



VICTOR VALLEY TRANSIT AUTHORITY

Representing the communities of Apple Valley, Adelanto, Barstow, Hesperia,
Victorville, and San Bernardino County.

IFB 2018 - 07

LIQUEFIED NATURAL GAS (LNG)
RENEWABLE LIQUEFIED NATURAL GAS (RLNG)

MARCH 20, 2018

NOTICE INVITING BIDS

1. Purpose of the Procurement and Period of Performance

The Victor Valley Transit Authority (VVTA) is seeking seeks bids from responsible and responsive Liquid Natural Gas (LNG) suppliers for delivery of LNG and/or Renewable Liquid Natural Gas (RLNG) its Barstow LNG/CNG station at 100 N. Sandstone Court, Barstow CA, 92311. The resulting contract will be for three years with the election to extend for two additional one-year options.

2. Obtaining Bid Documents

Bid documents may be obtained from Victor Valley Transit Authority, in person at 17150 Smoke Tree Street, Hesperia, CA 92345-8305 or electronically at www.vvta.org/bids. Documents are also available via email request to cplasting@vvta.org. Proposals requested by courier or via USPS mail shall be packaged and sent only at the Bidders' expense.

3. Bid Due Date and Submittal Requirements

Bids are due not later than **3:00 PM Pacific Time on Thursday, April 26, 2018**. The sealed bids will be publicly opened, and the bid amounts will be read aloud to all who are present.

3.1 Sealed Bids shall be delivered to the following address:

Victor Valley Transit Authority
Attn: Christine Plasting
Procurement Manager
17150 Smoke Tree Street
Hesperia, CA 92345

3.2 Envelopes or boxes containing bids shall be sealed and clearly labeled with VVTA's IFB number and the solicitation title: "VVTA IFB 2018-07 LNG/RLNG."

3.3 Bidders are requested to submit to VVTA one (1) hard copy of the bid marked "Original." A Bid is deemed to be late if it is received by VVTA after the deadline stated above. Bids received after the submission deadline shall be returned, unopened to the Bidder. It is the Bidder's sole responsibility to ensure that the Bids are received by the Procurement Manager by the date and time stated above.

4. Validity of Proposals

Bids shall be valid for a period of ninety (90) days. An award may be made without further discussion. VVTA reserves the right to withdraw or cancel this IFB at any time without prior notice and VVTA makes no representation that any contract will be awarded to a Bidder responding to this IFB.

5. Pre-proposal Meeting and Questions

There will not be a Pre-Bid meeting, however the deadline for questions is at 5:00 PM (PDT), Friday, April 13, 2018. Prospective bidders must submit written questions to the Procurement Manager at cplasting@vvta.org. Responses shall be shared with all known prospective bidders by written addenda only. All addenda and written questions and answers, will also be posted to the VVTA website at www.vvta.org/bids.

The successful Bidder will be required to comply with all applicable Equal Opportunity Laws and Regulations.

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1. INSTRUCTIONS TO BIDDERS

A. PROPOSAL TIMELINE

Date of IFB:	March 20, 2018
Agency:	VICTOR VALLEY TRANSIT AUTHORITY
Address of Agency:	17150 SMOKE TREE ST., HESPERIA, CA 92345-8305
Contracting Officer:	Christine Plasting, Procurement Manager
Telephone No:	(760) 995-3583
FAX No:	(760) 948-1380
Email Address:	cplasting@vvta.org
Pre-proposal Conference (Non –Mandatory)	None
Last Day for Questions	5:00 p.m. PDT, Friday, April 13, 2018
Addenda and Answers to questions	2:00 p.m. PDT, Thursday, April 19, 2018
Public Bid Opening/Due Date	3:00 p.m. PDT, Thursday, April 26, 2018
Anticipated Award Date	June 21, 2018

B. PURPOSE

The Victor Valley Transit Authority (VVTA) is seeking seeks bids from Liquid Natural Gas (LNG) suppliers for delivery of LNG and/or Renewable Liquid Natural Gas (RLNG) to its Barstow LNG/CNG station at 100 N. Sandstone Court, Barstow CA, 92311.

C. BACKGROUND

The Victor Valley Transit Authority is a Joint Powers Authority located in the high desert region of San Bernardino County located in Southern California and encompasses over 1,000 square miles, serving a population of approximately 400,000. Hesperia is located right along Interstate 15 and is approximately 90 miles from downtown Los Angeles, CA. Barstow is located approximately 50 miles north of Hesperia. The Victor Valley Transit Authority (VVTA) serves the cities of Victorville, Hesperia, Adelanto, Phelan, Wrightwood, Barstow, the Town of Apple Valley and several unincorporated areas of San Bernardino County.

VVTA provides public fixed route transit service, complementary paratransit, intercity service, and commuter service. VVTA's revenue fleet consists of thirty-three (33) thirty-five & forty-foot transit buses, twenty-four (24) class E cutaway transit buses, sixteen

(16) commuter and intercity buses which are forty & forty-five feet, and forty-two (42) demand response vehicles. VVTA transports 2.7 million passengers per year operating on 29 routes. Approximately thirty-four (34) paratransit vehicles operate daily depending upon demand.

VVTA's technological infrastructure is supported by in-house staff and a local IT vendor. VVTA is responsible for all grants, and reporting. VVTA is also responsible for reporting to its Board of Directors, state and federal agencies, and NTD.

VVTA currently has contracts with outside companies to purchase the CNG/LNG from VVTA at its Barstow fueling station.

D. PERIOD OF PERFORMANCE

VVTA intends to award a Fixed Price contract for a period of three (3) years, with the option of two (2) one-year extensions. VVTA may award the contract at a time other than stated in the proposed schedule.

E. EXAMINATION OF DOCUMENTS

By submitting a proposal, the Bidder represents that it has thoroughly examined and become familiar with the work required and documents included under the IFB.

F. REQUEST FOR CLARIFICATION/ APPROVED EQUALS

1. Whenever any material, product or service is specified or indicated in the IFB and/or contract documents by brand name, trade, patent, or proprietary name or by the name of the manufacturer, the item so specified or indicated shall be deemed to be followed by the words, "Or Equal."
2. At any time during this procurement up to the time specified in the "Proposal Schedule" (Section A), Bidders may request, in writing, a clarification or interpretation of any aspect, or a change to any requirement of the IFB or any addendum to the IFB. Requests may include suggested substitutes for specified items and for any brand names. Whenever a brand name is used in this solicitation it shall mean the brand name or "approved equal." Such written requests shall be made to the Contracting Officer and may be transmitted by facsimile or via email. The Bidder making the request shall be responsible for its proper delivery to VVTA per "Contracting Officer" (Section A) on the form provided in "Request for Pre-Offer Change or Approved Equal." VVTA will not respond to oral requests. Any request for a change to any requirement of the Contract Documents must be fully supported with technical data, test results, or other pertinent information evidencing that the exception will result in a condition equal to or better than that required by the IFB, without substantial increase in cost or time requirements. Any responses to such written request shall be provided by VVTA in the form of addendum only. Only written responses provided as addendum shall be official and all other forms of communication with any officer, employee or agent of VVTA shall not be binding on VVTA.

3. VVTA, at its sole discretion, shall determine whether the substantiating data demonstrates that an “approved equal” item(s) is equivalent in all respects to the item specified in the IFB and/or contract documents.

G. VENDOR CONTACT

1. All correspondence, communication and/or contact about any aspect of this solicitation is authorized only with the designated Contracting Officer identified in “A. Proposal Schedule” above, or their designated representative. Bidders and their representatives shall not make any contact with or communicate with any employees of VVTA, or its directors and consultants, other than the Contracting Officer regarding any aspect of this solicitation or offers. Ex parte’ communications with members of VVTA’s Board of Directors or any person responsible for awarding a contract, including the Contracting Officer is prohibited under California Public Contract Code Section 20216. All communications shall be in writing and will be made public.
2. If it should appear to a prospective Bidder that the performance of the Work under the contract, or any of the matters relating thereto, is not sufficiently described or explained in the **IFB** or Contract Documents, or that any conflict or discrepancy exists between different parts thereof or with any federal, state, local or Agency law, ordinance, rule, regulation, or other standard or requirement, then the Bidder shall submit a written request for clarification to VVTA within the time period specified above.

H. ADDENDA TO IFB

VVTA reserves the right to amend the IFB at any time. Any amendments to or interpretations of the IFB shall be described in written addendum. VVTA shall provide copies of Addendum to all prospective Bidders officially known to have received the IFB, as well as post to the VVTA website: www.vvta.org/bids. Prospective Bidders, or their agents, shall be responsible to collect the addendum. Failure of any prospective Bidder to receive the notification or addendum shall not relieve the Bidder from any obligation under its proposal as submitted or under the IFB, as clarified, interpreted or modified. All addendum issued shall become part of the IFB. Prospective Bidders shall acknowledge the receipt of each individual addendum and all prior addenda in their bids. Failure to acknowledge in their bids receipt of addendum may, at VVTA’s sole option, to deem the bid as non-responsive.

If VVTA determines that the addendum may require significant changes in the preparation of bids, the deadline for submitting the bids may be postponed by the number of days that VVTA determines will allow Bidder sufficient time to revise their bid. Any new Due Date shall be included in the addendum.

I. EXCEPTIONS / DEVIATIONS

Using the Form for Bid Deviation – Attachment G – State any exceptions to or deviations from the requirements of this IFB, segregating “technical” exceptions from “contractual” exceptions. Where Bidder wishes to propose alternative approaches to meet VVTA’s technical or contractual requirements, these should be thoroughly explained. If no contractual exceptions are noted, Bidder will be deemed to have accepted the contract requirements as set form in the Scope of Work.

J. SUBMSSION OF BIDS

1. Please note that **all addenda** must be acknowledged. Bidder is instructed to use Attachment H – Acknowledgement of Addenda – to acknowledge all addenda released during this solicitation.
2. **Sealed original bids, must be received at the address shown in “Proposal Schedule” (Section A) not later than 3:00 PM Pacific Time (PDT) on Thursday, April 26, 2018. All labor, equipment, materials, and training shall be furnished in strict accordance with the delivery schedule and the Contract terms and conditions. All Bids shall be valid for a period of ninety (90) days.**
3. The bids will be publicly opened, and the bid amounts read aloud to all who are present. After the opening, which may be a different date and time, the Procurement Manager will then do a responsibility and responsiveness check to ensure that the lowest bid was responsible and responsive.
4. Bids received after the time and date due will be rejected without consideration or evaluation and returned, unopened, to the return address on the package received. Under no circumstances will any bid be accepted after the due date and time in accordance with PCC 10168.
5. The award of the bid is subject to the Board of Directors approval.

K. FORMAT OF BIDS

1. Bids must be submitted and organized in the order listed below. The bid shall include, at a minimum, the following:
 - a. ATTACHMENT F – Pricing Page and other documents listed.
 - b. ATTACHMENT E - REQUEST FOR PRE-OFFER CHANGE OR APPROVED EQUALS (if applicable)
 - c. ATTACHMENT G – FORM FOR BID DEVIATION (If applicable)
 - d. ATTACHMENT H - ACKNOWLEDGEMENT OF ADDENDA

e. ATTACHMENT I – LIST OF SUBCONTRACTORS

2. Firms may include additional information, however, do NOT attach terms and conditions that conflict with the IFB, as you firm's bid may be deemed non-responsive.

L. BID PACKAGING REQUIREMENTS

1. Bidder shall submit the Cost/Price Bid (Attachment F). Other forms submitted with pricing and not on the specific form for be deemed "non-responsive." Prices are to exclude California State and Local Sales Tax.
2. Bidder shall pay all taxes which are legally enacted at the time bid is submitted and shall secure and pay for all permits and government fees, licenses and inspections necessary for the proper execution and completion of the Contract. All invoices submitted by awarded contractor, shall itemize applicable California State and Local Sales tax, or state "sales tax included".
3. VVTA reserves the right to accelerate receiving dates, in which case the pricing for the applicable time shall be applied.
4. Bids including all submittal documents and price elements shall be submitted by the due date specified, in one sealed package identified as "**VVTA IFB 2018-07 LNG/RLNG.**"

M. PRE-CONTRACTUAL EXPENSES

1. VVTA will not be liable for any pre-contractual expenses incurred by any Bidder in preparation of its bid. Bidder shall not include any such expenses as part of their bid.
2. Pre-contractual expenses are defined as expenses incurred by the Bidder in:
 - a. Preparing a bid in response to this IFB;
 - b. Submitting that bid to VVTA.
 - c. Negotiating with VVTA any matter related to this bid; and
 - d. Any other expenses incurred by Bidder prior to date of award, if any, of the Agreement.

N. JOINT BIDS

Where two or more firms desire to submit a single bid in response to this IFB, they should do so on a prime-subcontractor basis rather than as a joint venture.

O. TAXES

Bids are subject to State and Local sales taxes. However, VVTA is exempt from the payment of Federal Excise and Transportation Taxes. Firm is responsible for

payment of all taxes for any goods, services, processes, and operations incidental to or involved in the contract.

P. MODIFICATION OR WITHDRAWAL OR BIDS

1. A modification of a bid already received will be accepted by VVTA only if the modification is received prior to the Bid Due Date or is specifically requested by VVTA. All modifications shall be made in writing and executed and submitted in the same form and manner as the original bid.
2. A Bidder may withdraw a bid already received prior to the Bid Due Date by submitting, in the same manner as the original bid, to VVTA a written request for withdrawal executed by the Bidder's authorized representative, in accordance with PCC 10169. After the bid Due Date, a bid may be withdrawn only if VVTA fails to award the contract within the bid validity period prescribed in "Due Date" or any agreed upon extension thereof. The withdrawal of a bid does not prejudice the right of a Bidder to submit another bid within the time set for receipt of bids. Section 10169 of the California Public Contract Code does not authorize the withdrawal of any bid after the time fixed in the Public Notice for the opening of bids.
3. This provision for modification and withdrawal of bids may not be used by a Bidder to submit a late bid and, as such, will not alter VVTA's right to reject a bid.

Q. SUBCONTRACTORS AND ASSIGNMENTS

1. Pursuant to the provisions of the California Public Contract Code Section 4104 every Bidder shall in the bid set forth:
 - a. The name and location of the place of business (address) of each subcontractor who will perform work or labor or render service to the Bidder in or about the work in an amount more than one-half of one percent of the Bidder's total bid; and
 - b. The portion of the work that will be done by each subcontractor. The Bidder shall list only one subcontractor for each portion of work as defined by the Bidder in its bid.
 - c. The dollar amount of the work which will be done by each such subcontractor.
2. Bidder shall complete form entitled "List of Subcontractors (Attachment I)" with the above requested information.
3. If the Bidder fails to specify a subcontractor for any portion of the work to be performed under the contract in excess of one-half of one percent of the Bidder's total Bid, or if the Bidder specified more than one subcontractor for the

same portion of the work to be performed under the contract in excess of one-half of one percent of the Bidder's total bid, the Bidder agrees to perform that portion.

4. The successful Bidder shall not, without the express written consent of VVTA, either:
 - a. Substitute any person, firm, or corporation as subcontractor in place of the subcontractor designated in the original Bid; or
 - b. Permit any subcontract to be assigned or transferred; or
 - c. Allow it to be performed by anyone other than the original subcontractor listed in the Bid.
5. Each Bidder shall set forth in its bid the name and location of the place of business (address) of each subcontractor certified as a disadvantaged business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract.
6. Bidder shall not assign any interest it may have in any Agreement/Contract with VVTA, nor shall Bidder assign any portion of the work under any such Agreement with a value in excess of one-half of one percent of Agreement price to be sub- contracted to anyone other than these subcontractors listed in the "List of Subcontracts," except by prior written consent of VVTA. VVTA's consent to any assignment shall not be deemed to relieve Bidder of its obligations to fully comply with its obligations under its Agreement with VVTA. Bidder with its own forces shall perform a minimum of ten percent (10%) (Calculated as a percentage of the total cost of the project) of the work under this Agreement. Bidder shall also include in its subcontract agreements the provisions of its Agreement with VVTA including the stipulation that each subcontractor shall maintain adequate insurance coverage compatible to the insurance coverage required of the Bidder.

R. CONFIDENTIALITY AND PUBLIC RECORDS ACT

Access to government records is governed by the State of California Public Records Act. (Government Code Section 6250 et. seq.) Except as otherwise required by state law, VVTA will notify Bidder of any request for disclosure of proprietary information, trade secrets and confidential commercial and financial information submitted in the bid. Any such proprietary information, trade secrets or confidential commercial and financial information, which a Bidder believes should be exempted from disclosure, shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not assure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

Bidder fully understands the scope of work/specifications and has checked carefully all words and figures inserted in said IFB and further understands that VVTA will no way be responsible for any errors or submissions in the preparation of this bid.

1. Exclusive Property

- a. Responses to this Bid become the exclusive property of VVTA and are subject to the California Public Records Act.
- b. Those elements of each Bid that are *trade secrets*, as the term is defined in California Civil Code section 3426.1 (d) or otherwise exempt by law from disclosure and which are not prominently marked as TRADE SECRET, CONFIDENTIAL or PROPRIETARY may be subject to disclosure.

2. Disclosure of Records

- a. Upon a request for records from a third party regarding this bid VVTA will notify in writing the party involved. The party involved must respond within ten (10) calendar days with the identification of any and all “proprietary, trade secret, or confidential commercial or financial” information and the party involved shall agree to indemnify VVTA for its defense costs, (Including reasonable attorney fees) associated with its refusal to produce such identified information; otherwise, the requested information may be released and VVTA shall not be held liable for complying with the records request.
- b. If disclosure is deemed to be required by law or by an order of the court, VVTA shall not, in any way, be liable or responsible for the disclosure of any such records including without limitation those so marked.
- c. Any documents that are not marked “TRADE SECRET” or “CONFIDENTIAL” or “PROPRIETARY,” will be made available.

3. Exemption from Disclosure May Be Deemed Unresponsive

- a. VVTA will take into consideration documents that the Bidder deems exempt from disclosure which must be marked “TRADE SECRET” or “CONFIDENTIAL” or “PROPRIETARY.”
- b. Bidders who indiscriminately identify all or most of their bids as exempt from disclosure without justification may be deemed non-responsive.

4. Indemnification of VVTA by Bidder

- a. The Bidder agrees to indemnify, hold harmless and defend VVTA and each of its board members, officers, officials, employees and agents from any and all claims, demands and actions in law or equity (including attorney's fees and

litigation expenses), arising or alleged to have arisen directly or indirectly out of a Public Records Act request for any of the contents of a Bid labeled as protected information and identified as, among other things, "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY." This obligation shall survive the IFB process, including the awarding of the Contract

- b. Bidder agrees to absorb all costs and expenses, including attorneys' fees, in any action or liability arising under the California Public Records Act pertaining to protected information contained and labeled as such in the Bidder's bid.

5. Public Interest

- a. The public interest exemption of the California Public Records Act provides that an agency may withhold the disclosure of a record by showing that the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.
- b. To protect the integrity of the bid process, in most instances, price bids and information regarding the contents of a Bid, will not be released or made available to other Bidders or the public until contract award is made by VVTA's Board of Directors and after the conclusion of any protest.
- c. VVTA shall employ sound business practices no less diligent than those used for VVTA's own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data and other information and material provided by Bidders and the Contractor pursuant to the Contract which contain confidential commercial or financial information, trade secrets or proprietary information as defined in or pursuant to the state law against disclosure of such information and material to third parties except as permitted by the Contract. The Contractor shall be responsible for ensuring that confidential commercial or financial information, trade secrets or proprietary information, with such determinations to be made by VVTA in its sole discretion, bears appropriate notices relating to its confidential character.

S. ACCEPTANCE / REJECTION OF BIDS

1. VVTA reserves the right to reject any or all bids for sound business reasons, to undertake contract negotiations with one or more Bidders, and to accept that bid, which in its judgment, will be most advantageous to VVTA, price and other evaluation criteria considered. VVTA reserves the right to consider any specific bid, which is conditional or not prepared in accordance with the instructions and requirements of this IFB to be non-responsive. VVTA reserves the right to waive any defects, or minor informalities or irregularities in any bid which do not materially affect the bid or prejudice other Bidders.
2. If there is any evidence indicating that two or more Bidders are in collusion to restrict competition or otherwise engaged in anti-competitive practices, the bids of all such Bidders shall be rejected and such evidence may be a cause for

disqualification of the participants in any future solicitations undertaken by VVTA.

3. VVTA reserves the right to reject a bid that includes unacceptable conditions, exceptions and deviations.
4. Reasons for rejection include, but are not limited to:
 - I. Failure to use the Price Bid form provided by VVTA as Attachment F.
 - II. Bid is not signed by an officer who is duly assigned as authority to bind the Proposing Agency in a subsequent agreement, or (where required) notarized.
 - III. Failure to include the required information as listed under Section M.
 - IV. Unauthorized alteration of bid forms.

T. SINGLE BID RESPONSE

If only one bid is received in response to this IFB and it is found by VVTA to be acceptable, a detailed price/cost bid may be requested of the single Bidder. A price or cost analysis, or both, possibly including an audit, may be performed by or for VVTA of the detailed price/cost bid to determine if the price is fair and reasonable. The Bidder has agreed to such analysis by submitting a bid in response to this IFB. A price analysis is an evaluation of a proposed price that does not involve an in-depth evaluation of all the separate cost elements and the profit factors that comprise a Bidder's price bid. It should be recognized that a price analysis through comparison to other similar procurements must be based on an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity, involving similar specifications and in a similar time frame. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto. Where it is impossible to obtain a valid price analysis, it may be necessary to conduct a cost analysis of the proposed price. A cost analysis is a more detailed evaluation of the cost elements in the Bidder's Offer to perform. It is conducted to form an opinion as to the degree to which the proposed costs represent what the Bidder's performance should cost. A cost analysis is generally conducted to determine whether the Bidder is applying sound management in proposing the application of resources to the contracted effort and whether costs are allowable, allocable and reasonable. Any such analyses and the results therefrom shall not obligate VVTA to accept such a single bid; and VVTA may reject such bid at its sole discretion.

U. TIE BIDS

In accordance with CA Government Code Section 14838.f, In the event of a precise tie between the low responsible bid of a bidder meeting specifications of a small business or microbusiness, and the low responsible bid of a bidder meeting the specifications of a disabled veteran-owned small business or microbusiness, the contract shall be awarded to the disabled veteran-owned small business or microbusiness. This provision applies if the small business or microbusiness bidder is the lowest responsible bidder, as well as if the small business or microbusiness bidder is eligible for award as the result of application of the small business and microbusiness bidder preference granted by subdivision (b).

If a tied bid is between two Bidders who fulfill the requirement above, the tie breaking procedure is as follows:

1. A legal United States currency coinage with a designated "heads" side and a designated "tails" side of the coin will be used to settle the tie. The coin is to stay with the Bid documents stored and filed by VVTA until the documents are to be destroyed per VVTA's document retention policy. Prior to the document destruction, the coin will be removed from the file and returned to whomever volunteered the coin for use in this process.
2. There will be three individuals who will participate in the process of "flipping the coin." One designee will be the witness to the flipping, one will flip the coin, and the third, the Sr. Procurement Specialist, will call "Bidder one," for the "heads" side of the coin, as the coin is flipped and will document the entire process. The person flipping the coin will allow the coin to hit and bounce on the floor. All three participants will verify if the coin landed "head" up or "tails" up. If head is up, Bidder One will be awarded the line item. If tails are up, Bidder Two will be awarded the line item
3. A form will be completed which will require the signatures of all participants. The Bidders designated as One or Two will also be listed on the form.

V. CANCELLATION OF PROCUREMENT

VVTA reserves the right to cancel the procurement, for any reason, at any time before the Contract is fully executed and approved on behalf of VVTA.

W. AVAILABILITY OF FUNDS

This procurement is subject to the availability of funding. VVTA's obligation hereunder is contingent upon the availability of appropriated funds from which payment for the contract purposes can be made. No legal liability on the part of VVTA for any payment shall arise until funds are made available to the Contracting Officer for this contract and until the Contracting Officer receives notice of such availability, by issuance of a written Notice to Proceed by the Contracting Officer. Any award of Contract hereunder is conditioned upon said availability of funds for the Contract.

X. VVTA'S RIGHTS

1. Each Bid will be received with the understand that acceptance by VVTA of the Bid to provide services described herein shall constitute a contract between the Bidder and VVTA which shall bind the Bidder on its part to furnish and deliver at the prices given and in accordance with conditions of said accepted Bid and specifications.
2. VVTA reserves the right, in its sole discretion to:
 - a. Accept or reject all Bids, or any item or part thereof, or to waive any informalities or irregularities in Bids.

- b. Withdraw or cancel this IFB at any time without prior notice. VVTA makes no representations that any contract will be awarded to any Bidder responding to this IFB.
- c. Issue a new IFB for the project.
- d. To postpone the Bid opening for its own convenience.
- e. Investigate the qualifications of any Bidder, and/or require additional evidence or qualifications to perform the work.

Y. CONFLICT OF INTEREST AND CODE OF CONDUCT

1. POLICY OVERVIEW

Federal regulations require VVTA to prevent conflicts of interest in contract awards. VVTA also seeks to avoid any appearance of conflicts of interest. VVTA personnel and Contractors are expected to avoid conflicts of interest or appearances thereof and actions which could result in favoritism or appearances thereof.

2. GUIDELINES FOR CONTRACTOR RELATIONSHIPS

To avoid conflict whether real or apparent, the following shall apply to employees of any Contractor providing services to VVTA.

No Contract personnel or support staff shall:

- (a) Make recommendations or be involved in preparation of specifications for any contracts for which that Contract personnel may bid or propose.
- (b) Be involved in any aspect of evaluation, selection, or award of a contract for which that-Contract personnel may bid.
- (c) Be involved in any aspect of contract administration of a contract or subcontract which has been awarded to Contract personnel.

Z. EVALUATION, NEGOTIATION AND SELECTION

1. OPENING OF BIDS

Bid will be publicly opened on the date and time specified in the "Bid Timeline." The names of the bidders and the amounts of the bids will be called out and the lowest bid will be named the apparent low bidder. Internally, a responsibility and responsiveness check will be processed to ensure that the bidder awarded is the lowest responsive and responsible bidder. Bidders that have a reasonable chance of receiving a contract may be contacted to schedule a meeting with VVTA to carry out further negotiations and discussions. VVTA reserves the right to award to a Bidder without further discussions, negotiations, or it may determine that no Bidder meets the needs of VVTA.

2. BID SELECTION PROCESS

- a. Bids that do not comply with the instructions contained in these IFB documents and do not include the required information shall be rejected as non-responsive and shall not be considered for further consideration. VVTA reserves the right to waive technical defects, discrepancies and minor irregularities in an IFB and/or submitted bid(s). VVTA reserves the right to award any alternatives set forth in the solicitation documents in its sole discretion. Submitted bids may be rejected if there is any alteration of the IFB forms, additions not called for, conditional bids, incomplete bids, or irregularities of any kind. VVTA reserves the right to reject any bid not in compliance with the solicitation documents or prescribed public contracting procedures and requirements. Written notice of rejection of all submitted bids shall be sent to all Bidders. ALL UNSIGNED BIDS SHALL BE REJECTED.
- b. Submittal of a bid shall mean that the Bidder has accepted the VVTA Contract Documents in their entirety without exception.

3. QUALIFICATION REQUIREMENTS

- a. The lowest responsible and responsive Bidder may be notified and scheduled to meet with VVTA for further discussions, clarifications and negotiations. Any Bid deviations submitted by the Bidder will be discussed as part of the negotiations process. However, VVTA at its discretion may in its best interest, reject all such conditions, exceptions and deviations. Any bid which fails to comply with the VVTA instructions and requirements listed in the solicitation documents shall be deemed non-responsive and their bid shall be rejected.
- b. As part of the negotiation process, VVTA reserves the right to conduct factory visits to inspect the Bidder's facilities. VVTA shall also have the right to contact other party with whom the Bidder has experience with this type of request, and other relevant references which the Bidder has listed.

VVTA (VVTA) reserves the right to make an award to a Bidder whose bid it judges to be most advantageous to VVTA based upon the evaluation of responsiveness and responsibility without conducting any written or oral discussions with any Bidders or solicitation of any BAFOs.

***** END OF INSTRUCTIONS TO BIDDERS *****

VVTA IFB 2018-07 RENEWABLE LIQUID NATURAL GAS (RLNG) ATTACHMENT A – SCOPE OF WORK

VVTA seeks bids from Liquid Natural Gas (LNG) suppliers for delivery of LNG and/or Renewable Liquid Natural Gas (RLNG) to:

100 N. Sandstone Court, Barstow CA, 92311

VVTA requires the following:

- Delivery must be completed within 24 hours after an order is placed;
- Delivery during regular business hours of Monday through Friday, 8:00 AM until 5:00 PM; and
- Billing must be a monthly statement.

The storage tank at the LNG/CNG Fueling Station in Barstow holds approximately 15,000 gallons.

The station consumes approximately 425,000 Gas Gallon Equivalent (GGE) per year.

The Bids request should include the price per gallon for LNG; the price per gallon for RLNG; less any Low Carbon Fuel Standard (LCFS) credits and/or any government rebates available; and applicable delivery fees.

Please include pricing on Attachment F for FY 2018/2019, FY 2019/2020, and FY 2020/2021. There will an option to extend the contract for two additional option years.

The resulting Contract is expected to commence on July 1, 2018.

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ATTACHMENT B – SAMPLE CONTRACT

VVTA CONTRACT 2018-07
LNG/RLNG

THIS AGREEMENT is made and entered into this ____ day of _____, by and between the **VICTOR VALLEY TRANSIT AUTHORITY**, a Joint Powers authority, created pursuant to the laws of the State of California (“VVTA” OR “Agency”) and , (“CONTRACTOR”).

RECITALS

WHEREAS, VVTA circulated and distributed an Invitation for Bids (“IFB”) from prospective interested firms to provide the delivery of LNG/RLNG, a copy which is attached herein as Exhibit 1; and

WHEREAS, CONTRACTOR submitted a bid to provide the required services per the Scope of Work described in the RFP, a copy which is attached herein as Exhibit 2: and

WHEREAS, CONTRACTOR has represented and warrants to VVTA that it has the necessary training, experience, expertise, physical capacity and staff competency to provide the services, goods and materials that are described in this Agreement, at a cost to VVTA as herein specified and that it will be able to perform the herein described services to VVTA by virtue of its current resources and specialized knowledge of relevant data, issues, and conditions: and

WHEREAS, CONTRACTOR represents and warrants that neither CONTRACTOR, nor any of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent owners, is excluded or debarred from participating in or being paid for participation in any Federal or State program; and

WHEREAS, CONTRACTOR further represents and warrants that no conditions or events now exist which give rise to CONTRACTOR, or any of its officers, agents, employees, contractors, subcontractors, volunteers or five percent owners being excluded or debarred from any Federal or State program; and

WHEREAS, CONTRACTOR understands that VVTA is relying upon these representations in entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and conditions herein contained, VVTA and CONTRACTOR hereby agree as follows:

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1. SCOPE OF WORK

- A. CONTRACTOR will perform the Work and related tasks as described in Attachment A, Scope of Work (within Exhibit 1) hereto and is incorporated by reference into and made a part of this Agreement.

- B. This is a non-exclusive Agreement, whereby VVTA may, at its sole discretion, augment or supplant the Work with its own forces or forces of another contractor or entity. CONTRACTOR will cooperate fully with VVTA's staff or other contractor or entity that may be providing similar or the same Work for VVTA.

2. CONTRACT DOCUMENTS

The complete Contract between the parties shall consist of the following component parts:

This Agreement;

- A. Exhibit 1 – IFB NUMBER 2018-07, IFB TITLE: LNG/RLNG, including Addenda and all Attachments, including Attachment A – Scope of Work.
- B. Exhibit 2 – CONTRACTOR's Offer and Bid Submission dated _____
- C. Exhibit 3 - Insurance Certificate, dated _____
- D. Exhibit 4 – CONTRACTOR's Price Proposal Sheets dated _____.
- E. Exhibit 5 – CONTRACTOR's Required Forms

All of the Exhibits mentioned in this Attachment are attached and are herein incorporated. This Agreement and the other Exhibits mentioned constitute the entire Contractual Agreement between the parties. In the event of any conflict between any of the provisions of this Agreement and Exhibits, the provision that requires the highest level of performance from CONTRACTOR for VVTA's benefit shall prevail. Proposer shall execute and submit Certifications as required in the RFP shall be submitted separately in each Proposer's Price Proposal.

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3. PERIOD OF PERFORMANCE

This Agreement shall commence on _____, and shall continue in full force and effect through _____, with the option for two one-year extensions, unless earlier terminated or extended as provided in this Agreement.

4. TOTAL CONSIDERATION

- A. In accordance with the terms and conditions of this Contract, VVTA shall pay CONTRACTOR of its obligations under this Agreement. VVTA shall pay CONTRACTOR on a FIXED PRICE basis at the fully burdened fixed rates stated herein in accordance with the provisions, of this Section, and subject to the maximum cumulative payment obligation

RATES

- B. VVTA's maximum cumulative payment obligation under this Agreement shall not exceed _____ (\$), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including, but not limited to, leases, materials, taxes, insurance, and profit.

5. INVOICING AND PAYMENT

- A. CONTRACTOR shall invoice VVTA upon completion of each delivery of fuel to VVTA. CONTRACTOR shall furnish information as may be requested by VVTA to substantiate the validity of an invoice.

CONTRACTOR shall submit invoices in duplicate to:

VICTOR VALLEY TRANSIT AUTHORITY
ATTN: ACCOUNTS PAYABLE
17150 SMOKETREE STREET
HESPERIA, CA 92345-8305

A separate invoice shall be used for each delivery completed. Each invoice shall include, at minimum, the following information:

- Contract number
 - Purchase Order number
 - Invoice number
 - Description of deliverable
 - Delivery date
 - Unit Price, extended price and applicable taxes
 - Information as requested by VVTA
- B. VVTA shall remit payment within forty-five (45) calendar days of approval of the invoices by VVTA Senior Staff. VVTA does encourage the CONTRACTOR to accept discount terms of

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2% 10, net 45, in the event the CONTRACTOR is in need of expedited terms.

In the event VVTA should overpay CONTRACTOR, such overpayment shall not be construed as a waiver of VVTA's right to obtain reimbursement for the overpayment. Upon discovering any overpayment, either on its own or upon notice of VVTA, CONTRACTOR shall immediately reimburse VVTA the entire overpayment or, at its sole discretion, VVTA may deduct such overpayment amount from monies due to CONTRACTOR under this Agreement or any other Agreement between VVTA and CONTRACTOR.

6. AUDIT AND INSPECTION OF RECORDS

In accordance with 49 C.F.R. § 18.36(i), 49 C.F.R. § 19.48(d), and 49 U.S.C. § 5325(a), provided VVTA is the FTA Recipient or a sub-grantee of the FTA Recipient, the Contractor agrees to provide VVTA, FTA, the Comptroller General of the United States, the Secretary of the U.S. Department of Transportation, or any of their duly authorized representatives access to any books documents, papers, and records of the Contractor which are directly pertinent to or relate to this Contract (1) for the purpose of making audits, examinations, excerpts, and transcriptions and (2) when conducting an audit and inspection.

- A. In the event of a **sole source Contract, or single Offer, single responsive Offer, or competitive negotiated procurement**, the Contractor shall maintain and the Contracting Officer, the U.S. Department of Transportation (*if applicable*), or the representatives thereof, shall have the right to examine all books, records, documents, and other cost and pricing data related to the Contract price, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, or combinations thereof. Data related to the negotiation or performance of Contract shall be made available for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary for adequate evaluation of the cost or pricing data, along with the computations and projections used therein, including review of accounting principles and practices that reflect properly all direct and indirect costs anticipated for the performance of the Contract.
- B. **For Contract Amendments**, the Contracting Officer, the U.S. Department of Transportation (*if applicable*), or their representatives shall have the right to examine all books, records, documents, and other cost and pricing data related to a Contract Amendment, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, or combinations thereof. Data related to the negotiation or performance of the Contract Amendment shall be made available for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary for adequate evaluation of the cost or pricing data, along with the computations and projections used therein, either before or after execution of the Contract Amendment for the purpose of conducting a cost analysis. If

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an examination made after execution of the Contract Amendment reveals inaccurate, incomplete, or out-of-date data, the Contracting Officer may renegotiate the Contract Amendment and VVTA shall be entitled to any reductions in the price that would result from the application of accurate, complete or up-to-date data.

- C. For any **cost reimbursable work** the Contractor shall maintain and the Contracting Officer, the U.S. Department of Transportation (*if applicable*), or their representatives, shall have the right to examine books, records, documents, and other evidence, including review of accounting principles and practices that reflect properly all direct and indirect costs incurred as related to said cost reimbursable work:
1. The materials described in Paragraphs A, B and C above shall be available at the Contractor's office at all reasonable times for inspection, audit, and making excerpts and transcriptions until three years from the date of final payment under the Contract except that the materials described in Paragraph A above shall also be available prior to any award and materials relating to "Service and Parts" (Section 2.5). For records relating to appeals under "Disputes" (Section 2.2.7), Litigation (Section 2.2.8), or the settlement of claims; records as specified in this Section 2.6 shall be kept available until final resolution of such appeals, litigation, or claims.
 2. The Contracting Officer and their representative and any other parties authorized under this Contract shall employ sound Business practices to protect the confidence of the data specified under this clause, for which the Contractor provides access, against disclosure of such information and material to third parties except as permitted by the Contract. The Contractor shall be responsible for ensuring that any confidential data bears appropriate notices relating to its confidential character.
 3. The requirements of this Section 2.6 are in addition to other audit, inspection, and record- keeping provisions specified elsewhere in the Contract Documents.

7. NOTIFICATION

All notices hereunder concerning this Agreement and the Work to be performed shall be physically transmitted by courier, overnight, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

To VVTA:
Attn: Christine Plasting
Victor Valley Transit Authority
17150 Smoke Tree Street
Hesperia, CA 92345-8305

To CONTRACTOR

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8. VVTA AND CONTRACTOR'S REPRESENTATIVES

A. VVTA

VVTA's Executive Director, or his authorized designee, has authority to execute contracts on behalf of VVTA. Except as expressly specified in this Agreement, the Executive Director may exercise any powers, rights and /or privileges that have been lawfully delegated by VVTA. Nothing in this Agreement should be construed to bind VVTA for acts of its officers, employees, and/or agents that exceed the delegation of authority specified herein. The Executive Director or his/her designee is empowered to:

1. Have general oversight of the Work and this Agreement, including the power to enforce compliance with this Agreement.
2. Reserve the right to remove any portion of the Work from CONTRACTOR which have not been performed to VVTA's satisfaction.
3. Subject to the review and acceptance by VVTA, negotiate with CONTRACTOR all adjustments pertaining to this Agreement for revision.
4. In addition to the foregoing, the Executive Director shall have those rights and powers expressly set forth in other sections of this Agreement.

B. Contractor's Key Personnel

The following are CONTRACTOR's key personnel and their associated roles in the Work to be provided:

<u>Name</u>	<u>Role</u>
_____	_____
_____	_____
_____	_____
_____	_____

Any propose/substitution or replacement by Contractor of Contractor's key personnel shall ensure that such person possesses the same or better expertise that such person possesses the same or better expertise and experience than the key personnel being substituted or replaced. VVTA reserves the right to interview such person to ascertain and verify if such proposed substitution or replacement does in deed possess such expertise and experience.

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VVTA awarded this Agreement to CONTRACTOR based on VVTA's confidence and reliance on the expertise of CONTRACTOR's key personnel described above. CONTRACTOR shall no reassign key personnel or assign other personnel to key personnel roles until CONTRACTOR obtains prior written approval from VVTA.

9. TERMINATION OF CONTRACT

A. TERMINATION FOR CONVENIENCE

1. The performance of Work under this Contract may be terminated in whole, or from time to time in part, by the Contracting Officer for the convenience of VVTA whenever the Contracting Officer determines that such termination is in the best interest of VVTA and the other procuring agencies. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor must:
 - (a) Stop the Work under the Contract on the date and to the extent specified in the Notice of Termination;
 - (b) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
 - (c) Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated as set out in the Notice of Termination;
 - (d) Assign to VVTA in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case VVTA shall have the right, in its discretion, to settle or pay and or all claims arising out of the termination of such orders and subcontracts;
 - (e) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he/she may require, which approval or ratification shall be final for all the purposes of this Section;
 - (f) Transfer title to VVTA and deliver in the manner, at the times, and to the extent, if any, directed by Contracting Officer the fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced as part of, or acquired in connection with the performance of, the

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Work terminated, and the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to VVTA;

- (g) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by the Contracting Officer, and property of the types referred to above, provided, however, that the Contractor shall not be required to extend credit to any purchaser, and may acquire an such property under the conditions prescribed by and at a price(s) approved by the Contracting Officer, and provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by VVTA to the Contractor under this Contract or shall otherwise be credited to the price, or cost of the Work covered by this Contract or paid in such other manner as the Contracting Officer may direct;
 - (h) Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination; and
 - (i) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection or preservation of the property related to this Contract which is in the possession of the Contractor and in which VVTA has or may acquire an interest.
2. After receipt of a Notice of Termination, the Contractor shall submit to VVTA its termination claim, in the form and with certification prescribed by VVTA. Such claim shall be submitted promptly but in no event later than six months from the effective date of termination, unless one or more extensions in writing are granted by VVTA, upon request of the Contractor made in writing within such six months period or authorized extension thereof. However, if VVTA determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such six months period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, VVTA may determine, on the basis of information available, the amount, if any, due the Contractor by reason of the termination and will thereupon pay the Contractor the amount so determined.
3. Subject to the provisions of subsection 2 above, the Contractor and VVTA may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination or work pursuant to this Section, which amount or amounts may include an allowance for profit on work done; provided that such agreed amount or amounts exclusive of settlement costs, shall not exceed the total Contract Consideration as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract will be amended accordingly, and the Contractor will

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be paid the agreed amount.

4. In the event of failure of the Contractor and VVTA to agree, as provided in subsection 3, upon the amount to be paid the Contractor by reason of the termination of Work pursuant to this Section, VVTA will pay the Contractor the amounts determined by VVTA as follows, but without duplication of any amounts agreed in accordance with subsection:

With respect to Contract Work performed prior to the effective date of the Notice Termination, the total (without duplication of any items) of:

- (a) The costs of such Work;
 - (b) The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in subsection 1(e) above, exclusive of the amounts paid or payable on account of supplies or material delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of Work under this Contract, which amounts shall be included in the costs on account of which payment is made under 2 above;
 - (c) A sum, as profit on 4(a) above, determined by VVTA to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subsection 4(c) and an appropriate adjustment shall be made by reducing the amount of the settlement to reflect the indicated rate of loss; and
 - (d) The reasonable cost of preservation and protection of property incurred pursuant to subsection A (9) and any other reasonable cost incidental to termination of work under this Contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of Work under this Contract.
5. The total sum to be paid to the Contractor under subsection 4 will not exceed the total Contract Consideration as reduced by the amount of payments otherwise made and as further reduced by the Contract price of Work not terminated. Except for normal spoilage, and except to the extent that VVTA will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to the Contractor under subsection 4 the fair value, as determined by the VVTA, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to VVTA, or to a purchaser pursuant to subsection 1 (g) of this Section.

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6. In arriving at the amount due the Contractor under this Section, there will be deducted:
 - (a) The amount of any claim which VVTA has against the Contractor in connection with the Contract; and
 - (b) The agreed price for, or the proceeds of sale of materials, supplies, or other items acquired by the Contractor or sold, pursuant to the provision of this Section, and not otherwise recovered by or credited to VVTA.
7. If the termination hereunder is partial, prior to the settlement of the terminated portion of the Contract, the Contractor may file with VVTA a written request for an adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such adjustment as may be agreed will be made in the price or prices.
8. VVTA may from time to time, at its sole discretion and under terms and conditions it may prescribe, make partial payments and payments on account against cost incurred by the Contractor in connection with the terminated portion of the Contract whenever, in the opinion of VVTA, the aggregate of payments does not exceed the amount to which the Contractor will be entitled hereunder. If the total of the payments is in excess of the amount finally agreed or determined to be due under this Section, the excess shall be paid by the Contractor to VVTA upon demand, together

with interest at the rate of 10 percent per annum or the maximum rate permitted by applicable law, whichever is less, for the period from the date the excess payment is received by the Contractor to the date on which the excess payment is repaid to VVTA.
9. Unless otherwise provided for in this Contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this Contract, shall preserve and make available to VVTA at all reasonable times at the office of the Contractor but without direct charge to VVTA, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the Work terminated hereunder, or to the extent approved by VVTA, photographs, microphotographs, or other authentic reproductions thereof.
10. The Contractor shall insert in all subcontracts that the Subcontractor or Supplier shall stop work on the date of and to the extent specified in a Notice of Termination from VVTA and shall require that any tier subcontractor to insert the same provision in any tier subcontract.

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11. The Contractor shall communicate immediately upon receipt thereof, any Notice of Termination issued by VVTA to the affected Subcontractors and Suppliers of any tier.
12. Under no circumstances is the Contractor entitled to anticipatory, unearned profits or consequential damages as a result of a termination or partial termination under this Section. The payment to the Contractor determined in accordance with this Section constitutes exclusive remedy for a termination hereunder.
13. Anything contained in the Contract to the contrary notwithstanding, a termination under this Section shall not waive any right or claim to damages which VVTA may have and VVTA may pursue any course of action it may have under the Contract.

B. TERMINATION FOR CAUSE

- (1) By written Notice of Termination to the Contractor, VVTA and the other procuring agencies may cancel the whole or any part of the Contract in any one of the following circumstances:
 - (a) If the Contractor fails to perform the Work within the time specified or any extension thereof;
 - (b) If the Contractor fails to perform any of the provisions of the Contract, or so fails to make progress as to endanger performance of the Contract in accordance with its terms, and in either of these two later circumstances does not cure such failure within a period of the 10) calendar days (or such additional time as may be specified in the notice) after VVTA gives notice to Contractor of the failure;
 - (c) The Contractor or Subcontractor or Supplier has violated an authorized order or requirement of VVTA;
 - (d) Abandonment of the Contract;
 - (e) Assignment of subcontracting of the Contract or any Work under the Contract without approval by VVTA;
 - (f) Bankruptcy or appointment of a receiver for the Contractor's property;
 - (g) Performance by the Contractor in bad faith;
 - (h) Contractor allowing any final judgment to stand (unsatisfied) for a period of 48 hours (excluding weekends and legal holiday(s));

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- (i) Material failure to comply with the law, ordinance, rule, regulation or order of a legal authority applicable to the Contract, the Work, the Contractor or the goods; or
 - (j) Failure to indemnify any party which the Contractor is obligated to indemnify under the Section 2.7.5, Indemnification, or elsewhere under the Contract.
- (2) The Contractor shall be provided a period of ten (10) days to cure such failure (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from VVTA specifying such failure.
- (3) In the event the Contractor does not cure the breach to the satisfaction of VVTA within the time period specified by the Contracting Officer, the Contracting Officer will send the Contractor a written notice of failure to cure the breach. Upon receipt of such written notice from VVTA, Contractor shall:
- (a) Stop Work on the date of, and to the extent specified in, the Notice of Termination;
 - (b) Place no further orders or subcontracts for materials, equipment, services, or facilities, except that which is necessary to complete the portion of the Work which is expressly not cancelled under the Notice of Termination;
 - (c) Cancel all orders or subcontracts to the extent that they relate to the performance of Work cancelled under the Notice of Termination; and
 - (d) Comply with all other requirements of VVTA specified in the Notice of Termination.
- (4) If the Contract is cancelled as provided in this Section, VVTA may require Contractor to transfer title and deliver to VVTA, as directed by VVTA, the following:
- (a) Any completed supplies or equipment furnished by VVTA; and
 - (b) Such partially completed supplies and materials, installations, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called “manufacturing materials”) that the Contractor has specifically produced or acquired for the cancelled portion of this Contract. The Contractor shall also protect and preserve property in its possession in which VVTA has an interest at the Contractor’s sole expense.
- (5) Upon VVTA’s Termination of the Contractor’s right to proceed with the Work because of the Contractor’s default under the Contract, VVTA will have the right to

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complete the Work by whatever means and method it deems advisable. VVTA will not be required to obtain the lowest prices for completing the Work but shall make such expenditures as, in VVTA's sole judgment, best accomplish such completion.

- (6) The expense of completing the Work, together with a reasonable charge for engineering, managerial and administrative services, as certified by the Lead Procuring Agency, will be charged and will be deducted by VVTA out of such monies as may be due or may at any time thereafter become due to the Contractor. In case such expense is in excess of the sum which otherwise would have been payable to the Contractor under the Contract, then the Contractor or its surety shall promptly pay the amount of such excess to VVTA upon notice of the excess so due. VVTA may, in its sole discretion, withhold all or any part of any progress payments otherwise due the Contractor until completion and final settlement of the Work covered by the Notice of Termination of Contractor's right to proceed.
- (7) Contractor shall insert in all subcontracts that the Subcontractor or Supplier will stop work on the date of or to the extent specified in a Notice of Termination from VVTA and shall require the Subcontractors and Suppliers to insert the same provision in any of their subcontracts.
- (8) The Contractor shall immediately upon receipt communicate any Notice of Termination issued by VVTA to the affected Subcontractors and Suppliers at any tier.
- (9) The Surety on the Contractor's Performance Bond provided for in this Contract shall not be entitled to take over the Contractor's performance of Work in case of termination under this Section, except with the prior written consent of VVTA.
- (10) The Contractor shall not be liable for any costs in excess of the total Contract Consideration if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor and/or Supplier and such default arises out of causes beyond the control of and without the fault or negligence of either the Contractor or the Subcontractor and/or Supplier, and if the Supplies or Services to be furnished by the Subcontractor or Supplier were not obtainable from other sources in sufficient time to permit the Contractor to meet the required Delivery Schedule, the Contractor shall not be liable for any costs in excess of the total Contract Consideration to complete the Work.
- (11.) If, after issuance of the Notice of Termination of this Contract, it is determined for any reason that the Contractor was not in breach, or that the breach was excusable, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to the Termination for Convenience

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Section, and the Contractor shall be reimbursed for costs incurred under the terms of that Section.

10. ASSIGNMENT

This Agreement, any interest herein or claim hereunder, may not be assigned by CONTRACTOR either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by CONTRACTOR – without prior written consent of VVTA. Consent by VVTA shall not be deemed to relieve CONTRACTOR of its obligations to comply fully with all terms and conditions of this Agreement.

11. SUBCONTRACTING

VVTA hereby consents to CONTRACTOR's subcontracting of portions of the Work to the parties identified below for the functions described in CONTRACTOR's proposal. CONTRACTOR shall include in each subcontract agreement the stipulation that CONTRACTOR, not VVTA, is solely responsible for payment to the subcontractor for all amounts owing and that the subcontractor shall have no claim, and shall take no action against VVTA, Member Agencies or officers, directors, employees or sureties thereof for nonpayment by CONTRACTOR.

Subcontractors' Names and Addresses

Work to be Performed

Subcontractors' Names and Addresses	Work to be Performed
_____	_____
_____	_____
_____	_____

12. SUCCESSORS AND ASSIGNS

Subject to any provision under this Contract restricting assignment or subcontracting by CONTRACTOR, the provisions of this Contract shall be binding upon and inure to the benefit of the respective successors, assigns, heirs, and personal representatives of the parties to this Contract.

13. STATUS OF CONTRACTOR

- A. It is understood and agreed by all the parties hereto that Contractor is an independent contractor and that no relationship of employer-employee exists between VVTA and CONTRACTOR. Neither CONTRACTOR nor CONTRACTOR'S assigned personnel shall be entitled to any benefits payable to employees of VVTA. CONTRACTOR hereby indemnifies and holds VVTA harmless from any and all claims that may be made against

VVTA, based upon any contention by any third party that an employer-employee

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relationship exists by reason of this Contract or any services provided pursuant to this Contract.

- B. It is further understood and agreed by all the parties hereto that neither CONTRACTOR nor CONTRACTOR'S assigned personnel shall have any right to act on behalf of VVTA in any capacity whatsoever as an agent or to bind VVTA to any obligation whatsoever.
- C. It is further understood and agreed by all the parties hereto that CONTRACTOR must issue any and all forms required by Federal and State laws for income and employment tax purposes, including, but not limited to W-2 and 941 forms, for all of CONTRACTOR'S assigned personnel.

14. CONTRACTOR'S RESPONSIBILITY

- A. The CONTRACTOR shall be responsible for the Work performed under the terms of this Contract to the extent provided by law. The CONTRACTOR agrees not to disclose information identified by VVTA as proprietary to third parties, unless approved in advance by VVTA or required by law.
- B. VVTA shall not be held liable or responsible for the maintenance and/or safety of the CONTRACTOR's equipment or supplies placed upon VVTA's property in accordance with this Contract. The CONTRACTOR acknowledges that it assumes full responsibility for any loss or damage to its equipment and supplies.
- C. Any materials, equipment or work found to be damaged or defective during the period CONTRACTOR is performing the maintenance for the facility pursuant to this Agreement shall be repaired, replaced or corrected by the CONTRACTOR hereunder without additional cost to VVTA, unless such damage is the result of VVTA's gross negligence or willful misconduct.
- D. CONTRACTOR shall pay for all taxes, except for sales, use, transaction and excise taxes that were legally enacted at the time CONTRACTOR's offer submitted. CONTRACTOR shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of this Contract.
- E. CONTRACTOR's shall give VVTA Administration at least 24 hours prior notice when CONTRACTOR's Corporate representatives are scheduled to visit either the Hesperia or Barstow locations. Corporate representatives include, but not limited to, Board Members, Executive Staff, Regional staff, and Management.

15. GOVERNING LAW

This Contract shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Contract shall be filed and resolved in the Superior Court of the County San Bernardino.

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16. TIME OF THE ESSENCE

Time is of the essence in the performance of every term, covenant, condition, and provision of this Contract.

17. PUBLIC RECORDS ACT

Upon its execution, this Contract (including all Exhibits) shall be subject to disclosure pursuant to the California Public Records Act.

18. INSURANCE

A. General Requirements for Contractor

Throughout the life of this Agreement, Contractor shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by VVTA's Executive Director or his/her designee at any time and in his/her sole discretion. The following policies of insurance are required:

- (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than

\$5,000,000 per occurrence for bodily injury and property damage

\$5,000,000 per occurrence for personal and advertising injury

\$5,000,000 aggregate for products and completed operations

\$5,000,000 general aggregate

- (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$5,000,000 per accident for bodily injury and property damage.

- (iii) AUTOMOBILE PHYSICAL DAMAGE insurance to include collision and comprehensive coverage for all VVTA vehicles operated, maintained, used and/or stored by Contractor, or in the care, custody and control of Contractor, under this Agreement. This insurance shall

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include replacement cost coverage for all VVTA vehicles operated, maintained, used and/or stored by Contractor, or in the care, custody and control of Contractor, under this Agreement.

- (iv) FIDELITY BOND/CRIME insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial Crime Coverage Form CR 00 20 and include coverage for employee theft, forgery or alteration, inside the premises – theft of money and securities, inside the premises – robbery or safe burglary, outside the premises, computer fraud, funds transfer fraud and money orders and counterfeit paper currency, with limits of liability of not less than \$100,000 per claim/occurrence.
- (v) WORKERS' COMPENSATION insurance as required under the California Labor Code.
- (vi) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.
- (vi) PROPERTY insurance against all risk of loss to the Facility, improvements and betterments therein, business personal property of VVTA, including all tools, equipment and materials, used by Contractor, or in the care, custody and control of Contractor, under this Agreement. This insurance shall include replacement cost coverage, with no coinsurance penalty provision.

Should Contractor maintain insurance with broader coverage and/or limits of liability greater than those shown above, VVTA requires and shall be entitled to the broader coverage and/or the higher limits of liability maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to VVTA.

In the event Contractor purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall “follow form” and afford no less coverage than the primary insurance policy(ies).

Contractor shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Contractor shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the VVTA's Executive Director or his/her designee. At the option of the VVTA's Executive Director or his/her designee, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to VVTA, its members, board members, officers, officials, employees and agents; or (ii) Contractor shall provide a financial guarantee, satisfactory to VVTA's Executive Director or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall VVTA be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to VVTA. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Contractor shall furnish VVTA

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with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for VVTA, Contractor shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name VVTA, its members, board members, officers, officials, employees and agents as an additional insured. Such policy(ies) of insurance shall be endorsed so Contractor's insurance shall be primary and no contribution shall be required of VVTA. The coverage shall contain no special limitations on the scope of protection afforded to VVTA, its members, board members, officers, officials, employees, and agents. The Automobile Physical Damage, Fidelity Bond/Crime and Property insurance policies shall name the VVTA as a loss payee. The Workers' Compensation insurance policy shall contain a waiver of subrogation as to VVTA, its members, board members, officers, officials, employees and agents.

Contractor and its insurers shall waive all rights of contribution, recovery and subrogation against VVTA, its members, board members, officers, officials, employees and agents on account of any injury, death or property damage to any person, including any injury or death to the Contractor, its principles, officers, employees, agents, consultants, contractors, subcontractors, invitees, or Contractor's property or the property of others under Contractor's care, custody and control. Contractor shall give notice to its insurers that this waiver of subrogation is contained in this Agreement. This requirement shall survive expiration or termination of this Agreement.

Contractor shall furnish VVTA with all certificate(s) and applicable endorsements effecting coverage required hereunder. **All certificates and applicable endorsements are to be received and approved by VVTA's Executive Director or his/her designee in his/her sole discretion prior to VVTA's execution of this Agreement and before work commences.** Upon request of VVTA, Contractor shall immediately furnish VVTA with a complete copy of any insurance policy required under this Contract, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

If at any time during the life of this Agreement or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Contractor shall be withheld until notice is received by VVTA that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to VVTA. Any failure to maintain the required insurance shall be sufficient cause for VVTA to terminate this Agreement. No action taken by VVTA hereunder shall in any way relieve Provider of its responsibilities under this Agreement.

The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify VVTA shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount

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of indemnification to be provided by Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its principals, officers, employees, agents, persons under the supervision of Contractor, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

If Contractor should subcontract all or any portion of the services to be performed under this Agreement, Contractor shall require each subcontractor to provide insurance protection in favor of VVTA, its members, board members, officers, officials, employees and agents, in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Contractor and VVTA prior to the commencement of any work by the subcontractor.

B. Contractor's Responsibility Regarding Hazardous Substances

i. Definition:

"Hazardous Materials" means friable asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), petroleum or crude oil or any fraction thereof, natural gas, source material, special nuclear material, and byproduct materials regulated under the Federal Pesticide Fungicide and Rodenticide Act (7 U.S.C. 136, et seq.), and any hazardous waste, toxic, or dangerous substance or related material, including any materials defined or treated as a "hazardous substance," "hazardous waste," "toxic substance" or contaminant (or comparable term) under any law.

ii. Indemnification:

Contractor shall indemnify, defend, and hold harmless VVTA and its members, board members, officers, officials, employees and agents from all fines, suits, procedures, claims, and actions of every kind, and all costs associated therewith (including reasonable attorneys' and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge, or other release of Hazardous Substances during, or as a result of, Contractor's operations and work under this Agreement, or by any employee, representative, agent, contractor, sub-contractor, supplier, customer, guest, invitee of Contractor, or as a result of Contractor's failure to provide any or all information, make any or all submissions, and take any and all steps required by any or all Authorities under the Laws and any and all other environmental laws. This requirement shall survive the termination or expiration of this agreement.

C. Verification of Coverage

- 1) Contractor shall furnish VVTA with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by VVTA before work commences.

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- 2) As an alternative, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.
- 3) In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of VVTA.

E. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

F. Notification of Terminated Insurance

Insurance shall not be terminated or expire without thirty (30) days written notice, and are required to be maintained in force until completion of the contract.

G. Endorsements

The following endorsements 1 through 4 are required to be made a part of the Comprehensive General Liability policy, and Endorsement No.4 is required to be made part of the Workers' Compensation and Employers' Liability policy:

1. "Victor Valley Transit Authority (herein referred to as VVTA), its employees, officers, agents and contractors are hereby added as additional insurers."
2. "This policy shall be considered primary insurance as respects any other valid and collectible insurance VVTA may possess, including any self-insured retention VVTA may have, and any other insurance VVTA does possess shall be considered excess insurance only."
3. "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company." Coverage specified herein shall apply to acquisition actions of all procuring agencies under this contract.
4. "Thirty (30) days' prior written notice of Termination shall be given to VVTA in the event of Termination."

Such notice shall be sent to:
Victor Valley Transit Authority
ATTN: Christine Plasting
17150 Smoke Tree Street
Hesperia, California 92345

H. Proof of Coverage

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Copies of all the required Endorsements shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the Contractor's insurance company as evidence of the stipulated coverage. This Proof of Insurance shall then be mailed to:

Victor Valley Transit Authority
ATTN: Christine Plasting
17150 Smoketree Street
Hesperia, California 92345

I. Special Provisions

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor and any approval of said insurance by the VVTA Board, VVTA staff or their insurance consultant(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this Contract, including, but not limited to, the provisions concerning indemnification.
2. VVTA reserves the right to withhold payments to Contractor in the event of material noncompliance with the insurance requirements outlined above.

J. MINIMUM INSURANCE COVERAGE

- 1) Commercial General Liability including Products/Completed Operations: \$5,000,000; per occurrence for bodily and property damage liability and \$5,000,000 aggregate; *VVTA named and endorsed as an Additional Insured.*
- 2) Automobile Liability: \$5,000,000; per occurrence for bodily and property damage liability and aggregate; *VVTA named and endorsed as an Additional Insured.*
- 3) Workers' Compensation: statutory limits
- 4) Employer's Liability: \$1,000,000; per occurrence.

19. INDEMNIFICATION

- A. To the furthest extent allowed by law, Contractor shall indemnify, hold harmless and defend VVTA and its members, board members, officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by VVTA, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Contractor's obligations under the preceding sentence shall apply regardless of whether VVTA or any of its members, board members, officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures,

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costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of VVTA or any of its members, board members, officers, officials, employees, agents or volunteers.

If Contractor should subcontract all or any portion of the work to be performed under this Agreement, Contractor shall require each subcontractor to indemnify, hold harmless and defend VVTA and its members, board members, officers, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

- B. If CONTRACTOR has retained legal counsel reasonably acceptable to Agency, CONTRACTOR shall have the sole charge and direction of the defense of the suit, action or proceeding while it is assigned to such counsel. VVTA shall at the request of the CONTRACTOR furnish to the CONTRACTOR all reasonable assistance that may be necessary for the purpose of defending such suit, action or proceeding, and shall be repaid all reasonable costs incurred in doing so. VVTA shall have the right to be represented therein by advisory council of its own selection at its own expense.

20. REVISIONS

By written notice or order, VVTA may, from time to time, order work suspension or make changes to this Agreement. Changes in the Work shall be mutually agreed to and incorporated into an amendment to this Agreement. Upon execution of an amendment, CONTRACTOR shall perform the Work, as amended.

Price Adjustments:

- A. Any change in the contract that causes an increase or decrease in cost to VVTA, or the time required for the performance of the contract, must be approved as prescribed herein. In the event that the change is a request for price escalation by the Contractor, any price escalation or de-escalation must be justified by the contractor using acceptable measures such as the Consumer Price Index (CPI) or other universally accepted measure.
- B. An equitable adjustment in the compensation and schedule will be made upon an approved Change Order.
- C. CONTRACTOR shall be liable for all costs resulting from, or for satisfactorily correcting, any and all unauthorized specification changes not properly ordered by written modification to the contract.
- D. Except as otherwise expressly provided in the Contract, when costs are a factor in any determination of a contract price adjustment, such costs shall be in accordance with the applicable cost principles of Subpart 31.2 of the Federal Acquisition Regulations (FAR) in effect at the onset of the Contract.

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Modifications:

Unless specified otherwise in the Agreement, this Agreement may only be modified by written mutual consent evidenced by signature of representative authorized to enter into and modify the Agreement. In order to be effective, amendments may require approval by VVTA's Board of Director, and in all instances require prior signature of an authorized representative of VVTA.

21. RIGHTS IN TECHNICAL DATA

- A. No material or technical data prepared by CONTRACTOR under this Agreement is to be released by CONTRACTOR to any other person or entity except as necessary for the performance of the Work. All press releases or information concerning the Work that might appear in any publication or dissemination, including but not limited to, newspapers, magazines, and electronic media, shall first be authorized in writing by VVTA.
- B. The originals of all letter, documents, reports and other products and data produced under this Agreement shall become the property of VVTA without restriction or limitation on their use and shall be made available upon request to VVTA at any time. Original copies of such shall be delivered to VVTA upon completion of the Work or termination of the Work. CONTRACTOR shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the prior written approval of VVTA. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

22. OWNERSHIP OF REPORTS AND DOCUMENTS

The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the sole and exclusive property of VVTA. Copies may be made for CONTRACTOR's records, but shall not be furnished to others without prior written authorization from VVTA. Such deliverables shall be deemed works made for hire, and all rights in copyright therein shall be retained by VVTA.

23. OWNERSHIP RIGHTS

- A. In the event VVTA rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or develop by CONTRACTOR, it's Third Party Software Contractors and its Suppliers as part of the Project, any derivative works

and associated documentation created by and on behalf of BBTA by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of VVTA (collectively "VVTA Intellectual Property"), and VVTA may use, disclose and exercise dominion and full rights of ownership, in any manner in VVTA Intellectual Property in connection with the use, operation and maintenance of a transportation system

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administered by VVTA. No use of VVTA Intellectual Property shall be made for any purpose other than in conjunction with a transportation system administered by CONTRACTOR, and VVTA shall not sell, lease, rent, give away or otherwise disclose any VVTA Intellectual property to any outside third party other than Permitted programmers. To the extent there may be any question of rights of ownership or use in any VVTA Intellectual Property, CONTRACTOR shall require all of its subcontractors and suppliers (including without limitation its Third Party Software Contractors) to assign to VVTA, all worldwide right, title and interest in and to all VVTA Intellectual Property in a manner consistent with the foregoing terms of this paragraph. CONTRACTOR shall execute any documents as VVTA may from time to time reasonable request to effectuate the terms of this paragraph.

- B. All documentation and Software which predates this Contract and which otherwise owned by Contractor or its Third Party Software Contractors, and all Documentation and Software which is created by CONTRACTOR or its Third Party Software Contractors shall be Licensed Software or Licensed Documentation, as appropriate. All Licensed Software and Licensed Documentation shall be governed by License Agreement by and between the parties of event date herewith.

24. WORK FOR HIRE

Any Work created or produced as a part of this Agreement that may be defined under Section 101, Title 17, USC will be considered “work for hire” as it pertains to ownership rights. CONTRACTOR, by his/her endorsement heron agrees that all rights to any work(s) created or produced are waived, and that ownership rests with VVTA. CONTRACTOR further agrees to ensure transfer of all rights to such work(s), as defined under federal copyright law that may be created or produced under this Agreement by its suppliers, contractors or subcontractors.

25. SUBMITTAL OF CLAIMS BY CONTRACTOR

CONTRACTOR shall file any and all claims with VVTA in writing within thirty (30) days of the event or occurrence giving rise to the claim. The claim shall be in sufficient detail to enable VVTA to ascertain the claim’s basis and amount, and shall describe the date, place and other pertinent circumstances of the event or occurrence giving rise to the claim and the indebtedness, obligation, injury, loss or damages allegedly incurred by CONTRACTOR.

Even though a claim may be filed and/or in review by VVTA, CONTRACTOR shall continue to perform in accordance to this Agreement.

26. EQUAL OPPORTUNITY

CONTRACTOR shall not discriminate against, or grant preferential treatment to, any individual or group, or any employee or applicant for employment because of race, age, religion, color, ethnicity, sex, national origin, ancestry, physical disability, mental disability, political affiliation, sexual orientation, marital status or other status protected by law. CONTRACTOR shall take action to ensure that applicants and employees are treated without regard to the above.

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27. STANDARD OF PERFORMANCE

- A. CONTRACTOR shall perform and exercise, and require its subcontractors to perform and exercise due professional care and competence in this performance of the Work in accordance with the requirements of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that VVTA will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the “Standard of performance” for purposes of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.
- B. All workers shall have sufficient skill and experience to perform the Work assigned to them. VVTA shall have the right, at its sole discretion to require the immediate removal of CONTRACTOR’s personnel at any level assigned to the performance of the Work at no additional fee or cost to VVTA, if VVTA considers such removal in its best interests and requests such removal in writing and such request is not done for illegal reasons. Further, an employee who is removed from performing Work under the Agreement under this Article shall not be reassigned to perform Work in any other capacity under this Agreement without VVTA’s prior written approval.

28. NOTIFICATION OF EMPLOYMENT OF VVTA BOARD MEMBERS/ALTERNATES AND EMPLOYEES

To ensure compliance with VVTA’s Ethics Policy, CONTRACTOR shall provide written notice to VVTA disclosing the identity of any individual who CONTRACTOR desires to employ or retain under a contract, and who (1) presently serves as a Board Member/Alternate or an employee of VVTA, or (2) SERVED AS A Board Member/Alternate or an employee of VVTA within the previous 12 months of the date of the proposed employment or retention by CONTRACTOR. CONTRACTOR’s written notice shall indicate whether the individual will be an officer, principal or shareholder of the entity and/or will participate in the performance of this Agreement.

29. DISQUALIFYING POLITICAL CONTRIBUTIONS

In the event of a proposed amendment to this Agreement, CONTRACTOR shall provide prior to the execution of such amendment, a written statement disclosing any contribution(s) of \$250 or more made by CONTRACTOR or its subcontractor(s) to VVTA Board Members/Alternates or employees within the preceding twelve (12) months of the date of the proposed amendment. Applicable contributions include those made by any agent/person/entity on behalf of CONTRACTOR or subcontractor(s).

30. COMPLIANCE WITH LAW

CONTRACTOR shall familiarize itself with and perform the Work required under this Agreement in conformity with requirements and standards of VVTA, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and work may be affected by Work under this Agreement. CONTRACTOR shall also comply with all Federal, state and local laws and ordinances.

31. COMPLIANCE WITH LOBBYING POLICIES

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- A. CONTRACTOR agrees that if it is a Lobbyist Employer or if it has retained a Lobbying Firm or Lobbyist, as such terms are defined by VVTA in its Ethics Policy, it shall comply or ensure that its Lobbying Firm and Lobbyist complies with VVTA's Ethics Policy.

- B. If CONTRACTOR (Lobbyist Employer) or its Lobbying Firm or Lobbyist fails to comply, in whole or in part, with VVTA's Ethics Policy, such failure shall be considered a material breach of this Agreement and VVTA shall have the right to immediately terminate or suspend this Agreement.

32. WAIVER/INVALIDITY

No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach of the provision, or of any other breach of the provision of the Agreement. Failure of either party to enforce any provision of this Agreement at any time shall not be construed as a waiver of that provision

The invalidity in whole or in part of any provision of this Agreement shall no void or affect the validity of any other provision.

33. FORCE MAJEURE

Performance of each and all CONTRACTOR's and VVTA's covenants herein shall be subject to such delays as may occur without CONTRACTOR's or VVTA's fault from acts of God, strikes, riots, or from other similar causes beyond CONTRACTOR's or VVTA's control.

34. CONFIDENTIALITY

CONTRACTOR agrees that for and during the entire term of this Agreement, any information, data, figures, records, findings and the like received or generated by CONTRACTOR in the performance of this Agreement, shall be considered and kept as the private and privileged records of VVTA and will not be divulged to any person, firm, corporation, or other entity except on the direct prior written authorization of VVTA. Further, upon expiration or termination of this Agreement for any reason, CONTRACTOR agrees

that it will continue to treat as private and privileged any information, data, figures, records, findings and the like, and will not release any such information to any person, firm, corporation or other entity, either by statement, deposition, or as a witness, except upon direct prior written authority of VVTA.

35. CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC

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- A. VVTA shall review and approve in writing all VVTA related copy proposed to be used by CONTRACTOR for advertising or public relations purposes prior to publication.

CONTRACTOR shall not allow VVTA related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONTRACTOR shall ensure that all published information is factual and that it does not in any way imply that VVTA endorses CONTRACTOR's firm, service, and/or product.

- B. CONTRACTOR shall refer all inquiries from the news media to VVTA, and shall comply with the procedures VVTA's Public Affairs staff regarding statements to the media relating to this Agreement or the Work.
- C. If CONTRACTOR receives a complaint from a citizen or the community, CONTRACTOR shall inform VVTA as soon as possible and inform VVTA of any action taken to alleviate the situation.
- D. The provision of this Article shall survive the termination or expiration of this Agreement.

36. CONFLICT OF INTEREST

A. Prohibited Interests

1. During the term of this Contract, Contractor, its officers, employees and their immediate families shall not acquire any interest, direct or indirect, that would conflict with the performance of services required to be performed under this Contract.
2. Violation of subparagraph A. (1), is a material breach of this Contract, and Agency shall have the right to debar Contractor from participating at any tier in any Agency contract for a period of up to five (5) years.
3. Contractor shall include a copy of subparagraphs A. (1), and A. (2), of this provision in any agreement it makes with its subcontractors.

B. Covenant

1. Contractor covenants that prior to award of this Contract, Contractor has disclosed any present interest and any interest existing within twelve (12) months prior to award of this Contract including, without limitation, any business or personal relationship that creates an appearance of a conflict of interest. Disclosable interests and relationships are those that may reasonably be viewed as creating a potential or actual conflict of interest. Disclosable interests and relationships are those that may reasonably be viewed as creating a potential or actual conflict of interest. Any

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existing or prospective interest acquired or occurring after submission of the initial Certification shall be provided in an amended Certification with the executed Contract and shall be incorporated into the Contract by this reference. Violation of this covenant is a material breach of this Contract.

2. In addition, Contractor shall immediately disclose in writing to VVTA and or to the other procuring agencies General Manager and Chief Legal Counsel any interest or relationship described in subparagraph B(1) acquired or occurring during the term of this Contract.
3. Violation of the above disclosure obligations is a material breach of this Contract.

37. COVENANT AGAINST GRATUITIES

A. Prohibited Conduct

1. During the term of this Contract, Contractor, its officers and employees and their immediate families are prohibited from offering or giving a gratuity in any form including, without limitation, entertainment, favors, loans, gifts or anything of greater than nominal value for any reason including personal, non-business related reasons to any Lead Procuring Agency officer or employee or their immediate families. For the purpose of this section, nominal value means anything: (1) having an aggregate value of \$35.00 (thirty-five dollars) or less per year; or (2) any perishable item (flowers or food) of any value except that prepared meals are subject to the \$35.00 limit. A campaign contribution is not a gratuity and is not prohibited by this Section.
2. Violation of subparagraph A(1) of this provision is a material breach of this Contract, and Agency shall have the right to debar Contractor from participating at any tier in any Agency contract for a period of up to five (5) years.
3. Contractor shall include a copy of subparagraphs A (1) and A (2) of this provision in any agreement it makes with its subcontractors.

B. Covenant

Contractor covenants that prior to award of this Contract, Contractor has disclosed, any gratuity, as described above, that it, its officers, employees or their immediate families have offered or given to any Agency officer, employee or their immediate families for any reason including personal non-Business related reasons within the twelve (12) months prior to award of this Contract. Any gratuity offered or given after submission of the initial Certification shall be provided in an amended Certification with the executed Contract and shall be incorporated into the Contract by this reference. Violation of this covenant is a material breach of this Contract.

38. WARRANTY OF AUTHORITY

The person executing this Contract on behalf of Contractor affirmatively represents that she/he has the requisite legal authority to enter into this Contract on behalf of Contractor and to bind Contractor to the

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ATTACHMENT B – SAMPLE CONTRACT

terms, covenants and conditions of this Contract. Both the person executing this Contract on behalf of Contractor and CONTRACTOR understand that VVTA is relying on this representation in entering into this Contract.

39. ENTIRE AGREEMENT

This Contract, including any and all Exhibits, constitutes the entire agreement between VVTA and CONTRACTOR and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Contract or the construction or meaning of any term hereof, this Contract shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year set forth above.

VICTOR VALLEY TRANSIT AUTHORITY

By: _____

Kevin Kane, VVTA Executive Director

APPROVED AS TO FORM

VVTA Legal Counsel

CONTRACTOR

By: _____

Name: _____ Title: _____

By: _____

Name: _____ Title: _____

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ATTACHMENT C – INSURANCE REQUIREMENTS

1. INSURANCE REQUIREMENTS

A. General Requirements for Contractor

Throughout the life of this Agreement, Contractor shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by VVTA's Executive Director or his/her designee at any time and in his/her sole discretion. The following policies of insurance are required:

- (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than

\$5,000,000 per occurrence for bodily injury and property damage

\$5,000,000 per occurrence for personal and advertising injury

\$5,000,000 aggregate for products and completed operations

\$5,000,000 general aggregate

- (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$5,000,000 per accident for bodily injury and property damage.
- (iii) AUTOMOBILE PHYSICAL DAMAGE insurance to include collision and comprehensive coverage for all VVTA vehicles operated, maintained, used and/or stored by Contractor, or in the care, custody and control of Contractor, under this Agreement. This insurance shall include replacement cost coverage for all VVTA vehicles operated, maintained, used and/or stored by Contractor, or in the care, custody and control of Contractor, under this Agreement.
- (iv) FIDELITY BOND/CRIME insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial Crime Coverage Form CR 00 20 and include coverage for employee theft, forgery or alteration, inside the premises – theft of money and securities, inside the premises –robbery or safe burglary, outside the premises, computer fraud, funds transfer fraud and money orders and counterfeit paper currency, with limits of liability of not less than \$100,000 per claim/occurrence.
- (v) WORKERS' COMPENSATION insurance as required under the California Labor Code.
- (vi) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

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ATTACHMENT C – INSURANCE REQUIREMENTS

- (vi) PROPERTY insurance against all risk of loss to the Facility, improvements and betterments therein, business personal property of VVTA, including all tools, equipment and materials, used by Contractor, or in the care, custody and control of Contractor, under this Agreement. This insurance shall include replacement cost coverage, with no coinsurance penalty provision.

Should Contractor maintain insurance with broader coverage and/or limits of liability greater than those shown above, VVTA requires and shall be entitled to the broader coverage and/or the higher limits of liability maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to VVTA.

In the event Contractor purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall “follow form” and afford no less coverage than the primary insurance policy(ies).

Contractor shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Contractor shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the VVTA’s Executive Director or his/her designee. At the option of the VVTA’s Executive Director or his/her designee, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to VVTA, its members, board members, officers, officials, employees and agents; or (ii) Contractor shall provide a financial guarantee, satisfactory to VVTA’s Executive Director or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall VVTA be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to VVTA. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Contractor shall furnish VVTA with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for VVTA, Contractor shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name VVTA, its members, board members, officers, officials, employees and agents as an additional insured. Such policy(ies) of insurance shall be endorsed so Contractor’s insurance shall be primary and no contribution shall be required of VVTA. The coverage shall contain no special limitations on the scope of protection afforded to VVTA, its members, board members, officers, officials, employees, and agents. The Automobile Physical Damage, Fidelity Bond/Crime and Property insurance policies shall name the VVTA as a loss payee. The Workers’ Compensation insurance policy shall contain a waiver of subrogation as to VVTA, its members, board members, officers, officials, employees and agents.

Contractor and its insurers shall waive all rights of contribution, recovery and subrogation against VVTA, its members, board members, officers, officials, employees and agents on account of any injury, death or property damage to any person, including any injury or death to the Contractor, its principles, officers, employees, agents, consultants, contractors, subcontractors, invitees, or Contractor’s property or the property of others under Contractor’s care, custody and control. Contractor shall give notice to its insurers that this waiver of subrogation is contained in this Agreement. This requirement shall survive expiration or termination of this Agreement.

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ATTACHMENT C – INSURANCE REQUIREMENTS

Contractor shall furnish VVTA with all certificate(s) and applicable endorsements effecting coverage required hereunder. **All certificates and applicable endorsements are to be received and approved by VVTA's Executive Director or his/her designee in his/her sole discretion prior to VVTA's execution of this Agreement and before work commences.** Upon request of VVTA, Contractor shall immediately furnish VVTA with a complete copy of any insurance policy required under this Contract, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

If at any time during the life of this Agreement or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Contractor shall be withheld until notice is received by VVTA that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to VVTA. Any failure to maintain the required insurance shall be sufficient cause for VVTA to terminate this Agreement. No action taken by VVTA hereunder shall in any way relieve Provider of its responsibilities under this Agreement.

The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify VVTA shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its principals, officers, employees, agents, persons under the supervision of Contractor, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

If Contractor should subcontract all or any portion of the services to be performed under this Agreement, Contractor shall require each subcontractor to provide insurance protection in favor of VVTA, its members, board members, officers, officials, employees and agents, in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Contractor and VVTA prior to the commencement of any work by the subcontractor.

B. Contractor's Responsibility Regarding Hazardous Substances

i. Definition:

"Hazardous Materials" means friable asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), petroleum or crude oil or any fraction thereof, natural gas, source material, special nuclear material, and byproduct materials regulated under the Federal Pesticide Fungicide and Rodenticide Act (7 U.S.C. 136, et seq.), and any hazardous waste, toxic, or dangerous substance or related material, including any materials defined or treated as a "hazardous substance," "hazardous waste," "toxic substance" or contaminant (or comparable term) under any law.

ii. Indemnification:

Contractor shall indemnify, defend, and hold harmless VVTA and its members, board members, officers, officials, employees and agents from all fines, suits, procedures, claims, and actions of every kind, and all costs associated therewith (including reasonable attorneys'

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ATTACHMENT C – INSURANCE REQUIREMENTS

and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge, or other release of Hazardous Substances during, or as a result of, Contractor's operations and work under this Agreement, or by any employee, representative, agent, contractor, sub-contractor, supplier, customer, guest, invitee of Contractor, or as a result of Contractor's failure to provide any or all information, make any or all submissions, and take any and all steps required by any or all Authorities under the Laws and any and all other environmental laws. This requirement shall survive the termination or expiration of this agreement.

C. Notification of Terminated Insurance

Insurance shall not be terminated or expire without thirty (30) days written notice, and are required to be maintained in force until completion of the contract.

C. Proof of Coverage

Copies of all the required Endorsements shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the Contractor's insurance company as evidence of the stipulated coverage. This Proof of Insurance shall then be mailed to:

Victor Valley Transit Authority
ATTN: Christine Plasting
17150 Smoke Tree Street
Hesperia, California 92345

2. MINIMUM INSURANCE COVERAGE

- 1) **Commercial General Liability including Products/Completed Operations:** \$5,000,000; per occurrence for bodily and property damage liability and \$5,000,000 aggregate; *VVTA named and endorsed as an Additional Insured.*
- 2) **Automobile Liability:** \$5,000,000; per occurrence for bodily and property damage liability and aggregate; *VVTA named and endorsed as an Additional Insured.*
- 3) **Workers' Compensation:** statutory limits
- 4) **Employer's Liability:** \$1,000,000; per occurrence.

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ATTACHMENT D – PROTEST PROCEDURES

1. PURPOSE

- A. This policy provides guidelines for the submittal and evaluation of protests relating to all procurements. VVTA shall ensure, to the extent reasonably possible, uniform, timely and equitable consideration of all protests received by VVTA pursuant to this policy.
- B. In order to be considered, a protest must be filed in a timely manner, as described herein, must satisfy all the applicable requirements described in this policy and must be brought by an interested party as defined below.

2. DEFINITIONS

The following definitions apply to this policy.

A. Interested Party – An actual proposer/bidder whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. Interested parties do not include subcontractors or suppliers of an actual or prospective proposer/bidder, or joint venturers acting independently of a joint venture.

B. Procurement Manager - The person designated by VVTA who is responsible for managing the contracting and procurement function.

C. File or Submit – Shall mean the date of receipt of a written protest by VVTA.

D. Receipt of Protest – The date of receipt of the Protest will be the date in which VVTA receives the protest package.

3. REFERENCES

United States Department of Transportation, Federal Transit Administration, FTA Circulars, FTA Circular 4420.1 Third Party Contracting Guidelines. Note: Refer to the revision in effect at the time of protest.

4. BASIS OF PROTEST

A. Requests for Proposal

After the receipt of proposals by VVTA and after an action relating to the selection of a consultant/contractor by the VVTA Evaluation Committee, but prior to the award of a contract by the VVTA Board of Directors, a protest may be submitted on the basis of one or more of the following:

- i. VVTA Failed to adhere to the evaluation process set forth in the solicitation package.
- ii. VVTA failed to follow its own procurement policies and procedures.
- iii. VVTA violated a specific law, rule, or regulation in the procurement process.

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B. Invitations for Bid

After the receipt of bids by VVTA, but prior to award of a contract by the VVTA Board of Directors, a protest may be submitted on the basis of one or more of the following:

- i. VVTA failed to follow its own procurement policies and procedures.
- ii. VVTA violated a specific law, rule or regulation in the procurement process.

5. FILING OF PROTEST

A. Filing Written Protest with the VVTA Procurement Manager

An Interested Party wishing to protest a matter involving a procurement or proposed contract award shall file with the Procurement Manager, a written protest covering, at a minimum, the following:

- i. Name and address of the Interested Party;
- ii. Identification of the proposed procurement or contract;
- iii. Description of the nature of the protest;
- iv. A detailed statement of the legal and/or factual grounds for the issue(s) identified in the protest, including reference to the provision(s) of the solicitation, regulations, and/or laws upon which the protest is based; and any technical data, documentary evidence, names of witnesses or other pertinent information supporting the basis for the protest;
- v. A statement of the desired resolution to the protest by the Interested Party;
- vi. Signature of a properly authorized representative of the Interested Party.

B. Failure to Comply

Failure to comply with any of the requirements of this section may be grounds for dismissal of the protest.

C. Withdrawal of Protest

The Interested Party may withdraw its protest at any time before VVTA renders a decision by submitting a written request to the VVTA Procurement Manager.

6. SUMITTAL OF PROTEST

All protests must be submitted in writing to

**Victor Valley Transit Authority
Attn: Procurement Manager
17150 Smoke Tree Street**

VVTA IFB 2018-07 LNG/RLNG
ATTACHMENT D – PROTEST PROCEDURES

Hesperia, CA 92345

RE: Solicitation Protest – Solicitation/Contract Number

7. PROTEST SUBMITTAL DEADLINE

A. Requests for Proposal

After opening proposals, VVTA will evaluate the proposals and determine which proposer shall be recommended to the VVTA Board of Directors for award of a contract. Once VVTA staff has determined which proposer will be recommended to the Board for award, a Notice of Intent to Award will be sent to all proposers.

- i. Protests must be filed within five (5) business days from the issue date on the Notice of Intent to Award.
- ii. The date of filing shall be the date VVTA receives the protest.

B. Invitations for Bid

- i. Protests must be filed within three (3) business days from bid opening.
- ii. The date of filing shall be the date VVTA receive the protest.

8. PROTEST REVIEW PROCESS

If the protest is determined to be timely and meets the criteria identified in the preceding sections 4, 5, and 7, this process will be followed:

- A. No additional material will be allowed to be submitted unless specifically requested by the Procurement Manager.
- B. The Procurement Manger will review all material submitted and will render a decision within thirty (30) days after the receipt of the protest.
- C. The Procurement Manager will consider only those specific issues addressed in the written protest.
- D. The decision of the Procurement Manager will then be given to the Executive Director, or designee, for approval. The decision of the Executive Director is final.

9. PROTEST RELATING TO FEDERALLY FUNDED PROCUREMENT

If procurement is funded in whole or in part by the Federal Transit Administration (FTA), the protester may pursue the FTA Protest Policy as defined in FTA Circular 4220.1, Third party Contracting Guidelines. Refer to the revision in effect at the time of protest.

- A. Review of protest by FTA may be limited to;
 - i. VVTA's failure to have or follow its protest procedures;
 - ii. VVTA's failure to review the complaint or protest;

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ATTACHMENT D – PROTEST PROCEDURES

- iii. Violations of federal law or regulation.
- B. Protesters should consult FTA Circular 4220.1 for a complete description of the FTA procedures and the grounds for protest appeal.

An appeal to FTA must be received by the FTA regional or headquarters office within five (5) business days of the date the protestor learned or should have learned of an adverse decision by VVTA or other basis of appeal to FTA.

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ATTACHMENT G – REQUEST FOR PRE-OFFER CHANGE OR
APPROVED EQUALS

This form must be used for requested clarifications, changes, substitutes or approval of items equal to items specified with a brand name, and must be submitted as far in advance of the Due Date as specified in “Proposal Timeline”

This form should be emailed to: cplasting@VVTA.org with “Questions, Clarifications, and Approved Equals” on the subject line.

Request Number: _____

Proposer: _____

Email Address: _____

Phone Number: _____

Page Number: _____

Section: _____

Questions/Clarifications or Approved Equal:

VVTA Response:

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ATTACHMENT F – SUBMISSION OF FORMS

1. If a qualifier, i.e. (Required >\$100,000) follows the title of the form, then submit that form only if the BID meets that requirement.
2. Duplicate forms as necessary.
3. **Submit ONLY those forms that are checked, unless required elsewhere in the IFB/RFP/RFQ.**
4. Submit the following checked items AT THE TIME OF BID SUBMISSION:

- Proposal Pricing Form (Sealed Envelope)
- Buy America Certification (Required >\$150,000)
- Current Client References
- Not on Excluded Parties List System (SAM.com) (Provide page from website)
- Affidavit of Non-Collusion
- Debarment, Suspension, & Other Responsibility Matters
- List of Subcontractors and DBE's (Required >1/2 of 1% Share of Bid) (attachment I)
- Proposed Disadvantaged Business Enterprise (DBE) Participation; if you or a subcontractor are a DBE, please submit certification with bid.
- Restriction on Lobbying (Prime) One (1) form required of each prime bidder and any proposed subcontractor having greater than a \$100,000 share of the bid.
- Iran Contracting act Certification (Required)
- Warranty Procedures Form (Required)
- Audited Financials or Tax Returns prepared by a Certified Public Accountant, for the most recent two year period. (Required)
- Certificate confirming inclusion in the Air Resources Board HVIP program.

5. Submit the following **Required forms at the Time of Contract Award:**

- a. **Proof of Licenses.** As required by law, in addition to contract requirements. Must be California approved, valid, showing expiration dates and license numbers. These include, but are not limited to (**Only those items checked**):
 - i. Sales or Services; if applicable
 - ii. Business: authorized by the city wherein business is to be conducted (if applicable.)
 - iii. Driver's: within classification, required, valid, etc...
 - iv. Others: any not mentioned herein, but required by industry standard, required by law, by requirements of Contract.

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ATTACHMENT F – SUBMISSION OF FORMS

- b. **Proof of Permits:** as required by law, in addition to contract requirements. Must be California approved, valid, showing expiration dates and license numbers.
- c. **Insurance Certificate (Proof)** must meet the requirements in the RFP. If the Insurance Certificate with the additional insured endorsement is submitted with the bid, the Notice to Proceed can be issued sooner. Failure to submit the Proof of Insurance as requested may result in contract award annulment.
- d. **Performance Bond:** One Hundred percent (100%) of the contract price
- e. **Payment Bond:** One Hundred percent (100%) of the contract price.

**VVTA IFB 2018-07 LNG/RLNG
ATTACHMENT F – SUBMISSION OF FORMS**

Bidder shall complete the following form and include same in their Bid package.

By execution below Bidder hereby agrees to furnish the related materials, and services as specified in Victor Valley Transit Authority's Invitation for Bid (IFB) No. 2018-7 at the prices submitted in response to this solicitation.

PROPOSING COMPANY NAME: _____
STREET ADDRESS: _____
CITY, STATE, ZIP CODE: _____
AUTHORIZED OFFICER: _____
COMPANY OFFICER TITLE: _____
SIGNATURE OF AUTHORIZED OFFICER: _____
CONTACT INFORMATION: _____
OFFICE PHONE NUMBER: _____
EMAIL ADDRESS: _____

Line 1: Price per gallon for delivery of LNG (before any taxes)

Index for April, 2017	Divided by 12.1	Subtotal	+ Fee from Bidder	Less any rebates/credits	+ Delivery Fee	Total

Line 2: Price per gallon for delivery of RLNG (before any taxes):

Index for April, 2017	Divided by 12.1	Subtotal	+ Fee from Bidder	Less any rebates/credits	+ Delivery Fee	Total

VVTA IFB 2018-07 LNG/RLNG
ATTACHMENT F – SUBMISSION OF FORMS

CURRENT CLIENT REFERENCES

Proposer by its signature below, certifies that the following references Maintenance supplied to other clients over the last seven (7) years (use additional pages as necessary): (A minimum of 5 are required)

<u>Agency Name</u>	<u>Contact Name/Phone</u>	<u>Year</u>
1.		
2.		
3.		
4.		
5.		
6.		
7.		

Signature of the Proposer's Authorized Official

Name and Title of the Proposer's Authorized Official

Company Name

Date

VVTA IFB 2018-07 LNG/RLNG
ATTACHMENT F – SUBMISSION OF FORMS

NON-COLLUSION AFFIDAVIT
(Per Public Contract Code Section 7106)

State of California)
) ss.
County of _____)

_____, being first duly sworn, deposes and says that he or she is _____, of _____ ("Proposer") the party making the foregoing proposal that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Proposer has not directly or indirectly solicited any other Proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Proposers or anyone else to put in a sham proposal, or that anyone shall refrain from bidding; that the Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal fee of the Proposer or any other Proposer, or to fix any overhead, profit, or cost element of the proposal fee, or of that of any other Proposer, or to secure any advantage against the public body making the award of anyone interested in the proposed award; that all statements contained in the proposal are true; and, further, that the Proposer has not, directly or indirectly, submitted his or her proposal fee or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature Company Name

Printed Name Title

SUBSCRIBED AND SWORN TO BEFORE ME

This ____ day of _____, _____.

Notary Public (Seal)

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ATTACHMENT F – SUBMISSION OF FORMS

**FTA CERTIFICATION REGARDING DEBARMENT,
DEBARRED BIDDERS CERTIFICATION
SUSPENSION, INELIGIBILITY AND VOLUNTARY
EXCLUSION**

For Contracts and Subcontracts in Excess of \$25,000.00

Instructions for Certification

1. By signing and submitting its bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into; If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, VVTA may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to VVTA if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “principal,” “proposal,” and “voluntary excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 C.F.R. Part 29]. You may contact VVTA for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting its bid or proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by VVTA.
6. The prospective lower tier participant further agrees by submitting its bid or proposal that it will include the clause, set out below, titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The

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ATTACHMENT F – SUBMISSION OF FORMS

knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, RT may pursue available remedies including suspension and/or debarment.

“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier covered Transaction”

1. The prospective lower tier participant certifies, by submission of its bid or proposal, that neither it nor its “principals” [as defined at 49 C.F.R. §29.105(p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. When the prospective lower tier participant is unable to certify to the statement in this certification, such prospective participant shall attach an explanation to its bid or proposal.

Signature of the Proposer’s Authorized Official

Name and Title of the Proposer’s Authorized Official

Company Name

Date

VVTA IFB 2018-07 LNG/RLNG
ATTACHMENT F – SUBMISSION OF FORMS
FTA CERTIFICATION OF RESTRICTIONS ON LOBBYING
(For Bids Over \$100,000)

I. _____, hereby certify on behalf of _____ (Company Name)
that:

1. No Federal or State 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 State or Federal agency, a Member of the State Legislature or the United States Congress, an officer or employee of the Legislature or Congress, or an employee of a Member of the Legislature or Congress, in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any State or Federal cooperative agreement and the extension, continuation, renewal, amendment or modification of any State or Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, or an officer or employee of Congress, in connection with this contract, grant, loan or cooperative agreement, which is funded in whole or in part by Federal funds, the undersigned shall complete and submit Standard Form–LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for any subcontractor at any tier performing work under this Federal-Aid funded Contract and that all subcontractors of any tier shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is 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 § 13 52, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, _____

Signature of the Proposer’s Authorized Official

Name and Title of the Proposer’s Authorized Official

Company Name

Date

IFB 2018-07 LNG/RLNG
ATTACHMENT G – FORM FOR PROPOSAL DEVIATION

This form shall be completed for each condition, exception, reservation or understanding (i.e., deviation) in the proposal and/or Sample Contract.

Deviation Number: _____

Proposer: _____

Email Address: _____

Phone Number: _____

Page Number: _____

Section: _____

Detailed Description of Requested Deviation:

Rationale (Pros and Cons):

**VVTA IFB 2018-07 LNG/RLNG
ATTACHMENT H – ACKNOWLEDGEMENT OF ADDENDA**

The following form shall be completed and included in the bid package.

Failure to acknowledge receipt of all addenda may cause the bid to be considered non-responsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the Offer.

The undersigned Bidder acknowledges receipt of the following addendum to the documents:

Addendum No.	Date:
Addendum No.	Date:
Addendum No.	Date:
Addendum No.	Date:
Addendum No.	Date:
Addendum No.	Date:

Signature of the Bidder's Authorized Official

Name and Title of the Bidder's Authorized Official

Company Name

Date

VVTA IFB 2018-07 LNG/RLNG
ATTACHMENT I – SUBCONTRACTOR LIST

(If additional space is needed, supply information on a separate form)

COMPANY NAME: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

EMAIL ADDRESS: _____

CERTIFIED DBE? _____
 YES NO

If yes, please provide certification number: _____

COMPANY NAME: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

EMAIL ADDRESS: _____

CERTIFIED DBE? _____
 YES NO

If yes, please provide certification number: _____

COMPANY NAME: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

EMAIL ADDRESS: _____

CERTIFIED DBE? _____
 YES NO

If yes, please provide certification number: _____