

## AVTA and Federal Terms, Conditions, and Clauses

1. **Time is of the Essence.** Time is of the essence in the performance of this Contract. Company is providing services which may involve transportation, and the health, safety and welfare of the general public within Antelope Valley area of Los Angeles County, California. Delivery time is of the essence. Delivery must be made in accordance with the delivery schedule as promised by the Company.
2. **Contract Amendments.** This Contract shall be modified only by a written Contract Amendment signed by the Customer's Board Chairman, Executive Director/CEO or designee duly authorized to enter into Contracts on behalf of the Customer.
3. **No Third Party Beneficiaries.** The Customer and Company 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.
4. **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.
5. **Governing Law.** The provisions of this Contract shall be construed in accordance with the laws of the State of California and the provisions of the Antelope Valley Transit Procurement Policy. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in Los Angeles County, California. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the U.S. District Court located in Los Angeles, Los Angeles County, California.
6. **Purchase Order.** Company acknowledges and agrees that Company has read, understands and agrees to the Purchase Order upon execution of this Agreement, the Company acknowledges they have read, understands and agree (with incorporation of the revised terms noted herein) to the Purchase Order General Terms and Conditions, which are available for viewing at [www.avta.com](http://www.avta.com). The Purchase Order Terms and Conditions referenced above are hereby made a part of this Agreement and subsequent purchases.
7. **Early Termination.** This Contract may be terminated as follows:
  - a. The Customer and Company, by written agreement, may terminate this Contract at any time.
  - b. The Customer, in its sole discretion, may terminate this Contract for any reason on thirty (30) days written notice to Company.
  - c. Either the Customer or Company may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
  - d. Notwithstanding paragraph 7(c), Customer may terminate this Contract immediately by written notice to Company upon denial, suspension, revocation, or non-renewal of any license, permit, or certificate that Company must hold to provide services under this Contract.
8. **Payment on Early Termination.** Upon termination pursuant to paragraph 7, payment shall be made as follows:
  - a. If terminated under 7(a) or 7(b) for the convenience of the Customer, the Customer shall pay Company for work performed prior to the termination date if such work was performed in accordance with the Contract. Customer shall not be liable for direct, indirect, or consequential damages.

Termination shall not result in a waiver of any other claim the Customer may have against Company.

- b. If terminated under 7(c) by the Company due to a breach by the Customer, then the Customer shall pay the Company for work performed prior to the termination date if such work was performed in accordance with the Contract.
- c. If terminated under 7(c) or 7(d) by the Customer due to a breach by the Company, then the Customer shall pay the Company for work performed prior to the termination date provided such work was performed in accordance with the Contract less any setoff to which the Customer is entitled.

**9. Remedies.** In the event of breach of this Contract, the parties shall have the following remedies:

- a. If terminated under 7(c) by the Customer due to a breach by the Company, the Customer may complete the work either itself, by agreement with another Company, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Company shall pay to the Customer the amount of the excess.
- b. In addition to the remedies in paragraphs 7 and 8 for a breach by the Company, the Customer also shall be entitled to any other equitable and legal remedies that are available.
- c. If the Customer breaches this Contract, Company's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Company is entitled.

**10. Breaches and Dispute Resolution**

49 CFR Part 18.36 FTA Circular 4220.1F

- A. **Applicability to Contracts:** All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where Consultant/Contractors violate or breach contract terms and provide for such sanctions and liquidated damages as may be appropriate. This may include provisions for bonding, liquidated damages for late or inadequate performance, retained earnings, liquidated damages, or other appropriate measures.
- B. **Flow Down Requirements:** The Breaches and Dispute Resolutions requirements flow down to all tiers.
- C. **Disputes -** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AVTA. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Consultant / Contractor mails or otherwise furnishes a written appeal to the AVTA. In connection with any such appeal, the Consultant / Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of AVTA shall be binding upon the Consultant / Contractor and the Consultant / Contractor shall abide by the decision.
- D. **Performance During Dispute -** Unless otherwise directed by AVTA, Consultant / Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- E. **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, therefore, shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- F. **Remedies -** Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matters in question between the AVTA and the Consultant / 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 AVTA is located.
- E. **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 AVTA or Consultant / 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.

11. **Waiver.** Waiver of any default under this Contract by Customer shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.
12. **Non Waiver of Liability.** The Customer as a public entity supported by monetary tax funding, in execution of its public trust, shall not agree to waive any lawful or legitimate right to recover monetary funds lawfully due it. Therefore, Company agrees that it will not insist upon or demand any statement whereby the Customer agrees to limit in advance or waive any right the Customer might have to recover actual lawful damages in any court of law under applicable California law.
13. **Conflict of Interest/Contract Cancellation.** Company stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers, and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation, or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract.

Pursuant to State of California enacted Political Reform Act of 1974, this Contract is subject to cancellation by the Customer if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the Customer is, at any time while the Contract is in effect, an employee of any other party to the Contract in any capacity or a Company to any other party of the Contract with respect to the subject matter of the Contract.

14. **No Kick Back Fee.** 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 publically 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.
15. **Gratuities.** The Customer may, by written notice to the Company, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Company or any agent or representative of the Company, to any officer or employee of the Customer. In the event this Contract is canceled by the Customer pursuant to this provision, the Customer shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Company the amount of the gratuity.
16. **Non Exclusive Contract.** Any subsequent Contract resulting from the solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the Customer. The Customer reserves the right to obtain like goods, service, or work product from another source when necessary.
17. **Force Majeure.**
  - a. 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.
  - b. 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 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.
- c. 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.
- d. 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.
- e. The Customer shall have no obligation to pay Company for services that are suspended by a force majeure event.
18. **Gratuities.** The Customer may, by written notice to the Company, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Company or any agent or representative of the Company, to any officer or employee of the Customer. In the event this Contract is canceled by the Customer pursuant to this provision, the Customer shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Company the amount of the gratuity.
19. **Non Exclusive Contract.** Any subsequent Contract resulting from the solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the Customer. The Customer reserves the right to obtain like goods, service, or work product from another source when necessary.
20. **Late Submission of Claim.** The Customer shall not honor any invoices or claims which are tendered six (6) months or later after the right to receive payment for the last item of the account accrued.
21. **Access to Records.** Company shall maintain fiscal records and all other records pertinent to this Contract. 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. Customer's authorized representatives shall have the right to direct access to all of Company's books, documents, papers and records related to this Contract for the purpose of conducting audits and examinations and making copies, excerpts and transcripts. Customer shall reimburse Company for Company's cost of preparing copies at a rate of \$.15 per page, if requested by Company.
22. **Insurance Requirements.** Company shall maintain throughout the term of the Contract the amounts and limits established and referenced in the solicitation documents and included herein. See "Insurance Requirements".
23. **Indemnity.** To the maximum extent permitted by law, Company shall indemnify, defend, save, and hold harmless the Customer, its boards, commissions, directors, departments, officers, officials, agents, and employees individually and collectively (hereinafter referred to as "Indemnitees") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation, and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), any financial loss, or loss or damage to tangible or intangible

property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of, or arising out of, or relating to activities of, the Company or any of its owners, officers, directors, agents, employees, or subcontractors under this Contract. It is the specific intention of the parties that the Customer shall, in all instances be indemnified by Company 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. It is agreed that Company will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. However, neither Company nor any attorney engaged by Company shall defend the claim in the name of the Customer or any department of the Customer, nor purport to act as legal representative of the Customer or any of its departments, without first receiving from Antelope Valley Transit Authority's Counsel's Office, authority to act as legal counsel for the Customer, nor shall Company settle any claim on behalf of the Customer without the approval of Customer's Board of Directors or Executive Director/CEO. The Customer may, at its election and expense, assume its own defense.

24. **Indemnity—Patents, Copyright, and Trademark.** Company agrees to defend the Customer, its boards, commissions, directors, departments, officers, officials, agents, and employees individually and collectively (hereinafter referred to as "Indemnitees") at Company's own expense, in all suits, actions, and/or proceedings in which the Customer 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 Customer's use of the item(s)(equipment, material, product, services or work product, etc.) purchased as a result of this Procurement (Request For Proposals (RFP) and subsequent Contract). Company 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 Customer. Company 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 Customer's purchase and use of goods, service, or work product supplied by the Company. Company will indemnify Indemnitees against all claims for damages to persons or property resulting from defects in materials or workmanship. It is expressly agreed by Company that these covenants are irrevocable and perpetual.
25. **No Advance Payments.** Advance payments are not authorized. Payment will be made for only actual services or commodities that have been received and accepted by the Customer.
26. **Advertisement.** Company shall not advertise or publish news releases concerning this Contract without the prior written consent of the Customer's Executive Director/CEO or designee.
27. **Non-Discrimination Clause.** In accordance with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. sections 1681 *et seq.* and 49 CFR Part 25, 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, and Federal transit law at 49 U.S.C. § 5332, the Company agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability, source of income, or political affiliation in programs, activities, services, benefits, or employment. Company shall not discriminate against minority-owned, women-owned, or disadvantaged small businesses. Company shall include a provision in each sub-contract requiring subcontractors to comply with the requirements of this clause. In addition, the Company agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
28. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Contract:
  - a. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Company 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 Company 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 Company agrees to comply with any implementing requirements FTA may issue.

- b. Age – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Company agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Company agrees to comply with any implementing requirements FTA may issue.
- c. Disabilities – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Company 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 Company agrees to comply with any applicable implementing requirements issued by the federal government.
- d. Subcontracts – The Company also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance, modified only if necessary to identify the affected parties.

**29. OMB Circular A-133.** If Company is determined by the Customer to be a sub-recipient of federal funds passed through the Customer, the Company 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.

**30. Disadvantaged/Minority/Woman Business Enterprise.** Company agrees to give Disadvantaged/Minority/Woman Businesses the maximum practical opportunity to participate in this Contract when possible, by obtaining supplies, materials, and services from such firms.

**31. Non Appropriation Clause - Fiscal Year.** If appropriations are reallocated, reduced or eliminated by legislative action or for any reason these goods and / or services are not funded, during any fiscal year the Customer may take any of the following actions:

- a. Accept a decrease in price offered by the Company and complete the Contract;
- b. Place the Contract on-hold and pay the Company for work performed up to the date of the non-appropriation notice. Work must be performed in accordance with the Contract prior to payment and be less any setoff to which the Customer is entitled. The contract may be resumed at a later date when funding is reestablished. Contract cannot be resumed beyond a (4) four year time period from the date of non-appropriation notice. Company must also reaffirm pricing and resubmit insurance and bonding certificates, if applicable. Documents must be received by the Customer prior to resuming the Contract;
- c. Cancel the Contract and pay the Company for work performed up to the date of the non-appropriation notice. Work must be performed in accordance with the Contract prior to payment and be less any setoff to which the Customer is entitled, and re-solicit a new procurement;
- d. Cancel the contract and re-solicit the requirements;
- e. Cancel the contract.

**32. Non Appropriation Clause - Future Fiscal Year.** Funds may not presently be available for performance under this Contract beyond the current Customer’s fiscal year. If payment for performance under this Contract extends into next fiscal year, the Customer’s obligation to pay for such performance is subject to approval of future appropriations to fund this Contract by legislative action. The Customer shall have

no legal liability to pay funds due for performance under the terms of the Contract until and unless funds are appropriated by legislative action.

33. **Notice to Proceed.** The Company agrees to render services promptly and diligently upon receipt of written notice by a duly authorized Customer's Agent and to proceed with any or all of the services set forth herein.
34. **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.
35. **Non Performance.** In the event of nonperformance under this Contract, the Customer, after **seven (7) days** written notice to the Company, shall have the right to obtain from other sources such item(s)(equipment, material, product, services or work product, etc.) as may be required to accomplish the work not performed, and it is agreed that the difference in cost, if any, for said work or goods shall be borne by the Company.

For purposes of this section, nonperformance shall be defined as failure to appear and perform work and/or deliver item(s)(equipment, material, product, services or work product, etc.) as specified and scheduled.

36. **Liens and Stop Notices.** Company shall hold the Customer harmless from liens and stop notices filed by claimants supplying labor or materials to the Company or its subcontractors in the performance of the work required under this Contract. Company shall provide written certification that all liens against materials and labor, and/or stop notices, have been satisfied, before the Customer will make final payment.
37. **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.
38. **Title and Risk of Loss.** The title and risk of loss of materials and/or service shall not pass to the Customer until the Customer actually receives and unconditionally accepts the material and/or service at the point of delivery FOB; and such loss, injury, or destruction shall not release Company from any obligation hereunder. The Customer shall notify the Company promptly of any damaged item(s)(equipment, material, product, services or work product, etc.), and further shall assist the Company in arranging for inspection.
39. **Employment Standards.** The Company agrees that upon request by the Customer, it shall remove from the Customer's premises any Company's employee, who, in the reasonable opinion of the Customer, is guilty of improper conduct, bringing any unauthorized personnel (including their own children) into a facility or work area, or is not qualified to perform the work assigned. The Company agrees that its employees must complete and pass a security background check, if so requested.
40. **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 Company in the performance of Company's obligations under the agreement are considered to be Customer's employees and that no rights of Customer's civil service, retirement or personnel rules accrue to such persons. The Company 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 the Customer harmless with respect thereto.

41. **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.
42. **Security.** Any disclosure or removal of any Customer material and/or information marked as confidential or private on the part of Company 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 the Customer as a result of the Company's willful or negligent release of information, documents, or property contained in Customer facilities shall be borne solely by the Company.
43. **Preference for Recycled Materials.** Company 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.
44. **Prohibition on Government Contracts.** The Proposer/Company 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. Proposer/Company further agrees that they shall not have any scrutinized business operations in Sudan and/or Iran.
45. **Terrorism Country Divestments.** In accordance with Export Administration Act of 1979, as amended, Customer is prohibited from purchasing from a company that is in violation of this Export Administration Act. By entering into this Contract, Proposer/Company warrants compliance with the Export Administration Act.
46. **Company's Employee E-Verify Eligibility Requirement.** The Proposer/Company 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 Companies 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](http://www.dhs.gov/e-verify).

Pursuant to the previous listed regulations, Customer may request verification of compliance from any Company or subcontractor performing work under this Contract. Customer reserves the right to confirm compliance. Should Customer suspect or find that the Company or any of its subcontractors are not in compliance, Customer may pursue any and all remedies allowed by law, including, but not limited to suspension of work, termination of this Contract for breach or default, and suspension and/or debarment of the Company. All costs necessary for compliance shall be solely borne by the Proposer/Company.

47. **DBE Contract Assurance.** The Company, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Company shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the Company 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.
48. **Prompt Payment To Subcontractors.**
  - a. The Company is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than ten (10) calendar days after the Company has received payment from the Customer.
  - b. In addition, all Retainage amounts must be paid by the Company to the Subcontractor no later than seven (7) business days after the Subcontractor has, in the opinion of the Customer and/or Company, satisfactorily completed its portion of the Work.
  - c. A delay in or postponement of payment to the Subcontractor requires good cause and prior written approval of the Customer's Procurement and Contracts Office.

- d. The Company is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.
- e. The Customer will not pay the Company for work performed unless and until the Company 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 Customer of lien waivers, canceled checks (if requested), and the Company'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 Customer) 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 Customer, except for the first payment request, on every contract with the Customer. (See **Exhibit B - Prompt Payment Affidavit**).
- f. 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, Company debarment. In addition, Company'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.

**49. Reporting Requirements during the Term of the Contract**

- a. 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 and Contracts Office, DBE Program, upon request. All contracts between the proposer/Company and its subcontractors must contain a prompt payment affidavit as set forth in Exhibit B herein.
- b. During the term of annual contracts, the proposer/Company shall submit regular "Status Reports of DBE Subcontract Payments" in a form acceptable to the Customer. The frequency with which these reports are to be submitted will be determined by the Procurement and Contracts Office, DBE Program, but in no event will reports be required less frequently than quarterly. **In the absence of written notice from the Procurement and Contracts Office, DBE Program, the bidder's/proposer'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.**
- c. 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 Customer, indicating final DBE payments shall be submitted directly to the Procurement and Contracts Office, DBE Program. The information must be submitted prior to or at the same time as the bidder's/proposer's final invoice to the Customer user department identified in the solicitation. (NOTICE: The original invoices must be submitted directly to the Customer's department identified in the contract documents and the Status Report of DBE Subcontract Payments must be submitted directly to the Procurement and Contracts Office, DBE Program.) **Failure to follow these directions may delay final payment.**
- d. The address for the Procurement and Contracts Office, DBE Program, is: Customer Procurement and Contracts Office, Antelope Valley Transit Authority, 42210 6<sup>th</sup> Street West, Lancaster, CA, 93534

**50. No Government Obligations to Third Parties**

- A. Applicability.  
This Article applies to all federally funded contracts.
- B. Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to Customer, Company, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from this Contract. Company shall include this Article in each Subcontract and shall not modify the Article, except to identify the subcontractor who will be subject to its provisions.

**51. Program Fraud And False or Fraudulent Statements or Related Acts**

- A. Applicability.  
This Article applies to all federally funded contracts.

- B. The provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, shall apply to actions pertaining to this Contract. Upon execution of this Contract, Company certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining this Contract or the FTA assisted project for which this Contract Work is being performed. In addition to other penalties that may be applicable, Company 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 Company to the extent the Federal Government deems appropriate.
- C. Company also acknowledges that this Contract is 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 and if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Company, to the extent the Federal Government deems appropriate.
- D. Company shall include this Article in each subcontract financed in whole or in part with Federal assistance provided by FTA. Company shall not modify the Article, except to identify the Subcontractor who will be subject to the provisions.

## **52. Access to Third Party Contract Records**

### **A. Applicability**

This Article applies to all federally funded contracts.

- B. For a period of three (3) years following Agreement closing, the Company shall maintain, preserve and make available to Customer, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives, access at all reasonable times to any books, documents, papers and records of Company which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. Company also agrees, pursuant to 49 CFR 633.17, to provide the FTA Administrator or his or her authorized representatives, including any project management oversight Company, access to Company's records and sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. § 5307, § 5309 or § 5311.
- C. The Company shall maintain and Customer shall have the right to examine and audit all records and other evidence sufficient to reflect properly all prices, costs or rates negotiated and invoiced in performance of this Agreement. This right of examination shall include inspection at all reasonable times of the Company's offices engaged in performing the Agreement.
- D. If this Agreement is completely or partially terminated, the Company shall make available the records relating to the work terminated until three (3) years after any resulting final termination settlement. The Company shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.
- E. "Access to Records and Reports" applies with equal force and effect to any subcontractors hired by the Company to perform Work under this Agreement. The Company shall insert this provision in all subcontracts under this Agreement and require subcontractor compliance therewith.

## **53. Administration (FTA) Terms, and Federal Changes.**

### **A. Applicability**

This Article applies to all federally funded contracts.

- B. This Contract includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008 (including any changes, revisions or

successor circulars) are automatically hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Company shall not perform any act, fail to perform any act, or refuse to comply with any Customer requests which would cause Customer to be in violation of the FTA terms and conditions. This Contract is subject to a financial assistance agreement between Customer and the Federal Transit Administration of the US Department of Transportation and all laws, regulations, guidelines, and provisions of the financial assistance agreement apply to this Contract and are incorporated by reference as if fully set forth herein.

- C. Company shall at all times comply with all applicable federal laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in Applicable Grant Agreements between Customer and FTA, as they may be amended or promulgated from time to time during the term of this Contract collectively "Federal Requirements". These Federal Requirements may change and the changed Federal Requirements will apply to this Contract as required unless the Federal Government determines otherwise. Company's failure to so comply with the Federal Requirements shall constitute a material breach of this Contract.

#### **54. Disadvantaged Business Enterprise (DBE)**

- A. This Agreement shall be governed by the terms of the DBE Policy of Customer. It is the policy of Customer 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.
- B. Company 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. Company 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.
- C. The established goals for this Agreement shall be in accordance with Customer's DBE Program in effect at the time of proposal submittal.
- D. The established DBE participation goal for this Agreement is 11.95 percent.
- E. Company shall submit a DBE Utilization Report with each Application and Certification for Payment.

#### **55. Energy Conservation Requirements.**

- A. Applicability.  
This Article applies to all federally funded contracts.
- B. Company 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.

#### **56. Recycled Products.**

- A. 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.
- B. 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.

#### **57. Suspension And Debarment**

- A. Applicability.  
This article applies to federally funded contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for federally required auditing services.

- B. This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, Company shall verify that none of the Company, 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. Company shall comply with 49 CFR 29, Subpart C and shall include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.
- C. By entering into this Contract, Company certifies that it shall comply with the requirements of 49 CFR 29, Subpart C throughout the period of this Contract and that Company has not been suspended or debarred. This certification is a material representation of fact relied upon by Customer. If it is later determined that Company knowingly rendered an erroneous certification, in addition to remedies available to Customer, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

## **58. Americans With Disabilities Act.**

Company 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. Company 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.

## **59. ADA Access**

### **A. Applicability.**

This Article applies to federally funded Architect & Engineer, Operations/Management, Rolling Stock Purchase, and Construction contracts.

### **B. 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.

**60. Clean Water and Clean Air Requirements.**

A. Applicability.

This Article applies to all federally funded contracts over \$100,000.

B. Clean Water Requirements.

Company 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. Company shall report each violation to Customer. Customer 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.

Company 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. Company shall report each violation to Customer. Customer will, in turn, report each violation as required to FTA, the appropriate EPA Regional Office and all other agencies having jurisdiction.

**61. 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 apply or bid/proposal for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, attached hereto as the certification 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 Customer.

**62. 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. Company 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.

Customer may investigate Company's, any Subcontractor's, and any Supplier's compliance with this Article. If an investigation is initiated, Company, Subcontractor, or Supplier shall document its

compliance, in accordance with 49 CFR 661.15, and cooperate with the investigation. Company shall incorporate the Buy America conditions set forth in this Article in every subcontract or purchase order and shall enforce such conditions.

**63. Cargo Preference.**

A. Applicability.

The following Article applies to federally funded contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

B. Use Of United States Flag Vessels.

Company 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. Company 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 Customer (through Company in the case of a subcontractor's bill-of-lading). Company 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.

**64. Fly America.**

A. 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.

- B. Company 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 Companies 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. Company 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. Company agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

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

A. 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).

- B. 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.

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

**A. 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).

**B. 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.

**67. Federal Patent and Data Rights.**

**A. Applicability**

This Article applies to each contract involving experimental, developmental or research work and for which the purpose of the FTA grant is to finance the development of a product or information.

**B. Subject Data**

The term "Subject Data" used in this Article means recorded information, whether or not copyrighted,

that is delivered or specified to be delivered under the Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in Specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, Specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "Subject Data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

### C. Restrictions on Subject Data

The following restrictions apply to all Subject Data first produced in the performance of the Contract:

- A. Except for its own internal use, Customer or Company may not publish or reproduce Subject Data in whole or in part, or in any manner or form, nor may Customer or Company authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
2. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any Subject Data or copyright described in subparagraphs C.2(a) and C.2(b) of this Paragraph C.2. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
  - (a) Any Subject Data developed under the Contract, whether or not a copyright has been obtained; and
  - (b) Any rights of copyright purchased by Customer or Company using Federal assistance in whole or in part provided by FTA.
3. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, Customer and Company performing experimental, developmental, or research work required by the Contract shall permit FTA to make available to the public, either FTA's license in the copyright to any Subject Data developed in the course of the Contract, or a copy of the Subject Data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become Subject Data and shall be delivered as the Federal Government may direct. This Paragraph C.3 shall not apply to adaptations of automatic data processing equipment or programs for Customer's or Company's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
4. Unless prohibited by state law, upon request by the Federal Government, Customer and Company shall indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Customer or Company of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Contract. Neither Customer nor Company shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agent of the Federal Government
5. Nothing contained in this Article shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
6. Data developed by Customer or Company and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the

Contract is exempt from the requirements of Paragraphs 2, 3, and 4 of this Article, provided that Customer or Company identifies that data in writing at the time of delivery of the Contract Work.

**D. Patent Rights**

If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the Contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Customer and Company shall take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

- E. Provision of Rights in Invention to Federal Government Unless the Federal Government later makes a contrary determination in writing, irrespective of Company's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), Customer and Company shall take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.**

- 68. 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.

**69. Seismic Safety**

**A. 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.

- B. 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.**

**70. Bond for Faithful Performance**

- A. Before this Agreement shall be valid or binding against AVTA, but within ten (10) days after the award of the contract, Contractor shall furnish a performance bond for the benefit of, and satisfactory to AVTA, which bond shall be executed by a corporate surety admitted in the State of California and shall be in the amount of one hundred percent (100%) of the Contract Price. The performance bond shall be kept in full force and effect at all times during the term of this Agreement.**
- B. The condition of the performance bond shall be that Contractor shall fully and faithfully perform all Work as required by this Agreement and the Contract Documents.**
- C. If AVTA determines that Contractor has substantially failed to keep and perform the covenants, conditions and agreements in this Agreement and the Contract Documents, then AVTA may require the surety to perform, or may exercise or collect or cause to be exercised or collected, the obligations under the performance bond. In such an event, AVTA shall notify the surety and give the surety an opportunity to perform within a reasonable time certain. If the surety fails to perform, AVTA shall perform and assess the surety on its bond for the cost of such performance. The cost of such performance includes the costs of all labor and equipment reasonably necessary to perform the Work and complete the Project in Contractor's absence.**

**71. Bond for Payment of Labor and Materials**

- A. Before this Agreement shall be valid or binding against AVTA, but within ten (10) days after the award of the contract, Contractor shall furnish a payment bond acceptable to AVTA, which bond shall be**

written by a corporate surety admitted in the State of California, and shall be in the amount of one hundred percent (100%) of the Contract Price.

- B. The condition of the payment bond shall be that Contractor shall pay, as required by law, all persons supplying labor and/or materials in the construction of the Project.

**72. Davis-Bacon Act**

The successful bidder 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 bid opening. If amended during procurement process, the current Wage Determination within ten (10) days of the RFP opening will be available to all plan holders by addendum prior to bid opening.

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 \$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. Contractor shall attach a copy of the prevailing wage to bid proposal. The award of contract shall be conditioned upon the acceptance of the wage determination.

If State of California prevailing Wage is higher than Davis Bacon, contractor is required to pay the higher rate.

**73. Federal Privacy Act**

- A. 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.

- B. 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.

**74. 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.

**75. 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:

- A. Will give a hiring preference to veterans, as defined in Title 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third-party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. Chapter 53, and
- B. 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. ns are necessary to ensure 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.

## **76. Safe Operations of Motor Vehicles**

### **A. Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or the AVTA.

### **B. 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.

## **77. 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.

## 78. Federal Lobbying Certificate Requirements

(a) Definitions, as used in this clause:

**Agency** as defined in Title 5 USC § 552(f), includes federal executive departments and agencies as well as independent regulatory commissions and government corporations, as defined in Title 31 USC § 9101(1).

**AVTA (“Customer”)** means the Antelope Valley Transit Authority, Los Angeles County, California.

**Covered Federal action** means any of the following federal actions:

1. The awarding of any federal contract;
2. The making of any federal grant;
3. The making of any federal loan;
4. The entering into of any cooperative agreement, and
5. The extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

Covered federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

**Indian tribe** and **tribal organization** have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act Title 25 USC § 450(b). Alaskan Natives are included under the definitions of Indian tribes in that Act.

**Influencing or attempting to influence** means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a

member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any covered federal action.

**Local government** means a unit of government in a state and, if chartered, established, or otherwise recognized by a state for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments,

a sponsor group representative organization, and any other instrumentality of a local government.

**Officer or employee of an agency** includes the following individuals who are employed by an agency:

1. An individual who is appointed to a position in the government under Title 5, USC, including a position under a temporary appointment;
2. A member of the uniformed services as defined in Title 37 USC § 101(3);
3. A special government employee as defined in, Title 18 USC § 202; and,
4. An individual who is a member of a federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5 USC Appendix 2.

**Person** means an individual, corporation, company, association, authority, firm, partnership, society, state, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other federal law.

**Reasonable compensation** means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the federal government.

**Reasonable payment** means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

**Recipient** includes all Companies and subcontractors at any tier in connection with a federal contract. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other federal law.

**Regularly employed** means, with respect to an officer or employee of a person requesting or receiving a federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 days.

**State** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a state, and a multi-state, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

(1) Title 31 USC § 1352 provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) The prohibition does not apply as follows:

(i) Agency and legislative liaison by Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (b) (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a federal contract if the payment is for agency and legislative liaison activities not directly related to a covered federal action.

(B) For purposes of paragraph (b) (2) (i) (A) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(C) For purposes of paragraph (b) (2) (i) (A) of this section, the following agency and legislative liaison activities are allowable at anytime only where they are not related to a specific solicitation for any covered federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the persons products or services, conditions or terms of sale, and service capabilities, and

(2) Technical discussions and other activities regarding the application or adaptation of the persons products or services for an agency's use.

(D) For purposes of paragraph (b) (2) (i) (A) of this section, the following agency and legislative liaison activities are allowable only when they are prior to formal solicitation of any covered federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to official submission, and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(E) Only those activities expressly authorized by paragraph (b) (2) (i) of this section are allowable under paragraph (b) (2) (i).

(ii) Professional and technical services by Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (b) (1) of this section, does not

apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a federal contract or an extension, continuation, renewal, amendment, or modification of a federal contract if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal or application for that federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that federal contract.

- (B) For purposes of paragraph (b) (2) (ii) (A) of this section professional and technical services shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her clients proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered federal action.
- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (D) Only those services expressly authorized by paragraph (b) (2) (ii) of this section are allowable under paragraph (b) (2) (ii).

(iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iv) Professional and technical services by Other than Own Employees.

- (A) The prohibition on the use of appropriated funds, in paragraph (b) (1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that federal contract.
- (B) For purposes of paragraph (b) (2) (iv) (A) of this section professional and technical services shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are

not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered federal action.

- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (D) Persons other than officers or employees of a person requesting or receiving a covered federal action include Companies and trade associations.
- (E) Only those services expressly authorized by paragraph (b) (2) (iv) of this section are allowable under paragraph (b) (2) (iv).

(c) Disclosure.

- (1) Each person who requests or receives from Customer a contract with federal assistance shall file with Customer a certification, set forth in IFB/RFP Submittal Form entitled FEDERAL LOBBYING CERTIFICATION, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.
- (2) Each person who requests or receives from Customer a contract with federal assistance shall file with Customer a disclosure form, Standard Form-LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.
- (3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (c) (2) of this section. An event that materially affects the accuracy of the information reported includes:
  - (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action; or
  - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered federal action; or,
  - (iii) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered federal action.
- (4) Any person who requests or receives from a person referred to in paragraph (c) (1) of this section a subcontract with a contract value exceeding \$100,000 at any tier under a contract with federal assistance shall file a certification, and a disclosure form, if required, to the next tier above. All disclosure forms shall be forwarded from tier to tier until received by the Prime Company who will forward it to Customer.

**EXHIBIT A**

**CERTIFICATION OF COMPLIANCE WITH FEDERAL LOBBYING REQUIREMENTS (49 CFR PART 20)**

**To be submitted with each Bid/Proposal or offer of Bidder/Proposer exceeding \$100,000**

The \_\_\_\_\_ (Bidder/Proposer) certifies to the best of its knowledge and belief that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency; a member of Congress, an officer or employee of Congress, an employee of a member of Congress; or any Board member or employee of Customer in connection with the awarding of any federal contract; any federally funded contract; or the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any federal contract, federally funded contract grant, loan or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts, or influencing or attempting to influence; an officer or employee of any agency; a member of Congress; an officer or employee of Congress; an employee of a member of Congress or a Board member or employee of Customer in connection with this federally funded contract, grant, loan, or cooperative agreement, the undersigned shall register and comply with all federal disclosure requirements.
3. The undersigned shall require that the language of this certification be included in the solicitation and award documents for all subawards at all tiers including but not limited to subcontracts, subgrants and contracts under grants, loans and cooperative agreements and that all subrecipients shall certify and disclose accordingly.

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

Executed on this \_\_\_\_\_ day, of \_\_\_\_\_, 20\_\_\_\_, by:

Bidder/Proposer: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## DISCLOSURE OF LOBBYING ACTIVITIES INSTRUCTIONS FOR COMPLETION OF SF-LLL

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation of receipt of a covered federal action, or a material change to a previous filing, pursuant to Title 31 USC § 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with a covered federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime if the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks Subawardee, then enter the full name, address, city, state and zip code of the prime federal recipient. Include the Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program, name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in item 1 (e.g. Request For Proposals (RFP) number, Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the federal agency). Include prefixes, e.g., RFP-DE-90-001.
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter LastName, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the dates of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (03-46-00046). Washington, D.C. 20503.

## DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to  
Title 31 USC § 1352

(See next page for public burden disclosure.)

<p>1. Type of Federal Action: ... a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance</p>	<p>2. Status of Federal Action: ... a. bid/offer/application b. initial award c. post award</p>	<p>3. Status of Federal Action: ... a. initial change b. material change For Material Change Only: year _____ quarter _____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity Prime _____ ... Subawardee _____  Tier _____, if known:  Congressional District, if known:</p>	<p>5. If Reporting Entity in No. 4 is subawardee. Enter name and Address of Prime:  Congressional District, if known:</p>	
<p>6. Federal Department/Agency:  <b>Department of Transportation Federal Transit Administration</b></p>	<p>7. Federal Program Name/Description:  CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:  \$ _____</p>	
<p>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):  attach continuation sheet(s) SF-LLL-A if necessary</p>	<p>b. Individuals Performing Services (including address if different from No. 10.a) (last name, first name, MI):  attach continuation sheet(s) SF-LLL-A if necessary</p>	
<p>11. Amount of Payment (check all that apply): \$ _____... actual ... planned</p>		
<p>12. Form of Payment (check all that apply): a. cash b. in-kind; specify: nature _____  value _____</p>	<p>13. Type of Payment (check all that apply): ... a. retainer ... b. one-time fee ... c. commission ... d. contingent fee ... e. deferred ... f. other; specify _____</p>	
<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employer(s), or member(s) contacted, for Payment indicated in Item 11:</p>		
<p>15. Continuation Sheet(s) SF-LLL-A attached: ... Yes ... No</p>		
<p>16. Information requested through this form is authorized by Title 31 Signature: _____ USC § 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier Print Name: _____ above when this transaction was made or entered into. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. <span style="float: right;">Telephone No.: _____ Date: _____</span></p>		
<p>Federal Use Only: <span style="float: right;">Authorized for Local Reproduction Standard Form - LLL</span></p>		

**DISCLOSURE OF LOBBYING ACTIVITIES  
CONTINUATION SHEET**

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

**EXHIBIT B - PROMPT PAYMENT AFFIDAVIT**

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

Consultant 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 Customer Contract No. \_\_\_\_\_ ("Contract"):

A. \_\_\_ 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 Consultant received payment from Customer.

B. \_\_\_ 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 and Contracts Office, DBE Program. In addition, Consultant has attached to the current Payment Request all lien waivers for prior subcontractor payments and any other documentation required by the Customer. (Failure to attach all required documentation to the Payment Request or forward cancelled checks and invoices to the Customer's Procurement and Contracts Office, DBE Program may cause the Payment Request to be rejected by the Customer.)

C. \_\_\_ 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 Customer has paid said retainage amounts to Consultant. Attach a copy of the cancelled check evidencing payment of each retainage amount.

D. \_\_\_ 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 Customer's Procurement and Contracts Office.

Attach a copy of the written approval from the Customer's Procurement and Contracts Office.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

SIGNATURE MUST BE WITNESSED BY A NOTARY

PROMPT PAYMENT AFFIDAVIT (CONTINUED)

State of California )  
County of \_\_\_\_\_ )  
\_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
\_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_  
\_\_\_\_\_.

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

**EXHIBIT C - DEBARMENT AND SUSPENSION CERTIFICATION**

This contract constitutes a covered transaction for the purposes of the federal Debarment and Suspension provisions (see 2 C.F.R. Part 180). As such, the contractor is required to verify that none of the contractor, its principals, as defined at 2 C.F.R. 180.995, or affiliates, as defined at 2 C.F.R. 180-905, are excluded or disqualified, as defined in Part 180.

The Quoter/Bidder/Proposer certifies by submission of this Quote/Bid/Proposal, that neither it nor its "principals" nor affiliates, as defined in the Code of Federal Regulations (2 C.F.R. Part 180), is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the contract that may be entered into as a result of this RFQ/IFB/RFP by any federal department or agency.

The certification in this clause is a material representation of fact relied upon by the Agency. If it is later determined that the quoter, bidder, or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The quoter/bidder/proposer agrees to comply with the requirements of 2 C.F.R. Part 180 and 2 C.F.R. Part 1200 while this offer is valid and throughout the period of any contract that may arise from this offer. The quoter/bidder/proposer further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

Quoter/Bidder/Proposer: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**FAILURE TO SUBMIT THIS FORM SHALL BE CAUSE FOR BID REJECTION**

**EXHIBIT D - BUY AMERICA CERTIFICATE**

**BUY AMERICA CERTIFICATE FOR COMPLIANCE WITH TITLE 49 USC § 5323(J)(1)**  
(For Procurement of Steel, Iron, or Manufactured Products) (Over \$150,000)

The Quoter/Bidder/Proposer hereby certifies that it will comply with the requirements of Title 49 USC § 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Executed on this \_\_\_\_\_ day, of \_\_\_\_\_, 20\_\_\_\_, by:

Quoter/Bidder/Proposer: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**BUY AMERICA CERTIFICATE FOR NON-COMPLIANCE WITH TITLE 49 USC § 5323(J)(1)**

The Quoter/Bidder/Proposer hereby certifies that it cannot comply with the requirements of Title 49 USC § 5323(j)(1), but it may qualify for an exception pursuant to Title 49 USC § 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Executed on this \_\_\_\_\_ day, of \_\_\_\_\_, 20\_\_\_\_, by:

Quoter/Bidder/Proposer: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**FAILURE TO SUBMIT THIS FORM SHALL BE CAUSE FOR BID REJECTION**