

PURCHASE ORDER GENERAL TERMS & CONDITIONS

SECTION 1 – GENERAL TERMS AND CONDITIONS

- 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. **No Third Party Beneficiaries.** The AVTA and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.
- e. **Merger Clause.** This Contract and the attached exhibits constitute the entire agreement between the parties. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract. No waiver, consent, modification, or change in the terms of this Contract shall bind either party unless in writing and signed by both parties. Any written waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.
- f. **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.
- g. **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.
- h. **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.
- i. **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.
- j. **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:
 1. **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.
 2. **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.
 3. **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.
 4. **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.

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5. **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-sections k and l, below.

- k. **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.
- l. **Indemnity–Patents, Copyright, and Trademark.** Contractor agrees to defend the AVTA, its boards, commissions, directors, departments, officers, officials, agents, and employees individually and collectively (hereinafter referred to as “Indemnitees”) at Contractor’s own expense, in all suits, actions, and/or proceedings in which the AVTA is made a defendant for actual or alleged infringement of any United States of America or foreign letters, patents or intellectual property rights resulting from the AVTA’s use of the item(s)(equipment, material, product, services or work product, etc.) purchased as a result of this Procurement (and subsequent Contract). Contractor further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action, or proceedings against the AVTA. Contractor agrees to indemnify and hold harmless the Indemnitees from any and all license, royalty, and proprietary fees or costs, including payment of Indemnitees’ attorneys’ fees, costs of experts, and any other legal costs, which may arise out of the AVTA’s purchase and use of goods, service, or work product supplied by the Contractor. Contractor will indemnify Indemnitees against all claims for damages to persons or property resulting from defects in materials or workmanship. It is expressly agreed by Contractor that these covenants are irrevocable and perpetual.
- m. **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.
- n. **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.
- o. **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.
- p. **Right to Assurance.** Whenever one party to this Contract in good faith has reason to question the other party’s intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within seven (7) days, the demanding party may treat this failure as an anticipatory repudiation of this Contract.
- q. **Liens and Stop Notices.** Contractor shall hold AVTA harmless from liens and stop notices filed by claimants supplying labor or materials to the Contractor or its subcontractors in the performance of the work required under this Contract. Contractor shall provide written certification that all liens against materials and labor, and/or stop notices, have been satisfied, before AVTA will make final payment.
- r. **Severability.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held invalid.
- s. **Default in One Installment to Constitute Breach.** Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of nonconforming goods, service, or work product or a default of any nature under one installment or lot will impair the value of the whole agreement and constitute a breach of the agreement as a whole.
- t. **Security.** Any disclosure or removal of any AVTA material and/or information marked as confidential or private on the part of Contractor shall be cause for immediate cancellation of the Contract. Any liability, including, but not limited to, attorney fees, resulting from any action or suit brought against AVTA as a result of the Contractor willful or negligent release of information, documents, or property contained in AVTA’s facilities shall be borne solely by the Contractor.

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

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specifically provides otherwise. Contractor/Vendor shall supply all written materials to AVTA concerning Contractor/Vendor or manufacturer'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 requirements 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.** Time is of the essence in the performance of this PO. 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.
- 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 the 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.
- e. **Employment Standards.** The Contractor agrees that upon request by AVTA, it shall remove from AVTA's premises any Contractor's employee, who, in the reasonable opinion of AVTA, is guilty of improper conduct, bringing any unauthorized personnel (including their

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own children) into a facility or work area, or is not qualified to perform the work assigned. The Contractor agrees that its employees must complete and pass a security background check if so requested.

- f. **Organization–Employment Disclaimer.** The agreement resulting hereunder is not intended to constitute, create, give rise to, or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the right and obligations of the parties shall be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor's obligations under the agreement are considered to be AVTA's employees and that no rights of AVTA's civil service, retirement, or personnel rules accrue to such persons. The Contractor shall have total responsibility for all salaries, wage bonuses, retirement, withholdings, workers' compensation, occupational disease compensation, unemployment compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such persons and shall save and hold AVTA harmless with respect thereto.

SECTION 4 – FEDERAL REQUIREMENTS

- a. **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 therefore.
- b. **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.
- c. **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.
- d. **Disputes, Breaches, Defaults, and Litigation Notification.** Notification to the AVTA; Flow Down Requirement. If a current or prospective legal matter that may affect the AVTA or Federal Government emerges, the Contractor must promptly notify the AVTA. The Contractor must include a similar notification requirement in its subcontractor contracts. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the AVTA or Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- e. **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.
- f. **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.
- g. **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.
- h. **No Federal Government Obligations.**
- a. 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.
- b. 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.
- i. **Program Fraud Civil Remedies Act.**
- a. 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.
- b. 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 is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the

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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.

c. 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.

- j. **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 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.
- k. **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.
- l. **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.
- m. **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.
- n. **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.
- o. **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.
- p. **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.
- q. **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.
- r. **Termination for Convenience.**

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- 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.
- s. **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.
- t. **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:
 - 1. If Contractor/Vendor refuses or fails to provide the services in the manner required by this Agreement;
 - 2. Contractor/Vendor refuses or fails to perform any of the provisions of this Agreement in accordance with its terms; or
 - 3. If Contractor/Vendor refuses or fails to prosecute the Work or any separable part, with the diligence that will ensure 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 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.
- u. **Force Majeure.**
 - i. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term 'force majeure' means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
 - ii. Force Majeure shall not include the following occurrences:
 - 1. Late delivery of item(s)(equipment, material, product, services or work product, etc.) caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
 - 2. Late performance by a subCompany unless the delay arises out of a force majeure occurrence in accordance with this force

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majeure term and condition; or

3. Inability of either the Company or any subCompany to acquire or maintain any required insurance, bonds, licenses, or permits.
 - iii. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
 - iv. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused, by force majeure.
 - v. The Customer shall have no obligation to pay Company for services that are suspended by a force majeure event
- v. **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."
- w. **Clean Water and Clean Air Requirements.**
- A. Applicability. This Article applies to all federally funded contracts over \$100,000.
 - B. Clean Water Requirements. Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and all applicable clean water standards of the State of California and any state or local agency having jurisdiction. Contractor shall report each violation to AVTA. AVTA will, in turn, report each violation as required to FTA, and the appropriate EPA Regional Office, and all other agencies having jurisdiction.
 - C. Clean Air. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq., and all applicable Clean Air Standards of the State of California or any state or local agency having jurisdiction. Contractor shall report each violation to AVTA. AVTA will, in turn, report each violation as required to FTA, the appropriate EPA Regional Office, and all other agencies having jurisdiction.
- x. **Compliance with Federal Lobbying Policy.**
- A. Applicability. The following Article applies to federally funded contracts over \$100,000.
 - B. The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, requires that Companies who enter into a contract of \$100,000 or more shall file the certification required by 49 CFR Part 20, entitled, "Certification of Compliance with Federal Lobbying Requirements." As set forth in the certifications, each tier of subcontractors shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant, or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded from tier to tier up to AVTA.
- y. **Buy America.**
- A. Applicability. The following Article applies to federally funded rolling stock purchase and construction contracts over \$100,000 and to contracts over \$100,000 for materials & supplies for steel, iron, or manufactured products.
 - B. Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. AVTA may investigate Contractor's, any Subcontractor's, and any Supplier's compliance with this Article. If an investigation is initiated, Contractor, Subcontractor, or Supplier shall document its compliance, in accordance with 49 CFR 661.15, and cooperate with the investigation. Contractor shall incorporate the Buy America conditions set forth in this Article in every subcontract or purchase order and shall enforce such conditions.
- z. **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 leading for shipments originating outside the United States, a legible copy of a rated,

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"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.

aa. 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.

bb. 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.

cc. 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.

dd. 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.

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.

1. The established goals for this Agreement shall be in accordance with AVTA's DBE Program in effect at the time of proposal submittal.

2. The aspirational DBE participation goal for this Agreement is 9.00 percent.

3. Contractor shall submit a DBE Utilization Report with each Application and Certification for Payment.

ii. All proposers will be required to submit the following information to the Authority, at the closing date and time provided in the solicitation document:

1. The names and addresses of DBE firms that will participate in the contract;

2. A description of the work that each DBE will perform;

3. The dollar amount of the participation of each DBE firm participating;

4. Written documentation of the proposer's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

5. Written confirmation from the DBE that it is participating in the contract as provided in the prime proposer's commitment; and

6. If the contract goal is not met, evidence of good faith efforts must be shown. Provide the means taken to acquire DBE participation.

ee. 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

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- 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).
- vi. 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.
- ff. **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 **Disadvantage Business Enterprise Liaison Officer (DBELO)**, DBE Program, but in no event will reports be required less frequently than quarterly. **In the absence of written notice from the Disadvantage Business Enterprise Liaison Officer (DBELO), 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 Disadvantage Business Enterprise Liaison Officer (DBELO), 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 Disadvantage Business Enterprise Liaison Officer (DBELO) Office, DBE Program, is Antelope Valley Transit Authority, 42210 6th Street West, Lancaster, CA, 93534.
- gg. **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.
- hh. **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.
- ii. **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.
- jj. **Safe Operations of Motor Vehicles**
- i. **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 Contract.
- ii. **Distracted Driving.** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle the Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract or when performing any work for or on behalf of the Contract. The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the risks associated with texting while driving. The Contractor further agrees to include this clause in each subcontract awarded at each tier.
- kk. **Breaches and Dispute Resolution - 49 CFR Part 18 FTA Circular 4220.1F**
- i. **Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.
- ii. **Performance During Dispute** - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- iii. **Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents, or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- iv. **Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

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

ll. **Non-Construction Employee Protections - Contract Work Hours and Safety Standards Act.**

- i. Applicability. This Article applies to federally funded non-construction contracts over \$100,000 (including ferry vessels), for all turnkey, rolling stock purchases over \$100,000, and to operations/management contracts over \$100,000 (except transportation services and open market contracts).
- ii. Company agrees to comply, and assures the compliance of each subcontractor, lessee, third party Company, and other participant at any tier of the Agreement, with the employee wage and hour protection requirements for non-construction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. 3701, et seq., and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provision Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5.

mm. **Federal Privacy Act**

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

nn. **Telecommunication Services, Equipment, and Systems**

Pursuant to Public Law 115-232, Section 889, and 2 C.F.R. Part 200, including §200.216 and §200.471, the AVTA is prohibited from procuring or obtaining equipment, services, or systems that use "Covered Telecommunications Equipment or Services" as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, Section 889, "Covered Telecommunications Equipment or Services" is:

- A. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- B. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- C. Telecommunications or video surveillance services provided by such entities or using such equipment.
- D. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Contractor shall not use or provide the AVTA Covered Telecommunications Equipment or Services in the performance of this Contract. If Contractor later learns that prohibited telecommunications services, equipment, or systems have been supplied, installed, or utilized under this Contract, Contractor shall immediately inform the AVTA in writing. The AVTA may treat such occurrence as an event of default under Section 20 of this Contract and the AVTA may require the Contractor to promptly replace such prohibited service, equipment, and systems at the Contractor's sole cost or take such other actions pursuant to Section 20.

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

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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 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. The Contractor will be required to pay Federal prevailing wage scale for the classifications of workers required for the work associated with this Contract as determined by the Federal Wage Determination that is current within ten (10) days of the date of the execution of the Purchase Order.
 - iii. This work falls under the Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) and that contractor shall supply AVTA with certified payroll documentation. The Davis-Bacon and Related Acts will apply to contractors and subcontractors performing construction, alteration, or repair with federally funded or assisted contracts of \$2,000 or more. Under this Act, contractors shall be required to pay wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. A current copy of the Davis Bacon Wage Determinations is available upon request or can be found on sam.gov. Contractor shall abide by the applicable prevailing wage according to the above-mentioned qualifications. The execution and acceptance of this Purchase Order shall constitute the acceptance of the wage determination.
 - iv. If State of California prevailing Wage is higher than Davis Bacon, contractor is required to pay the higher rate.
 - v. Company stipulates that no person has been employed or has been retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; and that no member of the Board of Directors or any employee of the Customer has any interest, financially or otherwise, in this Contract that has not been publicly declared and procured in accordance with Anti-Kickback Act of 1986 (41 United States Code Section 51, et. seq.). In case of breach or violation of this requirement, the Customer shall have the right to annul this Contract without liability or at its discretion to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

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e. **Construction Employee Protections – Contract Work Hours and Safety Standards Act.**

- i. **Applicability.** This Article applies to federally funded construction contracts over \$100,000 (including ferry vessels), rolling stock purchases over \$100,000 and to operations/management contracts over \$100,000 (except transportation services).
- ii. Pursuant to the Labor Standards Provisions Applicable to Construction Contracts subject to the Federal Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327 through 332 as implemented by U.S. Department of Labor regulations, 29 CFR 5.5 (b) and (c) Contractor and Subcontractor's, contracting for any part of the Contract work, shall comply with the following:
 1. **Overtime requirements –** Neither Contractor nor any Subcontractor contracting for any part of the Contract work that requires or involves the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 2. **Violation; liability for unpaid wages; liquidated damages –** In the event of any violation of the Article set forth in paragraph 1 of this Section Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the Article set forth in paragraph 1 of this Section, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the Article set forth in paragraph 1 of this Section.
 3. **Withholding for unpaid wages and liquidated damages –** AVTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by Contractor or Subcontractor under the Contract or any other Federal contract with Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the Article set forth in paragraph 2 of this Section.
 4. **Subcontracts –** Contractor or Subcontractor shall insert in any Subcontracts the Articles set forth in this Section and also a Article requiring the Subcontractors to include these Articles in any lower tier Subcontracts. Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the Articles set forth in this Section.
 5. **Payrolls and basic records –** The records to be maintained hereinabove shall be made available by Contractor or Subcontractor for inspection, copying, or transcription by AVTA and U.S. Dept. of Labor. Contractor and Subcontractor shall maintain payrolls and basic records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid.

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 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

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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 Relation's 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 Disadvantage Business Enterprise Liaison Officer (DBELO) and 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