

**AMENDMENT NO. 2 TO
AMENDED AND RESTATED FACILITY AGREEMENT
NORTH TARRANT EXPRESS SEGMENTS 3A, 3B AND 3C FACILITY)**

This AMENDMENT NO. 2 TO AMENDED AND RESTATED FACILITY AGREEMENT (the "Amendment") is entered into and effective as of _____, by and between the Texas Department of Transportation, a public agency of the State of Texas ("TxDOT"), and NTE Mobility Partners Segments 3 LLC ("**Developer**") with reference to the following facts:

A. TxDOT and Developer entered into that certain Amended and Restated Facility Agreement for the North Tarrant Express Segments 3A, 3B and 3C Facility dated as of July 30, 2019 as amended, the "Facility Agreement" together with related agreements collectively referred to in the Facility Agreement as the "FA Documents".

B. TxDOT and Developer now desire to update and clarify the Facility Agreement in connection with certain federal requirements and related provisions, including On the Job Training (OJT) provisions, Disadvantaged Business Enterprise (DBE) and Developer's Job Training Plan provisions, and subcontractor payment provisions, as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, TxDOT and Developer agree as follows:

1. Definitions. All capitalized terms used but not defined in this Amendment have the respective meanings set forth in the Facility Agreement.

2. Facility Agreement Section 10.1. Section 10.1.2 is hereby amended to read as follows:

10.1.2 As soon as Developer identifies a potential Key or Affiliate Contractor for a potential Key or Affiliate Contract described in the first sentence of Section 10.1.1, but in no event later than five days after the Key or Affiliate Contract is executed, Developer shall notify TxDOT in writing of the name, address, phone number and authorized representative of such Key or Affiliate Contractor.

3. Facility Agreement Section 10.9.

a) The second sentence of Section 10.9.1.1 is hereby amended to read as follows:

The purpose of the DBE Special Provisions is to ensure that DBEs shall have an equal opportunity to participate in the performance of contracts funded in whole or in part with federal financial assistance (i.e., "federally assisted").

b) Section 10.9.1.2 is hereby amended to read as follows:

10.9.1.2 Developer shall include provisions to effectuate the DBE Special Provisions and then-current federal requirements in every federally-assisted Contract to which it is a party (including purchase orders and task orders for Work , and shall require that they be included in all such Contracts at lower tiers (including purchase orders and task orders for Work , so that such provisions will be binding upon each Contractor.

c) Section 10.9.2.2 is hereby amended to read as follows:

10.9.2.2 Developer shall exercise and document the adequacy of its good faith efforts, in accordance with 49 CFR Part 26, Appendix A, to achieve such DBE participation goal for the Facility through implementation of Developer's approved DBE Performance Plan. For Segment 3C and any federally-assisted Work performed after Final Acceptance of Segments 3A and 3B, including federally-assisted Capacity Improvements or TxDOT Change Orders, Developer shall submit to TxDOT and obtain TxDOT's approval of (1) an updated DBE Performance Plan for the federally-assisted Work to be performed, and (2) a schedule and commitments for work identified for participation by DBEs.

d) Section 10.9.2.3 is hereby amended to read as follows:

10.9.2.3 Developer agrees to use good faith efforts to encourage DBE participation in federally assisted Work performed after Final Acceptance of all Project Segments, including federally assisted Capacity Improvements or TxDOT Change Orders.

4. Facility Agreement Section 10.10.

(a) Section 10.10.1 is hereby amended to read as follows:

10.10.1 Developer's Job Training Plan applicable to the Project is set forth in Exhibit 15. The purpose of the Job Training Plan is to ensure that inexperienced and untrained workers have a substantial opportunity to participate in the performance of the Work through apprenticeships, training and similar measures to maintain and grow a diverse, skilled work force. Developer shall perform and comply with all requirements set forth in the Job Training Plan in every federally-assisted Contract.

(b) Section 10.10.2 is hereby amended to read as follows:

10.10.2 Developer shall include provisions to effectuate the On-The-Job Training Program Special Provisions in every federally-assisted Contract to which it is a party (including purchase orders and task orders for Work, and shall require that they be included in all such Contracts at lower tiers including purchase orders and task orders for Work), so that such provisions will be binding upon each Contractor. The foregoing shall not apply to Contracts at any tier with TxDOT or Governmental Entities. For federally-assisted Work performed after Final Acceptance of the Segment 3C Facility Segment, including federally-assisted Capacity Improvements and TxDOT Change Orders, Developer shall submit to TxDOT and obtain TxDOT's approval of an updated Job Training Plan for the federally-assisted Work to be performed.

5. Facility Agreement Section 10.13.2. Section 10.13.2 is hereby amended to read as follows:

10.13.2 The foregoing payment requirements apply to all tiers of subcontractors, including Suppliers, and shall be incorporated into all subcontracts. Developer shall encourage its Contractors to remit payment to all subcontractors and Suppliers within 30 days after receipt of a proper invoice, even if payment has not been received from TxDOT.

6. Facility Agreement Section 10.11.2. The first sentence of Section 10.11.2 is hereby amended to read as follows:

Developer shall make a good faith effort to negotiate with CRPs and the Texas Industries for the Blind and Handicapped (TIBH) for appropriate subcontracts at a fair market price

7. Facility Agreement Section 10.12. Section 10.12.1 is hereby amended to read as follows:

Developer shall pay or cause to be paid to all applicable workers employed by it or its Contractors to perform the Work not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including Chapter 2258 of the Texas Government Code and the Davis-Bacon Act, and as provided in Exhibit 8. Developer shall comply and cause its Contractors to comply with all Laws pertaining to prevailing wages. For the purpose of applying such Laws, the Project shall be treated as a public work paid for in whole or in part with public funds regardless of whether public funds are actually used to pay for the Project). The foregoing shall not apply to Contracts at any tier with TxDOT or Governmental Entities. Notwithstanding anything to the contrary herein, reporting requirements are not applicable to categories of workers performing non-federally funded operations and maintenance Work.

8. Facility Agreement Exhibit 8, Attachment 9. The On-the-Job Training Special Provision in Attachment 9 to Exhibit 8 is hereby replaced by the On-the-Job Training Special Provision for Design Build and Comprehensive Development Projects, attached hereto as Exhibit A.

9. Facility Agreement Exhibit 13. The DBE Special Provision in Exhibit 13 is hereby replaced by the DBE Special Provision for Non-Traditional Contracts, attached hereto as Exhibit B.

10. Facility Agreement Exhibit 14. For Segment 3C, the DBE Performance Plan in Exhibit 14 is hereby replaced by the DBE Performance Plan approved by TxDOT in October 2019, attached hereto as Exhibit C.

11. Facility Agreement Exhibit 15. For Segment 3C, the Job Training / Small Business Mentoring Plan in Exhibit 15 is hereby replaced by the Job Training Plan approved by TxDOT in October 2019, attached hereto as Exhibit D.

12. Effectiveness of FA Documents. Except as specifically amended hereby, the provisions of the FA Documents (including all prior written amendments thereto) are hereby confirmed and remain in full force and effect without change.

13. Binding Effect of Amendment. This Amendment is entered into pursuant to Section 24.3 of the Facility Agreement, and shall be valid, effective and enforceable notwithstanding Section 24.13 of the Facility Agreement or any similar provision in any other FA Document declaring that the FA Documents constitute the sole, integrated agreement of the Parties.

14. Modifications and Waivers. This Amendment may be amended only by a written instrument duly executed by the Parties or their respective permitted successors or assigns under the Facility Agreement. No waiver of any term, covenant or condition of this Amendment shall be valid unless in writing and signed by the Party benefitted by the term, covenant or condition. The

foregoing provisions shall not be construed to curtail or waive TxDOT's rights under the Facility Agreement to issue Directive Letters and Change Orders.

15. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of TxDOT and Developer and their permitted successors and assigns under the Facility Agreement.

16. No Third-Party Beneficiaries. It is not intended by any of the provisions of this Amendment to create any third-party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit pursuant to the terms or provisions hereof.

17. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

18. Jurisdiction and Venue. The Parties agree that the exclusive original jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of this Amendment shall be the district courts of Travis County, Texas.

19. Entire Agreement. This Amendment contain the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to such subject matter.

20. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature page immediately follows]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the day and year first written above.

Developer

TxDOT

**NTE MOBILITY PARTNERS SEGMENTS
3 LLC**

TEXAS DEPARTMENT OF TRANSPORTATION

DocuSigned by:
Alberto Gonzalez
By: _____
BCA7E0F02C2D4EE...
Name: Alberto González Lalueza
Title: Chief Executive Officer

DocuSigned by:
James M Bass
By: _____
A9629BA547D4BD...
Name: James M. Bass
Title: Executive Director

DocuSigned by:
Luis Vazquez
By: _____
72370FA768B0459...
Name: Luis Vazquez
Title: Deputy Chief Executive Officer

Exhibit A

EXHIBIT 9 TO ATTACHMENT 3-1

SPECIAL PROVISION

On-the-Job Training Program for Design-Build and Comprehensive Development Agreement Projects

This training special provision is the Department's implementation of 23 U.S.C. 140 (a). The primary objective of this provision is to train and upgrade minorities and women toward journey worker status. This training commitment is not intended and shall not be used to discriminate against any applicant for training, whether a member of a minority group or not.

By signing the Design-Build Contract, the DB Contractor certifies that it will meet the On-the-Job Training (OJT) goal as stated in the Special Provision or, if the OJT goal as stated in the Special Provision is not met, the DB Contractor will provide acceptable evidence of good faith efforts, including as described in section 6 hereof, to meet the OJT goal.

As part of DB Contractor's equal employment opportunity affirmative action program, training shall be provided as follows:

1. The DB Contractor shall ensure that on-the-job training aimed at developing full journey worker status in the type of trade or job classification involved is provided.
2. The Department has assigned a project-specific trainee goal in accordance with the following guidelines as set forth in 23 C.F.R. §230.111:
 - 1) Dollar value of the construction services contract;
 - 2) Duration of the construction work activity;
 - 3) Geographic location;
 - 4) Availability of minorities, women, and disadvantaged for training;
 - 5) The potential for effective training;
 - 6) Type of work;
 - 7) Total normal work force that the average proposer could be expected to use;
 - 8) The need for additional journeymen in the area;
 - 9) Recognition of the suggested minimum goal for the State; and
 - 10) A satisfactory ratio of trainees to journeymen expected to be on DB Contractor's work force during normal operations.

Construction Cost Estimate		
From	To	Trainees
\$0	\$9,999,999.99	0
\$10,000,000	\$19,999,999.99	1
\$20,000,000	\$39,999,999.99	2
\$40,000,000	\$59,999,999.99	3
\$60,000,000	\$79,999,999.99	4
\$80,000,000	\$99,999,999.99	5
\$100,000,000	\$119,999,999.99	6
Thereafter for each increment of \$20 million, goal is increased by one trainee		

3. The OJT program trainee goal for this project is [] trainees.
4. The DB Contractor will have fulfilled its responsibilities under this provision when acceptable training has been provided to the number of trainees assigned to this project.
5. In the event that DB Contractor subcontracts a portion of the contract work, it shall determine if any of the trainees are to be trained by the subcontractor. The DB Contractor should ensure that this training special provision is made applicable to such subcontract. However, DB Contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision.
6. The DB Contractor shall make every effort to ensure minorities and women are enrolled and trained in the program. The DB Contractor shall conduct systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent that such persons are available within a reasonable area of recruitment.
7. It is the intention of this provision that training is to be provided in the construction crafts. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.
8. The Department and the Federal Highway Administration (FHWA) shall approve a training program if it meets the equal employment opportunity obligations of DB Contractor and aims to train and upgrade employees to journey worker status.
9. The Department's OJT Program has been designed to ensure that the trainee consistently receives the level and quality of training necessary to perform as a journey worker in his/her respective skilled trade classification. Standard training programs for each skilled construction trade classification are located in the OJT program manual.
10. Apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided the program is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts.
11. The number of trainees shall be distributed among the work classifications on the basis of DB Contractor's needs and the availability of journey worker in the various classifications.
12. No employee shall be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journey worker status or in which he or she has been employed as a journey worker. The DB Contractor may satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, DB Contractor's records should document the findings in each case.
13. At or before contract execution, DB Contractor must submit the Contractor OJT Plan form to the Department's Civil Rights Division (CIV). The plan shall specify how DB Contractor intends to satisfy its goal by including the following information: the type of apprentice or training program, number of trainees, type of training, and length of training. This becomes Exhibit 5 of the DBA.

14. The trainee(s) shall begin training on the project after start of work and remain on the project as long as training opportunities exist or until the training is completed.
15. The trainees will be paid at minimum, 60 percent of the appropriate journey worker's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period. However, if the apprentices or trainees are enrolled in another program approved by the Department of Labor or other agency, such appropriate rates shall apply.
16. CIV must approve all proposed apprentices and trainees before training begins. The DB Contractor must submit the Federal OJT Enrollment Form to SharePoint and CIV. CIV must approve the enrollment in order for training to be counted toward the project goal and be eligible for reimbursement. The DB Contractor shall provide each trainee with a copy of the training program he or she will follow.
17. On a monthly basis, DB Contractor shall submit the Federal OJT Monthly Reporting Form to the District Representative and to CIV. The monthly reporting form will include the number of hours trained and training status. If a trainee is terminated, DB Contractor is required to make a good faith effort to replace the trainee within 30 calendar days of the termination.
18. The DB Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.
19. If requested, DB Contractor may be reimbursed 80 cents per hour of training for each trainee working on this project and whose participation towards the OJT project goal has been approved.

This reimbursement will be made regardless of whether DB Contractor receives additional training program funds from other sources, provided such other program requirements do not specifically prohibit DB Contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to DB Contractor if the trainees are concurrently employed on a federal-aid project and when DB Contractor: contributes to the cost of the training, or provides the instruction to the trainee, or pays the trainee's wages during the offsite training period.

No payment shall be made to DB Contractor if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by DB Contractor and evidences a lack of good faith on the part of DB Contractor in meeting the requirements of this Training Special Provision.
20. Compliance: The [design-builder/developer] shall maintain records and submit monthly reports documenting program performance by the 10th of each month. Noncompliance may be cause for corrective and appropriate measures pursuant to Section 8.8 "Termination," which may be used to comply with the sanctions for noncompliance pursuant to 23 CFR Part 230.
21. Detailed program reporting requirements and procedures, reporting forms, and the list of approved training classifications are found in the OJT program manual, which can be obtained upon request by contacting CIV.

Exhibit B

Draft 5-10-18

ATTACHMENT 3-2

DBE SPECIAL PROVISION FOR NON-TRADITIONAL CONTRACTS

Disadvantaged Business Enterprise in Federal-Aid Contracts

1. DESCRIPTION

The purpose of this Special Provision is to carry out the U.S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT-assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT-assisted contracts.

2. DISADVANTAGED BUSINESS ENTERPRISE IN FEDERAL-AID CONTRACTS

2.1. **Policy.** It is the policy of the DOT and the Texas Department of Transportation (Department) that DBEs, as defined in 49 CFR Part 26, Subpart A, and the Department's DBE Program, will have the opportunity to participate in the performance of contracts financed in whole or in part with federal funds. The DBE requirements of 49 CFR Part 26 and Department's DBE Program apply to this Design-Build Contract as follows.

The DB Contractor will solicit DBEs through reasonable and available means (reasonable and available means as defined in 49 CFR Part 26, Appendix A and the Department's DBE Program), or show Good Faith Efforts to meet the DBE goal for this Design-Build Contract.

The DB Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin or sex in the performance of this Design-Build Contract. The DB Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Design-Build Contract. Failure to carry out these requirements is a material breach of this Design-Build Contract, which may result in the termination of this Design-Build Contract or such other remedy as the Department deems appropriate.

The requirements of this Special Provision must be physically included in any subcontract including all tiers of subcontracts.

By signing the Design-Build Contract, the DB Contractor certifies that the DBE goal as stated in the Design-Build Contract will be met by obtaining commitments from DBEs or that, if the DBE goal as stated in the Design-Build Contract is not met, the DB Contractor will provide acceptable evidence of Good Faith Efforts to meet the DBE goal.

2.2. **Definitions.** The following terms, when used in this Special Provision, shall have the meanings set forth below. Capitalized terms not defined below shall have the meanings set forth in Item 1 of the General Conditions.

2.2.1. **Administrative Reconsideration.** A process by which the DB Contractor may request reconsideration of the Department's determination that the DBE goal has not been met or the Good Faith Efforts requirements have not been met.

2.2.2. **Commercially Useful Function (CUF).** A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually

performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. (ref. 49 CFR Part 26, Subpart C (26.55))

- 2.2.3. **DBE Joint Venture.** An association of a DBE firm and one or more other firms to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the Design-Build Contract and whose share in the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interest.
- 2.2.4. **Department.** The Texas Department of Transportation.
- 2.2.5. **Disadvantaged Business Enterprise (DBE).** A for-profit small business certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26, (a) that is at least 51% owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly owned business, in which at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals, and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- 2.2.6. **DOT.** The U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA).
- 2.2.7. **Federal-Aid Contract.** Any contract between the Department and a design-build contractor that is paid for in whole or in part with DOT financial assistance.
- 2.2.8. **Good Faith Effort.** All necessary and reasonable steps to achieve the DBE goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. Good Faith Efforts are evaluated prior to award and throughout performance of the Design-Build Contract. For guidance on good faith efforts, see 49 CFR Part 26, Subpart C and 49 CFR Part 26, Appendix A.
- 2.2.9. **North American Industry Classification System (NAICS).** A designation that best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau website: <http://www.census.gov/eos/www/naics/>.
- 2.2.10. **Prompt Payment** – Federal regulations and state law require DB Contractor and its subcontractors to pay their subcontractors within 10 days of receiving corresponding payment for the applicable scope of the work. This requirement includes the release of retainage when a subcontractor's work is satisfactorily complete, even if final acceptance has not occurred. State law requires that a contractor that withholds retainage on a subcontractor's work shall pay that retainage in full within 10 days after the date of satisfactory completion of all of the subcontractor's work.
- 2.2.11. **Race-Conscious measure or program.** A measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.
- 2.2.12. **Race-Neutral measure or program.** A measure or program that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender – neutrality.

2.2.13. **Schedule of Values.** A detailed **schedule** apportioning the subcontract sum among all portions of the work. Each Schedule of Values shall include a description of the work that will be performed, applicable NAICS codes, estimated quantities, unit prices, the total value of the applicable subcontract and break down of the major work activities to support each DBE contract or DBE contract revision.

2.2.14. **Texas Unified Certification Program (TUCP) Directory.** An online directory listing all DBEs currently certified by the TUCP. The Directory identifies DBE firms whose participation on the Design-Build Contract may be counted toward achievement of the assigned DBE goal.

2.3. **DB Contractor's Responsibilities.**

2.3.1. **DBE Liaison Officer.** The DB Contractor shall designate a DBE liaison officer who will administer the DB Contractor's DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs

2.3.2. **Compliance Monitoring and Tracking System.** This Design-Build Contract is subject to the Department's electronic contract compliance monitoring and tracking system (CMTS). The DB Contractor, DBEs and non DBEs (only if they are in a tiered relationship with a DBE) are required to provide any noted and requested contract compliance-related data in the Department's CMTS, which is accessible at <https://txdot.txdotcms.com/>. Such data includes commitments, terminations, payments, substitutions, and evidence of Good Faith Efforts. The DB Contractor and the applicable DBEs are responsible for responding by any noted response date or due date to any Department instructions or requests for information, and checking the Department's CMTS on a regular basis. The DB Contractor is responsible for ensuring all DBEs have completed all requested items and that their contact information is accurate and up-to-date. The Department may require additional information related to the Design-Build Contract to be provided electronically through the Department's CMTS at any time before, during or after award of the Design-Build Contract.

In its sole discretion, the Department may require that contract compliance tracking data be submitted by the DB Contractor and DBEs in an alternative format prescribed by the Department.

2.3.3. **DBE Performance Plan.** The DB Contractor shall, in consultation with the Department, develop and submit a DBE Performance Plan describing the methods to be employed for achieving the DBE goals for the Design-Build Contract, including DB Contractor's exercise of Good Faith Efforts. Each DBE Performance Plan must at a minimum include the following:

- (a) Specific categories of services and work anticipated for DBE participation on the Project;
- (b) Schedule for submission of DBE commitment agreements based on the DB Contractor's initial Project schedule and any subsequent revised Project schedule;
- (c) A description of the Good Faith Efforts performed prior to the date of execution of the Design-Build Contract;
- (d) A description of the Good Faith Efforts that will be exercised by the DB Contractor following execution of the Design-Build Contract to achieve the DBE goal for the Project; and
- (e) The name, qualifications, responsibilities and contact information for the DBE Liaison Officer.

The DB Contractor shall update the DBE Performance Plan quarterly or more frequently as requested by the Department.

- 2.3.4. **DBE Contractor.** If the DB Contractor is a DBE, the DB Contractor may receive credit toward the DBE goal for work performed by its own forces and work subcontracted to DBEs. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. In the event a DBE subcontracts to a non-DBE, that information must be reported to the Department monthly.
- 2.3.5. **DBE Commitment.** Only those DBEs certified by the TUCP are eligible to be used for DBE goal attainment. The Department maintains the TUCP DBE Directory at the following Internet address: <https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?TN=txdot&XID=2340>.

DB Contractor shall submit completed forms ADP-4901 DBE Program Commitment Agreement form for Alternative Delivery Projects, ADP-4901-MS DBE Program Material Supplier Commitment Agreement Form for Alternative Delivery Projects and ADP-4901-T DBE Program Trucking Commitment Agreement Form for Alternative Delivery Projects as appropriate. A DBE must be certified on the day the DBE commitment is considered by the Department and at time of subcontract execution. It is the DB Contractor's responsibility to ensure firms identified for participation are certified DBE firms and certified with the NAICS code applicable to the kind of work the DBE will be performing on the Project. The DB Contractor is responsible for ensuring that all submittals are accurate. Any and all omissions, deletions and/or errors that may affect the DBE commitment are the sole liabilities of the DB Contractor.

DBE commitments in excess of the DBE goal are considered Race-Neutral commitments.

If the DBE goal has not been met and the DB Contractor has used DBE subcontractors without committing to them, this participation would be counted as Race Neutral (RN). Additionally, if the DBE goal is not achieved by the Race Conscious (RC) subcontractors, the Race Neutral (RN) participation can neither be counted towards the DBE project goal nor considered as a GFE to achieve the DBE project goal.

For all DBE subcontracts including all tiered DBE subcontracts, submit a copy of the executed subcontract agreement.

- 2.3.6. **Good Faith Effort Requirements.** If the DB Contractor cannot meet the DBE goal, in whole or in part, the DB Contractor must make adequate Good Faith Efforts to obtain DBE participation, as determined by the Department.
- 2.4. **Administrative Reconsideration.** If the Department determines that the DB Contractor has failed to satisfy the good faith efforts requirement, the Department will notify the DB Contractor of the failure and will give the DB Contractor an opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

The DB Contractor must request an administrative reconsideration of that determination within 3 days of the date of receipt of the notice. The request must be submitted directly to the Texas Department of Transportation, Civil Rights Division, 125 East 11th Street, Austin, Texas 78701-2483.

If a request for administrative reconsideration is not filed within the period specified, the determination made is final and further administrative appeal is barred.

If a reconsideration request is timely received, the reconsideration decision will be made by the Department's DBE liaison officer or, if the DBE liaison officer took part in the original determination, the Department's executive director will appoint a department employee to perform the administrative

reconsideration. The employee will hold a senior leadership position and will report directly to the executive director.

The meeting or written documentation must be provided or held within 7 days of the date the request was submitted.

The Department will provide to the DB Contractor a written decision if the DB Contractor did or did not make adequate good faith efforts to meet the contract goal. The reconsideration decision is final and is not administratively appealed to DOT.

2.5. Determination of DBE Participation. The work performed by a DBE must be reasonably construed to be included in the work area and NAICS work code identified by the DB Contractor in the approved DBE commitment.

Participation by a DBE will not be counted toward the DBE goal unless (a) a DBE commitment was submitted to the Department prior to the committed DBE commencing work on the project (b) the DBE was certified as a DBE before the execution of the subcontract, (c) the DBE performed a Commercially Useful Function and (d) the amount of the participation has been paid to the DBE.

You may only count the credit towards a RC goal after a commitment is provided. You may only count payments to a DBE as RN before the commitment is submitted, but once a commitment is submitted, then the payments may count as RC moving forward (not retroactive).

The DBE must perform at least 30% of the work with its own forces if the work is to be counted toward the DBE goal. The total amount paid to a DBE for work performed with its own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its subcontract to another firm, the value of the subcontracted work may be counted toward the DBE goal only if the DBE's subcontractor is a DBE.

DBE goal credit for the DBE subcontractors' leasing of equipment or purchasing of supplies from the DB Contractor, Prime contractor or its affiliates is not allowed. Project materials or supplies acquired from an affiliate of the DB Contractor cannot directly or indirectly (second or lower tier subcontractor) be used for DBE goal credit.

If a DBE firm is declared ineligible due to DBE decertification after the execution of such DBE's subcontract, the firm may complete the work, and the firm's participation will be counted toward the DBE goal. If a DBE firm is decertified before such firm has signed a subcontract, the DB Contractor is obligated to replace the ineligible firm with a DBE or demonstrate that it has made Good Faith Efforts to do so.

The DB Contractor may count 100% of its expenditure to a DBE manufacturer toward the DBE goal. Pursuant to 49 CFR 26.55(e)(1)(i), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Design-Build Contract and of the general character described by the specifications.

The DB Contractor may count only 60% of its expenditure to a DBE regular dealer toward the DBE goal. Pursuant to 49 CFR 26.55(e)(2)(i), a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the Design-Build Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Long term leases with logistics

companies that provide transportation services (logistics, equipment and drivers) do not meet the regulatory dealer intent for goal credit as a bulk regular dealer; however, the transaction fees may be counted as goal credit. Packagers, brokers, manufactures representatives, or other persons who arrange or expedite transactions are not regular dealers.

With respect to materials or supplies purchased from a DBE that is neither a manufacturer nor a regular dealer, the DB Contractor may count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site toward the DBE goal.

With respect to trucking, the DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

In order to perform a CUF, the DBE trucking firm must own and operate at least one fully licensed, insured and operational truck used on the Design-Build Contract. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE that leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Design-Build Contract.

The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases only trucks from a non-DBE and supplies their own fully employed drivers receives credit for the total value of the transportation services the lessee provides on the Design-Build Contract.

The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives DBE goal credit only for the fee or commission the DBE receives as a result of the lease arrangement.

A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

The DB Contractor may count toward the DBE goal the portion of the total value of the Design-Build Contract amount paid to a DBE Joint Venture equal to the distinct, clearly defined portion of the work of the Design-Build Contract performed by the DBE.

- 2.6. **Commercially Useful Function.** The DB Contractor shall ensure that each DBE used to perform the work of the Design-Build Contract performs a CUF. The Department will monitor performance during the Design-Build Contract to confirm that each DBE is performing a CUF.

With respect to material and supplies used on the Design-Build Contract, in order to perform a CUF, a DBE must be responsible for negotiating price, determining quality and quantity, ordering the material, installing the material, if applicable, and paying for the material itself.

A DBE does not perform a CUF when its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. The Department will evaluate similar transactions involving non-DBEs in order to determine whether a DBE is an extra participant.

If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work than would be expected on the basis of normal industry practice for the type of work involved, the Department will presume that the DBE is not performing a CUF.

If the Department determines that a DBE is not performing a CUF, no work performed by such DBE will count as eligible DBE participation. The Department may make such determination at any time.

In case of the denial of credit for non-performance of a CUF by a DBE, the DB Contractor will be required to provide a substitute DBE to meet the DBE goal or provide an adequate Good Faith Effort when applicable.

- 2.6.1. **Rebuttal of a Finding of No Commercially Useful Function.** Consistent with the provisions of 49 CFR 26.55(c)(4)&(5), before Department makes a final finding that no CUF has been performed by a DBE, the Department will notify the DBE and provide the DBE the opportunity to provide rebuttal information.

CUF determinations are not subject to administrative appeal to the DOT.

- 2.6.2. **Joint Check.** The use of joint checks between a DB Contractor and a DBE is allowed with Department approval. Joint checks will not be allowed simply for the convenience of the DB Contractor. To obtain approval, the DB Contractor must submit a completed Form 2178, "DBE Joint Check Approval," to the Department.

The Department will closely monitor the use of joint checks to ensure that such a practice does not erode the independence of the DBE nor inhibit the DBE's ability to perform a CUF. When joint checks are utilized, DBE credit toward the DBE goal will be allowed only when the subcontractor is performing a CUF in accordance with 49 CFR 26.55(c)(1).

Long-term or open-ended joint checking arrangements may be a basis for further scrutiny by the Department and may result in the Department's determination of a lack of participation towards the DBE goal if DBE independence cannot be established.

If the proper procedures are not followed or the Department determines that the arrangements result in a lack of independence for the DBE involved, no credit for the DBE's participation as it relates to the material cost will be used toward the DBE goal, and the DB Contractor shall be required to make up the difference elsewhere on the Project.

- 2.7. **DBE Termination and Substitution.** No DBE named in the DBE commitment will be terminated for convenience, in whole or part, without the Department's approval. This includes, but is not limited to, instances in which the DB Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm or another DBE firm.

Unless the Department's consent is provided, the DB Contractor will not be entitled to any payment for work or material allocated to the DBE in the DBE commitment unless it is performed or supplied by the listed DBE.

In order to terminate a DBE for cause, the DB Contractor must first give written notice to the DBE of its intent to terminate for cause and the reason for the termination. The DB Contractor will copy the Department on such notice of intent to terminate.

The notice of intent to terminate for cause must provide the DBE five (5) calendar days to respond to the DB Contractor's notice, which response must advise the DB Contractor and the Department of the reasons, if

any, why the DBE objects to the proposed termination of its subcontract and why the Department should not approve the DB Contractor's request for termination. If directed by the Department, the notice of intent to terminate may require a response time shorter than (5) days by the DBE if required as a matter of public necessity.

The Department will consider both the DB Contractor's request and DBE's stated position prior to approving the request to terminate. The Department may provide a written approval only if it agrees, for reasons stated in its concurrence document, that the DB Contractor has good cause to terminate the DBE. If the Department does not approve the request, the DB Contractor must continue to use the committed DBE in accordance with the Design-Build Contract. For guidance on what good cause includes, see 49 CFR 26.53.

Good cause does not exist if the DB Contractor seeks to terminate, reduce or substitute a DBE so that the DB Contractor can self-perform the work for which the DBE was engaged.

When a DBE is terminated, the DB Contractor must make Good Faith Efforts to find, as a substitute for the original DBE, another DBE to perform, at least to the extent needed to meet the established DBE goal, the work that the original DBE was to have performed under the Design-Build Contract.

Upon termination of a DBE, the DB Contractor will submit Good Faith Effort documentation to find and secure substitute DBE and must enter associated DBE Termination and Substitution data into the Department's CMTS within seven (7) days, which deadline may be extended for an additional seven (7) days if necessary at the request of the DB Contractor. The Department will provide a written determination to the DB Contractor stating whether or not Good Faith Efforts have been demonstrated. If the Department determines that Good Faith Efforts were not demonstrated, the DB Contractor will have the opportunity to appeal the determination via Administrative Reconsideration.

- 2.8. **Reports and Records.** The DB Contractor shall promptly provide all information required in the Department's CMTS with respect to any payments made to DBEs. By the 15th of each month and after Work begins, the DB Contractor must report payments in the Department's CMTS (a) to meet the DBE goal and (b) DBE Race Neutral participation toward Race-Neutral measure or program. These payment entries are required until all DBE subcontracting or material supply activity is completed. Zero payment entries are required when no activity has occurred in a monthly period. All such reports must be entered in the Department's CMTS.

DBE forms required for this DB Contract may be found on the Department's website:
<http://www.txdot.gov/business/resources/doing-business/dbe-forms.html>.

On a quarterly basis, DB Contractor must submit to the Department a report setting forth the status of DB Contractor's Good Faith Efforts to satisfy the DBE goal and an updated DBE Performance Plan describing the DB Contractor's plan to solicit additional DBE firms to satisfy such DBE goal.

The DB Contractor shall notify the Department's Project Manager (or such other individual as may be designated by the Department) utilizing the Department's CMTS if payment to any DBE subcontractor is withheld or reduced for Department acceptance. See Section 9.8 of these General Conditions (Payment to Subcontractors) for additional information.

As a condition to receipt of the final payment for the work from the Department, the DB Contractor must indicate a final payment in the Department's CMTS. Such final payment indication includes a summary of all payments made to the DBEs on the Project.

The DB Contractor shall retain all records for a period of three (3) years following completion of the Work. Such records must be available at reasonable times and places for inspection by authorized representatives of Department or the DOT. The DB Contractor shall provide copies of subcontracts or agreements and other documentation upon request by the Department or the DOT.

- 2.9. **Failure to Comply.** The DB Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this Design-Build Contract. In such a case, the Department reserves the right (a) to terminate the Design-Build Contract, (b) to deduct the amount of the DBE goal not accomplished by DBEs from the compensation due or to become due the DB Contractor, (c) to secure a refund of the amount paid by the Department for the DBE goal not accomplished by DBEs, not as a penalty but as liquidated damages, or (d) such other remedy or remedies as the Department deems appropriate.
- 2.10. **Investigations.** The Department may conduct reviews or investigations of participants as necessary. All participants are required to cooperate fully and promptly with compliance reviews, investigations and other requests for information.
- 2.11. **Falsification and Misrepresentation.** If the Department determines that the DB Contractor or subcontractor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by the Department to be unallowable, or if the DB Contractor engages in repeated violations, falsification, or misrepresentation, the Department may:
 - (a) refuse to count any fraudulent or misrepresented DBE participation toward the DBE goal;
 - (b) withhold progress payments to the DB Contractor commensurate with the violation;
 - (c) refer the matter to the Office of Inspector General of the DOT for investigation; and/or
 - (d) seek any other available contractual remedy.

Exhibit C

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North Tarrant Express Segments 3A, 3B and 3C (NTE 35W) Project DBE Performance Plan

DBE Requirements

1. General Concepts

As we committed as the Developer, North Tarrant Express Mobility Partners (NTEMP) along with the project Design Builder, North Tarrant Infrastructure (NTI), a venture between Ferrovia Agroman US Corp. and Webber, LLC, will strive to excel as a local and national construction leader by encouraging a culture of diversity and inclusion. We recognize the importance of communicating effectively and connecting with employees and partners from diverse backgrounds. At NTEMP/NTI, our commitment is to consistently foster and implement strategies to enhance diversity on projects as well as within our organization. On this project, NTEMP/NTI will support the Texas Department of Transportation (TxDOT) Disadvantaged Business Enterprise (DBE) policy and program to ensure nondiscrimination in the execution and administration of projects as well as the commitment to utilize certified DBE firms. Additionally, this DBE performance plan includes initiatives and processes that will not only help to remove barriers that impact the participation of DBE firms on DOT-assisted projects such as this one, but the plan will also assist in developing firms so they can successfully compete on similar highway projects both in the marketplace and outside the DBE program. NTEMP/NTI has a firm commitment to contracting with DBE subcontractors to meet the project goal of six percent (6%) DBE participation. The following DBE plan outlines how the project will successfully achieve this goal during the design and construction phases with the project Design Builder, North Tarrant Infrastructure (NTI).

2. DBE Performance Plan

In accordance with the TXDOT DBE policy and program, NTI will dedicate resources to effectuate TXDOT's DBE program in every contract to which it is a party including lower tier subcontractors to ensure compliance with 49 CFR Part 26. Additionally, NTI will comply with the project's DBE program during the design and construction phases of the project and the NTI DBE team will be responsible for assisting the estimating and contracts departments in the solicitation of DBE firms in compliance with the standards set forth by TXDOT's DBE policy.

Using our corporate model for achieving DBE participation developed on previous successful multimillion dollars highway projects, we commit to achieving if not exceeding the DBE goal of six percent (6%) for this project. Our concept for the DBE program is to identify and use DBEs that provide benefit to the project while allowing the firms to gain experience and build capacity to expand their scope of services and/or work on other projects. Our team will actively and strategically solicit DBE participation and conduct extensive outreach about the opportunities and our commitment to team with local, diverse businesses. We will achieve the participation goal using the following strategies:

- Solicit, through all reasonable and available means, the interest of certified DBE firms who have the capability to perform the work of the contract. Allow sufficient time for response.
- Complete proper documentation to ensure all DBE firms are solicited with follow-up emails/calls to firms that do not respond to the initial solicitation to ensure receipt and elicit reasons for not responding to earlier solicitations (e.g., not interested, bidding other jobs, already have sufficient work).
- Select portions of work to be performed by DBE firms in order to increase the likelihood that the project goals for participation will be achieved.

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**North Tarrant Express
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DBE Performance Plan**

- Provide interested DBE firms with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to solicitation.
- Negotiate in good faith with interested DBE firms.
- Do not reject DBE firms for being unqualified without sound reasons, based on a thorough investigation of their capabilities. Document firms solicited who were found to be unqualified and list the reasons they have been found to be unqualified and share information with the DBE firms to improve their qualification for future opportunities.
- Actively participate with federal, state and local efforts in the recruiting and training of DBE firms.

DBE Strategy

Outreach

During the design and constructions phases, NTI is committed to soliciting all interested DBE firms and conduct extensive outreach and effective communications to the DBE community about the project and the possible opportunities through internal program experts as well as leveraging the current and prospective relationships with local DBE related groups and organizations. NTI will solicit to DBEs as well as other minority- and woman-owned vendors utilizing the TXDOT Civil Rights Office department directories especially the Texas Unified Certification Program (UCP), other local DBE/MWBE vendor databases, publication of advertisements in local and statewide media, and participation in local DBE/MWBE business opportunity events. NTI is also committed to assisting any interested firms in obtaining all necessary qualifications through extensive local outreach efforts to several agencies and organizations including but not exclusive of:

- National Association of Minority Contractors – (NAMC)- Texas (Dallas/Fort Worth) chapter
- Conference of Minority Transportation Officials (COMTO) North Texas Chapter
- Fort Worth Metropolitan Black Chamber of Commerce
- Regional Hispanic Contractors Association (RHCA)
- Regional Black Contractors Association (RBCA)
- Asian American Contractors of Texas (AACTX)
- DFW Minority Supplier Development Council
- Women in Transportation Seminar (WTS)- Dallas/ Fort Worth Chapter

NTI will encourage any subcontractor (regardless of tier) working in the job to utilize DBE participation to perform work. Solicitations, at a minimum, should include the following information:

- A description of the work for which the bid is being solicited
- The date, time, and location where bids are to be submitted
- How to respond to the solicitation
- The name of the individual who will be available to answer questions about the Project
- The location where bid documents may be reviewed
- Any special requirements

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DBE Performance Plan**

DBE Compliance

NTI recognizes the need to solicit participation for opportunities that were not determined during the pre-award stage. However, through our outreach initiatives as well as effective compliance, we will achieve if not exceed the goal. The efforts to meet the project's contract goal for DBE participation would not be effective without strong compliance and monitoring. We will subcontract portions of work which will provide maximum opportunities to local and DBE firms. Obtaining DBE participation on a design-build project requires ongoing commitment as the design and construction packages roll out throughout the project. Stringent monitoring and record-keeping will substantiate success. At a minimum, we will track our progress toward exceeding the contract goal in the monthly DBE Progress Report, consistent commercially useful function reviews and on-site visits.

Our approach will entail some of the following strategies:

- Identify a pool of potential DBE subcontractors/suppliers certified by the Texas UCP.
- Assist firms in obtaining DBE certification.
- Solicit price and scope quotes from certified, capable DBE subcontractors and suppliers.
- Implement good faith solicitation of potential DBE firms for the project and document our efforts, including all communication via phone, fax, email, visits, and pre-bid solicitation meetings.
- Investigate all contract provisions to identify all requirements to satisfy municipal, county, state, or federal obligations, including training and reporting.
- Ensure our team's commitment to proactively using certified DBEs and all reasonable efforts to meet or exceed mandated DBE requirements is upheld.
- Develop economically feasible packages through coordination of our DBE team with the entire project team especially the procurement staff to identify the opportunities for DBE participation and flexible work package sizes. Whenever possible, work will be packaged so it can be easily performed by small businesses. We will also require large subcontractors to identify subcontracting opportunities of their work for DBE and small businesses.
- Hold orientations with subcontractors before they begin work to familiarize them with the site, the requirements of the Project, and our expectations for their scope of work.
- Conduct consistent visits to the jobsite and offices to ensure that the DBE firms are performing a commercially useful function on the project.

DBE Monitoring

Although TXDOT may be responsible for ensuring that the DBE firms are performing a commercially useful function (CUF) on the project, our internal DBE team will proactively perform CUF reviews in addition to both desk and field-monitoring services to validate/ensure that work committed to DBEs is actually being performed by DBEs. These reviews become a critical link between the actual efforts/accomplishments reported and the true DBE participation. The NTI DBE team will also ensure that the contract and subcontract specifications and documents contain the appropriate DBE reporting clauses and requirements. The NTI DBE team in coordination with other team members will conduct these reviews at least once for each DBE firm no later than 180 days from the commencement of work identified for each DBE contract. Through its extensive monitoring and reporting, the NTI DBE team will ensure that the project will be in accordance with 49 CFR Part 26 as well as TXDOT DBE Program.

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**North Tarrant Express
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DBE Performance Plan**

The NTI team will utilize a project vendor and diversity compliance database for accurate and comprehensive vendor and especially DBE utilization management. This web based compliance system will be compatible to the electronic TxDOT DBE tracking system and will submit compliance related data as required.

- Customized web-based software system that captures and manages the vendor information from interested DBE firms for seamless transfers of potential vendors for solicitations and eventually subcontractors
- Comprehensive system for collecting and tracking data for DBE subcontractor commitments and payment for efficient and effective reporting and monitoring of DBE utilization

Commitment to DBE Utilization

NTI has already identified experienced DBE partners which will continue to perform key scopes of work in both professional services and construction areas as a continuation of the NTE Segment 3A-35W contract. NTI will utilize many of the same DBE firms utilized previously and continue to seek additional DBE firm participation throughout the project, as needed.

Our team has demonstrated success in utilizing DBE firms not just in the construction phase but also in the pre-construction/design phases of the project by using firms specializing in such professional services as environmental, technical studies, surveying, and utility coordination. NTI will work to start finalizing the professional services and certain construction related opportunities needed during the pre-construction phase within 60 days after NTP2. Due to the nature of design-build contracts, professional services like miscellaneous design services, material testing and QA support can be solicited throughout the project and mainly in the construction phase. The NTI team has successfully implemented this strategy for DBE participation in the professional services area on other projects and has exceeded the established DBE participation goal.

As for construction, our team also anticipates utilizing construction DBE firms throughout the duration of the project to perform such services as clearing and demolition, erosion control and miscellaneous site preparation during the pre-construction phase of the project. Additionally, our team anticipates contracting in the traditional construction services areas typically seen performed by DBE firms such as signage, landscaping, rebar installation, miscellaneous concrete work, trucking and a supplier of small bulk materials. These areas were also identified as areas of high DBE availability by the data initially provided by TXDOT. We have also seen proven success with DBE utilization in the following non-traditional areas of construction work like structural concrete work, drainage and ITS work.

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**North Tarrant Express
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DBE Performance Plan**

The NTI team has identified additional areas of work for potential DBE participation to include but not exclusive of the following work scopes:

- Environmental
- Materials Testing
- Miscellaneous Design Services
- Erosion and Sediment Control
- Utility Construction
- Removal/Demolition
- Miscellaneous Excavation/Earthworks
- Drainage
- Miscellaneous Bridge Construction Work
- Miscellaneous Concrete Pavement Services
- Electrical/Lighting/Signalization
- Traffic Control
- Rebar/Reinforcing Steel
- Trucking
- Guardrail
- Miscellaneous Concrete Flatwork
- Landscaping

DBE Goal Achievement Strategy

The NTI team has a proven record of achieving the established project goals on large design build projects. Our methodology of identifying a few key DBE firms for preconstruction work during the procurement phase is a process that has been used successfully on the previous projects. However, the NTI team has a DBE achievement plan for anticipated utilization of DBE firms for the project. Based on the number of ready willing and able firms in the state UCP as well as the estimate of potential DBE firms that will be certified over the course of the project, the NTI will establish a detailed DBE procurement strategy to meet/exceed the DBE goal by projecting to seek DBE participation in potential professional services as well as construction work scopes.

DBEs and Other Small Businesses Training

Our goal is project success—and our definition of success includes working with DBE firms to establish a good understanding of their work, including schedule, performance and administrative requirements. Strategies to provide support to DBE firms include training and effective initiatives that educate and facilitate increased capacity. Examples of workshops include:

- Administrative Procedures Training – Helps subcontractors (both DBE and non-DBE) understand the technical and administrative requirements such as documentation procedures for payment, certified payroll and DBE requirements

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**North Tarrant Express
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DBE Performance Plan**

- Project Orientations – Familiarizes firms and their employees with the site, our expectations for their scope and schedule, and safety requirements
- Technical Assistance Workshops – Continuation of our collaboration with the AGC of Texas and the RHCA to offer contract compliance and technical assistance as well as bonding and insurance workshops that assist NTI DBE and small contractors understand the expectations and requirements of performing work on this contract.
- Certification Support – Helps firms obtain certification by giving them information on the certification requirements and application process or expand their certifications to additional work codes through access to local certification agencies or entities.
- Trucking Training- As a major scope for DBE participation, NTI will work with our DBE trucking companies to ensure they have a clear understanding about the specific trucking requirements for DBE credit on the project.

DBE Liaison

Angela Berry Roberson will be the DBE Liaison officer for this project. Angela has over 25 years of professional experience working on transportation-related construction especially heavy highway projects and is considered a nationally recognized expert in civil rights program management. Additionally, Angela has managed the civil rights efforts for similar large complex public private partnership (P3) programs throughout the state and especially in the North Texas area including the LBJ Express and North Tarrant Express Segments 1, 2 and 3A (NTE 1-2 and 35W). She also has extensive knowledge about the small business and workforce applicable regulations and best practices to ensure compliance with all the Civil Rights Requirements. The DBE Liaison will be responsible for the day-to-day operational components of, and serve as the primary contact to TxDOT for, all matters and requirements according to Exhibit 13 of the Facility Agreement and this DBE Performance Plan. Her contact information is aroberson@ferrovial.us and 972-922-0826.

Exhibit D

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North Tarrant Express Segments 3A, 3B and 3C (NTE 35W) Project Job Training Plan

Overview

The project Design Builder, North Tarrant Infrastructure (NTI) is committed to recruit minorities, females, and disadvantaged persons to fulfill the established On-the-Job Training (OJT) goal on this project and shall perform and comply with all requirements as described in Section 10.10 and the revised Attachment 9 of Exhibit 8 in the Facility Agreement as well as this Job Training Plan. NTI understands that the purpose of the Job Training Plan (Job Training plan) is to ensure that inexperienced and untrained workers have a substantial opportunity to participate in the performance of the Work through apprenticeships, training and similar measures to maintain and grow a diverse, skilled work force. Therefore, NTI's goal is to maintain and grow a diverse, skilled local workforce and commit to achieving the goals of the TxDOT/AGC OJT Program through offering an effective Job Training program addresses the key areas and skill categories needed on the project. This includes not only recruiting but also upgrading of women, minorities, and socially and economically disadvantaged persons towards journey-level status.

NTI will show reasonable efforts include but are not limited to the following:

- Demonstrating that it reached out to community organizations and used other channels to solicit minority or female workers to fill the training positions.
- Reviewed its current workforce for potential upgrade, including all subcontractors.
- Interviewed minority or female applicants of which did not produce a viable employee.

Recruitment

NTI will demonstrate the steps taken to recruit minorities and women for training to comply with this plan and TXDOT's specifications. The recruitment process will begin early on in the project well before construction operations start to ensure that trainees are able to complete their training program and the project OJT goal is achieved. NTI will conduct systematic and direct recruitment within the greater Fort Worth/Metroplex area through public and private sources likely to yield minority and women employees especially trainees including outreach to established local, statewide and federal programs.

In addition to the above programs, NTI will make every effort to identify minorities and women for job opportunities through other local groups and organizations such as the local diverse chambers of commerce. NTI will also conduct focused outreach to community groups and churches as well as the several diverse colleges and universities in the Greater Fort Worth/Metroplex and especially the project area.

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**North Tarrant Express
Segments 3A, 3B and 3C (NTE 35W) Project
Job Training Plan**

Program Implementation

The NTI Job Training program is committed to providing opportunities for women and minorities in the skilled construction trades, especially the "critical crafts". We will also make concerted efforts for the inclusion of the physically challenged and veterans. In light of TXDOT's workforce development initiatives, we understand that job creation is a vital part of this project and we will integrate a community employment element in our program.

We also understand that workforce retention is critical for any project; therefore, we will have a comprehensive job training program in conjunction with the on-the-job training program. Our job training programs will train and advance employees toward journeyman worker status. Our plan is to implement proactive methods to exceed the project workforce goal established by TXDOT on the Project.

On-Site and Off-Site Training Goals

To accomplish this training goal, on-site and offsite training programs will provide both direct hire employees and especially subcontractor employees the education needed to safely perform job functions in an efficient manner and to improve skills toward journeyman worker status.

On-Site Training

Our personnel will train on the technical aspects of the specific trades including any training for the use of equipment required to perform the tasks. We will use the comprehensive On-the-Job Training program accepted by TXDOT and approved apprenticeship programs will also be customized for each trade. According to the TxDOT On-the-Job Training Program Special Provision for Design-Build and Comprehensive Development Agreement Projects which should be revised Attachment 9 to Exhibit 8 of the Facility Agreement, this project will have **27 trainees**.

Off-Site Training

Our off-site training will consist of access to OSHA safety classes in addition to classroom instruction about topics such as scheduling, construction best practices and some project management skills for prospective foremen and supervisors. The off-site training will provide additional training for project workers that complements the on-site or on-the-job training. Even though aspects of the training will involve internal project experts, we will welcome the opportunity to collaborate with the workforce initiatives of TXDOT, local community colleges as well as other organizations with work skills training and workforce development initiatives in the Greater Fort Worth/Metroplex area.

Two-Tiered program

A project specific OJT program will be designed that to provide opportunities for both professional work OJT classifications for project support / management and general

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**North Tarrant Express
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Job Training Plan**

construction OJT classifications for heavy highway construction trades, such as labor, asphalt and concrete paving, carpentry, and equipment operations. The job training program will maximize trainee retention through recruiting those minority, female and disadvantaged applicants whom are most likely to succeed in graduating into full journey persons.

Key elements of NTI's job training program include:

- Workforce training programs to safely perform job functions in an efficient manner; programs are available for any contractor and designed to benefit the entire workforce,
- Maximizing the use of hands-on training for both employees and subcontractors,
- Training provided by technical experts in the field and/ or qualified trainers; and
- Follow-up training provided as needed to enhance and reinforce skills

Expanded Work Classifications

We will also explore opportunities to expand the work classifications in the current on-the-job training program to reflect today's technological advancements in the construction industry. This strategy provides trainees with true opportunities to move upward during the completion of a long-term design-build project. We believe that additional classifications align the NTE 35W project with similar projects across the country that have advanced beyond the narrowly focused skilled crafts or trades to include semi-skilled crafts, technical, professional and other construction-related services. Any expanded work classifications that NTI would submit as part of the project-specific OJT program would need to be approved by CIV and FHWA in order to receive goal credit. Those submissions would include the proposed training programs and wage classifications for each additional training classification similar to the additions that were recently approved for our Grand Parkway project in Houston.

Some possible expanded technical classifications include:

- quality control technician,
- lab technician (asphalt plant),
- survey office technician,
- concrete technician,
- office technician,
- GPS operator and
- project manager.

Program Summary

The project job training program, especially the recruitment efforts, will begin shortly after NTP2. At that time, we will present the final customized job training program including more specific details regarding the cost and schedule for training. As we stated earlier, our job training program will incorporate our efforts to enroll women and minorities (as well

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**North Tarrant Express
Segments 3A, 3B and 3C (NTE 35W) Project
Job Training Plan**

as the physically challenged and veterans) and also establish programs to retain trainees through completion of the project.

In order to maximize the success and impact of the NTI Job Training program, NTI will utilize local experienced Diversity and Workforce resources along with our Diversity and Human Resources team members dedicated for workforce development. This workforce team will help maximize outreach efforts, guide the program as well as guide the strategy to and ensure compliance of the team's OJT efforts and ensure compliance through extensive reporting and good faith effort documentation necessary to track those efforts especially with subcontractors who may have OJT positions on the project. Additionally, NTI will maintain documentation of such efforts including but not limited to emails, letters, interview results, internal and external reports.

NTI is committed to meet, if not exceed, the workforce goals on this project. Members of NTI Team have a proven record of civil rights compliance and commitment and is committed to exert the same consistent efforts for the NTE 35W project to meet the goals.