

MERRIMACK VALLEY REGIONAL TRANSIT AUTHORITY

ADDENDUM 2

REQUEST FOR PROPOSALS

TRANSPORTATION MANAGEMENT SERVICES

ISSUED: May 4, 2022

- I. First Transit has agreed to extend the termination date of the current Transportation Management Services Contract with MVRTA from June 30, 2022 to July 31, 2022, in order to facilitate a smooth transition to the new contractor for all parties. As a result, please account for the additional time in the required Transition Plan to be included with your proposal.
- II. Due to the added transition time, **MVRTA is extending the proposal due date to May 23, 2022.**
- III. The Form of Contract has been revised in response to requests for clarifications received from the Proposers and is attached here. The revised Form of Contract should replace the one sent out with RFP Addendum 1 and be included in Appendix J. of the RFP.
- IV. MVRTA RESPONSE TO QUESTIONS FROM PROPOSERS

Questions from MV Transportation:

1. Please clarify the contractor has no pension liability.

MVRTA Response: Payments for the employer contributions and all related expenses for the Teamsters Local 170 union pension plans are reimbursable operating expenses. Refer to the Form of Contract, Article 16. subparagraph c, Eligible Operating Expenses; Subparagraph e, Indemnification; and Subparagraph i, Other Expenses and Risk.

Also See, Article 22. subparagraph h. Obligations of the MVRTA and Contractor Upon Termination.

2. Please clarify advance payment to avoid cash impacts.

MVRTA Response: MVRTA will advance funds for current cash requirements for all reimbursable operating expenses. See RFP, Article II. Scope of Work, paragraph C. Operating Funds and Reimbursable Operating Expenses; and in the Form of Contract, Article 13, Working Funds, and Article 16, Subparagraph b. Advance of Necessary Operating Expenses; and Subparagraph c. Eligible Operating Expenses.

3. Please clarify start up costs as a pass through.

MVRTA Response: Costs incurred prior to the effective date of the Contract are not chargeable to or reimbursable Operating Expenses as defined in the Contract. See the Form of Contract, Article 16. If the Proposer is seeking reimbursement of “start-up costs” that are not reimbursable operating costs incurred prior to the start of service, the “start up costs” must be itemized as “additional fees” on the Price Proposal Form (Attachment H of the RFP). “Additional Fees” will be considered during the evaluation of the “cost & price” of the Proposal. Note: Operating costs incurred by the sub-corporations, including but not limited to, wages, salary, fringe, etc. resulting from the transition from the current Contractor to the new Contractor during the transition period are reimbursable operating expenses as defined in the Contract.

Questions from DGR Management, Inc:

1. Can proposals be submitted electronically instead of hard copy?

MVRTA Response: Provided electronic proposals are within size limitations to send via electronic mail, proposers may elect to send via electronic transmission to pclayton@mvrta.com in lieu of submitting hard copies. Proposers electing to go this route should confirm via separate email that the proposal has been received.

2. What scheduling and ITS systems are currently in place (or soon to be implemented) for fixed route and paratransit?

MVRTA Response:

Fixed Route

- *Scheduling currently done manually, although MVRTA is currently in the process of reviewing systems*
- *APC – GMVSycromatics*
- *Video – Seon*
- *Vehicle location – Swiftly*
- *Voice Annunciation – Clever Devices*
- *Digital Sign Controller – Luminator*
- *Radios – Kenwood*

Paratransit

- *Scheduling/reservations/Dispatch – Stratagen Adept*
- *Video – Seon*
- *Radios – Kenwood*

3. What are typical Procurement responsibilities of the Contractor? Procurement role of Contractor vs MVRTA?

MVRTA Response: MVRTA typically takes the lead on all large procurements, with contractor subcorp personnel, under MVRTA direction, handling small procurements as appropriate, following FTA and Commonwealth of Massachusetts procurement regulations.

4. Is the Contractor responsible for Legal services needed for MCAD, employee relations issues, accident claims etc.?

MVRTA Response: MVRTA currently utilizes support provided by the incumbent Transportation Management Services contractor, First Transit, for labor law and expertise, but is open to retaining legal assistance on behalf of the contractor, as it does with other legal matters.

Questions from National Express Transit:

1. Can the contractor utilize the services of a subcontractor to handle any overflow service due to manpower shortages or an increase in the demand for the service?

MVRTA Response: Yes, with the prior approval of MVRTA.

2. Page 11, C.7 – Does this include the day to day expenses incurred by the local management team – cell phones, laptops?

MVRTA Response: Yes, associated day-to-day expenses incurred by the local management team, cell phones and laptops, are considered Reimbursable Operating Expenses under Scope of Work, Section C.7 of the RFP.

3. Will the local management team have local email, wifi access, or will we need to set up an IT infrastructure?

MVRTA Response: Yes, the local management team will have full access to local email, Wi-Fi, and all associated information technology.

4. Will we be provided with a funded working capital account for the expenses incurred by the sub-corps?

MVRTA Response: See MVRTA response to MV Transportation question #2 above.

5. Are start up costs reimbursable, i.e costs to set up / transfer sub corps, transition training, etc?

MVRTA Response: See MVRTA response to MV Transportation question #3 above.

Questions from Keolis Transit America:

1. Will you provide the financial/audited pension statement on percent fully funded through 7/1/22?

MVRTA Response: No, MVRTA is not in possession of Teamsters Pension System financials.

2. Is the only pension administered by the Teamsters for bus operators and mechanics only?

MVRTA Response: Yes, plus Customer Service Representatives, Foremen, Fuelers/Wash Rack workers and Building Maintenance Mechanics.

3. How much is the annual costs of service for the existing management fee, and the costs of the two subcorps?

MVRTA Response: The annual First Transit Management fee for FY2022 is \$1,098,320. Budgeted FY2022 amounts for MVATC is \$7,100,603 and STS is 1,370,865. Please note that the wages, fringe, etc. of the five resident managers is currently included in the management fee, but will be included in the subcorp pass-back amount under the new contract, under the organization described in Section I.B.1 of the RFP.

4. How much was the incumbent (First Transit) charging as a management fee annually?

MVRTA Response: See response to Keolis Transit America question #3 above.

5. MVRTA has stated it may prefer the new contractor to assume the existing two subcorps from First Transit. This too present risks as unknown or future liabilities may attach to each existing subcorp. If a proposer decides to set up new subcorps, how does the proposer recoup its costs in setting up new subcorps?

MVRTA Response: See MVRTA response to MV Transportation question #3 above.

6. Is MVRTA willing to indemnify the contractor from pension liability through 7/1/22? Will it provide a statement to that effect?

MVRTA Response: See MVRTA response to MV Transportation question #3 above. If there is specific language the proposer would like to see in the final contract, please include in your proposal.

7. Is MVRTA willing to indemnify the contractor from pension liability on an on-going basis and into perpetuity? Will it provide a statement to that effect?

MVRTA Response: See MVRTA response to Keolis Transit America question #6 above.

8. Is payroll, benefits, and human resources functions expected to be fully performed by the subcorp and directly billed?

MVRTA Response: Yes.

9. Could MVRTA please provide the past 12 monthly invoices and any reconciling statements for the First Transit Management fee and each of the two invoices for the subcorps?

MVRTA Response: Sample April 2022 Invoices for First Transit Management fee, MVATC (fixed route) and STS (paratransit) are attached at the end of this the Response to Questions section of this Addendum.

10. For submission it is stated that "2 copies" are required. Does this mean 1 original and 1 copy or 1 original and 2 copies?

MVRTA Response: The intent spelled out in the RFP was two (2) total copies plus one copy on USB. As spelled out in response to DGR Management, Inc question #1 above, MVRTA will also accept proposals sent via electronic transmission to

pclayton@mvrta.com in lieu of submitting hard copies, provided electronic proposals are within size limitations for electronic transmission. Proposers electing to go this route should confirm via separate email that the proposal has been received.

11. Is there a DBE goal for this RFP? Is a Good Faith Effort documentation required to accompany bidders' proposal?

MVRTA Response: There is no DBE goal for this RFP. The prevailing Transportation Management Services contractor is obligated to help MVRTA meet our FTA-approved DBE goal in our coordinated pursuit of contracting opportunities

12. Can MVRTA please confirm if the wages, payroll expenses, worker's compensation costs and benefits costs for the 5 resident managers are included in the "Reimbursable Operating Expenses" described in Section C of the Scope of Work? If they are not included, will MVRTA please provide the current wages (including bonuses) and benefits costs for each of the five resident managers?

MVRTA Response: Yes, as outlined in the RFP, all current resident managers that transition from being direct contractor employees to subcorp employees, unless the proposer offers an alternative organizational structure, as spelled out in Section B.4. on page 3 of the RFP

13. Will any transition costs incurred by the Contractor prior to the start of the contract be reimbursed by MVRTA? Should an estimate of these costs be included in the cost proposal form submitted by Proposers?

MVRTA Response: See MVRTA response to MV Transportation question #3 above.

14. Can MVRTA please clarify how claims costs, including Auto Liability and Workers Compensation claims, will be handled? Would any expenses that are accrued in estimate of future claims be considered a "Reimbursable Operating Expense" that would be paid to the Contractor by MVRTA monthly?

MVRTA Response: See MVRTA response to MV Transportation question #2 above.

15. Could MVRTA please confirm that the legal fees, expenses, and costs involved in any claims, damages, or losses would also be covered?

MVRTA Response: Yes, see Form of Contract, Article 16, Eligible Operating Expenses.

16. Could MVRTA please confirm that they intend to reimburse the contractor against pension liability costs that result from the pension ending and/or being underfunded?

See response to question #1 from MV Transportation above.

17. Can MVRTA confirm they have an insurance policy that covers pension liability? If so, could you please provide details as to what the coverage includes?

MVRTA Response: MVRTA does not have an insurance policy that covers pension liability.

18. Given the 5/16/22 due date, will MVRTA please provide the date bidders can expect responses to questions? The responses to some of the submitted questions could have a material impact on offerings from bidders. Further, would MVRTA consider a 14-day extension if responses will not be provided the week of 5/2/22?

MVRTA Response: As articulated in item II of this Addendum, MVRTA is extending the proposal due date to May 23, 2022.

19. Will MVRTA allow forms to be signed via electronic signature (e.g., DocuSign) that will allow a CEO to sign from his or her current location?

MVRTA Response: Yes, MVRTA will allow proposal forms to be signed via electronic signature, except the Management Contract must be signed by hand.

#####

FIRST TRANSIT, INC.

HAVERHILL (MVATC) 52657
85 RAILROAD AVENUE
HAVERHILL, MA 01835

Phone: 978-469.1256
Fax: 978-521.5956

INVOICE #

11792187

Invoice Date

04/07/2022

Terms

Net 30 Days

Customer Number

2657

Purchase Order #

Customer Information

Name HAVERHILL (MVATC)
Address 85 RAILROAD AVENUE
HAVERHILL, MA 01835

Service Description	Location	Account	Amount
Management Fee April 2022	52657	43610	\$91,526.66

Comments

Invoice Sub-Total	91,526.66
TAX EXEMPT	
Sales Tax	0.00
Total	91,526.66
Deposits	0.00
Balance Due	91,526.66

Please detach bottom portion to be returned with remittance

Location Number	52657
Customer Number	2657
Invoice Number	11792187
Invoice Total	91,526.66

Remit to:

FIRST TRANSIT, INC.
22192 Network Place
Chicago, IL 60673-1221
USA

00000526570000002657001179218700091526662

Merrimack Valley Area Transportation Company
85 Railroad Avenue
Haverhill, MA 01835

INVOICE # FR 22_10

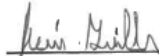
Date: March 15, 2022
To: Noah Berger
From: Jesus Guillermo
Subject: Fixed Route Drawdown for April, 2022

Below, please find our request to drawdown funds for the Fixed Route system for the month of April, 2022.

Total April Expenses:	\$1,117,300.57
Less Anticipated Revenues:	\$51,233.33
Less Insurance	\$29,090.91

Net request: \$1,036,976.33

If I may provide any further information please let me know.



Jesus Guillermo
General Manager

Merrimack Valley Area Transportation Company
85 Railroad Avenue
Haverhill, MA 01835

INVOICE#: STS 22_10

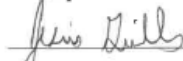
Date: March 15, 2022
To: Noah Berger
From: Jesus Guillermo
Subject: Special Transportation Services Drawdown for April, 2022

Please find below our request to drawdown funds for the Special Services' administrative costs for the month of April, 2022.

If we may provide any further information, please contact me.

Total April 2022 Expenses:	\$259,567.86
Less Revenues:	\$4,689.83
Less drawdown reduction	\$127,439.02

Net Request: \$127,439.02



Jesus Guillermo
General Manager

ATTACHMENT J

FORM OF CONTRACT **CONTRACT FOR MANAGEMENT SERVICES**

Note: This Form of Contract has been revised in response to requests for clarifications received from the Proposers. The MVRTA will consider further clarifications during the negotiating process with the selected Proposer but reserves the right to reject any changes to the Form of Contract that in the opinion of MVRTA is not in its interest of the Authority. Proposers should include with the Proposal any requested exceptions, modifications or additions to the Form of Contract.

The revisions can be found in Article 9.a. Employees; Article 13. Working Funds; Article 16, Operating Revenue and Expenses; Article 22, Obligations Upon Termination; & Article 54 Dispute Resolution.

FORM of CONTRACT

FOR MANAGEMENT SERVICES

BETWEEN THE

Merrimack Valley Regional Transit Authority

AND

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CONTRACT

THIS CONTRACT, made and entered into on the date it is fully executed by the parties (the “Effective Date”) by and between the MERRIMACK VALLEY REGIONAL TRANSIT AUTHORITY, (the “Authority”) a body politic and corporate, and a political subdivision of the Commonwealth of Massachusetts, organized and empowered pursuant to the provisions of Chapter 161B of the General Laws of Massachusetts, having a usual place of business at 85 Railroad Avenue, Haverhill, Massachusetts 01835 and _____ (the “Contractor”), a _____ having a usual place of business at _____, _____ (collectively, the “Parties”).

WHEREAS, the Authority desires to enter into a contract with a qualified organization for the management, maintenance, supervision, and operation of bus and paratransit services, within the MVRTA District (the “Transit System”); and

WHEREAS, the Authority invited the submission of proposals in response to a Request for Proposals (the “RFP”) for such services; and

WHEREAS, the Contractor submitted a Proposal to manage, maintain, supervise and operate the Transit System; and

WHEREAS, the Authority has decided to award the contract therefore to the Contractor.

NOW THEREFORE, the Parties hereto agree as follows:

1. The Contract This Contract for Transit System services, together with the Appendices, the RFP, and the Contractor’s Proposal, constitutes the entire contract between the Authority and the Contractor. The Federally Required Contract Clauses are included hereto as Appendix A. In the event of any conflict or inconsistency between or among the provisions of this Contract, the provisions of the Federally Required Contract Clauses and/or the provisions of the RFP, then the provisions of this Contract shall govern, control and prevail over the provisions of the Federally Required Contract Clauses, and the Federally Required Contract Clauses shall govern, control and prevail over the provisions of the RFP.

2. Contractor

a. Transit Management

The Contractor will furnish management services required by the Authority for the efficient operation of the Transit System under the policies, standards, and procedures established by the Authority. The management to be furnished includes, but shall not be limited to: general operations, safety and accident prevention, route planning, marketing, real estate management, equipment and building utilization and maintenance, revenue and property security, route supervision, scheduling, service standards, purchasing, accounting, budgeting, insurance and claims, employee selection and training, employee relations, labor negotiations, call taking, and trip scheduling and all other normal managerial functions reasonably required in the day-to-day operation of the Transit System.

The Contractor will be responsible for providing required preventive maintenance, repairs, fueling, and cleaning to the vehicles listed in Appendix B. It shall include the repair of equipment damaged in accidents or from abuse. This vehicle list will be updated from time to time to reflect the Authority bus and van fleet.

The Contractor will be provided with use of the maintenance facility, associated equipment, and tools by the Authority. Ownership of such maintenance facility, associated equipment, and tools shall remain with the Authority. The Contractor shall be responsible for the repair or replacement of any facilities, associated equipment, or tools damaged due to the gross negligent or intentional acts of the Contractor and/or the Contractor's employees or agents, normal wear and tear excepted. Such replacement facility, equipment, or tools shall be owned by the Authority.

At the request of the Authority the Contractor will supply "Special Project" assistance. "Special Projects" include but are not limited to, Bus Line Inspections (BLI), Comprehensive Operational Analysis (COA), or any other special programs requested during the term of this Agreement and as defined herein. Special Projects are defined as not being within the scope of the day-to-day management services provided for herein. For each Special Project, the parties shall mutually agree upon the cost to the Authority, the work task plan, special project budget, project schedule, and the special project tracking-reporting plan.

3. Commencement and Term and Start of Transit Services

a. Term

The term of this Contract (the "Contract Term") shall commence on the effective date and shall remain in full force and effect until June 30, 2027, unless terminated earlier pursuant to the provisions of Section 21 herein.

b. Transition and Start of Transit Services

The Contractor is responsible for the smooth transition and uninterrupted continuation of the MVRTA fixed route and paratransit services from the current contractor, First Transit, Inc. and the sub-corporations, Merrimack Valley Area Transportation Company, Inc., and Special Transit Services, Inc. on July 1, 2022, time being of the essence. The Contractor's transition plan covering the period for the effective date through the start of service is attached hereto as Appendix D and is incorporated herein by reference.

4. General Representations and Warranties of Contractor

a. Compliance with Laws

Neither Contractor nor to its knowledge any of its consultants, agents or suppliers has been charged with or is in material violation of any applicable federal, state and local statutory and common laws, rules, regulations, ordinances, codes and orders ("Laws") governing the operation of its business which have or could have a material adverse affect on the performance of Contractor's obligations hereunder or the performance of any of its consultants, agents or suppliers. Contractor and its consultants, agents and suppliers have and will maintain throughout the Contract Term all necessary rights, authorizations and licenses to provide all materials and services furnished pursuant to this Contract.

b. Litigation

Contractor hereby warrants there is no action, suit, proceeding at law or in equity by any person or entity, or any arbitration or any administrative or other proceeding by or before (or, to Contractor's knowledge, any investigation by) any governmental or other instrumentality or agency, pending, or, to Contractor's knowledge, threatened against or contemplated by Contractor or any of its consultants, agents or suppliers which has or could have a material adverse affect on the performance of Contractor's obligations hereunder or the performance of any of its consultants, agents or suppliers.

c. Financial Statements

Contractor shall furnish to the Authority its most recent balance sheet and profit and loss statements (the "Financial Statements"). The Financial Statements were prepared in accordance with generally accepted accounting principles consistently applied, are true and correct and fairly present the financial position of Contractor as of their respective dates and the results of its operations for the periods then ended. There has been no material adverse change in the financial position or business operations of Contractor since the date of the Financial Statements.

5. Personnel

a. Resident Team

MVRTA is very satisfied with the five current resident managers and is prioritizing maintaining stability with respect to personnel in the face of the changes outlined above. The Contractor shall presume that the five current First Transit resident managers will be available to transition to the new operating fixed route and paratransit sub-corporations to be established by the Contractor. The five current resident manager positions are: General Manager, Assistant General Manager, Assistant General Manager for Maintenance, Director of Paratransit Operations and Director of Administration. MVRTA anticipates that all five of the current managers will be interested in continuing in their current positions with the new sub-corporations. If any any of the current resident managers are not available to transition to the new sub-corporations the Contractor will subject to the approval of the Authority and consistent with its hiring practices of the Contractor fill the vacancy.

1. General Manager
2. Assistant General Manager
3. Assistant General Manager for Maintenance
4. Director of Paratransit Operations
5. Director of Administration

Management of the Transit System shall be the full-time job of the Resident Management Team. The Resident management team shall be employees of the sub-corporations to be owned by the Contractor as provided in this Agreement.

b. Employee Dishonesty

The Contractor shall maintain an insurance policy with a limit of \$1,000,000 issued by an insurance company licensed to do business in Massachusetts to insure against dishonest or fraudulent acts of employees of the Contractor.

c. Change in Key Personnel

The Contractor shall not make a change in the identity or position of any of the Key Personnel without the prior written approval of the Administrator. If the Contractor shall undertake such change without the prior written approval of the Administrator, it shall be an Event of Default as that term is defined in this Contract.

d. Required Personnel or Position Changes

Except as concerns the owner, officers, statutory or otherwise, of the Contractor, the Administrator shall have the right to require changes in the personnel or positions of the Contractor, including, but not limited to, the Resident Team, in order that the Transit System might be effectively and efficiently operated. In the event that the Contractor shall fail to make changes in its personnel or such positions after having been directed to do so by the Administrator, it shall be an Event of Default as that term is defined in this Contract.

e. Other Personnel

The Contractor may also employ, during the Contract Term, other personnel, as required in the ordinary course of business from time to time, or during emergency situations; however, if such personnel are employed without the prior approval of the Administrator, the costs of the Contractor in regard to such personnel shall not be considered to be an Operating Expense, as that term is defined in this Contract.

6. Advisory and Technical Assistance

The Contractor will furnish advisory and technical assistance as may be reasonably required to assist the Resident Team in the management of the Transit System at no additional cost (except travel and living expenses as set forth herein). Such advisory and technical assistance shall include, but will not be limited to, those relating to the managerial functions identified in Section 2. The amount and form of this advisory and technical assistance shall be approved by the Authority prior to commencement of work.

The Authority will reimburse the Contractor for travel and living expenses of non-resident Contractor personnel while they are providing advisory and technical assistance services away from their headquarters, as provided below:

Travel

1. Actual coach (if available) air fare.
2. Automobile allowance computed at the lesser of the rate per mile established by either the state or federal government at the beginning of each six-month period that this Agreement is in effect.
3. Airport parking fees and related ground transportation costs.

Living

Actual costs incurred for lodging. The Contractor will keep adequate time and expense records to document the billings, which shall be submitted monthly to the Authority.

7. Compensation

a. Management Fee

The management fee to be paid to the Contractor has been determined to reflect the value of the Contractor’s work, expertise, and management, as well as outside support, guidance, partnership, consultation, mentorship and identification of best practices.

The Contractor’s fee for the management of the Transit System pursuant to this Agreement is as follows:

<u>PERIOD</u>	<u>ANNUAL FEE</u>	<u>MONTHLY FEE</u>
7/1/22 – 6/30/23	\$	\$
7/1/23 – 6/30/24		
7/1/24 – 6/30/25		
7/1/25 – 6/30/26		
7/1/26 – 6/30/27		

As included in Appendix C, such fee includes the labor, overhead fringe benefits, travel, lodging and other expenses of the Account Manager, all other personnel of the Contractor, profit, overhead and other corporate expenses associated with the management of the MVRTA system for the Contractor. Payment of the Management Fee will be made to the Contractor by the Authority within 30 days of receipt of an invoice for that month’s management fee. In the event this Agreement becomes effective or terminates during a calendar month, the fee due the Contractor will be prorated on a daily basis.

The salary, wages, fringe benefits, travel and other costs of the Resident Management Team are reimbursable expenses chargeable to the MVRTA and are not included in the Management Fee, pursuant to this Agreement.

8. Operating Sub-corporations Personnel

The Contractor will acquire from First Transit, Inc. or establish appropriate wholly-owned subsidiary operating sub-corporations, duly organized under the Laws of the Commonwealth to manage and operate the MVRTA Fixed Route and Paratransit Transit services Pursuant to this Contract.

The sub-corporation for the MVRTA fixed route service is,

_____, a
Massachusetts corporation (_____) a wholly-owned subsidiary of the Contractor. The sub-corporation will cause _____ to employ the Resident Management Team and all supervisory,

administrative and maintenance, personnel necessary for the operation of the fixed route system including those represented by Teamsters Local 170.

The sub-corporation for the MVRTA paratransit service is,

_____, a
Massachusetts corporation (_____) a wholly-owned subsidiary of the Contractor. The sub-corporation will cause _____ to employ the Resident Management Team and all supervisory, administrative and maintenance, personnel necessary for the operation of the fixed route system including those represented by Teamsters Local 170.

9. Status of Employees of the Contractor

a. Not Employees of Authority

The Contractor's sub-corporations shall be and remain the employer of the Resident Management Team, as defined in Section 5, Personnel. The Contractor acknowledges and agrees that it is acting as an independent Contractor for all work and services rendered pursuant to this Contract, and shall not be considered an employee or agent of the Authority for any purpose, nor shall Contractor be considered to be the employee or agent of the bus drivers, dispatchers or any other personnel that does not constitute the Resident Management Team, as defined in section 5, Personnel. Although the Administrator and/or the Authority's Advisory Board has certain rights hereunder concerning routes, fares, and the like, as provided in said Chapter 161B, it shall not be construed or deemed that the exercise of any such rights shall cause any affected employee to be construed as an agent, servant, representative or employee of the Authority.

b. Relationship to Existing Obligations

To the extent required and/or permitted by applicable law, the Contractor shall assume all of the obligations due its employees in the conduct of the Transit System under all labor and other employee contractual obligations, including, but not limited to, collective bargaining agreements and pension plans, which are directly related to the operation of the Transit System, for the duration of this Contract. The Contractor shall not, however, make any representation to the effect that it has an ability to negotiate new agreements in these regards which will contain the same provisions as are contained in the existing agreements, to strike any such provision, or to add or modify provisions thereof.

c. Amended and New Agreements

Any amendments, modifications, changes, extensions, or renewals of collective bargaining agreements, pension plans, or other employee contractual agreements, or new agreements of such a nature, as may hereafter be entered into by the Contractor, that are beyond the funding available to the Authority will be the responsibility of the Contractor. Legal expenses related to collective bargaining in the negotiation of such agreements shall be considered to be an Operating Expense, as that term is defined herein; however, the identity of the lawyer or firm retained by the Contractor for such services, and the incurring of any expense related thereto, shall not be binding upon the Authority unless the prior written approval of the Administrator is obtained by the Contractor. Such approval shall not be unreasonably withheld by the Authority.

10. Materials, Equipment, and Facilities

The Authority agrees to provide and furnish to the Contractor offices, garage and storage facilities, motor coaches, inventory of motor coach parts and supplies, shop and garage equipment, office equipment, and all other properties, assets, and facilities necessary or appropriate, in the sole discretion of the Administrator, for the operation of the Transit System by the Contractor. Such offices, garage and storage facilities, motor coaches, inventory of motor coach parts and supplies, shop and garage equipment, office equipment, and all other properties, assets, and facilities are and shall remain the property of the Authority, and the Authority and the Contractor agree to enter into such agreements as may be necessary to further define the rights and obligations of the Parties in respect to this section.

11. Control of Services

The Administrator, and, if applicable, the Advisory Board, pursuant to and consistent with the provisions of said Chapter 161B, shall have the right to review the Contractor's plans for operating the Transit System, and its actual operation and to recommend or require changes. The Contractor shall advise the Administrator regarding matters of importance and make recommendations when appropriate; however, the Administrator shall have final authority with regard to these actions, which actions shall not be taken without the prior approval of the Administrator or the Advisory Board, as the case may be, and as provided in this Contract.

12. Purchase of Equipment and Supplies

The Contractor acknowledges that the Administrator may establish, from time to time, purchasing procedures applicable to the Contractor in the performance of its duties which shall be in accordance with sound business purchasing policies and procedures, applicable state procurement laws and regulations and the Authority's purchasing policies and rules. These policies may establish, among other matters, the use of funds and the ownership and responsibility for replacement of equipment and supplies in addition to the requirements established by the provisions of this Contract.

13. Working Funds

The Authority shall provide the Contractor with adequate working funds in advance through the establishment of accounts and shall be used to pay all payroll, fringe and pension benefits expenses and all other "operating expenses" of the Transit System under procedures and controls adopted by the Authority. The ownership of said funds will remain in the Authority. See Article 16 of this Form of Contract.

14. Budgets and Recommendations

The Contractor shall prepare projections as are or may be required by the Administrator or the Advisory Board to establish a budget for the Transit System. The Contractor agrees to make all responsible efforts to maintain operational, payroll, and any other expenditures consistent with the budget so established, and to inform the Administrator as soon as reasonably possible regarding the prospects of an increase or decrease in such expenditures so as to require reexamination of the established budget. The Contractor shall also furnish monthly reports and recommendations to the Administrator relating to service extensions, route planning, and service policies, and shall promptly assist the Administrator in the preparation of periodic reports relating to the Transit System.

15. Accounting Services and Procedures

a. Performance

The day-to-day accounting services and procedures related to the regular operation of the Transit System shall be the responsibility of the Contractor. Such services and procedures shall be performed by the employees of the Contractor unless the Administrator shall give prior written consent to the hiring of an independent accounting firm, whose services shall be construed to be an Operating Expense of the Transit System.

b. Specification

The accounting services and procedures which are to be performed by said employees shall include, but not be strictly limited to, bookkeeping services, the compilation of statistics, and the preparation of monthly financial and operating statements, the intent of which is to enable the Authority to compare the current operations of the Transit System with the operation in prior years, and with the performance of other transit operations.

16. Operating Revenues and Expenses

a. Operating Revenues

By vote of the MVRTA Advisory Board, MVRTA will not be collecting fares to at least March, 2024. Should the fare policy change at any time, the Contractor shall collect, sort, and deposit Operating Revenues in a bank or banks designated by the Administrator. The Contractor shall provide the Authority with an accounting of all Operating Revenues as required by the Administrator. The Administrator shall have the right to require that the Contractor make a good faith effort to obtain fidelity insurance coverage relative to those persons employed that will handle cash receipts; the costs related to such coverage shall be an Operating Expense, as that term is defined in this Contract. Revenue derived from the operations of the Transit System shall be and remain from the initial reception of, the absolute property of the Authority. As defined in this section, the term "Operating Revenues" shall mean and include all revenues derived from the operation of the Transit System, including, but not limited to, all passenger fares, transportation contracts, advertising fees, and proceeds from outside sales and maintenance.

b. Advance of Necessary Operating Expenses

MVRTA shall provide the Contractor with adequate working funds in advance that shall be deposited in a "Regular Operating Checking Account," "Other Special Accounts as Needed," and a "Payroll Account" that shall be used to pay all payroll, fringe, and all other reasonable and necessary "operating expenses" of the Transit System as defined below, under such procedures and controls as may be adopted by MVRTA. The ownership of said funds will remain with MVRTA.

c. Eligible Operating Expenses

Eligible Operating Expenses of the Transit System are all necessary and reasonable costs, expenses, and contractual obligations incurred by Contractor in connection with the operation of the transit system, facilities and equipment. All eligible operating expenses of the transit system shall be paid by the Contractor from working funds provided by MVRTA. MVRTA's obligation to pay or reimburse the cost of all eligible operating expenses of the transit system shall survive the termination and/or expiration of this Agreement. MVRTA shall make available to the Contractor, within the agreed upon budget, sufficient working capital to cover the eligible operating expenses of the transit system. In no event shall the Contractor be obligated to lend or

advance funds on behalf of MVRTA to fund operating expenses of the transit system. Eligible operating expenses of the transit system, as used herein, shall mean all of the cost and expenses of operating the fixed route and paratransit transit system, including but not limited to, all wages and other compensation due or payable to all personnel (excluding any employed directly by the Contractor) necessary to operate the system including all fringe benefits, pension benefits and any other benefit plan payments and related expenses pertaining to all personnel necessary to operate the system excluding GASB pension related expenses and pension administrative costs on behalf of plan participants, including but not limited to the Teamsters Local 170 union pension plans, all vacation pay and sick pay, all payroll taxes and costs, social security taxes, employee withholding taxes pertaining to the operation of the system, all statutory workers' compensation and unemployment insurance, costs of accounting and record keeping, costs for any audits required by federal, state, local or other governmental authorities with jurisdiction, all training costs, all costs associated with maintenance of the transit system facilities, equipment or vehicles, the cost of all tools other than those expected to be owned by a journeyman transit mechanic, maintenance equipment, all rental fees, utilities, association dues or expenses, insurance premiums, insurance deductibles, supplies, parts, computers and office supplies, repairs, fuel costs, lubricants, uninsured losses, all attorney fees when approved by MVRTA, settlements and awards, costs of compliance with legal requirements or government regulations and all other charges, costs and expenses pertaining to or arising out of the operation of the system.

d. Facilities and Equipment

MVRTA will provide administrative, maintenance, and vehicle storage facilities, as well as all equipment, supplies and transit vehicles as may be reasonably necessary for the operation of the transit system. The Contractor shall keep all MVRTA facilities in good working order and condition, the cost of which shall be an eligible operating expense of the transit system. All property of any type either real, personal, or mixed hereinafter acquired and reasonably necessary for performance of the Transit System operations shall be acquired at MVRTA's expense and shall become the property of MVRTA. The Contractor is also required to manage HVAC, grounds, carpentry, structural, electrical, mechanical (Plumbing), emergency repairs, vendor relations and management of maintenance personnel, the cost of which shall also be an eligible operating expense of the transit system. MVRTA agrees to pay any other approved reasonable operating expenses incurred by the Contractor pursuant to this Agreement.

e. Indemnification

MVRTA will indemnify, hold harmless, and defend against any and all liabilities, losses, damages, claims, costs, expenses, and suits, including reasonable attorneys' fees, suffered or incurred by Contractor and attributable or relating in any way to obligations of or assumed by Contractor under any labor agreement entered into by Contractor in performance of this Agreement, including, but not limited to, arbitration awards, obligations under any pension plan, provision or arrangement and any accrued benefits claimed to be due; provided, however, that nothing contained in this paragraph shall relieve Contractor from the negligence of Contractor or any Officer.

f. Other Expenses

Nonemergency expenses that are outside the ordinary, the Contractor must obtain prior approval from the Administrator. A purchase requisition form may be submitted by the

Contractor for review by appropriate personnel of the MVRTA for approval prior to the purchase by the Contractor of such services or goods.

g. Contractor's Employees

In respect to all of the employees of the sub-corporations and any other regular employees whom the Contractor hires after obtaining the prior written consent of the Administrator, the Authority shall be responsible for providing the Contractor with funds to pay all of their wages and other compensation, the employer's share of FICA, Social Security and Medicare payroll taxes, and the employer portion of all other Federal and State payroll taxes, and for all fringe benefits which the Contractor is liable to pay either under applicable law, or an applicable collective bargaining agreement.

h. Contractor's Advisors, Consultants and Special Personnel

In respect to all other persons, such as advisors, consultants and special personnel, the Authority shall not be responsible for paying, or providing the Contractor with funds to pay, any or all of their fees, or wages and other compensation, the employer's share of FICA, Social Security and Medicare payroll taxes, the employer portion of all other Federal and State payroll taxes, or any other fringe benefits, or travel and lodging expenses, unless the Contractor has obtained, in each instance, the prior written consent of the Administrator.

i. Other Expenses and Risk

i. The Authority shall be liable for paying for all other expenses incurred by the Contractor in conjunction with the operation of the Transit System, which shall include, but not be limited to, defending and handling employee grievances under collective bargaining agreements, premiums for workers compensation insurance and any other insurance which the Administrator may authorize the Contractor to obtain, fuel charges and the cost of inventory items, parts, repairs and supplies, subject to any provision within this Contract to the contrary.

ii. Claims, damages and losses resulting from current and future pension liability costs owed to sub-corporation employees, OSHA fines or fees, or cyber security exposure are reimbursable operating expenses to be paid by the MVRTA as provided in the Management Contract, unless such claims, damages or losses are the result of the negligence or omission of the Contractor, the Contractor's employees, officers or agents are not reimbursable operating expenses are the sole responsibility of the Contractor and the Contractor shall indemnify the Authority as provided in Section 25(a) & 25(b) Indemnification of this Agreement. The MVRTA does not view it to be the Contractor's responsibility or role to apologize for the Authority or assume the Authority's risk.

iii. Since the Authority is exempt under the provisions of said Chapter 161B from the obligation to pay any sales or use taxes on property which it purchases or leases for use in conjunction with the operation of the Transit System, it is expected that the Contractor will not be liable for any

such taxes if it acts as the purchasing agent for the Authority in conjunction with any of the responsibilities under this Contract.

j. Prior or Subsequent Expenses

Any and all expenses incurred by the Contractor and the organizers, principals, or promoters thereof, either prior or subsequent to the term hereof, and any claims against the Contractor which have accrued prior, or shall occur subsequent, to the term hereof, and which were not incurred, or did not accrue, as a consequence of the Contractor's operation of the Transit System during the term hereof, and are not an obligation of the Authority hereunder, shall not be construed as, or deemed to be, Operating Expenses.

17. Audit and Inspection of Records

a. Access and Inspection

The Authority, or its designated accountant or auditor, shall have the right of access to, and inspection of, all books and records of the Contractor at any and all reasonable times in order to verify and calculate Operating Revenues and Operating Expenses received and incurred, respectively, in the operation and maintenance of the Transit System. Such books and records shall be kept at the office where the Transit System is operated.

b. Annual Audit

Within twenty (20) days after the completion of each and every calendar month of operation of the Transit System, the Contractor shall submit to the Administrator a statement of Operating Revenues and Operating Expenses of the Transit System. The Contractor shall furnish an annual audit, prepared and certified to by an independent public accountant which audit shall certify as to the correctness of the Operating Revenues and Operating Expenses reported for the period covered in accordance with generally accepted accounting principles. The costs incurred in conjunction with the rendering of each such audit shall not be construed to be an Operating Expense of the Transit System.

c. Maintaining of Records

The Contractor shall maintain all records required pursuant to the provisions of this Contract for the longer of (i) three (3) years from termination, (ii) the closing of any matters pending at the termination of the Contract, or (iii) for as long as is required by applicable federal and state laws and regulations.

18. Interruptions in Service

The Contractor shall not be liable to the Authority, and it shall not be grounds for terminating this Contract, or assessing any damages, actual or liquidated, against the Contractor, if there should be any delay, failure or interruption of the Transit System, or any delay, failure or interruption in the performance of the Contractor's other obligations under this Contract, caused by any of the following enumerated causes or conditions:

a. Exterior Causes

Acts of God or nature, governmental restrictions, civil commotion or insurrection, or any kind of armed attack by a foreign power; a public health emergency caused, for instance, by an epidemic; and other similar causes beyond the Contractor's ability to control.

b. Labor Problems

Labor actions or inactions, such as blue collar flu, sit-in, slow-down or declared strike unless caused in whole or part by the acts or omissions of the Contractor as reasonably determined by the Authority.

19. Events of Default

An “Event of Default” shall mean a material default of Contractor’s obligations under this Contract which continues uncured after the expiration of any applicable cure period. Without limiting the generality of the foregoing, an Event of Default, shall include:

a. Contractor’s failure to comply with any provision of this Contract;

b. Contractor has become insolvent, filed for bankruptcy, or has made an assignment for the benefit of its creditors or has taken advantage of any insolvency statute or debtor/creditor law, or its property or affairs has voluntarily been put in the hands of a receiver;

c. Any case, proceeding or other action against Contractor is commenced in bankruptcy, or seeking reorganization, liquidation or any relief under any bankruptcy, insolvency, reorganization, liquidation, dissolution or other similar act or law of any jurisdiction, which case, proceeding or other action remains undismissed, undischarged or unbonded for a period of sixty (60) days;

d. Contractor is in violation of any law, regulation or rule applicable to it or the provision of the Transit System services.

20. Notice of Default/Opportunity to Cure

a. Default Notice

If Contractor shall default in its obligations under this Contract, the Authority will notify Contractor, specifying the nature of such default. The default notice shall state that unless the default is cured to the reasonable satisfaction of the Authority within thirty (30) days, or any other applicable cure period, or such longer period as may be mutually agreed upon following receipt of the default notice, an Event of Default shall have occurred and the Authority will be entitled to exercise any or all of the applicable remedies set forth in Section 21(c) hereof.

b. Immediate Termination

Notwithstanding the foregoing, the Authority may terminate this Contract immediately for the Event of Default described in Section 21(b).

21. Termination Provisions

This Contract shall terminate upon completion of the Contract Term, unless earlier terminated as follows:

a. Termination for Convenience

The Authority may terminate this Contract without cause, but with no fewer than thirty (30) days prior notice, at any time for its convenience upon written notice to Contractor, effective upon the termination date stated therein. The Contractor shall cease performance upon the stated termination date. If the Contract is terminated pursuant to this sub-section the

Contractor shall be entitled to be paid for services performed and actual costs incurred prior to the date of termination, but not in excess of amounts due pursuant to this Contract.

b. Termination Upon Change of Control

The Authority may terminate this Contract within one hundred and twenty (120) days of a “Change of Control” of which the Authority has notice, upon written notice to Contractor effective upon the termination date stated therein. The Contractor shall cease performance upon the stated termination date. For purposes of the Contract, Change of Control means any change in the ownership of Contractor or any circumstance where any third party or parties have acquired by contract or otherwise the power to exercise, directly or indirectly, a controlling influence on the management or policies of the Contractor.

c. Termination/Remedies Upon Event of Default

Upon an Event of Default, the Authority may exercise any or all of the following remedies:

1. Authority Right to Terminate

The Authority may terminate the Contract upon thirty (30) days prior notice.

2. Authority Right to Substitute Other Contractors

The Authority may order Contractor to cease performing the Services and may complete the Contract with other contractors or subcontractors.

3. Further Obligation

If this Contract should be terminated by the Authority in the exercise of the rights conferred upon it pursuant to the provisions of this Section 20 hereof, neither Party shall be under any further obligations to the other, except for the Authority’s duty to pay all obligations due hereunder, and the obligation of the Contractor to refund to the Authority any payments received by it in excess of any compensation it is entitled to receive hereunder, all as the case may be.

4. Recovery of Damages

Notwithstanding any other provision of this Contract, except as may relate to the provisions of Section 18, the Authority reserves the right to recover from the Contractor any actual damages it may sustain as a result of the Contractor’s failure to cure any default by it in the performance of the provisions of this Contract; in the alternative, the Authority may elect to demand that the Contractor pay to it Ten Thousand Dollars (\$10,000.00) per day for each day or part thereof for which there is a material and substantial lack of operation of the Transit System as a result of the act, omission, or negligence of the Contractor. The Contractor agrees that its failure so to operate would, in all likelihood, result in additional costs, and other tangible and intangible losses to the Authority; and that such costs and losses would be difficult to ascertain; hence, this alternative provision for liquidated damages is a fair and reasonable estimate of the actual damages, which does not amount to a penalty.

5. Contractor Liability for Other Damages

Contractor shall be liable for all actual damages resulting from an Event of Default. The Authority may deduct from and set off against damages due to the Authority all amounts due to Contractor hereunder.

6. No Contractor Liability for Consequential, Special or Incidental Damages

Notwithstanding any other provision of this Contract, Contractor shall have no liability under this Contract to pay to the Authority any consequential, special or incidental damages.

7. Cumulative Remedies

Unless otherwise inconsistent with any other provision hereof, any and all rights and remedies which either Party may have under the terms of this Contract, or by operation of law, either at law or in equity, upon any breach of the terms hereof, shall be distinct, separate and cumulative, and shall not be deemed inconsistent with each other; and no one of them, whether exercised by either Party or not, shall be deemed to be in exclusion of any other; and any two or more of all rights and remedies may be exercised at the same time to the extent permitted by applicable law.

8. Authority's Rights to Bring Suit

The Authority may bring any suit or proceeding against Contractor for specific performance or for an injunction or to recover damages or to obtain any other relief or for any other proper purpose hereunder.

22. Conduct by the Contractor Upon Termination

After receipt by either Party of a notice of termination of this Contract issued to it by the other Party, and except as otherwise directed by the Authority the Contractor shall conduct itself as follows:

a. Cessation of Services

Stop the performance of the services and operations required hereunder on the date and to the extent specified in said notice of termination.

b. Cessation of Orders

Place no further orders or subcontracts for equipment, materials, supplies and/or services, except as may be necessary for completion of such portion of the services and operations required under this Contract as are not terminated.

c. Termination of Orders

Terminate all orders and subcontracts to the extent that they relate to the performance of the services and operations terminated by the notice of termination.

d. Assignment of Orders

Assign to, in the manner, at the times, and to the extent directed by, the Authority, all of any right, title, and interest it may have under the orders and subcontracts so terminated, in which case the Authority shall have the right, in its discretion, to settle or pay any or all claims and liabilities arising out of the termination of such orders and subcontracts.

e. Transfer of Title

Transfer any title to and deliver, in the manner, at the times, and to the extent directed by, the Authority, of fabricated or unfabricated parts, work in process, completed work, supplies and other materials produced as a part of, or acquired in connection with, its performance of the

services and operations required hereunder, and the completed or partially completed plans, drawings, information and other property which, if this Contract had not been terminated, would have been required to be furnished to the Authority.

f. Completion of Services

Complete performance of such part of the services and operations required hereunder as shall not have been terminated by the notice of termination; provided, however, that the Parties previously agree upon reasonable compensation of the Contractor.

g. Preservation of Property

Take such action as may be necessary, or as the Administrator may direct, for the protection or preservation of the real and personal property which is in the possession of the Contractor and in which the Authority has or may acquire an interest, including, but not limited to, written documents, books, ledgers, journals and all financial and management records.

h. Obligations of the MVRTA and Contractor Upon Termination. If this Agreement is terminated for any reason or is not renewed with Contractor, MVRTA shall assume or make arrangements for the assumption of any and all existing obligations or liabilities of the Contractor pursuant to management services and operation of the fixed route transit system under this Agreement and the furnishing of personnel necessary for the operation of the transit system, provided that such obligations or liabilities were incurred by the Contractor in compliance with the terms and conditions of this Agreement, including, without limitation, as being within the authority of the Contractor under this Agreement. Such assumption or liability shall not apply to obligations or liabilities arising out of or related to any the negligence, omission or default of the Contractor under this Agreement or otherwise not consistent with the terms of this Agreement. The Contractor is required to cooperate with MVRTA and any successor management company selected by MVRTA in the transition of the operation, personnel and records of the transit system sub-corporations to the successor management company. The Contractor shall cooperate with MVRTA and any successor management company in the defense of any and all claims, arbitrations, or lawsuits resulting from the Contractor's operation of the transit system, whether or not such claims are known on the date of termination of this Agreement. Cooperation shall include, but not be limited to, providing necessary records and witnesses requested by MVRTA. The Contractor shall be entitled to compensation for reasonable direct out of pocket expenses associated with the defense of any such claim. This paragraph shall survive the termination of this Agreement.”

23. Waiver

a. Failure to Complain

Failure of either Party hereto to complain of any act or failure to act, or other condition, which constitutes a breach of the other Party's duties hereunder, no matter how long the same may continue, shall not be deemed to constitute a waiver by the first Party of any of its rights under this Contract. No waiver by either Party at any time, express or implied, of any breach of any provision of this Contract, shall be deemed to constitute a waiver of a breach of the same duty. If any action by either Party shall require the other Party's consent or approval, the first Party's consent or approval to any such action on any one occasion shall not be deemed to constitute a consent to or approval of said action on any separate, subsequent occasion, nor a consent to or approval of any other action on the same or subsequent occasion.

b. Acceptance of Payments

No payments by the Authority or acceptance by the Contractor, or payments by the Contractor accepted by the Authority, of a lesser amount than shall actually be due from each to the other shall be deemed to be anything other than a payment on account, and the acceptance by either Party of a check from the other for a lesser amount with an endorsement or statement thereon, or in a letter accompanying said payment, that said lesser amount is being tendered as payment in full, shall not be deemed an accord and satisfaction, and the payee can accept any payment without prejudice to its right to recover whatever balance is actually due it under this Contract.

24. Authority's Additional Powers

a. Adoption of Policies and Rules

The Authority shall have the right from time to time to adopt policies and make rules and the same shall be communicated in writing to the Contractor. This rule-making power does not extend to the making of rules pertaining to the manner in which employees of the Contractor perform their duties, nor shall the Authority's exercise of such power create any rights in any third persons. The Contractor shall be required to comply with all reasonable measures required of it pursuant to such policies and rules.

25. Indemnification

a. With the exception of those claims, demands, liabilities, actions, causes of actions, costs and expenses, including attorney's fees that are covered by the insurance policies listed in Section 26 of this Agreement, the Contractor shall indemnify, defend, and hold the Authority, its agents, officials and employees harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including attorney's fees, arising out of the Contractor's breach of this Contract or the negligence or misconduct of the Contractor, or the Contractor's agents or employees.

b. In the event claims, demands, liabilities, actions, causes of actions, costs and expenses (including attorney fees) are made against or incurred by the Contractor, _____, or _____ their agents, servants or employees, which are covered by the insurance policies listed in Section 26 of this Agreement, the Authority will apply the benefits of such coverage towards the resolution or defense of claims, demands, liabilities, actions, causes of actions, costs, expenses (including attorney's fees) and judgments. To the extent that such coverage is not available or is insufficient to provide full coverage for all claims, demands, liabilities, actions, causes of actions, costs and expenses (including attorney's fees) the indemnification protection provided by Section 25(a) herein shall apply to the benefit of the Authority.

c. Contractor shall ensure that any contract or agreement entered into with its sub-corporations, including _____ and _____, or subcontractors shall require that such sub-corporations or subcontractors agree to provide the same indemnification protection to the Authority as specified in Section 25(a) herein.

26. Insurance

a. The Authority will procure and maintain as an operating cost and expense at all times during the term of this Agreement and any renewal or extension thereof, liability and property insurance policies as the Authority deems necessary. Said policies shall (with the exception of the workers' compensation insurance as to the Contractor), be endorsed to name the Authority, the Contractor and sub-corporations as appropriate as additional insureds.

b. The MVRTA procures insurance for all MVRTA facilities, property, equipment, business auto liability & collision, pollution & environmental, cyber security, general liability, employment practices, crime, and workers compensation. A summary of the current coverages and limits is attached as Appendix E. The current policies expire on June 30, 2022. The Authority expects to renew the existing or obtain similar policies effective July 1, 2022.

c. In the event the failure of the Authority to provide funding for said insurance, the Contractor may, at its sole option, furnish such policy or policies without prejudice to any other remedy the Contractor may have, and the cost and expense of furnishing and maintaining such policy or policies shall be deemed an operating expense of the Transit System. The foregoing shall not, however, apply to criminal penalties or fraud committed by the Resident Team.

27. Waiver of Subrogation

The Authority hereby releases and agrees to hold the Contractor and _____, _____ and their agents, servants and employees harmless from and against any and all liability for loss of or damage to the buses, paratransit vehicles or other properties of the Authority that otherwise fall within the insurance coverage set forth in Section 26a.

28. Allegations of Discrimination

Notwithstanding any other provision of this Contract, if a Complaint which alleges some act of discrimination is filed with the Massachusetts Commission Against Discrimination (MCAD), or in a Trial Court of the Commonwealth of Massachusetts or a Federal Trial Court, against the Authority, the Contractor, or one or more of the employees thereof, by a person other than an employee of the Contractor relative to a matter concerned with the operation of the Transit System, the Authority will pay for the defense of such Complaint. If a final Judgment or other award is entered by the MCAD or a Court of competent jurisdiction against the Contractor or an employee thereof, to the effect that an act of discrimination was committed, and unless the conduct concerned therewith is covered under any of the insurance policies which the Contractor is required to purchase pursuant to the provisions of Section 26a, the Contractor, and not the Authority, shall be obligated to pay and comply therewith. Such payment and/or compliance by the Contractor shall not be construed to be an Operating Expense, as that term is defined in this Contract.

29. Claims by Employees

If a claim is brought against the Contractor by an employee of the Contractor, other than an employee grievance or one covered under Chapter 152 of the General Laws of Massachusetts, the Authority shall not be responsible for the defense thereof, nor shall the Authority be required to pay, or otherwise comply with, any judgment or award concerned therewith. Any payment and/or compliance by the Contractor in such regard shall not be construed to be an Operating Expense, as that term is defined in this Contract.

30. Defense of Other Actions

a. Criminal and Other Matters

The Authority shall not be required to defend or indemnify the Contractor or the agents or employees thereof, or to pay any judgment or award against the Contractor or the agents or employees thereof, with regard to criminal fines, penalties or sanctions assessed against the Contractor or the agents or employees thereof, for any reckless, wanton, malicious, willful or intentional tort, such as assault and battery, or any non-violent crimes involving deception, moral turpitude, dishonesty or fraud committed by the Contractor or the agents or employees thereof. Any payment and/or compliance by the Contractor or an agent or employee thereof, in such regard shall not be construed to be an Operating Expense, as that term is defined in this Contract.

b. Misconduct Covered by Insurance

For purposes of clarification, it is stipulated that this exclusion of liability does not apply to any alleged misconduct covered by the terms of a Massachusetts Motor Vehicle Liability Insurance Policy, or any other insurance policy which the Contractor has been required to purchase under this Contract.

31. Processing of Claims

Any and all claims made by or against the Contractor, the Authority, or the agents or employees thereof, relative to the conduct and operation of the Transit System, which come to the attention of the Contractor and which are, or could be, an obligation of the Authority hereunder, shall be referred to the Administrator.

32. Independent Contractor

The Contractor acknowledges and agrees that it is acting as an independent contractor for all work and services rendered pursuant to this Agreement, and shall not be considered an employee or agent of the Authority for any purpose, and shall not have the power to bind, or make any commitment on behalf of, the Authority.

33. General Conditions

The Contractor agrees to be subject to the following conditions:

a. Management

To use all reasonable efforts in managing and operating the Transit System, and not to assign, by power of attorney or otherwise, or sublet, its rights and obligations hereunder, or any part thereof, except as provided in Section 39 hereof.

b. Compilation of Records

To compile and maintain records, data, and information on a monthly basis necessary to compute the Operating Revenues and Operating Expenses of the Transit System, and to provide a written report thereof to the Administrator on a monthly basis, in such form as the Administrator may reasonably require.

c. Compliance with Laws

To comply with all relevant Federal, State, and Municipal laws, ordinances, and regulations, particularly those applicable to and governing public and private transportation operations, and the duties to be performed by it pursuant to the provisions of this Contract,

including, without limitation, all applicable policies and regulations established from time to time by the Authority.

d. Customer Complaints

To cooperate with the Authority in the speedy resolution of all customer complaints within limitations of applicable law.

e. Permits and Licenses

To procure all permits and licenses necessary to the lawful performance of the duties to be performed by it pursuant to the provisions of this Contract and required of it as Contractor hereunder. The costs associated therewith, except as concerns the licenses of vehicle operators, shall be construed to be Operating Expenses, as that term is defined herein.

f. Insurance Changes

To cooperate with the Authority in effecting any changes in insurance coverage as may be required.

34. Employee Discrimination

a. Non-Discrimination

In connection with the performance of the provisions of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, ancestry or national origin. They shall take affirmative action, as required by federal, state, or municipal laws and ordinances, or by the policies established by the Department of Labor, Federal Transit Administration or any other federal or state agency with appropriate jurisdiction, as interpreted by federal and state courts having jurisdiction, to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, sexual orientation, ancestry or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

b. Non-Exclusion

No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any activity to be performed under the terms of this Contract on the basis of race, religion, color, sex, sexual orientation, ancestry or national origin. However, no person shall be entitled to any special consideration on account of any of these enumerated conditions.

35. Changes in Scope of Services

a. Agreed Changes

The Contractor shall have the right, from time to time, to request changes in the scope of services to be performed hereunder, which shall include, but not be limited to, such matters as fare and schedule changes, expansion or reduction of service to be provided, and the addition or reduction of equipment. If the Parties agree upon any such requested change, the same shall be evidenced by a written amendment to this Contract, and/or to any exhibits which may become attached and made a part of this Contract, which agreement of amendment must be signed by

both Parties. Unless the agreement of amendment otherwise specifically provides, all the other terms and conditions of this Contract shall apply.

b. Contractor's Refusal to Agree Upon Changes

If, in the exercise of its reasonable judgment, the Contractor decides not to agree to a change requested by the Administrator, it shall have the right to terminate this Contract by giving the Administrator written notice of its decision one hundred and twenty (120) days prior to the effective date of such termination.

36. Covenant Against Gratuities

The Contractor shall not offer or provide gifts, favors, entertainment, or any other gratuities of monetary value to any official, employee or agent of the Authority during the term of this Contract or for a period of one (1) year after the termination hereof.

37. Prohibition on Use of Funds

None of the funds or services provided directly or indirectly under this Contract shall be used in the performance of this Contract for any political activity, or to further the election or defeat of any candidate for public office. None of the funds provided under this Contract shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the legislative branches of the Federal, State, and/or Municipal government.

38. Confidential Information

Any reports, data, or similar information, provided to or prepared or assembled by the Contractor pursuant to the provisions of this Contract, or matters of salaries and personnel information which the Authority requires to be kept confidential, shall not be made available to any individual or organization by the Contractor without the prior written approval of the Administrator, except in compliance with a summons or other process issued by a court of competent jurisdiction or some other duly authorized governmental entity.

39. Copyright

No reports, maps, or other documents produced in whole or in part pursuant to the provisions of this Contract shall be the subject of an application for copyright by or on behalf of the Contractor or any of the agents or employees thereof.

40. Assignment and Sub-Contracting

The Contractor shall not assign, sublet or otherwise transfer this Contract, in whole or in part, without the prior written consent of the Administrator, and shall not assign any of the moneys payable under this Contract, except by and with the written consent of the Administrator.

41. Power of Administrator

Except as otherwise specifically reserved herein, or as may be subsequently specified in an appropriate instrument in writing delivered by the Administrator to the Contractor, the Administrator shall be empowered to exercise the general and specific powers of the Authority in regard to all aspects of the performance of this Contract. The Contractor shall operate the Transit System under the general direction and control of the Administrator, as provided in this Contract, and/or any staff member to whom the Administrator may delegate any powers hereunder, provided that such direction and control does not conflict with applicable law.

42. Communications between the Parties

Unless otherwise expressly required hereunder, or by subsequent written notice sent by the Authority or the Contractor to the other, all communications to the Authority shall be directed to the Administrator, or designee; all communications directed to the Contractor shall be to the General Manager or designee.

43. Covenant Against Contingent Fees

a. Non-Solicitation of Contract

The Contractor represents and warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or persons, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage brokerage fee, gifts, or other consideration, contingent upon or resulting from the award of this Contract. The Contractor agrees to indemnify and hold harmless the Authority, its agents, officers, insurers, attorney, employees' servants, member municipalities and members of the Advisory Board, from any loss, claim, cost, expense, or damage resulting from the falsity of such representation or the breach of such warranty.

b. Independent Services

The Parties hereby acknowledge and stipulate that the Contractor has retained the services of independent accountants and attorneys to assist it in conjunction with the preparation of its Proposal applicable to this Contract, and the negotiation and execution of this Contract. The Authority acknowledges that such acts were not in violation of the provisions of Section 43. The Contractor shall be solely and exclusively responsible for paying all fees charges for all such independent professional advice.

44. Bonus or Commission

The Contractor shall not pay any bonus or commission relative to its being the Contractor hereunder, or for any approval by the Federal or Massachusetts Department of Transportation, the Federal Transit Administration, or the Authority, in connection with securing or carrying out the terms of this Contract.

45. Interest of Members of or Delegates to Congress

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract, or to any benefit arising therefrom.

46. Captions

The caption heading of each paragraph is intended for ease of reference only and does not constitute a part of this Contract. Likewise, such captions shall not be deemed to indicate the intentions of the Parties.

47. Notices and Reports

a. Notice of Breach

Any Notice which may be required under the provisions of this Contract, or any of the ancillary agreements of even date between the Parties, must be sent by United States Postal Service, postage prepaid, return receipt requested, and addressed as follows, unless and until

either Party should send the other Party notice of a different address in conformity with the requirements of this Section.

To the Contractor:

Attention:

Copy to its Counsel:

To the Authority:

Merrimack Valley Regional Transit Authority
85 Railroad Avenue
Haverhill, MA 01835
Attention: Joseph J. Costanzo, Administrator

Copy to its Counsel:

Mark R. Reich, Esq.
KP Law, P.C.
101 Arch Street
Boston, MA 02110

48. Other Recommendations or Actions

In the event that any agency, department or unit of the Federal or State Government makes any recommendations which have an effect upon the provisions of this Contract, or the process involving the obtaining or negotiation of this Contract, the Authority shall have the right to amend this Contract in a manner which is consistent with such recommendations. If the Contractor does not agree to be bound by the provisions of this Contract, as so amended, the Contractor may notify the Authority of its desire to terminate this Contract. Additionally, if the Administrator determines that it is in the best interests of the Authority to terminate this Contract as a result of a protest filed pursuant to the Authority's Procurement Protest Policy, the Authority shall have the right to terminate this Contract. In either case, such termination shall take effect no earlier than ten (10) days and no later than sixty (60) days after the date of such notification, upon a date to be determined by the Administrator, unless such agency, department or unit requires otherwise.

49. Government Funding

If, at any time during the term of this Contract, the Administrator shall determine, in good faith and in the exercise of reasonable judgment, that the funding from the Federal Government or the Commonwealth of Massachusetts, by which the Authority is enabled to pay the Contractor, is, or probably will be, jeopardized to such an extent as to cause an adverse impact,

financial or otherwise, upon the Cities and Towns which are then members of the Authority, the Administrator shall have the right to terminate this Contract upon ten (10) days prior written notice to the Contractor.

50. Entire Contract

This Contract, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

51. Severability

If any term or condition of this Contract or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

52. Governing Law

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the parties hereto submit to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement..

53. Required Federal Clauses

The following clauses of the Federal Transit Administration apply to this contract and are included in Appendix A:

- C Prohibited Interest
- D Termination (A, B, C, D, E, G)
- F Disadvantaged Business Enterprise
- G Civil Rights
- H-2 Contract Work Hours (102, 1, 2, 3, 4, 5)
- K Energy Conservation
- M Privacy Act
- N Access to Records (1, 5, 6)
- T Federal Changes
- U Recycled Products
- V No Obligation by Federal Government
- W Program Fraud and False or Fraudulent Statements
- X Incorporation of FTA Terms
- Y Drug & Alcohol Testing
- Z Charter Bus Requirements
- AA School Bus Requirements
- BB Transit Employees Protective Agreements

These additional clauses apply if the dollar value of the contract will exceed \$150,000:

- A Government-wide Debarment
- B Lobbying
- I Clean Air
- J Clean Water
- Q Third Party Contract Disputes or Breaches

54. Dispute Resolution

The parties shall negotiate in good faith in an attempt to resolve any dispute that may arise under this Agreement. Disputes that cannot be resolved by negotiation shall be submitted to a Massachusetts Court of competent jurisdiction for adjudication.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

MERRIMACK VALLEY REGIONAL TRANSIT AUTHORITY

By:

Noah Berger

Title: MVRTA Administrator

Date: _____

CONTRACTOR

By: _____

Print Name

Title: _____

Date: _____

Attach a corporate authorizing resolution.

INELIGIBLE CONTRACTORS CERTIFICATE

The _____ (name of third-party contractor)

hereby certifies (check one) that it is is not included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations for Various Public Contracts Incorporating Labor Standard provisions.

Company By: _____

Date Title: _____

NON-COLLUSION CERTIFICATION

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF ESSEX

I, _____ of the City of _____ in the County of _____ and the State of _____ of full age, being duly sworn according to law on my oath depose and say that:

I am _____ of the firm of _____, the offerer making the proposal for the above named project, and that I executed the said proposal with full authority to do so; that said offerer has not, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above named project; and that all statements contained in said proposal and in this affidavit are true and correct, and made with full knowledge that the Commonwealth of Massachusetts relies upon the truth of the statements contained in said proposal and in the statements contained in this affidavit in awarding the contract for the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by

(Name of Contractor)

Signature

(Type or Print Name under Signature.)

Subscribed and sworn to before me this Date: _____, 2014

Notary Public of _____

My commission expires _____.

STATEMENT OF TAX COMPLIANCE

Pursuant to Massachusetts General Laws Chapter 62C, Section 49A,

I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns and paid all State taxes required under law.

Signature of Individual
or Corporate Name

Social Security Number
or Federal Identification Number

By: _____

Date: _____

Corporate Officer (Name and Title)

Approval of a contract or other agreement will not be granted unless this certification clause is signed by the applicant.

Your Social Security Number may be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of Mass. G.L. c.62C s.49A.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member 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 any cooperative agreement, and the extension, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, 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. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.

(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 when this transaction was made or entered into. Submission of this certification is a prerequisite 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 a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C., 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C., 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The contractor acknowledges that the contract is subject to provisions including, in part, certain Standard Terms and Conditions required by U.S. DOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by U.S. DOT , as set forth in FTA Circular 4220.1F and the grant agreement between U.S. DOT, FTA, and the MVRTA 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 MVRTA requests which would cause the MVRTA to be in violation of the FTA terms and conditions.

Name of Contractor

Name of Authorized Officer, Title

Signature

Date

APPENDIX A

REQUIRED FEDERAL CLAUSES

REQUIRED FTA CLAUSES

For

MANAGEMENT SERVICES

A. Certification Regarding Debarment, Suspension and Other Responsibility Matters

1. **By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.**
2. The certification in this 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, MVRTA may pursue available remedies, including suspension and/or debarment..
3. The prospective lower tier participant shall provide immediate written notice to MVRTA 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 transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact MVRTA 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 is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by MVRTA.
6. **The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in 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 Nonprocurement List issued by US 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 Paragraph 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, MVRTA may pursue available remedies including suspension and/or debarment.

“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”

1. The prospective lower tier participant certifies, by submission of this bid or proposal, 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 participation in this transaction by any Federal department or agency.
2. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

B. Restrictions on Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. & 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CR 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 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.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member 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 any cooperative agreement, and the extension, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, 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. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.

(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 when this transaction was made or entered into. Submission of this certification is a prerequisite 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 a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C., 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C., 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

C. Prohibited Interests

1. No member, officer, or employee of the MVRTA, or of a local public body during their tenure or for one year thereafter will have any interests, direct or indirect, in a contract or the proceeds thereof.
2. In accordance with 41 U.S.C. 22, the Contractor agrees that it will not admit any member of or delegate to the United States Congress to any share or part of the Project or any benefit derived therefrom.

D. Termination of Contract

- a. **Termination for Convenience (General Provision)** The MVRTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to MVRTA to be paid the Contractor. If the Contractor had any property in its possession belonging to the MVRTA, the Contractor will account for the same, and dispose of it in the manner the MVRTA directs.
- b. **Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the MVRTA may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.
If it is later determined by the MVRTA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the MVRTA, after setting up a new delivery performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.
- c. **Opportunity to Cure (General Provision)** The MVRTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to MVRTA 's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within [ten(10)days] after receipt by Contractor of written notice from the MVRTA setting forth the nature of said breach or default, MVRTA shall have the right to terminate the contract without any further obligation to Contractor . Any such termination for default shall not in any way operate to preclude MVRTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- d. **Waiver of Remedies for any Breach** In the event that MVRTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by MVRTA shall not limit MVRTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. **Termination for Convenience (professional or Transit Service Contracts)** The MVRTA, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the MVRTA shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the MVRTA may terminate this contract for default. The MVRTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.
- g. **Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the MVRTA may terminate this contract for default. The MVRTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of the MVRTA goods, the Contractor shall, upon direction of the MVRTA, protect and preserve the goods until surrendered to the MVRTA or its agent. The Contractor and MVRTA shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination, for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the MVRTA.

- h. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the MVRTA may terminate this contract for default. The MVRTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The MVRTA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to; complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the MVRTA in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of MVRTA, acts of another Contractor in the performance of a contract with the MVRTA, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the Contractor , within [10] days from the beginning of any delay, notifies the MVRTA in writing of the causes of delay. If in the judgment of the MVRTA, the delay is excusable, the time for completing the work shall be extended. The judgment of the MVRTA shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the MVRTA.

- i. Termination for Convenience or Default (Architect and Engineering)** The MVRTA may terminate this contract in whole or in part, for the MVRTA's convenience or because of the failure of the Contractor to fulfill the contract obligations. The MVRTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected(unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the MVRTA, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the MVRTA.

- j. Termination for Convenience or Default (Cost-Type Contracts)** The MVRTA may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the MVRTA or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the MVRTA, or property supplied to the Contractor by the MVRTA. If the termination is for default, the MVRTA may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the MVRTA and the parties shall negotiate the termination settlement to be paid the Contractor.

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

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

F. Disadvantaged Business Enterprise

1. The Federal Fiscal Year goal has been set by MVRTA in an attempt to match projected procurements with available qualified disadvantaged businesses MVRTA goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by MVRTA as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, MVRTA may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

(a) Policy

It is the policy of the Department of Transportation and MVRTA that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The

Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of MVRTA to promote the development and increase the participation of businesses owned and controlled by disadvantaged individuals. DBE involvement in all phases of MVRTA procurement activities are encouraged.

- (b) DBE obligation The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.
- (c) Where the Contractor is found to have failed to exert reasonable and good faith efforts to involve DBE's in the work provided, MVRTA may declare the contractor noncompliant and in breach of contract.
- (d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with MVRTA DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of MVRTA and will be submitted to MVRTA upon request.

- (e) MVRTA will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request.
 - * Identification of qualified DBE
 - * Available listing of Minority Assistance Agencies
 - * Holding bid conferences to emphasize requirements

- 2. DBE Program Definitions, as used in the contract:
 - (a) Disadvantaged business “means a small business concern”
 - i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

 - ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

 - iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and

 - iv. Whose management and daily business operations are controlled by one or more women individuals who own it.

 - (b) “Small business concern” means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.

 - (c) “Socially and economically disadvantaged individuals” means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.
 - 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, Cuba, 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, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the US Trust Territories of Pacific, and the Northern Marianas;

v. “Asian-Indian Americans”, which includes persons whose origins are from India, Pakistan, and Bangladesh.

G. Civil Rights The following requirements apply to the underlying contract:

(1) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. & 2000d, section 303 of the Age Discrimination Act of 1975, as amended, or 42 U.S.C., 6102, section 202 of the ADA of 1990, 42 U.S.C. & 12132, and Federal Transit law at 49 U.S.C. & 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

(a) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. & 2000e, and Federal Transit laws at 49 U.S.C. & 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of US Department of Labor (US DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. & 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the

Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. && 623 and Federal Transit law at 49 U.S.C. & 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

H-2 Contract Work Hours and Safety Standards Act

Pursuant to Section 102 (Overtime):

(These clauses are specifically mandated under DOL regulation 29 CFR & 5.5 and when preparing a construction contract in excess of \$2,000 these clauses should be used in conjunction with the Davis-Bacon Act clauses as discussed previously. For nonconstruction contracts, this is the only section required along with the payroll section.)

(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 forty 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 forty hours in such workweek.

(2) **Violation: liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States 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 paragraph (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 forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages.** The MVRTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the 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 and 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 paragraph (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. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(Section 102 nonconstruction contracts should also have the following provision:)

(5) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

Section 107 (OSHA):

(This section is applicable to construction contracts only)

Contract Work Hours and Safety Standards Act. (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 USC Section 333, and applicable DOL regulations, “Safety and Health Regulations for Construction” 29 CFR Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) **Subcontracts.** The Contractor also agrees to include the requirements of this section in each subcontract. The term “subcontract” under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a “subcontractor” under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or

(2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a “subcontractor” if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a “subcontractor”. The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

I. Air Quality

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. & 7401 *et seq.* The contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

J. Clean Water

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

K. Energy Conservation

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

M. Privacy

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 USC & 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.

N. ACCESS TO RECORDS

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives 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. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a major capital project excludes contracts less than the simplified acquisition threshold currently set at \$100,000.
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 the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with 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 any Purchaser which is the FTA Recipient or a subgrantee of the 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 Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agree to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonable needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly

authorized representatives have disposed of all such litigation, appeals, claims or exception related thereto. Reference 49 CFR 18.39(i)(11).

Q. Third Party Contract Disputes or Breaches

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 authorized representative of MVRTA's Administrator. This decision shall be final and conclusive unless within [ten (10) days] from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Administrator. 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 Administrator shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

Claims for Damages. Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the MVRTA 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 in which the MVRTA is located.

Rights and Remedies. The duties and obligations imposed by the Contract Documents 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 the MVRTA, its Architect 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.

T. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

U. Recycled Products

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

V. No Obligation by the Federal Government

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

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

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

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. &5307, the Government reserves the right to impose the penalties of 18 U.S.C. &5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

X. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, 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 MVRTA requests which would cause MVRTA to be in violation of the FTA terms and conditions.

Y. Drug and Alcohol Testing

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Massachusetts, or the MVRTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Z. Charter Bus Requirements

Charter Service Operations. The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provisions of mass transportation.

AA. School Bus Requirements

School Bus Operations. Pursuant to 69 USC 5323(f) and 49 CFR Part 605, recipients and subreceptients of FTA assistance may not engage in school bus operations exclusively for the 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 may not use federally funded equipment, vehicles, or facilities.

BB. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

TRANSIT EMPLOYEE PROTECTIVE PROVISIONS

(1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations wok on the underlying contact in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C.A 5333(b), and U.S. DOL guidelines at 29 C.F.R, Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA

Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S.DOL letter. The requirements of this subsection(1), However, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. 5310 (a)(2), or for projects for nonurbanized areas authorized by 49U.S.C. 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

5310(a)(2) for Elderly Individuals and Individuals with Disabilities If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. 5310 (a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S.DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S.DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

5311 in Nonurbanized Areas If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Areas Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S.DOL or any revision thereto.

(2) The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by the FTA.

APPENDIX B

VEHICLE ROSTER

APPENDIX C

MANAGEMENT FEE