

PURCHASE ORDER GENERAL TERMS & CONDITIONS

SECTION 1

- a. **This Purchase Order is a Contract.** This form, when signed by a representative of AVTA (AVTA) and accepted by a Contractor/Vendor, is a Contract by and between the parties and is subject to the terms and conditions contained herein (this "PO"). All agreements between the parties and representations made by either party regarding this PO are contained within the Contract documents. No waiver of, modification, or change in the price or terms of this PO shall be allowed and shall be binding on both parties unless changed in writing and signed by both parties.
- b. **Contract Documents.** The overall agreement between the parties consists of the following documents: (1) Contract; (2) Contract Terms and Conditions; (3) Purchase Order Terms and Conditions; (4) Specifications; (5) Scope of Work, Description of Services, and Rate; (6) Solicitation Amendment(s); (7) Solicitation Document; (8) Offer and Response from the Vendor/Contractor; (the "Contract Documents"). The Contract Documents constitute the entire agreement between the parties and supersede all prior oral or written statements or agreements.
- c. **Priority Among Contract Documents.** In the event of a conflict between or among the terms of the Contract Documents, the terms in the Contract Document with the highest priority shall prevail. The order of priority shall be the numerical order of documents listed in Section 1 (b) Contract Documents, beginning with the Contract having the highest priority. If there are multiple Contract Amendments, the most recent amendment shall have the highest priority and the oldest amendment shall have the lowest priority.
- d. **FOB Point of Delivery.** All pricing, labor, materials and services are to be FOB destination and delivered within the city limits of Lancaster, California, unless otherwise specified.
- e. **Title and Risk of Loss.** The title and risk of loss of goods and/or services shall not pass to AVTA until AVTA actually receives and accepts the goods and/or services in writing at the point of delivery FOB; and such loss, injury, or destruction shall not release the Contractor/Vendor from any obligation hereunder.
- f. **Assignment.** The Order or any right or obligation thereunder may not be assigned, transferred or subcontracted by Contractor/Vendor without the written consent of AVTA and any assignment, transfer or subcontract made without such written consent shall be void and ineffective.
- g. **Non-Performance.** In the event of nonperformance under this PO, AVTA, after **seven (7) business days** written notice to the Contractor/Vendor, shall have the right to obtain from other sources such goods and/or services as may be required to accomplish the work not performed. It is agreed that the difference in cost, if any, for said work or goods shall be borne by the Contractor/Vendor. Non-performance shall be defined as failure to appear and perform work and/or deliver goods as specified, scheduled, and required by the Contract Documents.
- h. **Insurance.** Unless Contractor/Vendor ships all goods to be supplied under this PO by common carrier and will not make deliveries to AVTA using its own employees, or if performance under this PO requires Contractor/Vendor to be on property owned or controlled by AVTA, then Contractor/Vendor shall furnish to AVTA Certificates of Insurance ("Certificate"), as specified herein, together with cop(ies) of original endorsements effecting the required coverages, upon delivery and execution of this PO. Coverage must be provided by an insurance company admitted to do business in California and rated A-VII or better by AM Best's Insurance Rating. Contractor's coverage will be primary in the event of loss. Contractor shall pay all deductibles and retentions. A cross-liability clause or separation of insured's condition will be included in all commercial general liability policies required by this PO. The insurer shall waive the right of subrogation against AVTA, its officials, officers, employees and agents. The Certificate shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without **ten (10) calendar days** written notice from the Contractor's/Vendor's insurer to AVTA. The Certificate shall also state the deductible or retention level. If requested, complete copies of insurance policies shall be provided to AVTA. Subject to the foregoing, Contractor/Vendor shall provide Certificate(s) evidencing the following:
 - i. **Workers Compensation Insurance** as required by the California Labor Code, together with employer's liability insurance with coverage limits of not less than \$1,000,000.
 - ii. **Commercial General Liability Insurance**, on an occurrence basis, with a combined single limit of not less than \$1,000,000, each occurrence for bodily injury and property damage, with an annual aggregate limit of \$2,000,000. This insurance shall include contractual liability coverage.
 - iii. **Automobile Liability Insurance** with a combined single limit, or the equivalent of not less than \$1,000,000 each occurrence for bodily injury and property damage, including coverage for owned, hired or non-owned vehicles.
 - iv. **Product Liability Coverage.** Certificates of Insurance for product liability coverage are required from Vendors/Contractors or product manufacturers of higher hazard equipment where potential for loss is greater than normal (i.e., chemicals, heavy road equipment, machinery, etc.). This procedure verifies that the manufacturing company has proper product liability insurance and economic backing in the event of a catastrophic loss relating to a failure, malfunction, defect or other condition relating to the manufacture of the specific product.
 - v. **Additional Insureds.** For commercial general liability and automobile liability insurance policies, the Insurance Certificate and additional insured endorsement shall also provide that "**Antelope Valley Transit Authority, its boards, commissions, departments, directors, officers, officials, agents and employees are additional Insureds with respect to Contractor's/Vendor's services to be provided under this PO.**" If requested, complete copies of insurance policies shall be provided to AVTA.

The amount and type of insurance coverage as required herein is not intended to, and shall not be interpreted to, limit the scope of the indemnity set forth in the sub-section i, below.

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- i. **Indemnity and Hold Harmless.** Contractor/Vendor shall fully defend, hold harmless and indemnify Antelope Valley Transit Authority, its agents, directors, officers, officials, and employees from all claims, losses, liabilities, suits (including payment of actual attorney fees and experts' costs), and/or actions of any nature resulting from or arising out of the acts, omissions and/or willful misconduct of the Contractor/Vendor or its officers, employees, subcontractors, or agents in the performance of services under or in connection with this PO. It is the specific intention of the parties that, to the maximum extent permitted by law, AVTA, its agents, directors, officers, officials, and employees shall, in all instances, be indemnified by the Contractor/Vendor from and against any and all claims, regardless of whether or not the claims are caused in whole or in part by a party indemnified hereunder.
- j. **Termination.** AVTA may terminate this PO at any time. If this PO is terminated by the AVTA, AVTA shall pay Contractor/Vendor for work performed prior to the termination date if such work was performed in accordance with this PO, less any offset to which AVTA is entitled. AVTA shall not be liable for damages of any kind as a result of termination. Termination shall not result in a waiver of any claim AVTA may have against Contractor/Vendor.
- k. **Governing Law.** The provisions of this PO shall be construed in accordance with the laws of the State of California and policies of Antelope Valley Transit Authority. Any legal action arising under this PO must be brought in Los Angeles County, California, or if the claim must be brought in federal forum, then in the Central District of California.
- l. **Insolvency.** In the event the Contractor/Vendor become bankrupt or insolvent, the Contractor/Vendor, Court and/or appointed Receiver shall assign the Contractor/Vendor's property rights for the benefit of its creditors, AVTA shall have the right forthwith cancel this order or so much thereof as had been completed to official date of insolvency.

SECTION 2 - TERMS RELATING TO PURCHASE OF GOODS

- a. **Invoice.** Invoices submitted shall contain the following information: Purchase Order number; item numbers; description of merchandise invoiced including sizes, quantities, unit prices, and extended totals; sales tax and the name of the department, division, or section to which the merchandise was delivered or shipped. AVTA is exempt from federal excise taxes. All California state and local taxes apply. AVTA will provide a federal exemption number to Contractor/Vendor, when applicable, so Contractor/Vendor can complete the federal exemption certificate.
- b. **Merchandise Quality and Warranty.** All merchandise supplied shall be new, of the latest model available, of merchantable quality, and fit for the purpose for which it is sold and shall conform to the specifications on this Purchase Order unless the description of the item specifically provides otherwise. Contractor/Vendor shall supply all written materials to AVTA concerning Contractor/Vendor or manufacture's standard certifications and warranties. All merchandise shall comply with federal, state and local laws and regulations applicable to manufacture and processing of the merchandise.
- c. **Packing and Shipping.** Contractor/Vendor shall be responsible for industry standard packing which conforms to product and the requirements of carrier's tariffs, ICC regulations, and other applicable regulations. Containers must be clearly marked with the Purchase Order number, contact person, phone number, department, and FOB delivery address.
- d. **Fuel Surcharges.** All pricing shall be protected from increase for three (3) months from the execution date of this PO, Purchase Order, or Notice to Proceed. Fuel charges shall not be allowed unless disclosed at the time the Vendor/Contractor submits a response to a solicitation or quote and subsequently closed at the stated date and time. Fuel surcharges will only be allowed if the price per gallon of gasoline/diesel fuel **increases more than 20 percent (20%)** from the gasoline/diesel fuel prices posted on the day the solicitation closed. The index used for both gas and diesel prices are posted Weekly On Highway Diesel Prices for the West Coast California Region. Both are posted each Monday by the Energy Information Agency at the following addresses:
<http://www.eia.gov/petroleum/gasdiesel/> or http://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_nus_w.htm
- e. **Shipment Reservation Prohibited.** Contractor/Vendor shall not ship the goods under reservation and no tender of a bill of lading will operate or function as a tender of the goods.
- f. **Inspection and Acceptance.** Goods furnished under this PO shall be subject to inspection and testing by AVTA at times and places determined by AVTA, and within a reasonable time after arrival at its ultimate destination. If AVTA finds goods furnished to be incomplete, unsatisfactory, defective, of inferior quality or workmanship, fails to meet the specifications or other requirements, or not in compliance with this PO, AVTA, at its sole discretion, may either reject the goods, require Contractor/Vendor to correct any defects without charge, or negotiate with Contractor/Vendor to sell the goods to AVTA at a reduced price, whichever AVTA deems equitable under the circumstances. AVTA may return such goods to Contractor/Vendor at Contractor's/Vendor's expense. Contractor/Vendor shall reimburse AVTA for any amounts paid by AVTA for the returned goods and any costs incurred by AVTA to return the goods to the Contractor/Vendor. If Contractor/Vendor is unable or refuses to cure any defects within a time deemed reasonable by AVTA, AVTA may reject the goods and cancel this PO in whole or in part. Payment for merchandise prior to inspection shall not be construed to be an acceptance of unsatisfactory or defective merchandise. Nothing in this paragraph shall in any way affect or limit AVTA's rights as buyer under the Uniform Commercial Code, including the rights and remedies relating to rejection or revocation of acceptance under California Commercial Code §§ 1101, et seq.
- g. **Recycled Products.** Contractor agrees to comply with all the requirement of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

SECTION 3 - TERMS RELATING TO PURCHASE OF SERVICES

- a. **Performance of the Work.** All work under this PO shall be performed in a professional and workmanlike manner. Contractor/Vendor shall not subcontract any of the work required by this PO or assign or transfer any of its interest in this PO. Time is of the essence in the performance of this PO.

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- b. **Invoice.** An invoice shall be submitted upon completion of the work unless otherwise provided on the face of this PO. If the work is to be paid on an hourly basis, the invoice shall state in detail each task performed, the person performing the task, the number of hours for each task, the hourly rate, and sales tax.
- c. **Contractor's/Vendor's Employee E-Verify Eligibility Requirement.** The Bidder/Contractor/Vendor shall comply with all applicable provisions of the Federal Immigration and Nationality Act (FINA), Title 8, United States Code (USC), which requires compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program. See the following website for further information: www.dhs.gov/e-verify.
- Pursuant to the previous listed regulations, AVTA may request verification of compliance from any Contractor/Vendor or subcontractor performing work under this PO. AVTA reserves the right to confirm compliance. Should AVTA suspect or find that the Contractor/Vendor or any of its subcontractors are not in compliance, AVTA may pursue any and all remedies allowed by law, including, but not limited to suspension of work, termination of this PO for breach or default, and suspension and/or debarment of the Bidder/Contractor. All costs necessary for compliance shall be solely borne by the Contractor/Vendor.
- d. **Ownership of Work Product.** All work products, images, ideas, electronic files, writings and documents created by the Contractor/Vendor as part of Contractor's/Vendor's performance of this PO, including all intellectual and proprietary rights arising therefrom, but not including work products containing pre-existing intellectual property of the Contractor/Vendor or a third party, shall be considered to be "works made for hire" and the exclusive property of AVTA ("AVTA Work Product"). If any work products contain pre-existing intellectual property of the Contractor/Vendor or third party that is or could be protected by federal copyright, patent, or trademark laws, Contractor/Vendor hereby grants AVTA a perpetual, royalty- free, paid in full to date, non-exclusive, and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use, re- use, in whole or in part, and to authorize others to do so, all such work products. AVTA shall have no rights in any pre-existing work products of Contractor/Vendor or any third party provided to AVTA by Contractor/Vendor in the performance of this PO, except to copy, use, and re-use any such work products for AVTA use only and at no charge to AVTA. If this PO is terminated prior to completion, and AVTA is not in default, AVTA, in addition to any other rights provided by this PO, may require the Contractor/Vendor to transfer and deliver to AVTA all partially completed AVTA Work Product. To the extent not otherwise conveyed to AVTA by the foregoing, Contractor/Vendor hereby assigns any and all ownership rights to the AVTA Work Product to AVTA.

SECTION 4 – FEDERAL REQUIREMENTS

- a. **Prohibition on Government Contracts.** The Contractor/Vendor shall comply with all applicable provisions of Public Law 110-174 – Sudan Accountability and Divestment Act of 2007, as amended and Public Law 104-172 - Iran Sanctions Act of 1996, as amended. Contractor/Vendor further agrees that they shall not have any scrutinized business operations in Sudan and/or Iran.
- b. **Terrorism Country Divestments.** In accordance with Export Administration Act of 1979, as amended, AVTA is prohibited from purchasing from a company that is in violation of this Export Administration Act. By entering into this PO, Contractor/Vendor warrants compliance with the Export Administration Act.
- c. **No Federal Government Obligations.**
- i. AVTA 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, the Federal Government is not a party to this Contract/PO and shall not be subject to any obligations or liabilities to AVTA, Contractor/Vendor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract/PO.
- ii. The Contractor/Vendor 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.
- d. **Program Fraud Civil Remedies Act.**
- i. The Contractor/Vendor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. Department of Transportation 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/Vendor 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 the 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.
- ii. The Contractor/Vendor 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 if financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- iii. The Contractor/Vendor 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.
- e. **False or Fraudulent Statements and Claims.** By accepting this Contract/PO, Contractor/Vendor 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

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right to impose penalties under the program Fraud Civil Remedies Act of 1986 to the extent the Federal Government deems appropriate. Contractor/Vendor 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 authority of 49 U.S.C. 5307, the Federal Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1) on Contractor to the extent the Federal Government deems appropriate. The Contractor agrees to include the above provisions in each subcontract. It is further agreed that said provisions shall not be modified, except to identify the subcontractor who will be subject to the provisions.

- f. **Access to Records.** Contractor/Vendor shall maintain fiscal records and all other records pertinent to this PO. All fiscal records shall be maintained pursuant to generally accepted accounting standards, and other records shall be maintained to the extent necessary to clearly reflect actions taken. All such records shall be retained and kept accessible for no less than **five (5) years** following final payment. AVTA's authorized representatives shall have the right to direct access to all of Contractor's/Vendor's books, documents, papers and records related to this PO for the purpose of conducting audits and examinations and making copies, excerpts and transcripts. AVTA shall reimburse Contractor/Vendor for cost of preparing copies at a rate of \$.10 per page.
- g. **Compliance with FTA Regulations, Policies, Procedures and Directives.** Contractor/Vendor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between AVTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's/Vendor's failure to so comply shall constitute a material breach of this contract.
- h. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this PO:
 - i. **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/Vendor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor/Vendor 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 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/Vendor agrees to comply with any implementing requirements FTA may issue.
 - ii. **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/Vendor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor/Vendor agrees to comply with any implementing requirements FTA may issue.
 - iii. **Disabilities** – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor/Vendor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor/Vendor agrees to comply with any applicable implementing requirements issued by the federal government.
- i. **Non-discrimination Clause.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor/Vendor 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.
- j. **Federal Terms and Conditions.** To the extent the procurement of goods or services is funded with State or federal funds, the Contractor/Vendor is hereby notified that such procurement shall be subject to additional terms and conditions required by State or federal law, whether or not set forth in the Contract Documents; and to the extent applicable, all such terms and conditions are incorporated by reference herein. Such terms and conditions applicable to federally funded procurements may include, but are not limited to, those terms and conditions set forth in Federal Circular 4220.1F, or any successor version thereof, as are applicable to the specific type of procurement herein.
- k. **Energy Conservation Requirements.**
 - i. **Applicability**
This Article applies to all federally funded contracts.
 - ii. Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 USC § 6321 et seq.
- l. **Recycled Products.**
 - i. **Applicability.**
This Article applies to federally funded operations/management, construction, or materials & supplies contracts for items designated by the Environmental Protection Agency, when procuring \$10,000 or more per year.
 - ii. To the extent practicable and economically feasible, a competitive preference shall be given for products and services that conserve natural resources and protect the environment and are energy efficient.

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- m. **Americans With Disabilities Act.** Contractor shall ensure that the Project meets the applicable Accessibility Guidelines for Transportation Facilities set out as Appendix A to 49 C.F.R. Part 37. Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), section 504 of the Rehabilitation Act of 1973, and any implementing requirements FTA may issue.
- n. **OMB Circular A-133.** If Contractor is determined by the AVTA to be a sub-recipient of federal funds passed through the AVTA, the Contractor must submit an annual Federal Compliance Audit in conformity with the OMB Circular A-133, which applies the Federal Single Audit Act of 1984, Public Law 98-502, to non-profit organizations.
- o. **Interests of Members of / or Delegates to Congress.** In accordance with 18 U.S.C. Section 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.
- p. **Cancellation of Contract.** In any of the following cases, AVTA shall have the right to cancel this Agreement without expense to AVTA: (i) Contractor is guilty of misrepresentation; (ii) this Agreement is obtained by fraud, collusion, conspiracy, or other unlawful means; or (iii) this Agreement conflicts with any statutory or constitutional provision of the State of California or the United States. This Section does not limit AVTA's right to terminate the Contract for convenience or default.
- q. **Termination for Convenience.**
- i. The performance of work under this Agreement may be terminated for convenience by AVTA in accordance with this Section in whole, or from time to time in part, whenever AVTA determines that such termination is in the best interest of AVTA. Any such termination shall be effected by delivery to Contractor of a notice of termination specifying the extent to which performance of work under this Agreement is terminated and the date upon which such termination becomes effective.
 - ii. Upon receipt of a notice of termination, and except as otherwise directed by AVTA, Contractor/Vendor shall (a) stop work on the date and to the extent specified in the notice of termination; (b) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work as is not terminated; (b) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; (d) assign to AVTA in the manner, at the times, and to the extent directed by AVTA, all of the rights, title and interest of Contractor/Vendor under the orders and subcontracts so terminated; (e) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of AVTA, to the extent AVTA may require, which approval or ratification shall be final for all the purposes of this Section; (f) transfer title to AVTA and deliver in the manner, at the times, and to the extent, if any, directed by AVTA, supplies, equipment, and other material produced as a part of, or acquired in connection with the performance of, the work terminated, and any information and other property which, if this Agreement had been completed, would have been required to be furnished to AVTA; (g) complete any such part of the work as shall not have been terminated by the notice of termination; and (h) take such action as may be necessary, or as AVTA may direct, for the protection and preservation of the property related to this Agreement which is in the possession of Contractor/Vendor and in which AVTA has or may acquire an interest. Payments by AVTA to Contractor/Vendor shall be made by the date of termination but not thereafter. Except as otherwise provided, settlement of claims by Contractor/Vendor under this termination Section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49. Under no circumstances will Contractor/Vendor be entitled to anticipatory or unearned profits, consequential damage, or other damages of any sort as a result of a termination or partial termination. Contractor/Vendor shall insert in all subcontracts that the subcontractor shall stop work on the date of and to the extent specified in a notice of termination, and will require subcontractors to insert the same condition in any lower tier subcontracts.
- r. **Termination by Mutual Agreement.** This Agreement may be terminated by mutual agreement of the parties. Such termination shall be effective in accordance with a written agreement by the parties.
- s. **Termination for Default.**
- i. Subject to the provisions of Subsection iii, AVTA may terminate the whole or any part of this Agreement for default in any one of the following circumstances:
 - (a) If Contractor/Vendor refuses or fails to provide the services in the manner required by this Agreement;
 - (b) If Contractor/Vendor refuses or fails to perform any of the provisions of this Agreement in accordance with its terms; or
 - (c) If Contractor/Vendor refuses or fails to prosecute the Work or any separable part, with the diligence that will insure its completion within the Contract Time or any extension thereof or fails to complete the Work within this time. Contractor's/Vendor's right to proceed shall not be terminated nor shall Contractor/Vendor be charged with damages under this Section if the delay in completing the work arises from force majeure.
 - ii. AVTA shall terminate under this Section by delivering to Contractor/Vendor a notice of termination specifying the nature of the default. In this event AVTA 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. Contractor/Vendor and its sureties shall be liable for any costs or damages to AVTA resulting from Contractor's/Vendor's refusal or failure to complete the within specified time whether or not Contractor's/Vendor's right to proceed with the work is terminated. This liability includes any increased costs incurred by AVTA in completing the work, including the procurement of replacement services by AVTA, any excess costs of such similar supplies or services, and any increase in the total contract cost as a result of the completion and/or re-procurement of services from the date of termination to the expiration date of this Agreement. Contractor/Vendor shall continue the performance of this Agreement to the extent not terminated under the provisions of this Section. If after termination of Contractor's/Vendor's right to proceed, it is determined that Contractor/Vendor 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 AVTA.
 - iii. If AVTA determines that an event of default under this Section has occurred, it shall immediately notify Contractor/Vendor in writing and provide Contractor/Vendor with ten (10) days in which to cure such default. If Contractor/Vendor fails to cure within such time

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frame, AVTA may declare Contractor/Vendor to be in breach and terminate the Contract in whole or in part.

- iv. Except as otherwise provided, settlement of claims by Contractor/Vendor under this termination Section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49.
- t. **Debarment/Suspension Status on Purchases over \$25,000.** This Contract/PO is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the Contractor/Vendor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.
The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and entering into this agreement the Contractor/Vendor certifies as follows: "The certification in this clause is a material representation of fact relied upon by AVTA. If it is later determined that the Contractor/Vendor knowingly rendered an erroneous certification, in addition to remedies available to AVTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor/Vendor agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor/Vendor further agrees to include a provision requiring such compliance in its lower tier covered transactions."
- u. **Cargo Preference.**
 - i. **Applicability.**
The following Article applies to federally funded contracts involving equipment, materials, or commodities which may be transported by ocean vessels.
 - ii. **Use Of United States Flag Vessels.**
Contractor shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels Contractor shall furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to AVTA (through Contractor in the case of a subcontractor's bill-of-lading). Contractor shall include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.
- v. **Fly America.**
 - i. **Applicability.**
This Article applies to federally funded contracts if the contract or subcontracts may involve the international transportation of goods, equipment, or personnel by air.
 - ii. Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.
- w. **DBE Contract Assurance.** The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
- x. **Metric Requirements.** To the extent required by the Department of Transportation or FTA, Contractor agrees to use the metric system of measurement in activities under this Agreement as may be required by 15 U.S.C. Section 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal government Programs," 15 U.S.C. Section 205a; and other regulations, guidelines and policies issued by the Department of Transportation or FTA. To the extent practicable and feasible, Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.
- y. **Disadvantaged Business Enterprise (DBE).**
 - i. This Agreement shall be governed by the terms of the DBE Policy of AVTA. It is the policy of AVTA that DBEs as defined in 49 C.F.R. Part 26 shall have the opportunity to compete fairly for contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 C.F.R. Part 26 apply to this Agreement.
 - ii. Contractor agrees that it will take necessary and reasonable steps to ensure that DBEs as defined in 49 C.F.R. Part 26 have a fair opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. Contractor shall not discriminate on the basis of race, color, national origin, physical or mental disability, or sex in the award and performance of DOT assisted contracts.
 - iii. The established goals for this Agreement shall be in accordance with AVTA's DBE Program in effect at the time of proposal submittal.

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- iv. The aspirational DBE participation goal for this Agreement is 4.00 percent.
- v. Contractor shall submit a DBE Utilization Report with each Application and Certification for Payment.
- vi. All proposers will be required to submit the following information to the Authority, at the closing date and time provided in the solicitation document:
 - (a) The names and addresses of DBE firms that will participate in the contract;
 - (b) A description of the work that each DBE will perform;
 - (c) The dollar amount of the participation of each DBE firm participating;
 - (d) Written documentation of the proposer's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
 - (e) Written confirmation from the DBE that it is participating in the contract as provided in the prime proposer's commitment; and
 - (f) If the contract goal is not met, evidence of good faith efforts must be shown. Provide the means taken to acquire DBE participation.
- z. **Prompt Payment To Subcontractors.**
 - i. The Contractor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than ten (10) calendar days after the Contractor has received payment from the Authority. Complete Exhibit 1 – Prompt Payment Affidavit.
 - ii. In addition, all Retainage amounts must be paid by the Contractor to the Subcontractor no later than seven (7) business days after the Subcontractor has, in the opinion of the Authority and/or Contractor, satisfactorily completed its portion of the Work.
 - iii. A delay in or postponement of payment to the Subcontractor requires good cause and prior written approval of the Authority's Procurement Office.
 - iv. The Contractor is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.
 - v. The Authority will not pay the Contractor for work performed unless and until the Contractor ensures that the Subcontractors have been promptly paid for the work they have performed under all previous payment requests, as evidenced by the filing with the Authority of lien waivers, canceled checks (if requested), and the Contractor's sworn statement that it has complied with the prompt payment requirements. Prime Contractors must submit a prompt payment affidavit, (form to be provided by the Authority) which identifies each subcontractor (both DBE and non-DBE) and the date and amount of the last payment to such subcontractor, with every payment request filed with the Authority, except for the first payment request, on every contract with the Authority. (See Exhibit 6 - Prompt Payment Affidavit).
 - vii. Failure to comply with these prompt payment requirements is a breach of the Contract, which may lead to any remedies permitted under law, including, but not limited to, Contractor debarment. In addition, Contractor's failure to promptly pay its Subcontractors is subject to the provisions of Code of Federal Regulations (CFR) Title 49, Part 26 and California Public Contract Code.
- aa. **Reporting Requirements during the Term of the Contract.**
 - i. The proposer shall, within five (5) business days from contract execution, or prior to any work being performed, execute formal subcontracts or purchase orders with the DBE firms included in the proposal. These written agreements shall be made available to the Procurement Office, DBE Program, upon request. All contracts between the proposer/contractor and its subcontractors must contain a prompt payment clause as set forth in Section 4 herein.
 - ii. During the term of annual contracts, the proposer shall submit regular "Status Reports of DBE Subcontract Payments" in a form acceptable to the Authority. The frequency with which these reports are to be submitted will be determined by the Procurement Office, DBE Program, but in no event will reports be required less frequently than quarterly. **In the absence of written notice from the Procurement Office, DBE Program, the bidder's first "Status Report of DBE Subcontract Payments" will be due 90 days after the date of contract award, with additional reports due quarterly thereafter.**
 - iii. In the case of a one-time procurement with either a single or multiple deliveries, a "Status Report of DBE Subcontract Payments," in a form acceptable to the Authority, indicating final DBE payments shall be submitted directly to the Procurement Office, DBE Program. The information must be submitted prior to or at the same time as the bidder's final invoice to the Authority user department identified in the solicitation. (NOTICE: The original invoices must be submitted directly to the Authority's department identified in the contract documents and the Status Report of DBE Subcontract Payments must be submitted directly to the Procurement Office, DBE Program.) **Failure to follow these directions may delay final payment.**
 - iv. The address for the Procurement and Contracts Office, DBE Program, is: Procurement and Contracts Office, Antelope Valley Transit Authority, 42210 6th Street West, Lancaster, CA, 93534.
- bb. **Compliance with Applicable Law.** Contractor/Vendor shall observe and comply with all established federal, state, and local administrative rules, codes, ordinances, regulations, standards, and licensing or permitting laws applicable to the work under this PO regardless of whether or not they are referred to by AVTA in the Contract Documents.
- cc. **Taxpayer Identification Information.** Pursuant to Internal Revenue Code, Title 26, Federal Code of Regulations, a Federal Tax Identification number or social security number, if sole proprietor, is required to do business with AVTA and will be used for the administration of state, federal, and local laws. Payment information will be reported to the Internal Revenue Service under the name and federal tax identification number or, if none, the Social Security number provided.

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- dd. **Composition of Contractor/Vendor.** If the Contractor/Vendor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable for compliance with this PO.
- ee. **Seat Belt Use.** Pursuant to Executive Order No. 13043 and in accordance with 23 U.S.C. §402, the Contractor/Vendor is encouraged to adopt and promote on-the-job seat belt use policy and program for its employees and other personnel that operate company-owned, rented, or personally-operated vehicles and include this provision in all subcontracts entered into under this Contact.

SECTION 5 – FEDERAL REQUIREMENTS FOR CONSTRUCTION OVER \$2,000

a. **ADA Access.**

- i. Applicability. This Article applies to federally funded Architect & Engineer, Operations/Management, Rolling Stock Purchase, and Construction contracts.
- ii. Access Requirements for Persons with Disabilities Contractor shall comply with:
 1. The requirements of 49 U.S.C. § 5301(d), which states the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy;
 2. All applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps;
 3. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act;
 4. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act; and
 5. All applicable requirements of the following regulations and any subsequent amendments thereto:
 - (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
 - (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
 - (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
 - (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
 - (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
 - (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
 - (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
 - (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
 - (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
 - (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
 - (11) Any implementing requirements FTA may issue.

b. **Seismic Safety.**

- i. Applicability. This Article applies to federally funded Architect & Engineer contracts for the design of new buildings or additions to existing buildings and to contracts for the construction of new buildings or additions to existing buildings.
- ii. Any new building or addition to an existing building shall be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and Contractor shall certify to compliance to the extent required by the regulation. Contractor shall ensure that all work performed under this Contract, including work performed by a Subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

c. **Veterans Employment Preference.** As provided by Title 49 U.S.C. § 5325(k), to the extent practicable, the Contractor and its subcontractors agrees and assures:

- i. They will provide a hiring preference to veterans, as defined in Title 5 U.S.C. § 2108, provided that applicant possesses the skills and abilities required to perform the construction work required under a third party contract, let in connection with a capital project supported with funds made available or appropriated under the provisions of 49 U.S.C. Chapter 53; and
- ii. They will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any

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racial or ethnic minority, female, an individual with a disability, or a former employee. These guidelines are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Title 49 United States Code, § 47112.

d. Davis-Bacon and Copeland Anti-Kickback Act.

i. Applicability. This Article applies to federally funded construction contracts if the contract or subcontracts may involve the award of construction Agreements above \$2,000.

ii. Contractor shall comply with the following provisions:

(1) Minimum wages - (i) All laborers and mechanics employed or working upon 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), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis- Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (A) The Procurement and Contracts Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Procurement and Contracts Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Procurement and Contracts Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Procurement and Contracts Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Procurement and Contracts Officer or will notify the Procurement and Contracts Officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Procurement and Contracts Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Procurement and Contracts Officer shall refer the questions, including the views of all interested parties and the recommendation of the Procurement and Contracts Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Procurement and Contracts Officer or will notify the Procurement and Contracts Officer within the 30- day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages

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of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- (v) (A) The Procurement and Contracts Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Procurement and Contracts Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
 - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Procurement and Contracts Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Procurement and Contracts Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Procurement and Contracts Officer or will notify the Procurement and Contracts Officer within the 30-day period that additional time is necessary.
 - (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Procurement and Contracts Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Procurement and Contracts Officer shall refer the questions, including the views of all interested parties and the recommendation of the Procurement and Contracts Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the Procurement and Contracts Officer or will notify the Procurement and Contracts Officer within the 30-day period that additional time is necessary.
 - (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (2) Withholding – Antelope Valley Transit Authority 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 the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on 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), all or part of the wages required by the contract, Antelope Valley Transit Authority may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
 - (3) 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 is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing 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.
 - (ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Antelope Valley Transit Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program.

If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration

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withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
 - (5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR, Part 3, which are incorporated by reference in this contract.
 - (6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
 - (7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
 - (8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
 - (9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
 - (10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (iii) The penalty for making DBE false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- e. **Disadvantaged Business Enterprise (DBE)**
- i. This Agreement shall be governed by the terms of the DBE Policy of AVTA. It is the policy of AVTA that DBEs as defined in 49 C.F.R. Part 26 shall have the opportunity to compete fairly for contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 C.F.R. Part 26 apply to this Agreement.
 - ii. Contractor agrees that it will take necessary and reasonable steps to ensure that DBEs as defined in 49 C.F.R. Part 26 have a fair opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. Contractor shall not discriminate on the basis of race, color, national origin, physical or mental disability, or sex in the award and performance of DOT assisted contracts.
 - iii. The established goals for this Agreement shall be in accordance with AVTA's DBE Program in effect at the time of proposal submittal.
 - iv. The established DBE participation goal for this Agreement is 7.00 percent.
 - v. Contractor shall submit a DBE Utilization Report with each Application and Certification for Payment.

SECTION 6 – STATE OF CALIFORNIA REQUIREMENTS FOR CONSTRUCTION OVER \$1,000

- a. **Licenses.** Prime Contractor shall possess an active applicable License issued by the California Contractors State License Board will be required at the time the bidder's proposal documents are submitted unless otherwise required by state or federal law. The successful contractor and their subcontractors will be required to possess business licenses from the City of Lancaster.
- b. **California Industrial Relations Registration Requirements.** Effective July 1, 2014, all contractors and subcontractors are required to register annually with the Department of Industrial Relations (DIR) before submitting a bid and performing work on a public works project, pursuant to CA Labor Code Section 1725.5. Contractor and/or Subcontractor(s) shall provide proof of such registration upon submission of a bid or proposal or no later than a solicitation closing date and time. Any bid received after the closing date and time stated above for any reason whatsoever will not be considered for any purpose but will be returned, unopened, to the bidder. Each bidder must submit a bid on standard forms provided in the bid package.

Subletting and Subcontracting. In compliance with the Subletting and Subcontracting Fair Practices Act, being Sections 4100-4113 of the California Public Contract Code, and any amendments thereto, each bidder shall set forth the name and location of the place of business of each subcontractor, including DBE subcontractor(s) who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement in an amount in excess of one-half (1/2) of one percent (1%) of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of one percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater. The bidder shall further set forth the portion of the work, which will be done by each subcontractor. Only one subcontractor for each such portion shall be listed. Failure to provide such information may render the bid unresponsive.

If the contractor fails to specify a subcontractor for any portion of the work to be performed under the Contract, he shall be deemed to have agreed to perform such portion himself and he shall not be permitted to subcontract that portion of the work except under the

PURCHASE ORDER GENERAL TERMS & CONDITIONS

conditions hereinafter set forth. In such cases, failure of the contractor to hold certain specialty licenses may render the bid unresponsive.

Subletting or subcontracting of any portion of the work to which Contractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the legislative body of the Owner.

- c. **Prompt Progress Payment To Subcontractors.** Attention is directed to the provisions in Sections 10262 and 10262.5 of the Public Contract Code and Section 7108.5 of the Business and Professions Code concerning prompt payment to subcontractors.

Prompt Payment of Withheld Funds to Subcontractors. The Contractor shall return all moneys withheld in retention from the subcontractor within 30 days after receiving payment for work satisfactorily completed, even if the other contract work is not completed and has not been accepted in conformance with the acceptance of the project. Contractual, administrative, or judicial remedies otherwise available to the Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or noncompliance by a subcontractor shall not be limited or impaired by this provision.

- d. **California Prevailing Wages.** The Project constitutes a "public works project" and is subject to the payment of prevailing wages. The successful bidder will be required to pay not less than the general prevailing hourly wage rates, as determined by the Director of the Department of Industrial Relations pursuant to the California Labor Code Sections 1770 et seq., for each craft, classification, or type of workman needed to perform the Contract. These wages are available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/DLSR/PWD>. The successful bidder shall also be required to comply with applicable State and Federal requirements governing the use of apprentices and helpers. In cases of conflict between Federal (Davis-Bacon Act) Wage Scale and with California Prevailing Wage rates, the higher wage of the two (2) wage rates shall be applied.

- i. Prevailing Wages. In accordance with the provisions of Labor Code Section 1770 et seq., the Director of the Department of Industrial Relations of the State of California has ascertained the general prevailing rate of wages applicable to the Work to be done under contract for public improvement.
- ii. A copy of such documents is on file and may be inspected in the office of the Procurement and Contracts Officer, 42210 6th Street West, Lancaster, CA 93534.
- iii. Penalties. Contractor shall comply with Labor Code Section 1775 and shall forfeit, as a penalty to AVTA, a sum not to exceed Two-hundred Dollars (\$200) dollars for each calendar day or portion thereof during which Contractor or any subcontractor has paid to any worker employed in the project an amount less than that required. Amount to be assessed as a penalty shall be established by the State of California Labor Commissioner and in accordance with Labor Code (Section 1775 et seq.).
- iv. Payroll Records. Contractor's attention is directed to Labor Code Section 1776 relating to accurate payroll records, which imposes responsibility upon Contractor for the maintenance, certification, and availability for inspection of such records for all persons employed by Contractor or by the subcontractors in connection with the Project. Contractor shall comply with this section and all other applicable provisions of the Labor Code.
- v. Working Hours. Contractor shall forfeit, as penalty to the AVTA, the sum of Twenty-Five Dollars (\$25) dollars for each worker employed in the execution of this Agreement by Contractor or subcontractors for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3, Chapter 1, Part 7, Division 2 of the Labor Code (Section 1810 et seq.), except as hereinafter provided for under Labor Code Section 1815.
- vi. Overtime hours. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of Labor Code Section 1815, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections (Sections 1810 to 1814), work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.
- vii. Apprentices. Attention is directed to the provisions of Labor Code Sections 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or any subcontractor. Contractor and all subcontractors shall comply with the requirements of such sections in the employment of apprentices. Information relative to apprenticeship standards and administration of the apprenticeship program may be obtained from the Department of Industrial Relations, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.



**PURCHASE ORDER GENERAL TERMS & CONDITIONS
EXHIBIT 1 - PROMPT PAYMENT AFFIDAVIT**

(Form to be used **only** upon payment to DBE Subcontractors)

Contractor will place a check in the appropriate box below that applies to this payment request.

Re: Payment Request No. _____

I, _____ (Name), the _____ (Title - e.g., President, Vice President, etc.) of _____ ("Company"), do state the following with regard to payments made under Contract No. _____ ("Contract"):

1. ____ Subcontractors, at the first tier, both DBE and non-DBE, who completed work and were listed for payment on the prior Payment Request No. _____, were paid no later than ten (10) business days after Contractor received payment from Authority.

2. ____ Copies of invoices and cancelled checks for subcontractors at the first tier who were paid under the prior payment request have been delivered or mailed to the Procurement Office, DBE Program. In addition, Contractor has attached to the current Payment Request all lien waivers for prior subcontractor payments and any other documentation required by the Authority. (Failure to attach all required documentation to the Payment Request or forward cancelled checks and invoices to the Authority's Procurement Office, DBE Program may cause the Payment Request to be rejected by the Authority.)

3. ____ All retainage amounts withheld from any subcontractor who satisfactorily completed its portion of the contract work, including punch list items, were paid to the subcontractor(s) no later than seven (7) business days after it satisfactorily completed its work, whether or not the Authority has paid said retainage amounts to Contractor. Attach a copy of the cancelled check evidencing payment of each retainage amount.

4. ____ There was no delay in or postponement of any payment owed to a subcontractor, whether periodic payment or retainage amount, except for good cause and after receipt of prior written approval from the Authority's Procurement Office.

Attach a copy of the written approval from the Authority's Procurement Office.

Company Name

Signature

Print Name

Date

SIGNATURE MUST BE WITNESSED BY A NOTARY