

in place at least thirty (30) days prior to implementation). Training of all staff must be completed five (5) business days prior to implementation.

Recruitment of Operators: The Contractor choosing to hire existing Contractor staff must develop a plan to recruit, hire and train operators without interfering with the current service. Specifically, VIA desires that the existing operators shall continue to drive for the current Contractor until the new service starts. The Contractor must provide a detailed plan to VIA that ensures that there is no degradation of service.

Transition Out: The Contractor must cooperatively participate in the transition of this service at the end of the contract term. Sixty (60) days prior to such replacement or additional Contractor starting, participation is necessary in:

- Meetings
- Transfer of records
- Access to property/vehicles

A transition period is defined as the 60-day period prior to the end of the current contract term and the subsequent contract implementation-of-service date. The Contractor shall participate in the smooth transition of service in such a manner as to ensure the transition results in minimum service disruption to operations.

During the transition phase, VIA shall conduct almost daily meetings with the incumbents and new provider to discuss specific operations, records, and other transition events and the time frame in which they must occur. As requested by VIA, the incumbent must make pertinent records and equipment accessible to both VIA and new provider within one day of VIA's request.

PART 3 GENERAL TERMS

3.1 General Definitions:

"Appeal" means a formal request for reconsideration of a determination rendered by the Contracting Officer in respect of:

- (a) a request, prior to contract award, as set forth in the section entitled, "Proposers' Requests," herein; or
- (b) a dispute concerning a question of fact, arising after contract award as set forth in the section entitled "Disputes," herein.

"Apprentice" (in the context of construction contracts) means (a) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training or with a State apprenticeship agency recognized by the Bureau; or (b) a person in his first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship council (where appropriate) to be eligible for probationary employment as an apprentice.

"Authorized Signature" is the written authorization of the person who is executing this Contract on behalf of the Proposer/Contractor and who is authorized to bind the Proposer/Contractor.

"Contracting Officer" is that person designated by VIA to enter into and administer this Contract and make determinations and findings up to his/her level of authority, in regard to the Contract on behalf of VIA. For the purpose of this Contract, the Contracting Officer is the individual identified in the section entitled "Inquiry and Questions" or otherwise designated by VIA.

"Contracting Officer" is that person designated by VIA to make determinations and findings in regard to the Contract on behalf of VIA.

"Contractor" means the person or legal entity prior to contract award, submitting a response to a procurement solicitation (IFB, RFQ or RFP); it also means the successful Proposer to whom the Contract is ultimately awarded. Any reference to "Bidder," "Proposer," or "Offeror," also applies to Contractor after award. It is generally intended that these terms be interchangeable.

"Day" unless otherwise defined, shall be defined as a calendar day.

"DEO" means Diversity and Economic Opportunity department for VIA Metropolitan Transit.

"DBE" means **"Disadvantaged Business Enterprise"**

"Final Acceptance" (used in the context of construction contracts) means all provisions of the Contract have been completed to VIA's satisfaction, including punch list items.

"FTA" means Federal Transit Administration a division of the United States Department of Transportation.

"Liquidated Damages" means the amount assessed in lieu of actual damages, for the failure to complete the work in a timely manner and not as a penalty, at the agreed rate per calendar day expressed herein in the section entitled "Liquidated Damages."

"Indefinite Quantities Contract" or **"IDQ"** refers to those service Contracts providing for a specific term and fixed labor rates, pursuant to which specific Task Orders may be issued on an as needed basis.

"Invitation for Bid" or **"IFB"** means the formal procurement issued by VIA (see also, "Procurement") and, where the context allows, also includes "Requests for Qualifications" (RFQs) and "Requests for Proposal" (RFPs).

"Notice of Award" is the written notice sent by VIA notifying the selected Proposer of the award of contract, and acceptance of Proposer's offer to perform under the terms contained herein. In the absence of a formal Notice of Award, the receipt of a Notice to Proceed or Purchase Order issued by VIA shall serve as notice of the award.

"Notice to Proceed" (in the context of construction contracts) is the written notice sent by VIA after the Contractor has complied with the submission of the required SBE information, a Performance Bond, Payment Bond, Warranty Bond and/or Insurance as required by VIA, and which notifies the Contractor to commence performance under the Contract. For contracts not requiring a Performance Bond, Payment Bond, Warranty Bond and/or Insurance, VIA will issue a Purchase Order. Issuance of a Purchase Order shall serve as a Notice to Proceed.

"Plans" (in the context of construction contracts) are the parts of the Contract which show the characteristics and scope of the work to be performed and which have been prepared or approved by the Architect/Engineer and/or Contracting Officer.

"Procurement" means the formal solicitation issued by VIA, for services, goods, supplies, or work, and includes Invitations for Bid (IFBs), Requests for Qualifications (RFQs) and/or Requests for Proposal (RFPs), as applicable.

"Proposer" is the person or legal entity responding to this procurement solicitation. The term also includes **"Bidder," "Offeror"** and/or **"Contractor."**

"Protest" means a formal request contesting:

- (a) a final ruling issued by the Contracting Officer in the case of a request for clarification of the specifications or a request for approval of an equal or modification of the specifications;
- (b) any alleged impropriety or other similar situation arising prior to bid opening; or,
- (c) the award of contract.

"Protest Committee" is the three (3) member group established by VIA for the purpose of reviewing protests submitted by a Proposer or supplier.

"Provide" means to furnish and install completely and ready for use.

"Purchase Order" means the written order sent by VIA on its form ordering the equipment or supplies in accordance with the terms and conditions of the Procurement.

"Request for Proposals" or **"RFP,"** see "Procurement."

"Request for Qualifications" of "RFQ," See "Procurement."

"Reserved" is a term utilized to delete standard terms and conditions that are not applicable to a specific procurement.

"Specifications" means the written description and statement of necessary requirements of the equipment, construction, services and/or supplies to be provided, including the technical specifications, if any.

"South Central Texas Regional Certification Agency" or **"SCTRCA"** means that agency whose membership consists of various local governmental entities, including VIA; the purpose of which is to provide

a unified resource for firms to seek SBE certification and information on doing business with SBE-certified firms. SCTRCA may be reached at (210) 362-2077.

"Subcontractor" means any person, firm or corporation supplying services, labor and/or materials under separate contract or agreement with, the Contractor.

"Subject Data" is 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 does not include financial reports, cost analyses, and similar information incidental to contract administration.

"Supplier" means any manufacturer, company, or agency providing units, components, or subassemblies for inclusion.

"Task Order" (in the context of Indefinite Quantity Contracts (IDQs)) means the specific scope-of-work for a particular assigned project issued at VIA's discretion.

"Technically Competitive Range" – The range of prospective contractors that demonstrates a technically satisfactory approach and has satisfactory qualifications as well as a reasonable chance of being selected for award of a contract.

"Texas Open Records Act" or "TORA" means Chapter 552, Texas Government Code.

"VIA" means VIA Metropolitan Transit, San Antonio, Texas. References to **"grantee," "recipient"** or **"purchaser"** shall also mean "VIA."

"Work" is any and all labor, supervision, services, materials, machinery, equipment, tools, supplies, and facilities called for by the Contract and necessary to the completion thereof.

"Work On (At) the Project" means work to be performed at the location of the project including the transportation of materials and suppliers to or from the location of the project by employees of the Contractor and any subcontractor.

3.2 Relationship and Work in General: Contractor, an independent contractor, covenants and agrees to perform for the stated compensation, all of the services described in Part 2, entitled "Scope of Work, Terms and Conditions" of this Contract. Contractor agrees to complete the work in a professional and workmanlike manner with a high degree of care to ensure the accuracy and timeliness thereof.

3.2.1 Assignment of Personnel: Contractor agrees to assign qualified staff members including a Project Director who shall be responsible for the task administration and work performance.

3.2.2 Employment of Personnel: Contractor agrees to employ, at its own expense, all personnel required in performing the services under this contract. Personnel employed by Contractor shall not be employees of, nor have any contractual relationship with VIA. All personnel engaged in the work shall be fully qualified and shall be authorized or licensed to perform such work as required.

3.2.3 Subcontracts:

3.2.3.1 Use of Subcontractors: The Contractor may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.

3.2.3.2 Written Approval of VIA: No work or services under this Contract shall be subcontracted without the prior written approval of VIA and then only by written contract or agreement. To obtain approval, Contractor must submit to VIA a written statement concerning the proposed award to the subcontractor that includes, at a minimum, the following:

- (a) A description of the supplies or services to be called for by the subcontract; and
- (b) Identification of the proposed subcontractor.

3.2.3.3 Responsibility for Subcontractor(s) Acts: VIA's approval of a subcontract notwithstanding, VIA shall not be obligated to any third party, including any subcontractor retained by Consultant, for payment of any work or services performed under this Contract, or to provide any work or services as compensation for any work or services performed under this contract. The Contractor is and shall be fully responsible to VIA for acts and omissions of Contractor's subcontractors and any person directly or indirectly employed by the subcontractor.

3.2.3.4 Binding of Subcontractors: Unless specific waiver is granted in writing by VIA, subcontractor shall be subject to each and every relevant and applicable provision of this Contract. Compliance by subcontractors with this Contract shall be sole responsibility of the Contractor.

3.2.3.5 Lack of Privity: Nothing contained in this contract shall create any contractual relation between any subcontractor and VIA.

3.2.3.6 Consent Not Acceptance of Price or Waiver: Neither consent by the Contracting Officer to any subcontract nor any provisions thereof nor approval of the Contractor's procurement system shall be construed to be a determination of the acceptability of any subcontract price or of any amount paid under any subcontract or to relieve the Contractor of any responsibility for performing this contract, unless such approval or consent specifically provides otherwise.

3.2.3.7 Cost-Plus Subcontract: The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost-basis.

3.2.3.8 Substitution of Subcontractors: Any Subcontractor receiving approval in accordance with this paragraph 3.1 must be utilized by the Contractor for the portion of the Work for which they were approved. VIA will generally not entertain substitutes for any such Subcontractor in the absence of compelling circumstances to do so.

3.2.3.9 INDEMNITY: BY SUBMISSION OF PROPOSAL THE CONTRACTOR AGREES THAT HE/SHE/IT WILL INDEMNIFY AND SAVE VIA HARMLESS FROM ALL CLAIMS GROWING OUT OF THE LAWFUL DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, AND ALL SUPPLIES, INCLUDING COMMISSARY, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. THE CONTRACTOR SHALL, AT VIA'S REQUEST, FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREIN ABOVE DESIGNATED BE PAID, DISCHARGED, OR WAIVED. IF THE CONTRACTOR FAILS TO DO SO, THEN VIA MAY, AFTER HAVING SERVED WRITTEN NOTICE, DIRECT, OR WITHHOLD FROM THE CONTRACTOR'S UNPAID COMPENSATION A SUM OF MONEY DEEMED REASONABLY EFFICIENT TO PAY ANY AND ALL SUCH CLAIMS UNTIL SATISFACTORY EVIDENCE IS FURNISHED THAT ALL LIABILITIES HAVE BEEN FULLY DISCHARGED WHEREUPON PAYMENT TO THE CONTRACTOR SHALL BE RESUMED, IN ACCORDANCE WITH THE TERMS OF THIS CONTRACT, BUT IN NO EVENT SHALL THE PROVISIONS OF THIS SENTENCE BE CONSTRUED TO IMPOSE ANY OBLIGATIONS UPON VIA TO EITHER THE CONTRACTOR OR HIS SURETY.

3.3 Termination of Contract:

3.3.1 Termination for Convenience: VIA may terminate this contract, in whole or in part, at any time without cause and solely for the convenience of VIA by giving written notice of termination to the Contractor, which will not be less than ten (10) business days. The Contractor will be paid fees and expenses for work performed up to the time of termination and that meet the bargained for standards under the contract. VIA reserves the right to direct, within the termination notice, what work may be performed prior to the effective date of termination. To be paid, unless an extension is authorized in writing by VIA, the Contractor must submit its final invoice/claim within thirty (30) calendar days of the date of termination. If the Contractor has any property in its possession belonging to VIA, the Contractor will account for same and dispose of it in the manner VIA directs, including but not limited to returning same to VIA. Upon disposal of any VIA property as directed, VIA shall then pay Contractor's final invoice, provided however, that such payment does not exceed the maximum amount of this Contract.

3.3.2 Termination for Default:

3.3.2.1 Default: In the event the Contractor breaches the terms or violates the conditions of this Contract and does not cure the default within ten (10) business days after receiving written notice of such default from VIA, VIA may immediately terminate the Contract, and pursue any and all legal and equitable remedies available to it against the Contractor.

3.3.2.2 Notice: Termination shall be affected by serving a written notice of termination on the Contractor setting forth the manner in which the Contractor is in default. Service shall be obtained by personal delivery or delivery by mail, registered or certified, postage prepaid with return receipt requested and addressed to the Contractor at the most recent address provided by Contractor.

3.3.2.3 VIA Options: In addition to any and all other remedies at law or in equity that are available to VIA, default by the Contractor may result in the occurrence of one or more of the following:

- (a) VIA may complete such contract without further liability to the Contractor for compensation for any labor, supplies or materials furnished by the Contractor under the contract; and
- (b) To the extent applicable, VIA may direct the Contractor to remove any equipment delivered and/or installed by the Contractor and to refund to VIA any amounts paid by VIA to the Contractor, and VIA shall have no further liability to the Contractor; and
- (c) VIA may contract to acquire supplies or services similar to those terminated and Contractor shall remain liable to VIA for any difference in the total costs and expenses incurred by VIA.

3.3.2.4 Compensation and Liability: The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance bargained for and set forth in the contract. In addition to any other available remedies, the Contractor and to the extent applicable, the Contractor's surety or sureties shall be liable to VIA for all costs, loss or damage incurred for supplies or services to complete the contract.

3.3.3 Termination of Subcontracts: As directed to do so in the notice of termination, Contractor agrees to and shall cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts which relate to the performance of this Contract. To this effect, VIA shall not be liable to Contractor nor Contractor's creditors for any expense, encumbrances or obligations whatsoever incurred after the date of termination.

3.4 Breaches and Dispute Resolution:

3.4.1 Disputes: Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Contracting Officer. This decision shall be final and conclusive unless within ten (10) working days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Vice President of Procurement. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer

evidence in support of its position. The decision of the Vice President of Procurement shall be binding upon the Contractor and the Contractor shall abide by the decision.

3.4.2 Performance During Dispute: Unless otherwise directed by VIA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

3.4.3 Remedies: Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between VIA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Texas.

3.4.4 Rights and Remedies: The duties and obligations imposed by the Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by VIA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

3.5 Inspection of Work: VIA shall have the right to review and inspect the progress of the work described herein at all times.

3.6 Copyright: No reports, maps, or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the Contractor. All reports, maps, and other documents produced under this contract shall become the property of VIA. The Contractor shall, at its expense, defend all suits or proceedings instituted against VIA and pay any award of damages assessed against VIA in such suits or proceedings, insofar as the same are based on any claim that materials furnished, or work performed, under the contract constitutes an infringement of any patent, trade secret, copyright, or any other proprietary right.

3.7 Proprietary Rights: Contractor agrees not to release data or information about the results of the project to any person outside of VIA without first obtaining written authorization to release such information from VIA.

3.8 Indemnification: CONTRACTOR covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS**, VIA, the Board of Trustees, and its employees, officers and representatives, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal bodily injury, death and property damage, made upon VIA, directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Agreement, all without, however, waiving any governmental immunity available to VIA under Texas law and without waiving any defenses of the PARTIES under Texas law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF VIA, THE BOARD OF TRUSTEES, EMPLOYEES, OFFICERS, AND/OR REPRESENTATIVES OF VIA, UNDER THIS AGREEMENT.** The provisions of this INDEMNITY are solely for the benefit of the PARTIES hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall promptly advise VIA in writing of any claim or demand against VIA or CONTRACTOR known to the CONTRACTOR related to or arising out of CONTRACTOR'S activities under this Agreement and shall see to the investigation and defense of such claim or demand at CONTRACTOR'S cost. VIA shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph. **IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION 3.7, IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY, PROTECT AND HOLD HARMLESS VIA FROM THE CONSEQUENCES OF VIA'S OWN NEGLIGENCE, PROVIDED HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION**

SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF VIA IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF VIA IS THE SOLE ACTIVE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. CONTRACTOR FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF VIA AND IN THE NAME OF VIA, ANY CLAIM OR LITIGATION BROUGHT AGAINST VIA AND ITS BOARD OF TRUSTEES, EMPLOYEES, AGENTS, OFFICERS, AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS HEREIN SET FORTH.

- 3.9 Ownership of Documents:** The parties agree and understand that any and all documents produced under this Contract are the sole and exclusive property of VIA and VIA retains ownership of all such documentation including, but not limited to, studies, plans, specifications, and all related documents. To the extent necessary, CONTRACTOR HEREBY ASSIGNS AND TRANSFERS ANY AND ALL COPYRIGHTS TO VIA.
- 3.10 CONTRACTING AUTHORITY PROTECTION: ANY AND ALL OF CONTRACTOR'S EMPLOYEES WHILE ENGAGED IN THE PERFORMANCE OF ANY WORK REQUIRED BY VIA UNDER THIS AGREEMENT SHALL BE CONSIDERED EMPLOYEES OF CONTRACTOR ONLY AND NOT OF VIA, AND ANY AND ALL CLAIMS THAT MAY ARISE FROM THE WORKERS COMPENSATION ACT ON BEHALF OF SAID EMPLOYEES WHILE SO ENGAGED, AND ANY AND ALL CLAIMS MADE BY ANY THIRD PARTY AS A CONSEQUENCE OF ANY ACT OR OMISSION ON THE PART OF CONTRACTOR'S EMPLOYEES WHILE SO ENGAGED IN ANY OF THE WORK OR SERVICES PROVIDED TO BE RENDERED HEREIN, SHALL BE THE SOLE OBLIGATION AND RESPONSIBILITY OF CONTRACTOR. TO THE EXTENT ALLOWED BY LAW, CONTRACTOR INDEMNIFIES, SAVES, AND HOLDS HARMLESS VIA AGAINST ALL CLAIMS, DEMANDS, ACTIONS, OR CAUSES OF ACTION OF WHATSOEVER NATURE OR CHARACTER, AS PERMITTED BY LAW, ARISING OUT OF ANY REASON OF THE EXECUTION OR PERFORMANCE OF THE WORK PROVIDED FOR HEREIN AND FURTHER AGREES TO DEFEND, AT ITS SOLE COST AND EXPENSE, ANY ACTION OR PROCEEDING COMMENCED FOR THE PURPOSE OF ASSERTING ANY CLAIM OF WHATSOEVER CHARACTER ARISING HEREUNDER.**
- 3.11 Maintenance of Records:** Contractor must maintain records to show actual time involved in performance of the Work, or each Task Order issued (if this is an Indefinite Quantities Contract) by VIA and costs incurred.
- 3.12 Progress Reports:** The Contractor shall submit to VIA monthly progress reports. Such reports shall outline the Contractor's work accomplished during the previous month. The Contractor is responsible for managing the project and maintaining Contractor Services within budget. Monthly progress reports submitted will include, but not be limited to, the percentage of completion of the work and each work task, special problems or delays encountered or anticipated, changes in the estimated value of each task, comparison of actual Contractor expenditures and charges to originally budgeted amounts, the anticipated work activities for the next work period, any necessary corrective action by the Contractor to accomplish project services within established cost limits, and a brief description of work accomplished, methodologies used, and conclusions reached, if any, for each task.
- 3.13 Effect of Extensions of Time:** Granting of or acceptance of extensions of time to complete the work or furnish the labor or materials will not operate as a release to the Contractor from the covenants and conditions of the Contract.
- 3.14 Changes and Modifications:**
- 3.14.1 Changes by Contractor:** If, during the performance of Work under the Contract, the Contractor finds it impracticable to comply strictly with the specifications, the Contractor will notify the Contracting Officer immediately in writing.
- 3.14.2 Written Acceptance by VIA:** Any proposals by Contractor that vary or add to this Contract shall be construed as additional terms or modifications and shall not become part of the Contract unless accepted in writing, by the Contracting Officer.

3.14.3 Change Orders/Contract Modifications: All changes in the work contemplated herein, or the work otherwise specified in Task Orders issued hereunder (if this is an Indefinite Quantities Contract), shall be made only with the prior approval of the Contracting Officer and only by appropriate written Change Order or Contract Modification as appropriate. The Contracting Officer may, at any time, by a written Change Order or Contract Modification, and without notice to the Surety (if any), make changes within the general scope of this Contract. If the change affects the Contractor's costs, then the Contracting Officer shall also make an equitable adjustment in the Contractor's compensation, after compliance by the Contractor with the Price Request procedure provided below. Charges or credits for the work covered by such approved Change Orders or Contract Modifications shall be determined by one or more, or a combination, of the following methods:

- (a) Unit prices previously approved.
- (b) An agreed lump sum.
- (c) The actual cost of:
 - 1) Labor, including foremen;
 - 2) Materials entering permanently into the work;
 - 3) The ownership or rental cost of construction plant and equipment during the time of use on extra work;
 - 4) Power and consumable supplies for the operation of power and equipment;
 - 5) Insurance;
 - 6) Social Security and old age and unemployment contributions;
 - 7) An equitable allowance for profit.

3.14.4 Price Requests: Where the Contracting Officer foresees issuing a Change Order affecting Contractor's costs, a Price Request will be issued to the Contractor. Unless otherwise specified therein, the Contractor shall fully respond to the Price Request within 10 days of issuance.

3.15 Assignment: The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the whole or any part of this Contract or his right, title or interest in or to any monies due or to become due under this Contract without VIA's express written consent. If such consent is given, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this Contract.

3.16 Whole Agreements: The Contract constitutes the whole of the agreement between the parties hereto and neither thereof has been induced to make or enter into the Contract by reason of any promise, agreement, representation, statement, or warranty other than contained herein.

3.17 Partial Invalidity: If any term, provision, covenant, or condition of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

3.18 Titles and Headings for Convenience Only: As used throughout this Contract, titles and headings of sections are for convenience only, and shall not be used to aid in interpretation of the provisions contained herein.

3.19 Notice, Waiver and Applicable Law:

3.19.1 Notices: Notice given to Contractor and VIA shall be given to the parties in writing by certified mail at the respective designated addresses.

3.19.2 Waiver: Waiver by VIA of a breach by Contractor of any provision of this Contract shall not be deemed a waiver of future compliance therewith, and such provision, as well as other provisions hereunder, shall remain in full force and effect.

3.19.3 Applicable Law and Venue: The rights and duties of the parties hereto shall be determined by the laws of the State of Texas, and to that end venue shall lie, and this agreement shall be considered

and construed as a contract made and to be performed in San Antonio, Bexar County, Texas. All work performed, materials and supplies and/or construction furnished pursuant to this solicitation and Contract shall be in compliance with the laws and regulations of the State of Texas and the United States of America and local rules and ordinances as may be applicable. Contractor shall, if requested by VIA, supply certification and evidence of such compliance.

3.20 Compliance with Laws and Regulations: All work performed, materials and supplies and/or construction furnished pursuant to this solicitation and Contract shall be in compliance with the laws and regulations of the State of Texas and the United States of America and local rules and ordinances as may be applicable. Contractor shall, if requested by VIA, supply certification and evidence of such compliance.

3.21 Access to Records and Reports:

3.21.1 Audits: Upon three (3) days written notice, Contractor agrees to and shall provide VIA or any VIA representative, access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as determined by VIA or its representative.

3.21.2 Maintenance of Records: The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period as required by the appropriate retention statutes but in no case less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until VIA has disposed of all such litigation, appeals, claims or exceptions related thereto.

3.22 Environmental and Sustainability Management System Program: VIA has adopted an Environmental and Sustainability Management System (ESMS) Program to implement sustainable practices in VIA's operations. **TO THE EXTENT APPLICABLE, ALL CONTRACTORS AND ANYONE UNDER CONTRACTOR'S DIRECTION ENTERING ONTO A VIA SITE UNDER THIS CONTRACT SHALL ADHERE TO THE REQUIREMENTS OF THE ESMS. CONTRACTOR ACKNOWLEDGES, AGREES TO AND WARRANTS THAT IT WILL COMPLY WITH AND/OR HAS COMPLIED WITH THE ESMS AND ANY AMENDMENTS THERETO. FOR BREACH OF THIS WARRANTY, VIA SHALL HAVE THE RIGHT TO ANNUL THIS CONTRACT WITHOUT LIABILITY AND/OR EMPLOY ANY OTHER REMEDY IT MAY HAVE AT LAW OR IN EQUITY.**

3.23 Contract Period:

3.23.1 Contract Commencement Date: The Contract commencement date shall be the date of the "Notice to Proceed." VIA may issue a Notice to Proceed to the Contractor within a reasonable time after the Contractor has delivered the required bonds, certificates of insurance, construction progress schedules, and any other required data. Any preliminary work started, or materials ordered or purchased before receipt of the Notice to Proceed shall be at the risk and expense of the Contractor. Within five (5) calendar days after the effective date specified in the Notice to Proceed, the Contractor shall commence work and diligently prosecute the work to completion within the time limit herein specified.

3.23.2 Time for Completion:

3.23.2.1 Contract Completion: The Contract shall be fully completed as evidenced by Final Acceptance by VIA, within _____ (**#days**) calendar days from the date of the Notice to Proceed or Purchase Order, as applicable.

3.23.2.2 Time Period: The date of beginning and the time for completion as specified herein are reasonable and ESSENTIAL CONDITIONS of this Contract, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality. Further, time is of the essence of each and every portion of this Contract for which a definite length of time is fixed, and where under

the Contract additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract.

3.23.2.3 Diligent Work: The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified.

3.23.2.4 Delay Consideration: If the Contractor notifies VIA in writing within ten (10) calendar days from the beginning of a delay specified in the section entitled, "Eligible Delays," below, and if VIA (within its sole discretion) after ascertaining the facts and considering them, notifies the Contractor of VIA's determination regarding the cause and extent of any acceptable delay, then to that extent the Contractor shall not be charged with liquidated damages or any excess cost.

3.23.2.5 Eligible Delays: The Contractor may request VIA to waive delays under the section entitled, "Delay Consideration," above, when the delay in completion of the work is due solely:

- (a) To any preference, priority or allocation order duly issued by the Government;
- (b) To unforeseeable cause beyond the control and wholly without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of VIA that a reasonable contractor would not provide for, acts of another contractor in the performance of a contract with VIA if VIA's liquidated and other damages attributable to the delay are paid by the other contractor, injunctions, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and adverse weather conditions;
- (c) To any delays of the Contractors' subcontractors or suppliers occasioned by any of the causes specified above; and
- (d) To causes, not including the fault of the Contractor, for which the Contractor's reasons are acceptable to VIA.

3.23.3 Liquidated Damages:

3.23.3.1 Amount per Day: The Contractor agrees that VIA will be substantially damaged in amounts that will be difficult or impossible to determine if the work is not completed within the time allowed. Therefore, if the Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by VIA, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to VIA Liquidated Damages, at the rate of _____ dollars (**\$0.00**) for every calendar day the contract work is not completed beyond the time specified in the section entitled, "Contract Completion," above, or as amended by Change Order. VIA and Contractor agree that the liquidated damages rate is reasonable and that the payment by Contractor of liquidated damages is in lieu of actual damages for such failure to complete the work and not as a penalty. In consideration thereof, Contractor waives any defense as to the validity of any liquidated damages agreed to herein as they may appear on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages. Further, Contractor agrees that VIA may withhold accrued liquidated damages from final payment.

3.23.3.2 Subsequent Delay: It is further agreed that Contractor's payment of, or agreement to pay, liquidated damages and VIA's acceptance of such payment or acceptance of the agreement to pay liquidated damages for any specific period of delay, as Contractor and VIA may agree, shall in no way affect VIA's rights to terminate the Contract for default for any subsequent delay or to otherwise pursue any available legal remedies and recovery of damages, such rights being expressly reserved.

PART 4
GENERAL SOLICITATION POLICY PROVISIONS

- 4.1 Covenant Against Contingent Fees:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, VIA shall have the right to annul this Contract without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- 4.2 Proposers' Requests and Appeals:**
- 4.2.1 Pre-proposal Approvals:** The Contracting Officer's written approval must be obtained prior to proposal submission for:
- a. any clarification of the specifications; or
 - b. any brand name or product proposed as equal to the one specified, unless the technical specifications explicitly permit approval after award; or
 - c. any sample or engineering detail which the technical specifications required to be submitted before proposing, including substitution of any required proposal or contract form; or
 - d. any modification to the specifications which the Proposer maintains are restrictive and which the Proposer proposes be altered, amended or changed.
- 4.2.2 Submission:** Submissions under Section 4.2.2, Pre-proposal Approvals, must be in writing and received by the Contracting Officer no later than the date specified in Section 1.3.4, Requests for Clarification and/or Modifications, of the Request for Proposal; and
- a. supported by evidence such as technical data, test results, and/or other pertinent information that demonstrates that the substitute offered is equal to or better than the specification requirement; or
 - b. in the instance of submission of a request for modification of the specifications, must contain a draft of the recommended language relating to the specification(s) which is/are proposed to be altered, amended or changed.
- 4.2.3 Appeal:** Any appeal of the Contracting Officer's determination in response to a request for pre-proposal approval must be submitted in writing and received by the Contracting Officer within seven (7) working days of the date issuance of the Contracting Officer's determination.
- 4.2.4 Final Ruling:** After receipt of an appeal, if any, a final ruling will be issued by the Contracting Officer and provided contemporaneously to all Proposers. Proposers may protest a final ruling under Section 4.2, Proposers' Requests, as provided in Section 4.7, Protest Procedures.
- 4.2.5 Withdrawal:** Proposers may withdraw a request or an appeal at any time prior to the Contracting Officer's issuance of a final ruling. There will be no further review by the Contracting Officer of a request or an appeal after a final ruling is issued.
- 4.2.6 Denial:** Any pre-proposal request for approval is denied unless such request is approved by the Contracting Officer in writing prior to proposal submission.
- 4.3 Non-collusive Affidavit:** The Contractor represents and warrants that its proposal is genuine and not sham or collusive or made in the interest or in behalf of any person not therein named, and that the Contractor has not, directly or indirectly, induced or solicited any other person to submit a sham proposal, or any other

person, firm, or corporation to refrain from submitting a proposal, and that the Contractor has not in any manner sought by collusion to secure itself an advantage over any other proposer.

4.4 Penalty for Collusion: If at any time it shall be found that the person, firm, or corporation to whom a contract has been awarded has, in presenting any proposal, colluded with any other party or parties, then the contract so awarded shall be voidable by VIA; and the Contractor shall be liable to VIA for all loss or damage which VIA may suffer thereby.

4.5 Covenant Against Gratuities: The Contractor warrants that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any official or employee of VIA with a view toward securing favorable treatment in the awarding, amending, or evaluating performance of this Contract. For breach of this warranty, VIA shall have the right to annul this Contract without liability and/or employ any other remedy it may have at law.

4.5.1 Local Government Code 176.006:

Any person who seeks to contract for the sale or purchase of property, goods or services with VIA shall file a completed conflict of interest questionnaire promulgated by the Texas Ethics Commission as required by the law (See Part 9, Forms).

4.6 Code of Ethics: On July 11, 1995, the VIA Board of Trustees adopted a *Code of Ethics and Conduct Related to Business Transactions*, establishing general standards of ethical conduct for VIA employees, Board members, Contractors and vendors. Contractor agrees to and warrants that it will comply and has complied with the *Code of Ethics and Conduct Related to Business Transactions* and any amendments thereto. For breach of this warranty, VIA shall have the right to annul this Contract without liability and/or employ any other remedy it may have at law. Upon request, a copy of the *Code of Ethics and Code of Conduct Related to Business Transactions* shall be made available to Contractors.

Vendors and Contractors shall pay particular attention to Section IV.C. of the *Code of Ethics and Code of Conduct Related to Business Transactions* (as amended) which prohibits any business contracting or attempting to contract with VIA from communicating with a Board member or VIA employee (other than VIA's Contracting Officer designated for this procurement in the Contract or an individual designated in writing by the Contracting Officer) regarding details of a procurement or other contract opportunity or extension or change to an existing contract.

4.7 Procurement Protest Procedure:

4.7.1 Protest: In the event VIA receives a protest according to the terms referenced herein, specifically 4.7.2. Timeliness, VIA will suspend the procurement process until the protest is resolved. A protest, if any, shall be in writing, received within the time limits set forth below (see "Timeliness") and shall be supported by sufficient information to enable the protest to be considered. Protests containing mere allegations or unsubstantiated expressions of suspicion without actual evidence to support the claim may be considered by VIA to be insufficiently supported. Protests (if any) must be submitted to VIA's Contracting Officer for referral to VIA's Chief Audit Officer, who will determine whether the protest is timely and otherwise meets the minimum requirements of this section and, if so, will transmit the protest for consideration by VIA's Protest Committee. If a protest is deemed by the Chief Audit Officer or the Protest Committee to be insufficient, the protester will be notified. A determination of insufficiency is final and may not be appealed; however, the protest deficiencies may be corrected, and the protest re-filed, provided the protest is re-filed in a timely manner (see, "Timeliness," below) and no additional time shall be allowed without good cause shown (such determination to be in VIA's sole discretion). Protests shall (at a minimum) include the following information:

(a) name, address, and fax and telephone numbers of the protester;

(b) solicitation or contract number;

(c) detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester;

- (d) copies of relevant documents;
- (e) statement as to the form of relief requested;
- (f) all information establishing that the protester is an interested party for the purpose of filing a protest; and
- (g) all information establishing the timeliness of the protest.

A protest, if any, must be based upon one or more of the following:

- (a) substantial allegations of restrictive procedures, alleged improprieties or other similar situations arising prior to bid opening (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, arising prior to contract award;
- (b) substantial allegations of the issuance of an improper or clearly incorrect final ruling relating to requests for changes to or approval of equals, clarifications and modifications of the specifications; or
- (c) substantial allegations of an improper award of contract or alleged impropriety arising after bid opening (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, arising after contract award.

4.7.2 Timeliness: To be effective, a protest must be submitted so that it is received by the Contracting Officer by the following deadlines:

- (a) a protest based upon substantial allegations of restrictive procedures, alleged improprieties or other similar situations arising prior to bid opening (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, arising prior to contract award, must be submitted so that it is received by VIA's Contracting Officer no later than seven (7) working days prior to the specified bid opening date (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, no later than seven (7) working days prior to the date of contract award, and may only be protested once;
- (b) a protest based upon substantial allegations establishing the issuance of an improper or clearly incorrect final ruling relating to a request for changes to or approval under the specifications must be submitted so that it is received by VIA's Contracting Officer within seven (7) working days following the issuance of the Contracting Officer's final ruling; and
- (c) a protest of an allegedly improper award of contract or alleged impropriety arising after bid opening (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, arising after the date of contract award, must be submitted so that it is received by VIA's Contracting Officer within seven (7) working days following the earlier of the date (1) on which the Proposer knew, or (2) the date on which a diligent Proposer would have known, of the allegedly improper award or alleged impropriety. Notwithstanding the above, unless allowed by VIA in its sole discretion (upon good cause shown), a protest of an allegedly improper award of contract or alleged impropriety arising after bid opening (in procurements utilizing the Invitations for Bid "IFB" process) or in all other cases, arising after the date of contract award, must be filed within seven (7) days after contract award.

4.7.3 Final Determination: VIA's Protest Committee will use its best efforts to issue, within seven (7) working days of receipt, a final determination of the protest.

4.7.4 Withdrawal: A Proposer may withdraw its protest at any time prior to VIA's Protest Committee issuing a final determination. There will be no further review by VIA of a protest after a final determination is issued.

4.7.5 FTA Review: FTA Review: In accordance with 2 CFR, Part 200.318, General Procurement Standards, VIA alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve VIA of any contractual responsibilities under its contracts. The FTA will not substitute its judgment for that of VIA unless the matter is primarily a Federal concern. Violations of law will be referred to the Local, State, or Federal authority having proper jurisdiction.

- 4.8 Release of Information:** Contractor agrees and understands that access to government records is governed by the Texas Public Information Act more commonly referred to as the Texas Open Records Act (TORA). Any proprietary information, trade secrets or confidential commercial and financial information which a Contractor believes should be exempted from disclosure to a third party **shall be specifically identified and marked as such by Contractor at the time Contractor submits its bid.** Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information is not sufficient to establish confidentiality. **The specific proprietary information, trade secrets or confidential communication and financial information must be clearly identified as such.** Upon request for records from a third party regarding this procurement, VIA will notify, in writing, in the manner required under TORA, the Contractor if and only if the information requested was identified by Contractor, as required under this paragraph. VIA may determine in its sole discretion whether sufficient legal justification exists for withholding the records and whether an opinion should be requested from the Texas Attorney General. **TO THE FULLEST EXTENT ALLOWED BY LAW, CONTRACTOR AGREES TO AND HEREBY DOES IDEMNIFY VIA FOR ITS COSTS ASSOCIATED WITH CONTRACTOR'S REFUSAL TO PRODUCE SUCH IDENTIFIED INFORMATION FOR PURPOSES OF TORA. Further, Contractor agrees to fully cooperate with VIA and to provide VIA full and complete access to any and all records requested under TORA regarding this Contract at no cost to VIA.**
- 4.9 Rejection of Proposals:** VIA reserves the right to reject any and all proposals that are not responsive or unreasonably priced or impose modifying conditions. VIA may reject the proposal of any party who has been determined to be non-responsive in any former contract with VIA. VIA reserves the right to reject any or all proposals, and to waive technical defects as the interest of VIA may require. Each Proposer shall be notified if all proposals are rejected.
- 4.10 Preparation Costs:** All costs related to responding to this procurement solicitation, including (if applicable) the cost of any oral presentations required, shall be the sole responsibility of and shall be borne by each proposer.

PART 5 INSURANCE

- 5.1 General Insurance Requirements:** The Contractor shall purchase and maintain in full force and effect during the entire period of this Contract, including any maintenance period thereof, insurance of the following types and in amounts not less than the amounts stated below. Such insurance shall protect VIA from any and all claims and damages, which may arise out of or result from, Contractors operations whether such operations are performed by Contractor or by its subcontractor or by anyone for whose acts the Contractor may be liable. All costs associated with these insurance coverages are the sole responsibility of the Contractor. The Contractor must adhere to the following requirements:
- 5.1.1 Additional Insured:** The Commercial General Liability and Commercial Automobile Liability policies shall be endorsed to name VIA and its officers, trustees and employees as additional insured regarding Contractor's operations as well as completed operations in performance of this Contract.
- 5.1.2 Waiver of Subrogation:** The Commercial General Liability, Commercial Automobile Liability, Workers' Compensation and Employer's Liability, shall be endorsed to provide a waiver of subrogation in favor of VIA, its officers, trustees, and employees. If Contractor is an approved self-insurer, Contractor will waive all rights of recovery against VIA, its officers, trustees, and employees for any and all claims.
- 5.1.3 Coverage Primary:** Such insurance as is provided herein shall be primary and non-contributing with any other valid and collectible insurance available to VIA. The limits of liability required herein may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies; but, in no event shall the total limits of liability available for any one occurrence or accident be less than the amounts required.
- 5.1.4 No Commencement Without Coverage:** The Contractor shall not commence work under this Contract until all required insurance is obtained and approved by VIA. Approval of the insurance by VIA shall not relieve or decrease the liability of the Contractor hereunder.
- 5.1.5 Certificates:** All required endorsements and completed certificates of insurance evidencing coverage shall be furnished to the VIA Contract Officer prior to commencement of work and within ten (10) calendar days after the date of Notice of Award. All associated correspondences accompanying the requisite Certificates of Insurance shall be directed to the assigned VIA Contract Officer and reflect the VIA project number. All certificates must be issued reflecting VIA Metropolitan Transit as the certificate holder. Certificates and endorsements shall be provided by contractor and anyone involved in the performance of work under this contract by and through contractor (not otherwise included under contractor's coverage), including all subcontractors. All such insurance documents shall be provided by insurance companies authorized to do business in the State of Texas and having a Best's rating of A- (VII) rating or greater, as shown in the most current issue of A.M. Best's Key Rating Guide. Failure to furnish the required certificates of insurance and accompanying endorsements within the time allowed shall not be considered cause for modification of any contractual time limits.
- 5.1.6 No Lapse or Cancellation:** The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse. In the event of cancellation or lapse of insurance, the Contractor shall notify VIA immediately, in writing, by certified or registered mail, return receipt requested. Contractor shall also provide written notification to VIA, within ten (10) days, of any cancellation due to non-payment of premium, notice of expiration, cancellation, nonrenewal or material change in coverage it receives from its insurer. In addition to any other remedies VIA may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, VIA shall have the right to order Contractor to stop work hereunder and/or withhold payment(s) which become due to Contractor until Contractor demonstrates compliance hereof and unless otherwise directed by VIA, shall cease work until evidence of acceptable insurance coverage is supplied to VIA.
- 5.1.7 Breach:** Failure to maintain insurance coverage, as required herein, constitutes a material breach of this Contract.

- 5.1.8 Subcontracts:** Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder, purchase and maintain, during the term of the Contract, the same minimum levels of applicable insurance coverages that are necessary and appropriate for the work performed and as required of Contractor herein. Contractor shall provide to VIA certificates of insurance and endorsements Contractor receives from its subcontractor(s) that name the Contractor and VIA as additional insureds. Contractor shall provide VIA with said certificates and endorsements prior to the commencement of any work by that subcontractor.
- 5.1.9 Responsibility of Payments:** Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.
- 5.1.10 Own Equipment and/or Property:** Contractor and its subcontractors are responsible for all damage to their own equipment or property.
- 5.1.11 Other Obligations:** It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.
- 5.1.12 Review of Insurance Requirements:** VIA reserves the right to review the insurance requirements of this Contract during the effective date of the Contract and at renewal or any extension hereof and to modify insurance coverages and limits when deemed necessary and prudent based upon changes in statutory law, court decisions, or circumstances surrounding this Contract.

5.2 Specific Insurance Requirements:

- 5.2.1 Workers' Compensation Insurance:** Coverage is required for workers' compensation providing Statutory Benefits in accordance with the Workers' Compensation Act of the State of Texas and/or any other state or Federal law as may be applicable to the work being performed under this Contract.
- 5.2.2 Employer's Liability Insurance:** Coverage is required for employer's liability with limits of liability not less than:

\$	<u>500,000</u>	Each Accident
\$	<u>500,000</u>	Policy Limit for Disease
\$	<u>500,000</u>	Each Employee for Disease

- 5.2.3 Commercial General Liability Insurance:** Contractor shall provide commercial general liability insurance covering all operations by or on behalf of the Contractor under this contract resulting in claims for personal injury (including bodily injury and death) and property damage (including loss of use) and for the following where exposure exists and for amounts not less than:

1)	Premises/Operations
2)	Products/Completed Operations
3)	Personal and Advertising Injury
\$	<u>2,000,000</u> General Aggregate
\$	<u>2,000,000</u> Products/Completed Operations Aggregate
\$	<u>1,000,000</u> Personal & Advertising Injury per occurrence
\$	<u>1,000,000</u> Each Occurrence

- 5.2.4 Commercial Automobile Liability Insurance:** Coverage is required for automobile liability, covering all owned/leased, hired, rented, borrowed and non-owned motor vehicles including fuel transports used in connection with the work being performed under the Contract with limits of liability not less than:

\$	<u>1,000,000</u> Combined Single Limit
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5.2.5 Professional Liability: Claims-made coverage to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional service. Said errors and omissions insurance coverage shall be annually renewed for no less than three (3) years following completion of the contract and acceptance of the work by VIA. Coverage including renewals shall have the same retroactive date as the original policy applicable to this Contract.
With limits not less than:

\$	<u>1,000,000</u>	Per Claim
\$	2,000,000	Aggregate

PART 6
BILLING AND PAYMENT

- 6.1 Compensation:** The Contractor shall be reimbursed by VIA for authorized costs incurred in performance of the work under this Contract. Authorized costs shall include Contractor's direct labor, payroll burden, general and administrative, reimbursable expenses and fixed fee based on the prices specifically described in the Best and Final Offer. Detailed records must be maintained to show actual time devoted and costs incurred. The Contractor shall include as part of their invoice a list of all SBE subcontractors and the amounts to be paid to each of the subcontractors from this invoice. This requirement is in accordance with FTA Circular 4716.1.

Errors on the invoice will cause the invoice to be sent to the Contractor to be corrected. The invoice will be checked entirely for accuracy before submittal to VIA. The rate of payments will be according to the schedules included (whether expressly or by reference) in this document. The invoice will be on the Contractor's letterhead and signed by the Chief Financial Officer or designated representative of the company.

Payment will only be made after receipt of a proper invoice. A proper invoice shall include the Contract/Purchase Order number, the date of the invoice, a description of the goods and/or services delivered, and **applicable project numbers**. All invoices must be emailed to acctpayable@viainfo.net or mailed to VIA Metropolitan Transit, Attn: Accts Payable, PO Box 12489, San Antonio, Texas 78212.

After verification, VIA will submit payment to the Contractor within thirty (30) days after receipt of a properly submitted invoice. In the event payment is not made within (30) days, the Contractor shall submit a reminder invoice marked overdue. If the invoice contains an error, the invoice will not be classified as a properly submitted invoice.

Payment by VIA shall be submitted by USPS to the Contractor's mailing address. If the Contractor is unable to receive payment by USPS, then it shall be the responsibility of the Contractor to arrange and compensate for other means of delivery for payment.

The Contractor is to work with VIA personnel to validate the invoice format along with supporting documents prior to providing service.

- 6.2 Prompt Payment:** The Prime Contractor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than ten (10) business days after the Contractor has received payment from VIA. In addition, all retainage amounts must be paid by the Contractor to the Subcontractor no later than thirty (30) business days after the Subcontractor has satisfactorily completed its portion of the work as determined by the Project Manager/Project Engineer. A delay in or postponement of payment to the Subcontractor requires good cause and prior written approval of the SBE Liaison Officer.

If the Contractor fails or refuses to comply with the terms of this Program, as it is set forth in such Contractor's Contract, VIA will issue an order stopping all or part of payment and/or work until satisfactory action has been taken. If the Contractor still fails to comply, VIA may issue a termination for default proceeding.

6.3 Discounts:

6.3.1 Evaluation of Offers: Discounts for early payment shall not be considered in the evaluation of offers, except in the case of a tie bid provided that a minimum of ten (10) days is offered in which to take the discount.

6.3.2 Binding: Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the Contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

6.3.3 Time Computation: Time will be computed, for discount computation purposes, from:

- (a) the date of delivery to and acceptance by VIA; or

- (b) the date a proper invoice is received in the office specified by VIA, if the latter date is later than the date of delivery.

6.3.4 Payment Date: Payment will be deemed to have been made on the date which appears on payment checks.

6.4 Acceptance of Final Payment: The acceptance by the Contractor of final payment shall be and shall operate as a release to VIA of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of VIA and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or the Contractor's Surety or Sureties from any obligation under this Contract or Performance and Payment Bond.

6.5 E-Payables

VIA can offer payment to Contractors through e-payables. The e-payable payment method provides the following advantages to the Contractor:

- Card acceptance offers business development opportunities for suppliers because buyers assign "preferred supplier" status to suppliers that accept cards
- Card acceptance can provide the opportunity to expand into online sales.
- Expedited receipt of cash, improving Days Sales Outstanding
- Reduced check processing costs
- Reduced collection costs associated with lost or misplaced checks
- More efficient handling of exception items
- Remittance data transmitted with payment for more efficient back-end reconciliation
- Paperless

Payments are processed as credit card transactions and standard bank fees will apply. There are no additional fees imposed by users or the issuing bank. Proposers interested in this alternative payment method should contact VIA's Fiscal Management Department at (210) 362-2181 or acctpayable@viainfo.net.

PART 7
FEDERAL PROVISIONS
[THESE PROVISIONS APPLY TO THE EXTENT APPLICABLE]

- 7.1 Fly America Requirements** – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. **The Contractor** shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. **The Contractor** shall include the requirements of this section in all subcontracts that may involve international air transportation.

- 7.2 Reserved**

- 7.3 Charter Bus Requirements** – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, “Charter Service,” 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

- 7.4 School Bus Requirements** – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Pursuant to 49 USC 5323(f) or (g) as amended by MAP-21, 23 USC 133, 23 USC 142, and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles, or facilities. Violations. If a Recipient or any Third-Party Participant that has operated school bus service in violation of FTA’s School Bus laws and regulations, FTA may: (1) Require the Recipient or Third-Party Participant to take such remedial measures as FTA considers appropriate, or (2) Bar the Recipient or Third Party Participant from receiving Federal transit funds.

- 7.5 Reserved**

- 7.6 Reserved**

- 7.7 Energy Conservation** – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

- 7.8 Clean Water** – Applicability – All Contracts and Subcontracts over \$150,000.

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. The Contractor shall report each

violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. The Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

7.9 Reserved

7.10 Reserved

7.11 Lobbying – Applicability - Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - The Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

7.12 Access to Records and Reports– Applicability – As shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), the Contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, the Contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.

3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, the Contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

The Contractor is not required to include these provisions in subcontracts.

7.13 Federal Changes – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract. The Contractor's failure to comply shall constitute a material breach of the contract.

7.14 Bonding Requirements: (Refer to section entitled "Guarantees and Bonds"):

7.15 Clean Air – Applicability – All contracts over \$150,000. 1) The Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. The Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. 2) The Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

7.16 Reserved

7.17 Reserved

7.18 Contract Work Hours & Safety Standards Act – Applicability – Contracts over \$250,000.

(1) Overtime requirements - No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

(4) Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

7.19 No Government Obligation to Third Parties - Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

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

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

7.20 Program Fraud and False or Fraudulent Statements or Related Acts – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

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

(2) If the Contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on the Contractor, to the extent the US Government deems appropriate.

(3) The Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

7.21 Termination. (Refer to the section entitled "Termination of Contract").

7.22 Government-wide Debarment and Suspension (Nonprocurement) – Applicability – Contracts over \$25,000.

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debar, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

7.23 Contracts Involving Federal Privacy Act Requirements – Applicability - When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could

be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

7.24 Civil Rights Requirements— Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

VIA is an Equal Opportunity Employer. As such, VIA agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, VIA agrees to comply with the Requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal Assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

7.24.1 Nondiscrimination: In accordance with 49 U.S.C. § 5332, the Contractor and any subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, disability or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue

7.24.2 Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000(e) *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000(e) note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000(e) note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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, the Contractor agrees to comply with any implementing requirements FTA may issue.

7.24.3 Age: In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

7.24.4 Disabilities: In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

7.25. Breaches and Dispute Resolution – Applicability – All contracts over \$250,000. (Refer to the Section entitled "Breaches and Disputes").

7.26. Patent and Rights Data – Contracts involving experimental, developmental, or research work (\$10,000 or less, except for construction contracts over \$2,000).

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such Certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant VIA intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in an manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such a time as FTA may have either released or approved the release of such data to the public. This restriction on publications, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - a) Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - b) Any rights of copyright purchased by the Contractor using Federal Assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents

of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or otherwise granted to the Federal Government under any patent.
5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

7.27. Transit Employee Protective Provisions – Applicability – Contracts for transit operations except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Public Transportation Employee Protective Arrangements. VIA agrees that 49 U.S.C. § 5333(b) requires employee protective arrangements to be in place as a condition of award of FTA assistance made available or appropriated for FTA programs involving public transportation operations. U.S. DOL recognizes the following categories of arrangements:

(1) U.S. DOL Certification. When its Project involves public transportation operations and is financed with funding made available or appropriated for 49 U.S.C. §§ 5307, 5309, 5312, 5337, or 5339, as amended by Map-21, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a Certification of employee protective arrangements before FTA may provide financial assistance for the Project. Therefore, VIA understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must carry out the Project as provided in its U.S. DOL Certification, which contains the terms and conditions that U.S. DOL has determined to be fair and equitable to protect the interests of any employees affected by the Project, (b) It must comply with 49 U.S.C. § 5333(b), and any future amendments thereto, (c) It will follow the U.S. DOL guidelines, "Guidelines, Section 5333(b), Federal Transit Law," 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (d) It must comply with the terms and conditions of the U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, including: 1 Alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and (e) It must comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement for the Project: 1 The U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, 2 The documents cited in that U.S. DOL certification for the Project, 3 Any alternative comparable arrangements that U.S. DOL has specified for the Project, and 4 Any revisions that U.S. DOL has specified for the Project,

(2) Special Warranty. When its Project involves public transportation operations, and is financed with funding made available or appropriated for 49 U.S.C. § 5311, as amended by Map-21, for former 49 U.S.C. § 5311 in effect in FY 2012, or a previous fiscal year, or for section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, U.S. DOL will provide a Special Warranty for those projects, including projects under the Tribal Transit Program. Therefore, VIA understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must comply with Federal transit laws, specifically 49 U.S.C. § 5333(b), (b) Follow the U.S. DOL guidelines, "Guidelines, Section 5333(b), Federal Transit Law," 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (c) It will comply with the U.S. DOL Special Warranty for its Project that is most current on the date when it executed the Underlying Agreement, and documents cited therein, including: 1 Any alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and (d) It will comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement: 1 The U.S. DOL Special Warranty for its Project, 2 Documents cited in that Special Warranty, 3 Alternative comparable arrangements U.S. DOL specifies for the Project, and 4 Any revisions that U.S. DOL has specified for the Project, and

(3) Special Arrangements for 49 U.S.C. § 5310 Projects. VIA understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not "necessary or appropriate" to apply the conditions of 49 U.S.C. § 5333(b) to Subrecipients participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make the following exceptions: (a) FTA will make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and (b) FTA reserves the right to make other exceptions as it deems appropriate.

7.28. Disadvantaged Business Enterprise (DBE) – Applicability – Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs.

7.28.1 DBE Program: As a condition to financial assistance, VIA has submitted, and the DOT has approved, a Disadvantaged Business Enterprise program ("VIA's DBE Program") which VIA has agreed to perform. VIA's DBE Program is incorporated into this Contract by reference and made a part hereof. Failure of the Contractor to comply with such terms will constitute a breach of contract. A copy of VIA's DBE Program may be obtained from VIA's DBE office.

7.28.2 General Policy: It is the policy of VIA that Disadvantaged Business Enterprises "DBEs" as defined in 49 C.F.R Part 26, shall have the maximum opportunity to participate in the performance of contracts. Consequently, the DBE requirements of 49 C.F.R. Part 26, apply to this Contract. If the Contractor is found to have failed to exert good faith efforts (as defined in 49 C.F.R. 26.5) to meet the DBE contract goal, VIA may declare the Contractor noncompliant and in breach of contract.

7.28.2.1 DBE Obligation: The Contractor agrees to ensure that DBEs as defined in 49 C.F.R. Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts under this Contract. In this regard, The Contractor shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26, and VIA's DBE Program, to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

7.28.2.2 Contractor/Subcontractor Obligation: The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as VIA deems appropriate which may include but not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or;
- 4) Disqualifying the Contractor from future bidding as non-responsible. 49 C.F.R. § 23.13(b).

7.29. Prompt Payment – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime Contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

7.30. Incorporation of Federal Transit Administration (FTA) Terms – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as

stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

7.31. Drug & Alcohol Abuse and Testing – Applicability – Operational service contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The Contractor agrees to comply with the following Federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41 U.S.C. §§ 8103 et seq., and 2 CFR part 182, b. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 USC 5331, as amended by Map-21, 49 CFR part 40, 49 USC chapter 53, 49 CFR Part 655, to the extent applicable.

7.32 Additional Environmental and Resource Conservation Requirements:

7.32.1 Environmental Protection: The Contractor agrees to comply with the requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.; Section 14 of the Federal Transit Act, as amended, 49 U.S.C. app. 1610; the Council on Environmental Quality regulations, 40 CFR Part 1500 et seq.; and the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR Part 771 and 49 CFR Part 622.

7.32.2 Air Pollution: The Contractor agrees to comply with the joint FHWA/FTA regulations, "Air Quality Conformity and Priority Procedures for Use in Federal-Aid Highway and 49 CFR Part 623. The Contractor assures that any facilities or equipment acquired, constructed, or improved as part of the Project are or will be designed and equipped to limit air pollution as provided in accordance with the following EPA regulations: "Control of Air Pollution from Motor Vehicles and Motor Vehicles Engines," 40 CFR Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicles Engines: Certification and Test Procedures," 40 CFR Part 86; and "Fuel Economy of Motor Vehicles," 40 CFR Part 600; in accordance with applicable Federally-approved State Implementation Plan(s) (in particular, the Transportation Control Measures); and in accordance with applicable Federal regulations, directives and other standards.

7.32.3 Historic Preservation: The Contractor agrees to assist the Government to comply with Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, involving historic and archaeological preservation by:

- (a) Consulting the State Historic Preservation Officer on the conduct of investigations, in accordance Properties," 36 CFR Part 800, to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and notifying VIA and the Government (FTA) of the existence of any such properties; and;
- (b) Complying with all Federal requirements to avoid or mitigate adverse effects upon such properties.

7.32.4 Mitigation of Adverse Environmental Effects: Should the performance under this Contract cause adverse environmental effects, the Contractor agrees to take all reasonable steps to minimize such effects pursuant to 49 U.S.C. app. 1610, all other applicable statutes, and the procedures set forth in 23 CFR Part 771 and 49 CFR Part 622. The Contractor agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreements, and statements required by 49 U.S.C. 303) and with any conditions imposed by the Government as part of a finding of no significant impact or a record of decision; all such mitigation measures are incorporated in and made part of this Contract by reference.

7.33 Access Requirements for Individuals with Disabilities: The Contractor agrees to comply with, and assure that any subcontractor, or third party contractor under this Project complies with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.* and 49 U.S.C. 322; section 502(b) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 792(b), (7); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. 1612; and the following regulations and any amendments thereto:

- (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
- (c) U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38;
- (d) Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- (e) DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- (f) General Services Administration regulations, "Construction and Alteration of Public Buildings", "Accommodations for the Disabled" 41 CFR part 101-19;
- (g) Equal Employment Opportunity Commission (EEOCC) "Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- (h) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64 Subpart F;
- (i) FTA regulations, "Transportation for Elderly and Disabled Persons," 49 CFR Part 609;
- (j) Architectural and Transportation Barriers Compliance Board regulations, "Minimum Guidelines and Requirements for Accessible Design," 36 CFR part 1190;
- (k) Architectural and Transportation Barriers Compliance Board regulations, "Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities," 26 CFR Part 1191; and
- (l) Architectural and Transportation Barriers Compliance Board regulations, "Americans With Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles," 36 CFR 1192.

PART 8
SMALL BUSINESS ENTERPRISE PROGRAM

- 8.1 Policy:** VIA Metropolitan Transit's (VIA) Small Business Enterprise (SBE) program is in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. VIA receives Federal financial assistance from the USDOT and as a condition of this assistance, VIA has signed an assurance that it will comply with 49 CFR Part 26. VIA also receives financial assistance from local funding sources, however VIA's SBE Program mirrors our Disadvantage Business Enterprise Program.

It is the policy of VIA to ensure that SBE and/or DBEs, as defined in Part 26, have an equal opportunity to participate in USDOT-assisted contracts. It is also the policy of VIA:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which SBE and/or DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that the SBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as SBE and/or DBEs;
5. To help remove barriers to the participation of SBE and/or DBEs in USDOT-assisted contracts;
6. To assist in the development of firms that can compete successfully in the marketplace outside the SBE program; and
7. To promote the use of SBE and/or DBEs in all types of federal and locally assisted contracts and procurement activities.

8.2 Terms and Definitions:

- a) **Commercially Useful Function (CUF):** An SBE and/or DBE performs a commercially useful function when it is responsible for execution of a distinct element of work of a contract or subcontract and carries out its responsibilities by actually performing, managing, and supervising the work involved.
- b) **Contract:** a legally binding agreement obligating a seller to furnish supplies or services.
 - 1) **Prime contract:** direct agreement with VIA for supplies/services; between VIA and Prime Contractor (hereinafter Contractor).
 - 2) **Subcontract:** agreement between a prime contractor and 1st tier contractors; between Contractor and Subcontractors.
- c) **Disadvantage Business Enterprise or DBE means a for-profit small business enterprise:**
 - 1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
 - 2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- d) **DBE Liaison Officer (DBELO):** individual responsible for implementation of all aspects of VIA's DBE and SBE program, who must have direct, independent access to the Chief Executive Officer concerning DBE and SBE program matters.
- e) **Federally Assisted Contract:** Any contract between VIA and a contractor that is paid for, in-whole or in-part, with USDOT financial assistance.

- f) Goal Credit: The value of SBE participation on a project that qualifies towards the SBE goal.
- g) Good Faith Effort (GFE): A contractor's efforts to achieve an SBE goal by its scope, intensity, and appropriateness to the objective that can reasonably be expected to fulfill the program requirement. Additional information regarding GFE requirements is listed in Part 8.8 of this section.
- h) Manufacturer: a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- i) NAICS Code: The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.
- j) Non-SBE: Any firm that is not a certified SBE.
- k) Office of Diversity and Federal Compliance (ODFC): department within VIA that works with SBE and/or DBEs and assists them in their efforts to participate in contracts with VIA.
- l) Regular Dealer: a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question.
- m) Small Business Enterprise means, with respect to firms seeking to participate as SBEs in DOT-assisted contracts, a small business enterprise as defined pursuant to section 3 of regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in Section 26.65(b).
- n) Socially and Economically Disadvantaged Individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
 - 1) Any individual who a recipient finds to be a socially and economically disadvantage individual on a case-by-case basis.
 - 2) Any individual in the following groups, members of which are refutably presumed to be socially and economically disadvantaged:
 - i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia, Philippines, Brunel, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

- vi. Women;
 - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- o) Texas Unified Certification Program (TUCP): a certification program for the Federal DBE and SBE Programs in Texas. A business' DBE and/or SBE certification received from any of the TUCP members is valid and can be relied upon by any Texas entity that receives USDOT financial assistance. Additionally, a unified certification program is a federal DOT memorandum of agreement for certification services that are performed by all 50 U.S. states' DOT.

8.3 Contractor and Subcontractor Obligations: All Contractors are making a commitment to meet a project's specified SBE goal upon signing a proposal and submitting a bid. It is the Contractor's sole responsibility to assure a project's SBE goal is met in accordance with this contract and all rules and regulations pertaining to VIA's SBE program as required by the USDOT and 49 CFR Part 26.

Contractors must review SBE goals for each project, evaluate contracts and identify items and/or services which may be subcontracted and quantify based on estimated dollar amounts. When practical, Contractors should divide large (scope or quantity) items into smaller subcontracting opportunities, as well as look for second tier subcontracting opportunities and quantify.

8.3.1 Failure to Comply

Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

8.3.2 Time is of the Essence

TIME IS OF THE ESSENCE IN RESPECT TO SBE PROGRAM PROVISIONS.

The Contractor is solely responsible for meeting all deadlines in association with this contract.

8.4 Submission of SBE Forms: All forms must be accurate and complete in every detail and must be signed by an authorized representative of the contractor(s)/consultant(s). Percentages and dollar amounts must be accurate.

The following forms must be submitted in accordance with the policies of the ODFC.

a) Part 9.1.8 Contractor Utilization Plan - Small Business Enterprise

Part 9.1.8 must list all subcontractors (certified SBE and/or DBEs and non-certified) intended to be used and the creditable amounts. The total listed amount, including the Contractor's participation, should equal 100%. All SBE commitment amounts must be finalized between the SBE and/or DBE subcontractor and the Contractor prior to proposal submittal.

b) Part 9.1.9 Intent to Perform for SBE Goal Requirements

Part 9.1.9 must be completed by every SBE and/or DBE listed on Part 9.1.8. This completed form

serves as confirmation that the SBE and/or DBEs identified to participate are available to meet the requirements at the time the contract is executed and that the Contractor assumes responsibility for such.

Contractors are required to use the SBE and/or DBEs identified in Part 9.1.8 and 9.1.9. The listing of an SBE and/or DBE by the Contractor constitutes a representation by the Contractor to VIA that it believes such SBE and/or DBE firm to be technically and financially qualified and available to perform the work. It shall also represent a commitment by the Contractor that if it is awarded the Contract it will enter into a subcontract with such SBE and/or DBE for the work described and at the price set forth in Parts 9.1.8 and 9.1.9 as noted above.

8.5 SBE Goal:

The minimum goal for participation by SBE and/or DBEs on this project is as follows:

7 Percent

The percentage of SBE participation shall be based on the total dollar value of the contract.

Contractors are strongly encouraged to secure and include sufficient SBE and/or DBE firms on their teams for multiple disciplines and work categories to ensure they can meet the SBE goal on the contract and for any Task Order revisions/Contract Modifications that are executed post-award. The contract specific SBE goal requirements extend to additional dollars added by Task Order revisions/Contract Modifications to help ensure that the overall SBE goal is met on the contract and/or the Task Order. Once proposers are notified of the SBE goal, they are required to meet the contract specific and/or Task Order specific goal(s).

8.6 Credit Applied to Goals:

- a) To count toward meeting the contract specific SBE goal, the SBE and/or DBE firms must be certified at the time of proposal submission in each NAICS code applicable to the kind of work the firm will perform on the contract.

NAICS for each SBE and/or DBE can be found within the VIA web portal <https://via.diversitycompliance.com>. General descriptions of all NAICS codes can be found at <http://www.naics.com/search/>.

- b) Credit towards the Contractor's goal is based on actual payments to SBE and/or DBE firms for the work performed.
- c) Only payments to SBE and/or DBEs that perform a CUF will be counted towards a contract specific goal. When performing a CUF, the SBE and/or DBE is also responsible, with respect to materials and supplies used on the Contract, for negotiation price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

An SBE and/or DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SBE participation.

If an SBE and/or DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the SBE and/or DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is not performing a CUF.

The entire amount of a contract that is performed by the SBE and/or DBE's own forces, including the cost of supplies and materials purchased by the SBE and/or DBE for the work on the contract and equipment leased by the SBE and/or DBE will be credited towards SBE participation.

Supplies and equipment the SBE and/or DBE subcontractor purchases or leases from the prime

contractor or its affiliates will not be credited toward SBE participation.

- d) The Contractor bears the responsibility to determine whether the SBE and/or DBE possesses the proper contractor's license(s) to perform the work, and if SBE credit is requested, that the SBE and/or DBE subcontractor is certified for the requested type of work
- e) When an SBE and/or DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards the SBE goal only if the SBE and/or DBE's subcontractor is a certified SBE and/or DBE and performs the work with its own forces. Work that an SBE and/or DBE subcontracts to a non-SBE and/or DBE firm does not count toward an SBE goal.

8.7 Documented Good Faith Efforts: If the selected Contractor has indicated in its submittal that it will be unable to meet the contract specific SBE goal, that Contractor must demonstrate, through detailed and comprehensive documentation, that good faith efforts have been made to solicit, assist, and use SBE and/or DBE firms to meet the SBE goal prior to submission of the proposal.

Failure to demonstrate Good Faith Efforts (GFE) to the satisfaction of the ODFC will result in a non-responsive proposal.

The selected Contractor who cannot meet the SBE goal at the time the proposal is due must submit its documentation of GFE to VIA with the price proposal. Negotiations will be finalized after the required GFE forms and documentation are received and approved.

The documentation of GFE must include copies of each SBE and/or DBE and non-SBE and/or DBE subcontractor quotes submitted to the proposer when a non-SBE and/or DBE subcontractor was selected over an SBE and/or DBE for work on the contract. A generalized assertion that the Contractor received multiple quotes is not sufficient unless copies of those quotes are provided.

Contractors are encouraged to review Appendix A of 49 CFR Part 26 – Guidance Concerning Good Faith Efforts.

Additional recommendations for best practices when exercising GFE can be found in the Informational Reference included with the form Part 9.1.10 Documentation of Good Faith Efforts – SBE Goal. The information provided in Part 9.1.10 does not replace the specification given in this section; Contractors must still comply with the requirements of this specification.

In order to be awarded a contract on the basis of GFE, a contractor must show that it took all necessary and reasonable steps to achieve the SBE goal, which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient SBE and/or DBE participation, even if they were not fully successful. The ODFC will consider the quality, quantity, and intensity of the different kinds of efforts the contractor has made. The efforts employed by the contractor should be those that one could reasonably expect a contractor to make if the contractor were actively and aggressively trying to obtain SBE participation sufficient to meet the SBE goal. Mere pro forma efforts are not sufficient good faith efforts to meet the SBE contract requirements.

The contractor shall, as a minimum, seek SBE and/or DBEs in the same geographic area in which it generally seeks subcontractors for a given project. If the contractor cannot meet the goals using SBE and/or DBEs from this geographic area, the contractor, as part of its effort to meet the goals, shall expand its search to a reasonably wider geographic area.

The following is a list of types of efforts a contractor must address when submitting good faith effort documentation.

- (1) Conducting market research to identify small business contractors and suppliers, and soliciting, through all reasonable and available means, the interest of all certified SBE and/or DBEs who have the capability to perform the work of the contract. This may include attendance at pre-proposal meetings and business matchmaking meetings and events, advertising and/or providing written notices, posting of "Notices of Sources Sought" and/or "Requests for Proposals" at reasonable locations, including the

contractor's website, written notices or emails to all SBE and/or DBEs listed in the VIA's directory of registered vendors that specialize in areas of work desired (as noted in the SBE directory) and which are located in the area or surrounding areas of the project. The Contractor should solicit this interest as early in the acquisition process as practicable to allow SBE and/or DBEs to respond to the solicitation and submit a timely offer for the subcontract. The Contractor should determine with certainty if SBE and/or DBEs are interested by taking appropriate steps to follow-up initial solicitations.

- (2) Selecting portions of the work to be performed by SBE and/or DBEs in order to increase the likelihood that the SBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example smaller tasks or quantities) to facilitate SBE and/or DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible time frames for performance and delivery schedules in a manner that encourages and facilitates SBE and/or DBE participation.
- (3) Providing interested SBE and/or DBEs with adequate information about project's scope of work, plans, specifications, and requirements of the project in a timely manner to assist them in responding to a solicitation with their offer for a subcontract.
- (4) Negotiating in good faith with interested SBE and/or DBEs. It is the Prime Contractor's responsibility to make a portion of the work available to the SBE and/or DBE subcontractors and suppliers, and to select those portions of work or material needs consistent with the available SBE and/or DBE subcontractors and suppliers, so as to facilitate SBE and/or DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of SBE and/or DBEs that were considered; a description of the information provided from the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for SBE and/or DBEs to perform work.

Pro forma mailings to SBE and/or DBEs requesting proposals are not alone sufficient to constitute good faith negotiation.

A Contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including SBE and/or DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using SBE and/or DBEs is not in itself sufficient reason for a Contractor's failure to meet the SBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the Contractor of the responsibility to make good faith efforts. However, prime contractors are not required to accept higher quotes from SBE and/or DBEs if the price difference is excessive or unreasonable. Documentation, such as copies of all other proposals or quotes, must be submitted.

Another practice considered insufficient good faith effort is the rejection of the SBE and/or DBE because its quotation for the work was not the lowest received. The contractor must submit copies of each SBE and/or DBE and non-certified subcontractor quote submitted to the Contractor when a non-certified subcontractor was selected over an SBE and/or DBE for work on the contract. The ODFC will contact rejected SBE and/or DBEs as part of its investigation. However, nothing in this paragraph shall be construed to require the Contractor to accept unreasonable quotes in order to satisfy contract goals.

- (5) Not rejecting SBE and/or DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the contractor's efforts to meet the project goal. Contractor must submit documentation of past performance and with input from the VIA Project Manager/Project Engineer, contractor's qualifications are then reviewed for acceptance and approval.
- (6) Making efforts to assist interested SBE and/or DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- (7) Making efforts to assist interested SBE and/or DBEs in obtaining necessary equipment, supplies,

materials, or related assistance or services.

- (8) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of SBE and/or DBEs.

In determining whether a Contractor has made good faith efforts, the ODFC will review the documented efforts of the Contractor and will review the performance of other Contractors in meeting the contract specific goal.

A promise to use SBE and/or DBEs after being awarded a contract is not considered to be responsive to the contract solicitation nor does it constitute good faith efforts.

The ODFC will evaluate the submittal to determine whether in fact good faith efforts have been demonstrated consistent with the specifications and the Federal regulations, 49 CFR 26, Appendix A.

8.8 Certification of SBEs:

- a) VIA is a participating entity under the Texas Unified Certification Program (TUCP). This means that VIA will accept certifications from any of the certifying agencies that have agreed to perform the certification of SBE and/or DBEs within the state of Texas under the Texas Unified Certification Program (TUCP). The participating agencies are:

- **Texas Department of Transportation**
- **North Central Texas Regional Certification Agency**
- **South Central Texas Regional Certification Agency**
- **City of Houston**
- **City of Austin, and**
- **Corpus Christi Regional Transportation Authority.**

Additionally, a unified certification program is a federal DOT memorandum of agreement for certification services that are performed by all 50 U.S. states' DOT.

- b) The South Central Texas Regional Certification Agency (SCTRCA) will serve as the certifying agency for the San Antonio region, which includes Bexar County. All prospective SBE and/or DBEs must submit appropriate forms, available through the SCTRCA, to prove actual ownership and control by SBE and/or DBEs. All such firms shall cooperate in supplying additional information as requested by SCTRCA staff, which will determine the certification of eligible SBE and/or DBEs. Blank forms may be obtained on the SCTRCA website: <https://sctrca.org/disadvantage-business-enterprise-certifications> or by contacting the SCTRCA at (210) 227-4722. Vendors may also contact the ODFC at (210) 362-2071 to obtain information.
- c) Information concerning certified SBE and/or DBEs can be obtained by contacting the VIA Office of Diversity and Federal Compliance or by accessing the SCTRCA certified vendor directory at <https://sctrca.org>. Only certified SBE and/or DBEs may be counted for credit towards the goal. **If Contractor proposes using a subcontractor not currently certified, the SBE and/or DBE Application must be approved by the date and time established for the receipt of this proposal.** Any extensions to the due date by amendment to the solicitation shall automatically extend the due date of the application.

Certification of an SBE and/or DBE is not a representation of qualifications and/or abilities nor does it mean that an SBE and/or DBE firm is guaranteed or entitled to receive or be awarded a contract. Being certified simply means that a firm has met the criteria for SBE and/or DBE certification as outlined in 49 CFR Part 26. The contractor bears all risks of ensuring that SBE and/or DBE firms selected by the contractor are able to perform the work.

- 8.9 **SBE and/or DBE Modification or Substitution:** In the event that an Offeror wishes to modify its Schedule of Participation (SOP) after its offer is submitted and/or a Contract awarded, the Offeror/Contractor must notify VIA in writing and request approval of the modification. This will include any changes to items of work,

material, services or SBE and/or DBE firms which differ from those identified on the Schedule of Participation on file. The Offeror/Contractor must cooperate in supplying VIA with additional information with respect to the requested modification. If the modification involves a substitution and if it is approved by VIA's DBELO, the Offeror/Contractor must make every good faith effort to replace the SBE and/or DBE with another comparable and certified SBE and/or DBE. In the event that the Offeror/Contractor is unable to contract with another SBE and/or DBE, such good faith efforts must be documented to the ODFC. The substitute SBE and/or DBE firm must be confirmed as certified by VIA in order for the Offeror/Contractor to receive credit towards the contract specific SBE goal.

8.10 Contract Compliance Tracking: This contract is subject to contract compliance tracking, and the contractor and any subcontractors are required to provide any noted and/or requested contract compliance-related data electronically in the VIA Vendor Web-Portal and Contract Compliance Reporting System. The web address is <https://via.diversitycompliance.com/>.

The contractor and all subcontractors are responsible for responding in accordance with all response or due date(s) in regard to any instructions or request(s) for information, and to check the VIA Web-Portal on a regular basis to manage contact information and contract records.

The contractor is solely responsible for ensuring all subcontractors have completed all requested items and that their contact information is accurate and up to date.

VIA may require additional information related to the contract at any time before, during, or after contract award. Information related to contractor access of the system will be provided to a designated point of contact with each contractor upon award of the contract.

8.11 Prompt Payment Policy: The Prime Contractor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than ten (10) business days after the Contractor has received payment from VIA. In addition, all retainage amounts must be paid by the Contractor to the Subcontractor no later than thirty (30) business days after the Subcontractor has satisfactorily completed its portion of the work as determined by the Project Manager/Project Engineer. A delay in or postponement of payment to the Subcontractor requires good cause and prior written approval of the DBE Liaison Officer.

If the Prime Contractor fails or refuses to comply with the terms of this policy, as set forth in Part 8.11.1 and Part 8.11.2 below, VIA will issue an order stopping all or part of payment and/or work until satisfactory action has been taken. If the contractor still fails to comply, VIA may issue a termination for default proceeding.

8.11.1 Prompt Payment Verification Process:

Once a contract is awarded to a Prime Contractor, the following steps are taken to ensure prompt payments are made to Subcontractors:

1. Finance sends email to Diversity Compliance System Administrator (DCSA) when check is released every Wednesday and Friday.
2. DBELO or DCSA proactively monitors Prime Contractors to ensure that Subcontractors are paid within the ten (10) day period. If Prime Contractor has not met prompt payments to subcontractor within seven (7) days, the DCSA notifies the Prime Contractor with a phone call or email reminding them that the ten (day) window is nearing.
3. DCSA conducts payment verifications every Thursday and Monday morning to start a seven (7) day follow-up with Prime Contractors. This step enables the ODFC staff to monitor payments to Subcontractors and alert the Prime Contractor before the ten (10) daytime frame expires.
4. If Prime Contractors are not in compliance with their contractual obligations, enforcement actions are initiated by the DBELO. Enforcement actions are any remedies permitted under law which include but are not limited to:

- a. DBELO facilitates meeting between Prime Contractor, Subcontractor, Project Manager and Contract Specialist for dispute resolution.
 - b. Paying the Subcontractor directly and deducting the amount from the Prime Contractor's retainage
 - c. If Subcontractor is not comfortable contacting the Prime Contractor directly, Subcontractor should contact DBELO to initiate prompt payment complaint.
 - d. If filing a prompt payment complaint does not result in timely and meaningful action by VIA, affected Subcontractor may elevate the complaint to Federal Transit Administration
 - e. Withholding of payment
 - f. Contract cancellation
 - g. Contract debarment
5. Once payments are verified through various communication efforts (i.e. phone calls, emails and discussions with subcontractors) a prompt payment report is generated for DBELO review. The DBELO will take corrective action and share findings with the Executive Management Team (EMT).

8.11.2 Payment Reporting:

Contractors are required to Report Payments into VIA's Contract Compliance Reporting System as follows:

1. Procurement's Document Management Administrator enters payments to Prime Contractors every 5th of each month, including check number or wire transfer confirmation, date paid and amount.
2. Prime Contractors acknowledges payment from VIA and enters payments to all subcontractors and suppliers within ten (10) days to acknowledge payment and enter subcontractor payments including check number or wire transfer confirmation, date paid and amount.
3. Subcontractors and suppliers must acknowledge receipt of payment (within ten (10) days to acknowledge payment receipt from Prime) or rejects it.
 - a. If Subcontractor rejects payment, Prime Contractor and Subcontractor is notified via email of discrepancy to resolve.
 - b. If discrepancy still cannot be clarified a notice via email is sent to DCSA to assist in discrepancy solution.
4. DCSA checks progression on a weekly basis to track and monitor monthly compliance audits until they are marked complete.
5. During the term of annual contracts, the Contractor shall submit regular "Status Reports of SBE Subcontract Payments" in VIA's Contract Compliance Reporting System. The Offeror's first "Status Report of SBE Subcontract Payments" will be due sixty (60) days after the date of contract award, with additional reports due monthly thereafter.

8.12 SBE and/or DBE Financial Institutions: The Contractor is strongly encouraged to research and utilize the services of disadvantaged, minority and woman-owned banks and financial institutions.

VIA strongly encourages contractors to research the Federal Reserve Board website at www.federalreserve.gov to identify minority-owned banks in Texas. Depository institutions that participate in the FDIC's Minority Depository Institutions Program have been added in addition to depository institutions defined by the Treasury. The data come from the Board's National Information Center database and is generally released about twelve weeks after the end of each quarter.

- 8.13 Sanctions for Non-Compliance with SBE Program Provisions:** If the ODFC determines that the consultant has not met the SBE goal at the end of the contract, the ODFC at its discretion, may assess liquidated damages up to two times the amount of the unattained portion of the original SBE goal, based on the circumstances of the noncompliance. Not meeting the SBE goal will also be reflected in the consultant evaluation.

When evaluating if the consultant has met the overall SBE goal for the contract, the ODFC will evaluate the size, amount and scope of Task Orders/Contract Modifications, contractor's efforts to exceed the SBE goal on larger Task Orders/Contract Modification with subcontracting opportunities, approved Good Faith Efforts for Task Orders/Contract Modification, and other factors.

In determining whether liquidated damages will be assessed and the amount of the liquidated damages, the ODFC will consider whether there have been other violations on this or other contracts, whether the failure was due to circumstances beyond the control of the contractor, whether the contractor has made Good Faith Efforts to meet the goal, and other appropriate circumstances.

In addition to any other sanctions, willful failure of the contractor, SBE and/or DBE or other subcontractor to comply with this contract or with the Federal DBE regulations may result in disqualification from further contracting, subcontracting, or other participation in VIA projects.

- 8.14 False, Fraudulent, or Dishonest Conduct:** In addition to any other remedies or actions, VIA will bring to the attention of the US Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the SBE program, so that USDOT can take steps such as referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General for possible initiation of suspension and debarment proceedings against the offending parties or application of "Program Fraud and Civil Penalties" rules provided in 49 CFR Part 31.

PART 9 FORMS

9.1 Forms to be Submitted with Proposal:

9.1.1 Offer and Certifications Form:

The undersigned Proposer/offeror having read and examined the Procurement (see section entitled "Definitions") documents, and which will ultimately comprise the Contract for the above designated Work, and thoroughly familiarized himself/herself with the factors which will affect the execution of the Work and the cost thereof, does hereby offer to furnish all materials and labor to complete the work set forth in this offer. All prices stated herein are firm and shall not be subject to escalation provided this offer is accepted within one hundred twenty (120) days after the official opening of the proposal.

Furthermore, the undersigned hereby declares that he has thoroughly reviewed all the Procurement documents (which will ultimately comprise the Contract) and has found no discrepancies with the information or accuracy of the documents that might affect either the cost or the time of the work.

The following certifications are made in connection with the proposal/offer and the performance of the Contract (the references to "Proposer/offeror" shall also mean and apply to "Contractor" upon acceptance of the Proposal/offer):

9.1.1.1 Good Faith Offer:

The Proposer/offeror hereby declares that only the persons or firms interested in the offer as principal or principals are named herein and that no other persons or firms then herein mentioned have any interest in this offer or in the contract to be entered into; that this offer is made without connection with any other person, company, or parties likewise submitting a proposal or offer; and that it is in all respects for and in good faith.

9.1.1.2 Contractor Compliance with VIA's Drug/Alcohol-Free Workplace Policy:

The Proposer/offeror certifies that it will comply with VIA's Policies and Procedures for maintaining a drug and alcohol-free work environment, the essence of which is as follows:

1. While operating as a contractor or subcontractor performing work on VIA's premises, neither the Proposer/offeror or its subcontractor(s) will engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conduct of any contracting activity paid for by VIA. (Authority -- 49CFR 29.600 Subpart F)
2. At its sole option, VIA may elect to subject Contractor and/or subcontractor personnel to random testing for the presence of controlled substances when such employees are performing safety sensitive work on VIA's premises. (A copy of VIA's Drug and Alcohol Policy is available upon request.) (Authority -- 49CFR 40.1)
3. Upon determination of one or more confirmed instances of the presence of a controlled substance involving Contractor or subcontractor personnel, VIA may elect to take punitive action against Contractor including, but not limited to Termination for Default.

9.1.1.3 Affidavit of Non-Collusion:

The Proposer/Offeror certifies that:

The attached Proposal/Offer has been arrived at by the proposer independently, and has been submitted without collusion with, and without agreement, understanding, or planned common course of action with, any other vendor of materials, supplies, equipment, services described in the Procurement documents, designed to limit independent bidding or competition; and the contents of the Proposal/offer have not been communicated by the proposer or its employees or agents, to any person not an employee or agent of the Proposer/offeror or its surety on any bond furnished with the Proposal/offer, and will not be communicated to any such person prior to the official opening of the bid or consideration of the proposal.

9.1.1.4 Certification of Restrictions on Lobbying:

The Proposer/offeror certifies that:

1. No Federally appropriated funds have been or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions (as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1431 (1/19/96).
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed for making or entering into this transaction imposed by 31 U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

THE PROPOSER/OFFEROR CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE PROPOSER/OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. 3801 ET. SEQ., APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

9.1.1.5 Proposal/offer:

By execution below, the Proposer/offeror agrees to faithfully and diligently complete the work as proposed herein, and as specified in VIA's Procurement documents including those described in the section entitled "Contract" under Part 2, "Scope of Work, Terms and Conditions." Proposer/offeror understands and agrees that by execution below, it is offering to be bound by the terms contained or referenced in the section entitled "Contract" under Part 2, "Scope of Work, Terms and Conditions" and that, in the event VIA accepts this offer, such documents will form and constitute a legally binding contract.

By execution below, Proposer/offeror provides all the certifications and assurances described in this Proposal/offer, and further certifies that all information provided or otherwise contained in its response to VIA's Procurement Solicitation is true and correct, including but not limited to the information contained in the following forms:

Acknowledgment of Addenda

List of Similar Contracts/References

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Business Questionnaire

Conflict of Interest Questionnaire

Certificate of Interested Parties (Form 1295)

Contractor Utilization Plan – Disadvantaged Business Enterprise (SBE)

Intent to Perform for SBE Goal Requirement

Documentation of Good Faith Efforts – SBE Goal

VIA's Declaration of Agency Sustainability

Signed this ____ day of _____, 20____.

PROPOSED CONTRACTOR (Proposer/offeror)

(Name should be the same as the response to question #1 "Business Questionnaire").

(individual or officer authorized to sign on behalf of
Proposer/offeror)

(title, or legal capacity - attach power of attorney, if any)

ATTEST: (if Proposer/offeror is a corporate entity)

By _____ [Affix CORPORATE SEAL here]

(Title - usually, "corporate secretary")

ACKNOWLEDGED, SWORN TO and SUBSCRIBED before me, the undersigned authority, on this
____ day of _____, 20____, to certify which, witness my hand and seal of office.

Notary Public

AWARDED, executed and effective this ____ day of _____, 20____.

VIA Metropolitan Transit

By: _____

9.1.2 ACKNOWLEDGMENT OF ADDENDA

The undersigned acknowledges receipt of the following addenda to the Bidding Documents:

ADDENDUM NO. _____, DATED _____

ADDENDUM NO. _____, DATED _____

ADDENDUM NO. _____, DATED _____

ADDENDUM NO. _____, DATED _____

ADDENDUM NO. _____, DATED _____

NOTE: Failure to acknowledge receipt of all addenda may cause the proposal to be considered nonresponsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the proposal.

Name of Firm

Signature of Authorized Person

Address

Print Name

City State Zip Code

Position and/or Title

Type of Entity

Date

9.1.3 LIST OF SIMILAR CONTRACTS/REFERENCES (All Formal Solicitations)

1. Project:
Contact Person:
Company Name:
Telephone Number:
Fax Number:
E-mail Address:

2. Project:
Contact Person:
Company Name:
Telephone Number:
Fax Number:
E-mail Address:

3. Project:
Contact Person:
Company Name:
Telephone Number:
Fax Number:
E-mail Address:

4. Project:
Contact Person:
Company Name:
Telephone Number:
Fax Number:
E-mail Address:

Name of Firm

Signature of Authorized Person

Address

Print Name

City State Zip Code

Position and/or Title

Type of Entity

Date

**9.1.4 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION
(Pursuant to 49 CFR Part 29, Appendix B) (All Solicitations Valued at \$25,000 and above)**

1. By signing and submitting this proposal, the Proposer is providing the signed certification set out below.
2. The certification referred to in this paragraph clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, VIA may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to VIA if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "*covered transaction*," "*debarred*," "*suspended*," "*ineligible*," "*lower tier covered participant*," "*persons*," "*lower tier covered transaction*," "*principal*," "*proposal*," and "*voluntarily excluded*," as used in this paragraph, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 49 CFR Part 29. You may contact VIA for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by VIA.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and all solicitations for lower-tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under subparagraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, VIA may pursue available remedies including suspension and/or debarment.

CERTIFICATION

The prospective lower tier participant certifies, by submission of this offer, that neither it nor its "principals," [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

When the prospective lower tier participant is unable to certify to the statements in this certification, prospective lower tier participant shall attach an explanation to this proposal.

Signature _____

Typed or Printed Name _____

Title _____

Company _____

Date _____

BUSINESS QUESTIONNAIRE:
(For Solicitations Valued at \$5,000 and above)

This questionnaire must be submitted for all potential Contractors and subcontractors listed on the Schedule of Participation.

1. Name of Proposed Contractor ("Business", herein): _____

Doing Business As: _____

Other business name, if applicable)

EIN# _____ DUNS# _____

2. Business Mailing Address: _____

Street Address

City

State

Zip Code

3. Business Telephone Number: () _____ Fax Number: () _____

E-mail address: _____

4. Business Type: ☐ Individual ☐ Corporation ☐ Partnership ☐ Joint Venture

5. Number of Years in Business: _____

6. Annual Gross Revenue: (M represents Millions)

☐ \$1M or less ☐ \$1M-\$5M ☐ \$5M-\$10M ☐ \$10M-\$16M ☐ \$16M or Over

7. Number of Employees:

☐ Less than 50 ☐ 50-100* ☐ 101-750 ☐ 751-1,000 ☐ 1,001 or over

8. Is Business Owned by Minority Ethnicity? ☐ Yes ☐ No

9. Ethnic Group: ☐ African American ☐ Hispanic American ☐ Native American
☐ Asian Pacific American ☐ Subcontinent Asian American ☐ Caucasian
☐ Other (Please Specify) _____

10. Female Owned Business? ☐ Male Owned Business? ☐

11. Type of Work Performed: ☐ Construction ☐ Wholesale/Distributor ☐ Manufacturing
☐ Professional Service ☐ General/Technical Service ☐ Retail

12. Please provide a brief description of your materials and/or services:

13. Is the Business a subsidiary of another entity? ☐ Yes ☐ No

14. Has the Business, or any officer or partner thereof, failed to complete a contract? ☐ Yes ☐ No

15. Is any litigation pending against the Business? ☐ Yes ☐ No

16. Has the Business ever been declared "not responsible"? ☐ Yes ☐ No

17. Has the Business been debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded or otherwise disqualified from bidding, proposing or contracting? ☐ Yes ☐ No

18. Has the Business been a defaulter, as principal, surety or otherwise? ☐ Yes ☐ No

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19. Has the government or other public entity requested or required enforcement of any of its rights under a surety agreement on the basis of a default or in lieu of declaring the Business in default? ☐Yes ☐No
20. Is the Business in arrears upon a contract or debt? ☐Yes ☐No
21. Are there any proceedings pending relating to the Business' responsibility, debarment, suspension, voluntary exclusion or qualification to receive a public contract? ☐Yes ☐No
22. Have liquidated damages or penalty provisions been assessed against the Business for failure to complete the work on time or for any other reason? ☐Yes ☐No
23. If a "yes" response is given under questions 14 through 23, please provide a detailed explanation including dates, references to contract information, contacts, etc. (attach additional pages as necessary). VIA reserves the right to inquire further with respect thereto.
24. List the name and business address of each person or legal entity that has a 10% or more ownership or control interest in the Business (attach additional pages as necessary).
- _____
25. Name of principal financial institution for financial responsibility reference.
- Name of Bank: _____
- Address: _____
- City and State: _____
- Officer familiar with proposers account: _____
- Federal Taxpayer I.D. number: _____
26. Please indicate all current certifications held by your business:
- _____DBE _____SBE
27. How were you notified of this solicitation? (Check all that apply—your response to this will help improve our outreach efforts.)
- | | | |
|--------------------------------------|---|---|
| <input type="checkbox"/> Newspaper | <input type="checkbox"/> VIA Website | <input type="checkbox"/> TX Marketplace |
| <input type="checkbox"/> Direct Mail | <input type="checkbox"/> E-mail | <input type="checkbox"/> VIA Outreach |
| <input type="checkbox"/> Telephone | <input type="checkbox"/> Networking Event | <input type="checkbox"/> Other (Identify) _____ |

I, individually and on behalf of the business named above, do by my signature below certify that the information provided in this questionnaire is true and correct. I understand that if the information provided herein contains any false statements or any misrepresentations: 1) VIA will have the grounds to terminate any or all contracts which VIA has or may have with the business; 2) VIA may disqualify the business named above from consideration for contracts and may remove the business from VIA's proposers list; or/and 3) VIA may have grounds for initiating legal action under federal, state or local law. **Note: This questionnaire is also a certification form; the information requested will be used to determine small business status as per 13 CFR Part 121. Additionally, this information will allow VIA to report the amount of subcontracting activity with all businesses that offer the commodities and services used by VIA.**

* Contractors that employ 50 or more transit related employees will be required to submit a copy of their EEO program.

Printed Name: _____ Title: _____

Signature of Owner: _____ Date: _____

(Owner, CEO, President, Majority Stockholder or Designated Representative)

Questions about this document should be directed to the Contracting Officer

REV 8/9/19

9.1.6 CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local government entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity, and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(1-a), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has affiliation or business relationship.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ YES ☐ NO

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ YES ☐ NO

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director or holds an ownership interest in one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer, one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7 _____
Signature of person doing business with the governmental entity Date

9.1.7 CERTIFICATE OF INTERESTED PARTIES**FORM 1295**

Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

VIA METROPOLITAN TRANSIT

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract and provide a description of the goods or services to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party.

**6 AFFIDAVIT**

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day
of _____, 20____, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

ADD ADDITIONAL PAGES AS NECESSARY**Must file online at www.ethics.state.tx.us/File**

9.1.8 CONTRACTOR UTILIZATION PLAN - SMALL BUSINESS ENTERPRISE (SBE)



CONFIDENTIAL INFORMATION REQUIRED SUBMITTAL

VIA METROPOLITAN TRANSIT Contractor Utilization Plan

Instructions: Prime Contractors/Consultants must complete this form by listing: 1) Name of the prime and **all proposed subcontractors**; 2) Contact Information; 3) Description of work to be performed/product to be provided; 4) Status as a SBE and/or DBE or non-certified firm; 5) Age of the firm; 6) Dollar value of commitment; and 7) Percentage (%) of work to be performed. Subcontractors that are listed on this form as SBEs and/or DBEs must be certified with a participating Texas Unified Certification Program (TUCP) certifying agency at the time of the proposal submission. The SBE and/or DBE certification must be complete and current at time of proposal submittal. Each subcontractor that is listed on this form as a SBE and/or DBE must complete Form 9.1.9 Intent to Perform as a SBE and/or DBE Subcontractor agreeing to the information listed here. A **certified SBE and/or DBE prime contractor/consultant** is required to perform a minimum of 30% of the contract to demonstrate a **Commercially Useful Function**.

(Please note: **Both SBEs and DBEs** can be used to satisfy SBE goals.)

1) Name of PRIME CONTRACTOR	2) Contact Person, Address, and Phone # of firm(s)	3) Description of Work: services provided. Where applicable, specify "supply" or "install" or both	4) SBE, DBE, or Non-certified	5) Age of Firm	RESERVED	7) % of work to be performed
<i>Example:</i> ABC Prime Contractor	Susan Doe 123 Blvd San Antonio, TX 78213	Installation of shelters	Non	25 years		90%
1) Name of SUBCONTRACTORS	(Please indicate below)					
<i>Example:</i> XYZ Subcontractor	Jane Davis 4567 Main St. San Antonio, TX 78210	Concrete padding	SBE/DBE	5 years		10%
Work to be completed by Prime Contractor and all subcontractors must TOTAL 100% →						

This Contractor Utilization Plan (CUP) must be completed as instructed above and include the prime contractor and all subcontractors proposed on this project, including dollars and % of work committed. **If column 7 does not total 100%, the proposal submittal will be considered non-responsive.** The undersigned will enter into a formal agreement with all proposed SBE and/or DBE firms for work listed in the CUP upon execution of a contract with VIA. The Contractor agrees to the terms of this CUP by signing below and submitting the Intent to Perform as completed by the SBE and/or DBE subcontractors.

Signature of Authorized Representative of Prime

Date Signed

1) Name of SUBCONTRACTORS	2) Contact Person, Address, and Phone # of firm(s)	3) Description of Work, services provided. Where applicable, specify "supply" or "install" or both	4) SBE, DBE or Non-certified	5) Age of Firm	RESERVED	7) % of work to be performed
SUBCONTRACTORS (continued)	(Please indicate below)					
Work to be completed by Prime Contractor and all subcontractors must TOTAL 100% →						

This Contractor Utilization Plan (CUP) must be completed as instructed above and include the prime contractor and all subcontractors proposed on this project, including dollars and % of work committed. **If column 7 does not total 100%, the bid submittal will be considered non-responsive.** The undersigned will enter into a formal agreement with all proposed SBE and/or DBE firms for work listed in the CUP upon execution of a contract with VIA. The Contractor agrees to the terms of this CUP by signing below and submitting the Intent to Perform as completed by the SBE and/or DBE subcontractors.

Signature of Authorized Representative of Prime

Date Signed



Intent to Perform as SBE Subcontractor

RFP # 21-201

Please STOP HERE only if the following statement is true: "The Prime Contractor is a certified SBE and/or DBE firm and will self-perform 100% of the contract. No subcontractors will be utilized in performing the requirements of this contract."

All other Prime Contractors must submit a completed Form 9.1.9 – Intent to Perform for SBE Goal Requirements for each SBE and/or DBE Subcontractor listed on Form 9.1.8 – Contractor Utilization Plan – Small Business Enterprise.

1. Name of First Tier Certified SBE and/or DBE Subcontractor _____

2. The undersigned is either certified under the Texas Unified Certification Program (TUCP) as SBE and/or DBE or will be at the time this solicitation is due.

(NOTE: In accordance with 49 CFR (Code of Federal Regulations) Part 26, VIA and ATD Board policy, SBE and/or DBE firms participating in VIA's SBE Program must have their certification status with a TUCP Certifying Agency by the due date established for this IFB/RFP.)

3. SBE Goal: The undersigned is prepared to perform the following described work and/or supply the material(s) listed in connection with the above project (where applicable specify "supply" or "install" or both)

and the following price \$ _____.

(Name of First Tier SBE/DBE Subcontractor)

(Signature of Authorized Representative)

(Phone Number)

(Date Signed)

(Name of Prime Company)

(Signature of Authorized Representative)

(Phone Number)

(Date Signed)

9.1.10 DOCUMENTATION OF GOOD FAITH EFFORTS – SBE Goal Requirement

Informational Reference

If the Proposer cannot fully meet the SBE goal of this Contract, the Proposer shall complete Section 9.1.10 Documentation of Good Faith Efforts – SBE Goal Requirement **and attach documentation demonstrating the Proposer's Good Faith Efforts**. The Office of Diversity and Federal Compliance (ODFC) has the authority to make a fair and reasonable judgment regarding whether a Proposer made adequate Good Faith Efforts. Proposers are required to demonstrate Good Faith Efforts with additional documentation as applicable including call logs, posted advertisement, attendance to pre-proposal/submittal meetings, and records of negotiation.

The following is a list of actions which the ODFC considers as part of the Proposer's Good Faith Efforts to obtain SBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

1. Conducting market research to identify small business contractors and suppliers and soliciting through all available means the interest of all certified SBEs that have the capability to perform the work of the contract. This may include attendance at pre-proposal and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all SBEs listed in the Texas Unified Certification Program (TUCP) database
2. Selecting portions of the work to be performed by SBEs in order to increase the likelihood that the SBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate SBE participation, even when the Proposer might otherwise be able to perform these work items with its own resources. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates SBE participation.
3. Proposer should solicit the interest to allow reasonable time for SBEs to respond to the solicitation and submit a timely offer for the subcontract. Providing interested SBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation. The Proposer should determine with certainty if the SBE firms are interested in taking appropriate steps to follow up from initial solicitations.
4. (A) Negotiation in good faith with interested SBE firms. It is the Proposer's responsibility to make a portion of the work or material needs consistent with the available SBE subcontractors and suppliers, so as to facilitate SBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of SBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected; and evidence as to why additional Agreements could not be reached for the SBEs to perform the work.

(B) A Proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including SBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using SBEs is not in itself sufficient reason for a Proposer's failure to meet the contract SBE goal, as long as such costs are reasonable. The ability or desire of the Proposer to perform the work of a contract with its own workforce does not relieve them of the responsibility to make Good Faith Efforts.

However, Proposers are not required to accept higher quotes from SBE firms if the price difference is excessive or unreasonable.

5. (A) A Proposer must use objective criteria and perform a thorough investigation of a SBE's capabilities to determine whether a SBE is qualified to perform the needed work. The SBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for rejection or non-solicitation of proposals in the Proposer's efforts to meet the project goal. Another practice considered an insufficient Good Faith Effort is the rejection of the SBE firm because its quotation for the work was not the lowest received proposal. However, nothing in this paragraph shall be construed to require the Proposer to accept unreasonable quotes in order to satisfy contract goals.

(B) A Proposer's inability to find a replacement SBE at the original price is not alone sufficient to support finding that Good Faith Efforts have been made to replace the original SBE firm. The fact that the Proposer has the ability and/or desire to perform the contract work with its own workforce does not relieve the Proposer of the obligation to make Good Faith Efforts to find a replacement SBE, and it is not a sound basis for rejecting a prospective reasonable quote from a replacement SBE firm.
6. Making efforts to assist interested SBE firms in obtaining bonding, lines of credit, or insurance as required by the Proposer.
7. Making efforts to assist interested SBE firms in obtaining necessary equipment, supplies, materials, or related assistance or services.

9.1.10 DOCUMENTATION OF GOOD FAITH EFFORTS – SBE Goal Requirement



DATE: _____

Please read the statements below and check the box that is applicable to you.

- ☐ The Proposer **is able to meet** the SBE contract goal and has completed and submitted 9.1.8 – Contractor Utilization Plan and 9.1.9 – Intent to Perform for SBE Goal Requirements.

(Please note: Both SBEs and DBEs can be used to satisfy SBE participation goals.)

If the above statement is true, please **STOP HERE**.

- ☐ The Proposer **is unable to meet** the SBE contract goal. Please continue to page 2 of this section.

I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

PRINTED NAME: _____ SIGNATURE: _____ TITLE: _____

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

9.1.10 DOCUMENTATION OF GOOD FAITH EFFORTS – SBE Goal Requirement



DATE: _____

If you have not demonstrated attainment of the required SBE participation needed to meet the contract goal, you MUST complete and submit this form along with 9.1.8 – Contractor Utilization Plan – Small Business Enterprise (SBE) and 9.1.9 – Intent to Perform for SBE Goal Requirements.

PROPOSERS: If the Proposer is unable to meet the SBE Goal, ALL SECTIONS of this completed form MUST BE furnished along with all required supporting documentation at the time of proposal submittal. **Should the Proposer fail to comply with this request, the proposal shall be considered NON-RESPONSIVE.**

Proposal # _____

Proposal Amount \$ _____

Project Title: _____

_____ has not fully satisfied the requirements of the bid/proposal specifications for the above bid by VIA in the
Name of Bidding Firm
following manner. *Please check the appropriate box.*

- ☐ The Proposer is unable to meet the SBE contract goal, however the Proposer is committed to a minimum of _____ % SBE and/or utilization on this contract and has completed 9.1.9 – Intent to Perform for SBE Goal Requirements, along with all Good Faith Efforts documentation.
- ☐ The Proposer is unable to meet the SBE contract goal and has completed and submitted 9.1.8 – Contractor Utilization Plan along with all required supporting Good Faith Efforts documentation.

I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

PRINTED NAME: _____ SIGNATURE: _____ TITLE: _____

INSTRUCTIONS: Please, complete Sections A through C, and include all specific supporting documentation, as outlined below. If you feel that any section of this form is Not Applicable, DO NOT write Not Applicable or N/A. You must provide a written statement as to why the section is Not Applicable to your response.

- ☐ SPECIFIC PORTIONS OF WORK IDENTIFIED FOR SBE and/or DBE SUBCONTRACTOR(S): Complete Section A.
- ☐ NOTIFYING CERTIFIED SBEs OF CONTRACTING OPPORTUNITIES: Please, attach a copy of the announcement and written notices distributed to SBEs and/or DBEs.
Example: Newspaper announcement, mail or email correspondence, community outreach notices, etc. Complete Section B.
- ☐ INITIAL SOLICITATION & FOLLOW-UP: Proposers may solicit from any state Unified Certification Program (UCP). Complete Section C.

9.1.10 DOCUMENTATION OF GOOD FAITH EFFORTS – SBE Goal Requirement



- A. SPECIFIC PORTIONS OF WORK IDENTIFIED FOR DBE SUBCONTRACTOR(S):** You MUST list all selected scopes or portions of work to be performed by SBE and/or DBE firms in order to increase the likelihood of meeting the contract goal for this project and the estimated value of each scope or portions of work identified. Use additional pages, if warranted.

Scope or Portions of Work Identified for SBE and/or DBE Participation		Estimated Value	% of Contract Value
1		\$	
2		\$	
3		\$	
4		\$	
5		\$	
6		\$	
7		\$	
8		\$	
9		\$	
10		\$	
11		\$	
12		\$	
13		\$	
14		\$	
15		\$	
16		\$	
17		\$	
18		\$	
19		\$	
20		\$	
TOTALS			

9.1.10 DOCUMENTATION OF GOOD FAITH EFFORTS – SBE Goal Requirement



B. NOTIFYING CERTIFIED SBEs OF CONTRACTING OPPORTUNITIES: Please complete all fields below, list all sources of advertisement and outreach to SBE firms.

I. Did you attend all pre-bid and/or outreach meeting(s) scheduled by VIA to inform SBEs of subcontracting opportunities?

YES	NO	Date of Meeting

II. You MUST identify publications in which announcements or notifications were placed and published. Include a copy of each notification. Shaded area to be completed by ODFC office staff only.

Source of Advertising/Outreach	What subcontracting areas of work were advertised?	Date of Ad	Deadline for Submittal		ODFC VERIFICATION
			Date	Time	
1.					
2.					
3.					
4.					

C. INITIAL SOLICITATION & FOLLOW-UP: You MUST complete all fields below, list all certified SBE firms that received written notification of work items to be subcontracted. If no response was received to the initial solicitation, you must indicate when firms received subsequent telephone or email solicitation (list delivery or read receipts date and certified firm's response). **You must include copies of the physical and/or electronic notice(s) sent to certified firms.**

SBE Firm & Contact	Phone	Scope of Work Solicited	Date of Written Notification	Result of Initial Communication	Date of Follow-Up and Method of Contact (P = Phone, F = Fax, E = Email)		Result of Follow-Up Communication
Ex: ABC Company/Jane Smith	(337) 321-4567	Legal Services	01/01/19	Will submit quote	01/10/19	E	Quote received on 01/12/19
1.							
2.							

9.1.10 DOCUMENTATION OF GOOD FAITH EFFORTS – SBE Goal Requirement



SBE Firm & Contact	Phone	Scope of Work Solicited	Date of Written Notification	Result of Initial Communication	Date of Follow-Up and Method of Contact (P = Phone, F = Fax, E = Email)		Result of Follow-Up Communication
Ex: ABC Company/Jane Smith	(337) 321-4567	Legal Services	01/01/19	Will submit quote	01/10/19	E	Quote received on 01/12/19
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							



As the primary provider of public transportation in the San Antonio region, VIA Metropolitan Transit has long recognized its role as a steward of the environment and is continually exploring innovations to lessen its impact. Implementation of an Environmental and Sustainability Management System (ESMS) is one way VIA serves and protects San Antonio.

VIA's Environmental and Sustainability Management System (ESMS) Policy states:

VIA Metropolitan Transit shall implement an Environmental & Sustainability Management System (ESMS) to provide a strategic and systematic approach to the management of environmental impacts. Implementation of an ESMS maximizes organizational benefit through risk mitigation, prevention of pollution, and regulatory compliance, and will help VIA to provide the community with safe, reliable and sustainable transportation. Each of VIA's employees is entrusted with incorporating the actions necessary in their work to fulfill this commitment.

By enacting this Environmental & Sustainability Management System, VIA commits to:

- *Implementation and continual improvement of environmental management practices and solutions*
- *Prevention of pollution and utilization of environmentally safe methods of disposal and recycling to maintain a safe and clean environment*
- *Compliance with applicable legal and other requirements to which VIA subscribes which relate to its environmental aspects*
- *Minimization of significant environmental impacts by establishing environmental objectives and targets*
- *Evaluation of environmental performance and progress through periodic review of the ESMS and related objectives and targets*
- *Integration of sustainable practices during planning and decision-making processes and in all other work conducted at VIA*

VIA is committed to becoming an environmental leader in the industry and pledges to provide necessary education and tools to all persons working for or on behalf of VIA to successfully carry out this program. VIA promotes implementation of goals and programs that will continuously reduce our environmental impact on the community and environment. This environmental and sustainability management system policy will be documented, regularly reviewed, communicated to all persons working for or on behalf of VIA, and be made available to the public.

We are committed to assessment of the environmental impacts associated with our activities and services, and we will develop and track measures of our progress. It is our goal to have VIA Metropolitan Transit recognized as a regional environmental steward as well as a sustainability leader among transit agencies.

Please sign below to acknowledge that you have read VIA's ESMS Policy.

Signature

Date

9.2 Other Forms

9.2.1 SUBCONTRACTOR PARTICIPATION FOR PAYMENT

This is to certify that for the month of _____, the following subcontractor(s) and supplier(s) will be paid:

Name of subcontractor(s) or supplier(s)	Amount
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Name of Authorized Person

Signature of Authorized Person

Date

**PART 10
PRICE PROPOSAL**

10.1 Price Proposal

10.1.1 Responsiveness: To be responsive, proposals must include this form completed in ink or by machine, as indicated, and specified in 1.3.5, Receipt of Proposal, and 1.8, Price Proposal Submission. Any modifications to this form or to any of the terms of the Request for Proposal will render this proposal non-responsive.

10.1.2 Completion: The Proposer shall respond to each item on the Price Proposal.

10.1.3 Offer: _____ offers to supply goods or services to VIA Metropolitan Transit without exception according to all terms of the Request for Proposal issued by VIA **February 24, 2021** for **VIA RFP #21-201** in consideration of payment of the following price:

See next page for pricing sheets.
(See Part 2, Scope of Work, Terms and Conditions)

VIA may choose at the time of award or later, to award options. However, VIA will include the price of options considered for award in the price evaluation. Prices will be evaluated on "all or none" basis.

PROMPT PAYMENT DISCOUNT. The following prompt payment discount is hereby offered for payments made within the period specified after receipt of invoice.

_____ % _____ days

Map Exhibit 2							
	Zone 1	North East			Option A	Option B	Option C
	Tier	Estimated Number of Passengers (Annual)		Estimated Service Hours (Annual)	Unit Cost Per Passenger	Unit Cost Per Hour	Lump Sum Cost
Year 1	1	0	150,000	-	\$ -	\$ -	\$ -
Assumption: Starting Spring 2022	2	150,001	200,000	-	\$ -	\$ -	\$ -
	3	200,001	250,000	-	\$ -	\$ -	\$ -
	4	250,001	300,000	-	\$ -	\$ -	\$ -
	5	Above	300,001	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Year 2	1	0	150,000	-	\$ -	\$ -	\$ -
	2	150,001	200,000	-	\$ -	\$ -	\$ -
	3	200,001	250,000	-	\$ -	\$ -	\$ -
	4	250,001	300,000	-	\$ -	\$ -	\$ -
	5	Above	300,001	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Year 3	1	0	150,000	-	\$ -	\$ -	\$ -
	2	150,001	200,000	-	\$ -	\$ -	\$ -
	3	200,001	250,000	-	\$ -	\$ -	\$ -
	4	250,001	300,000	-	\$ -	\$ -	\$ -
	5	Above	300,001	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Option Year 4	1	0	150,000	-	\$ -	\$ -	\$ -
	2	150,001	200,000	-	\$ -	\$ -	\$ -
	3	200,001	250,000	-	\$ -	\$ -	\$ -
	4	250,001	300,000	-	\$ -	\$ -	\$ -
	5	Above	300,001	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Option Year 5	1	0	150,000	-	\$ -	\$ -	\$ -
	2	150,001	200,000	-	\$ -	\$ -	\$ -
	3	200,001	250,000	-	\$ -	\$ -	\$ -
	4	250,001	300,000	-	\$ -	\$ -	\$ -
	5	Above	300,001	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -

Note: The Contractor to provide phase-in assumptions for the first year and phase-out assumptions for the final year of the contract.

Map Exhibit 3							
	Zone 2	North West			Option A	Option B	Option C
	Tier	Estimated Number of Passengers (Annual)		Estimated Service Hours (Annual)	Unit Cost Per Passenger	Unit Cost Per Hour	Lump Sum Cost
Year 1 (Pilot)	1	0	150,000	-	\$ -	\$ -	\$ -
Assumption: Starting Fall 2021	2	150,001	200,000	-	\$ -	\$ -	\$ -
	3	200,001	250,000	-	\$ -	\$ -	\$ -
	4	250,001	300,000	-	\$ -	\$ -	\$ -
	5	Above	300,001	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Year 2	1	0	150,000	-	\$ -	\$ -	\$ -
	2	150,001	200,000	-	\$ -	\$ -	\$ -
	3	200,001	250,000	-	\$ -	\$ -	\$ -
	4	250,001	300,000	-	\$ -	\$ -	\$ -
	5	Above	300,001	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Year 3	1	0	150,000	-	\$ -	\$ -	\$ -
	2	150,001	200,000	-	\$ -	\$ -	\$ -
	3	200,001	250,000	-	\$ -	\$ -	\$ -
	4	250,001	300,000	-	\$ -	\$ -	\$ -
	5	Above	300,001	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Option Year 4	1	0	150,000	-	\$ -	\$ -	\$ -
	2	150,001	200,000	-	\$ -	\$ -	\$ -
	3	200,001	250,000	-	\$ -	\$ -	\$ -
	4	250,001	300,000	-	\$ -	\$ -	\$ -
	5	Above	300,001	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Option Year 5	1	0	150,000	-	\$ -	\$ -	\$ -
	2	150,001	200,000	-	\$ -	\$ -	\$ -
	3	200,001	250,000	-	\$ -	\$ -	\$ -
	4	250,001	300,000	-	\$ -	\$ -	\$ -
	5	Above	300,001	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -

Note: The Contractor to provide phase-out assumptions for the final year of the contract.

Map Exhibit 4							
	Zone 3	Sandy Oaks			Option A	Option B	Option C
	Tier	Estimated Number of Passengers (Annual)	Estimated Service Hours (Annual)		Unit Cost Per Passenger	Unit Cost Per Hour	Lump Sum Cost
Year 1 (Pilot)	1	0	1,100	-	\$ -	\$ -	\$ -
Assumption: Starting Fall 2021	2	Above	1,101	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Year 2	1	0	1,100	-	\$ -	\$ -	\$ -
	2	Above	1,101	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Year 3	1	0	1,100	-	\$ -	\$ -	\$ -
	2	Above	1,101	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Option Year 4	1	0	1,100	-	\$ -	\$ -	\$ -
	2	Above	1,101	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Option Year 5	1	0	1,100	-	\$ -	\$ -	\$ -
	2	Above	1,101	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -

Note: The Contractor to provide phase-out assumptions for the final year of the contract.

Map Exhibit 5							
	Zone 4	South			Option A	Option B	Option C
	Tier	Estimated Number of Passengers (Annual)		Estimated Service Hours (Annual)	Unit Cost Per Passenger	Unit Cost Per Hour	Lump Sum Cost
Year 1 (Pilot)	1	0	80,000	-	\$ -	\$ -	\$ -
Assumption: Starting Fall 2021	2	80,001	110,000	-	\$ -	\$ -	\$ -
	3	110,001	140,000	-	\$ -	\$ -	\$ -
	4	140,001	170,000	-	\$ -	\$ -	\$ -
	5	Above	200,000	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Year 2	1	0	80,000	-	\$ -	\$ -	\$ -
	2	80,001	110,000	-	\$ -	\$ -	\$ -
	3	110,001	140,000	-	\$ -	\$ -	\$ -
	4	140,001	170,000	-	\$ -	\$ -	\$ -
	5	Above	200,000	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Year 3	1	0	80,000	-	\$ -	\$ -	\$ -
	2	80,001	110,000	-	\$ -	\$ -	\$ -
	3	110,001	140,000	-	\$ -	\$ -	\$ -
	4	140,001	170,000	-	\$ -	\$ -	\$ -
	5	Above	200,000	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Option Year 4	1	0	80,000	-	\$ -	\$ -	\$ -
	2	80,001	110,000	-	\$ -	\$ -	\$ -
	3	110,001	140,000	-	\$ -	\$ -	\$ -
	4	140,001	170,000	-	\$ -	\$ -	\$ -
	5	Above	200,000	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Option Year 5	1	0	80,000	-	\$ -	\$ -	\$ -
	2	80,001	110,000	-	\$ -	\$ -	\$ -
	3	110,001	140,000	-	\$ -	\$ -	\$ -
	4	140,001	170,000	-	\$ -	\$ -	\$ -
	5	Above	200,000	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -

Note: The Contractor to provide phase-out assumptions for the final year of the contract.

Map Exhibit 6							
	Zone 5	Southeast			Option A	Option B	Option C
	Tier	Estimated Number of Passengers (Annual)		Estimated Service Hours (Annual)	Unit Cost Per Passenger	Unit Cost Per Hour	Lump Sum Cost
Year 1 (Pilot)	1	0	8,000	-	\$ -	\$ -	\$ -
Assumption: Starting Fall 2021	2	Above	8,001	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Year 2	1	0	1,100	-	\$ -	\$ -	\$ -
	2	Above	1,101	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Year 3	1	0	1,100	-	\$ -	\$ -	\$ -
	2	Above	1,101	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Option Year 4	1	0	1,100	-	\$ -	\$ -	\$ -
	2	Above	1,101	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -
Option Year 5	1	0	1,100	-	\$ -	\$ -	\$ -
	2	Above	1,101	-	\$ -	\$ -	\$ -
				TOTAL	\$ -	\$ -	\$ -
				AVERAGE	\$ -	\$ -	\$ -

Note: The Contractor to provide phase-out assumptions for the final year of the contract.

Pricing for Option D and E will not be evaluated on an "all or none" basis.

Option D – Price for installation of Masabi validators for all vehicles. The Masabi validator will be supplied by VIA. All expenses for supplies and installation will be incurred by the Contractor.

Price Per Vehicle Installation \$ _____

Option E – VIA reserves the right to re-negotiate for a reduction in cost if VIA provides any vehicles for this contract in the future.

Exhibit 1 - KSAM MoD Plan Zones

Jan 2021

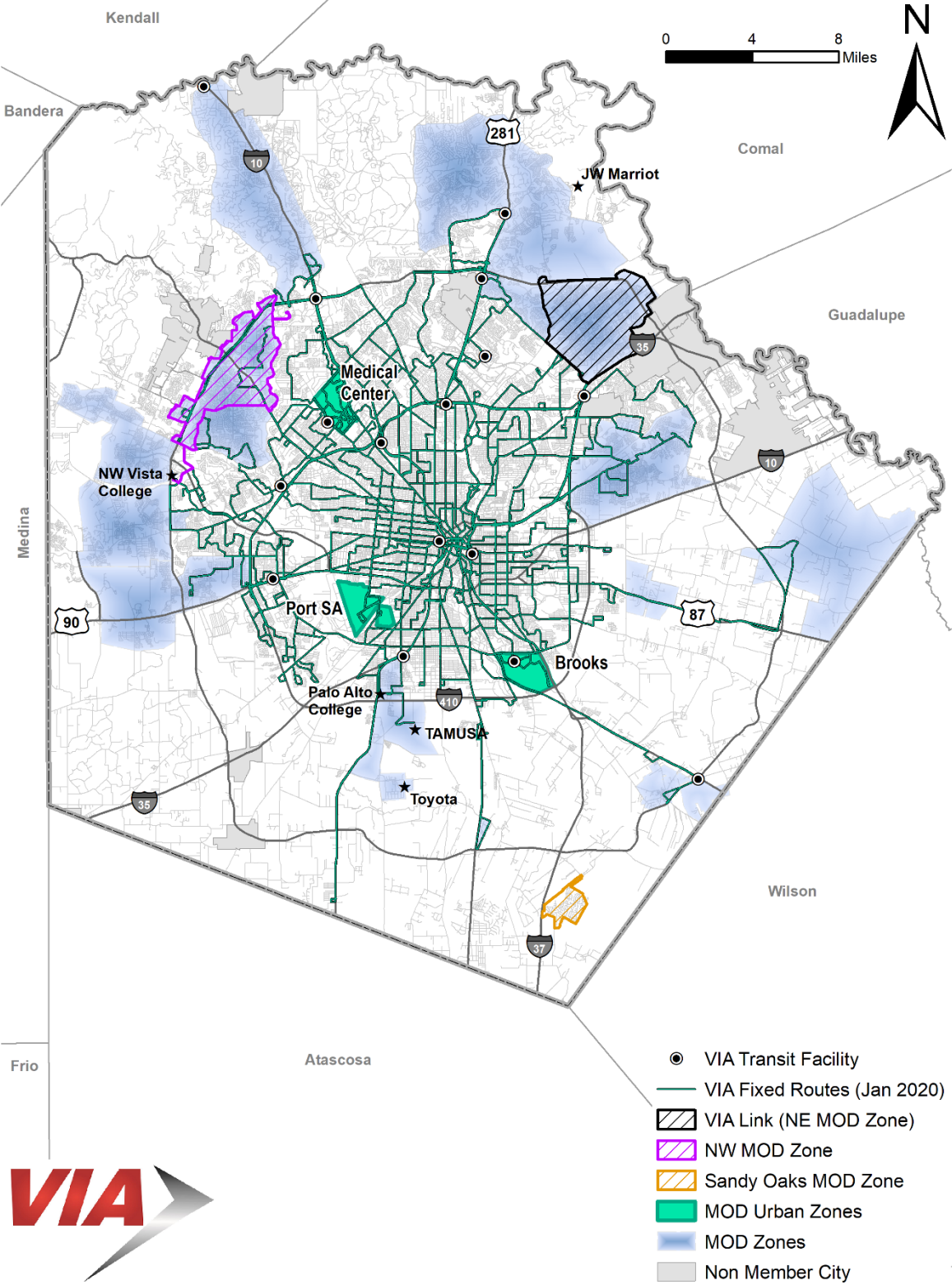


Exhibit 2 - VIA Link North East

Jan 2021

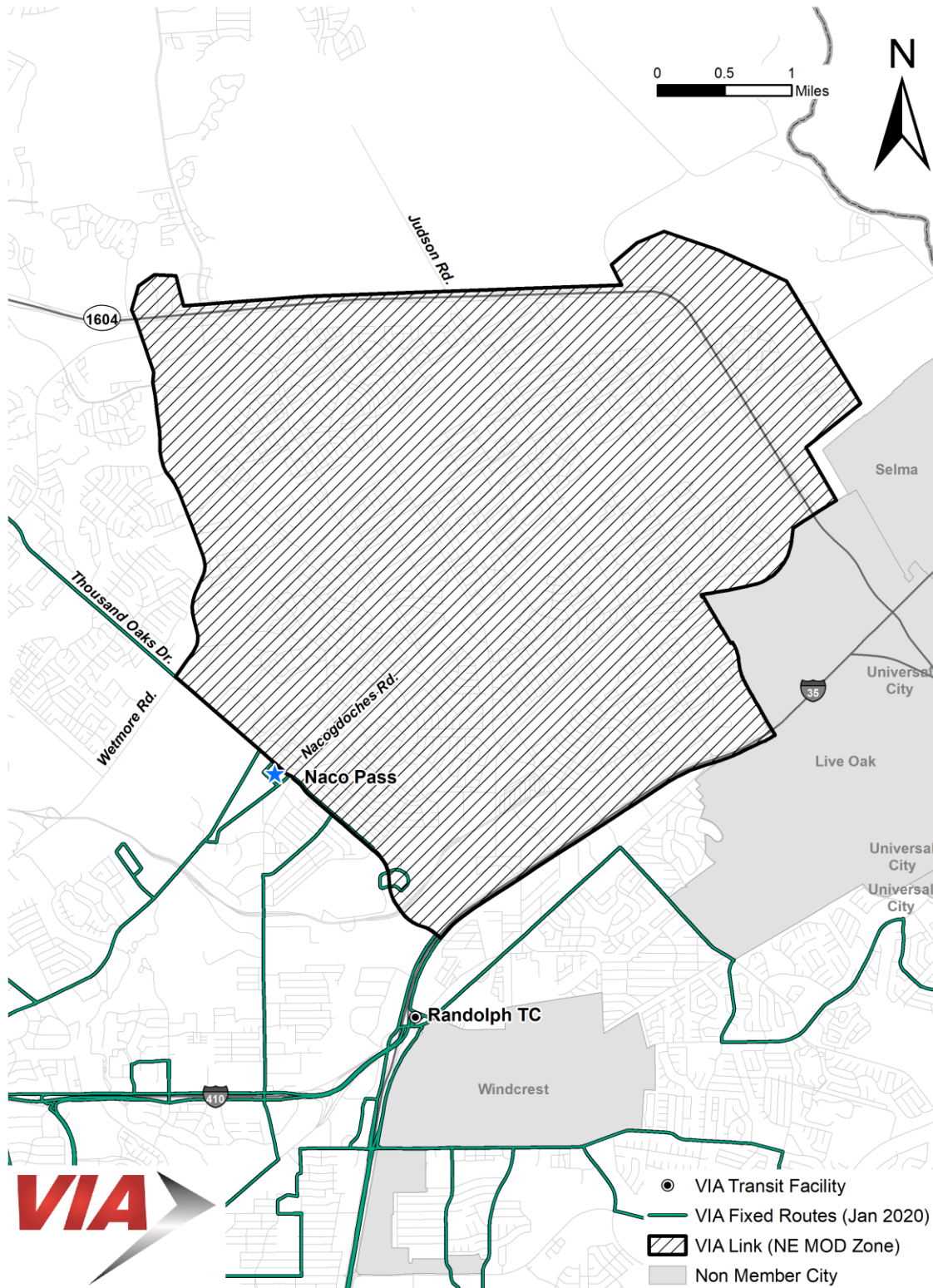
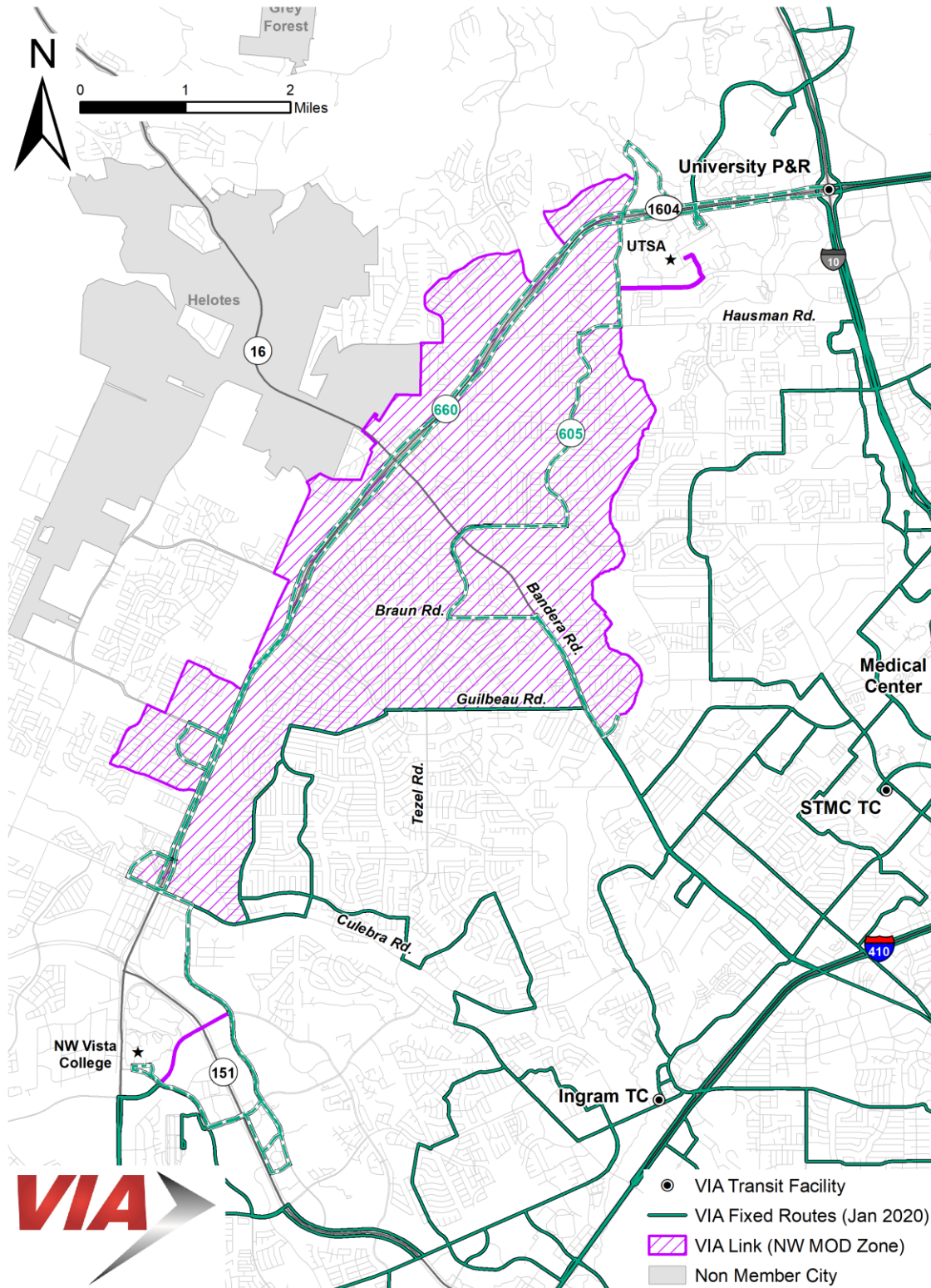


Exhibit 3 - VIA Link North West

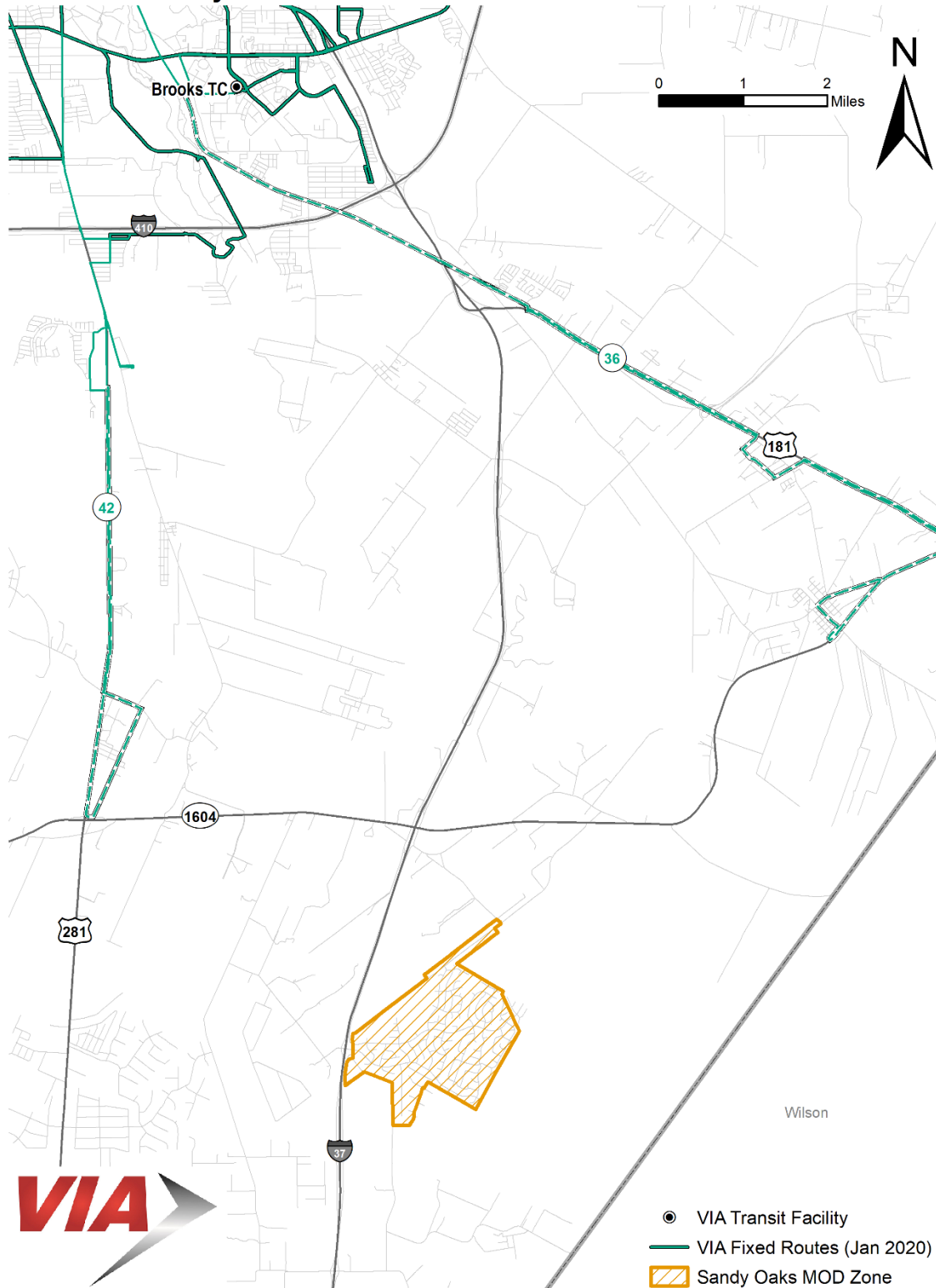
Jan 2021



Assumption: Routes 605 and 660 to be replaced by MoD Service.

Exhibit 4 - Sandy Oaks

Jan 2021

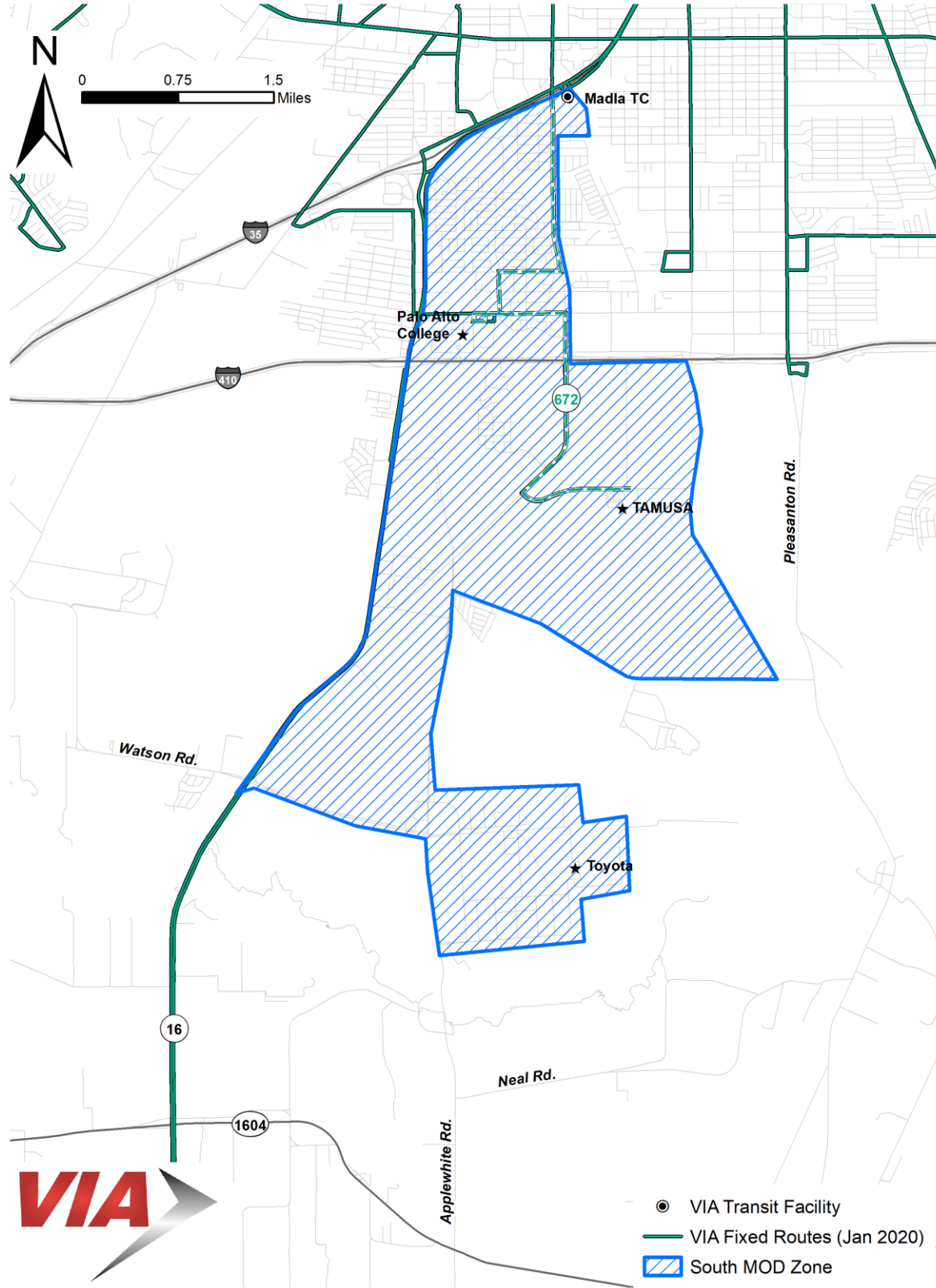


Service Characteristic:

1. Zone to be operational during Monday – Friday 6:00 am – 6:00 pm
2. Trips from Sandy Oak to Brooks Transit Center

Exhibit 5 - South Zone

Jan 2021

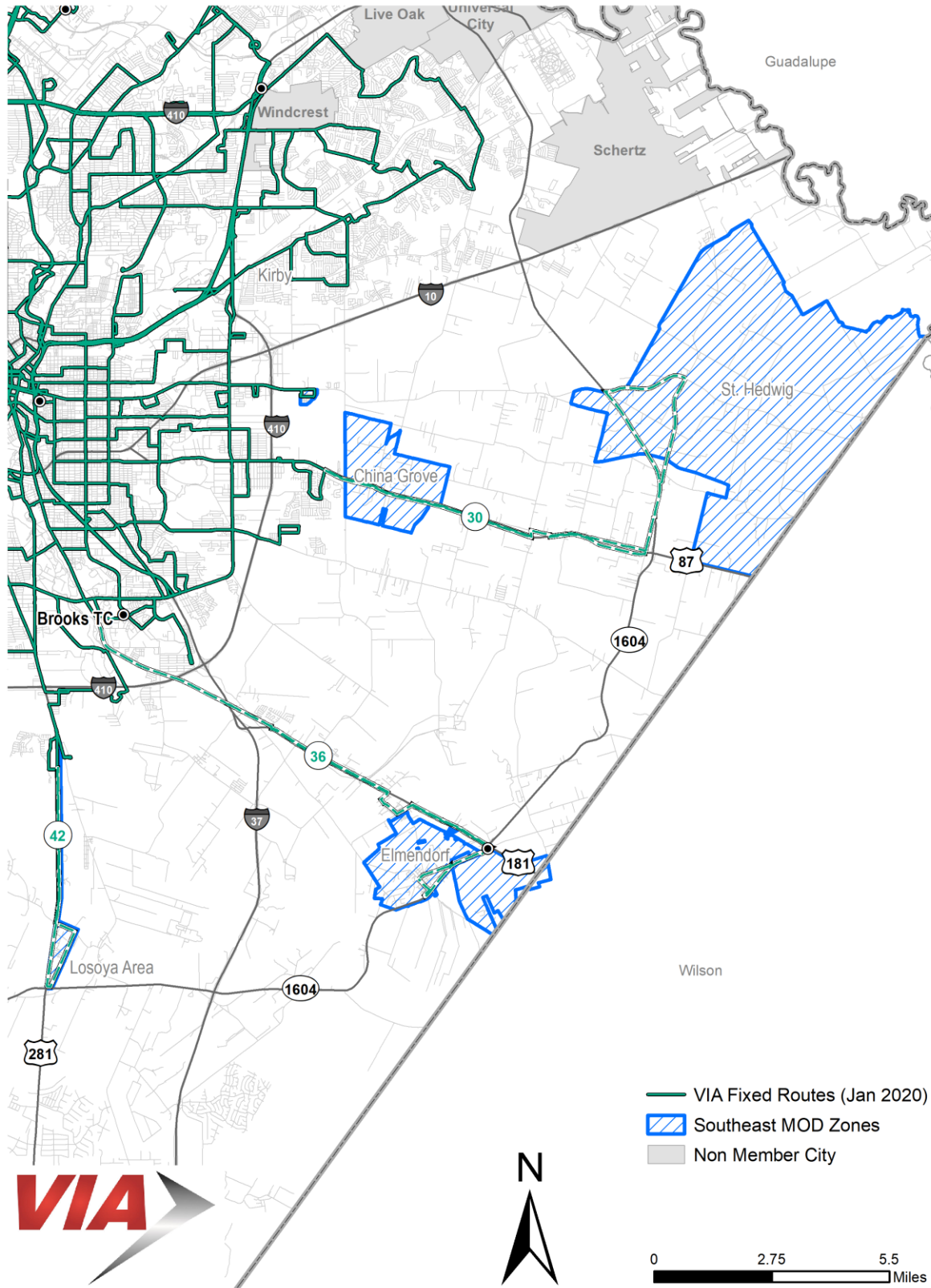


- VIA Transit Facility
- VIA Fixed Routes (Jan 2020)
- ▨ South MOD Zone

Assumption: Route 672 to be replaced by the MOD service

Exhibit 6 - Southeast Zones

Jan 2021



Assumption:
Route extensions 30, 36 and 42 to
be replaced by MOD Zone(s).