

**VICTOR VALLEY TRANSIT AUTHORITY
REGULAR MEETING OF
THE BOARD OF DIRECTORS
October 15, 2018, 9:30 A.M.**

**Victor Valley Transit Authority
17150 Smoke Tree Street
Hesperia, CA 92345**

Victor Valley Transit Authority Board of Directors

Rich Harpole, Chair, City of Barstow
Barb Stanton, Vice-Chair, Town of Apple Valley
Larry Bird, Director, City of Hesperia
Rich Kerr, Director, City of Adelanto
Robert Lovingood, Director, County of San Bernardino
James Ramos, Director, County of San Bernardino
Gloria Garcia, Director, City of Victorville

MISSION STATEMENT

Our mission is to serve the community with excellent public transportation services in terms of quality, efficiency, and responsiveness.

AGENDA

The Board of Directors meeting facility is accessible to persons with disabilities. If assistive listening devices or other auxiliary aids or services are needed in order to participate in the public meeting, requests should be made through the Clerk of the Board at least three (3) business days prior to the Board meeting. The Clerk's telephone number is 760-948-3262 x112, (voice) or for Telephone Device for the Deaf (TDD) service, begin by calling 711 and provide the VVTA phone number and the office is located at 17150 Smoke Tree Street, Hesperia, CA. This agenda available and posted: Thursday, October 11, 2018.

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

ANNOUNCEMENTS

PUBLIC COMMENTS

This is the time the Board will hear public comments regarding items not on the agenda or the consent calendar. Individuals who wish to speak to the Board regarding agenda items or during public comments should fill out a comment card and submit it to the Clerk of the Board. Each speaker is allowed three (3) minutes to present their comments. The Board will not remark on public comments; however, each comment will be taken into consideration by VVTA.

CONSENT CALENDAR

Consent Calendar items shall be adopted by a single vote unless removed for discussion by Board member request.

- Pg. 9 ***Item #1: Minutes from Public Hearing and Regular Meeting of The Board of Directors Conducted on September 17, 2018.***
Recommendation: Move for approval.
Presented by: None.
- Pg. 17 ***Item #2: Warrants, August 2018.***
Recommendation: Move for approval.
Presented by: None.
- Pg. 23 ***Item #3: Amend Public Comment Polices on Service Changes and Fare Increases.***
Recommendation: Ratify and approve amendment to VVTA's Public Comment on Service Changes and Public Comment on Fare Increases Policies to address FTA required elements.
Presented by: None.
- Pg. 31 ***Item #4: Ratify Merchant Application and Agreement with Chase Paymentech for Processing Mobile Ticketing and Smart Card Fare Collections.***
Recommendation: Ratify Merchant Application and Agreement with Chase Paymentech for processing mobile ticketing and smart card fare collections.
Presented by: None.
- Pg. 65 ***Item #5: Memorandum of Agreement (MOA) Between Victor Valley Transit Authority and Mojave Desert AQMD for The Designation of AB 2766 Funds to Be Granted for Public Transit Support.***
Recommendation: Approve MOA between VVTA and MDAQMD for the designation of AB 2766 funds to be Granted for Public Transit Support.
Presented by: None.

- Pg. 71 **Item #6: Update VVTA's Technical Advisory Committee Purpose and Organization.**
Recommendation: Approve the update to VVTA's Technical Advisory Committee Purpose and Organization.
Presented by: None.

REPORTS

- Pg. 75 **Item #7: Meeting Notes from The Technical Advisory Committee Meeting Conducted on October 3, 2018.**
Recommendation: Information item only.
- Pg. 81 **Item #8: Management Reports for Hesperia and Barstow Divisions – Verbal Report from Executive Director.**
Recommendation: Information item only.
Presented by: Kevin Kane, Executive Director.

ACTION ITEMS

- Pg. 93 **Item #9: Creation of a New VVTA Public Routes #501 - #504 (Barstow Light Fest) to Operate One-Day-Only, November 3, 2018.**
Recommendation: Create VVTA Public Routes #501 - #504 (Barstow Light Fest) to Operate One-Day Only, November 3, 2018.
Presented by: Kevin Kane, Executive Director.
- Pg. 101 **Item #10: VVTA RFP 2018-13 Design-Build Barstow Facility.**
Recommendation: 1) Authorize Executive Director to enter into the BAFO process with Macro Z Technologies and delegate authority for executing and overseeing the contract; and 2) Direct the Executive Director to present the executed Design-Build contract to the Board of Directors for ratification at the first meeting following execution.
Presented by: Christine Plasting, Procurement Manager
- Pg. 143 **Item #11: Amend VVTA's Employee Personnel Policy Benefits Contribution Rates, Revision 6; Initiate a Five Percent (5%) Wage Increase for All VVTA Staff; eliminate steps that will be below the statutory increase to minimum wage; and Include a Yearly Cost of Living Increase for Staff to be Reviewed by the VVTA Board Prior to Incorporation Into the VVTA Annual Budget.**
Recommendation: 1) Amend VVTA's Employee Personnel Policy Benefits Contribution Rates, Revision 6. 2) Initiate a five percent (5%) wage increase for all VVTA staff and amend the salary table to include the salary changes and to remove steps 5 through 10 made obsolete by the

increased minimum wage. **3) Amend VVTA's Compensation Policy by Updating the Range and Step Plan in accordance with Board direction and add a requirement that staff bring an item to the Board by April of each year, commencing in 2019 for consideration of a cost of living increase based upon the Consumer Price Index**
Presented by: Steven Riggs, Finance Director.

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Item #12: Closed Session.

BOARD BUSINESS

Personnel Matters - Government Code Section 54957(b)(1) – Public Employee Performance Evaluation. Title: Executive Director.

BOARD OF DIRECTORS COMMENTS

DATE OF NEXT MEETING

Monday, November 19th at 9:30 AM
Barstow City Council Chambers
220 East Mountain View Street
Barstow, CA 92311

ADJOURNMENT

Victor Valley Transit Acronym List

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ADA	Americans with Disabilities Act
APTA	American Public Transit Association
AQMP	Air Quality Management Plan
BAFO	Best and Final Offer
BEB	Battery Electric Bus
BOE	Board of Equalization
CALCOG	California Association of Councils of Governments
CALTRANS	California Department of Transportation
CARB	California Air Resources Board
CEQA	California Environmental Quality Act
CHP	California Highway Patrol
CIP	Capital Improvement Program
CMAQ	Congestion Mitigation and Air Quality
CMP	Congestion Management Program
CNG	Compressed Natural Gas
COG	Council of Governments
CSAC	California State Association of Counties
CTC	California Transportation Commission
CTC	County Transportation Commission
CTP	Comprehensive Transportation Plan
CTSA	Consolidated Transportation Services Agency
CTSGP-CTAF	California Transit Security Grant Program-California Transit Assistance Fund
DAC	Disadvantaged Communities
DBE	Disadvantaged Business Enterprise
DBELO	Disadvantaged Business Enterprise Liaison Officer
DOD	Department of Defense
DOT	Department of Transportation
E&H	Elderly and Handicapped
EEM	Environmental Enhancement and Mitigation
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
EPA	United States Environmental Protection Agency
ETC	Employee Transportation Coordinator
FAST	Fixing America's Surface Transportation ACT
FEIS	Final Environmental Impact Statements
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
GIMS	Geographic Information Mapping Systems
GIS	Geographic Information Systems
GPS	Global Positioning System
HOV	High-Occupancy Vehicle
IAS-FFA	Independent Auditors Statement for Federal Funding Allocation
ITS	Intelligent Transportation Systems
JPA	Joint Powers Authority
LACMTA	Los Angeles County Metropolitan Transportation Authority
LAP	Language Assistance Plan
LCFS	Low Carbon Fuel Standard
LCTOP	Low Carbon Transit Operations Program
LD	Liquidated Damages
LEED	Leadership in Energy and Environmental Design
LEP	Limited English Proficiency
LTF	Local Transportation Fund

Victor Valley Transit Acronym List

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MAP-21	Moving Ahead for Progress in the 21 st Century
MBTA	Morongo Basin Transit Authority
MDAQMD	Mojave Desert Air Quality Management District
MDT	Mobile Display Terminal
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
MTP	Metropolitan Transportation Planning
MTBP	Mass Transit Benefit Program
NEPA	National Environmental Policy Act of 1969
NTD	National Transit Database
OCTA	Orange County Transportation Authority
OWP	Overall Work Program
PASTACC	Public and Specialized Transportation Advisory and Coordinating Council
PCA	Personal Care Attendant
PTMISEA	Public Transportation Modernization Improvement and Service Enhancement
POP	Program of Projects
RCTC	Riverside County Transportation Commission
RDA	Redevelopment Agency
RTAC	Regional Transportation Agencies' Coalition
RTAP	Rural Technical Assistance Program
RTIP	Regional Transportation Improvement Program
RTP	Regional Transportation Plan
RTPA	Regional Transportation Planning Agencies
SBCTA	San Bernardino County Transportation Authority (formerly SANBAG)
SCAG	Southern California Association of Governments
SOV	Single-Occupant Vehicle
SRTP	Short Range Transit Plan
STAF	State Transit Assistance Funds
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
TAC	Technical Advisory Committee
TAM	Transit Asset Management
TCM	Transportation Control Measure
TDA	Transportation Development Act
TEA	Transportation Enhancement Activities
TEAM	Transportation Electronic Award and Management
TNC	Transportation Network Company
TOCP	Transit Operating and Capital Plan
TrAMS	Transit Award and Management System
TREP	Transportation Reimbursement Escort Program
TRIP	Transportation Reimbursement Incentive Program
TSSSDRA	Transit System Safety, Security and Disaster Response Account
TSM	Transportation Systems Management
ULEV	Ultra Low Emission Vehicle
UZAs	Urbanized Areas
VOMS	Vehicles Operated in Maximum Service
ZEB	Zero Emission Bus
ZEV	Zero Emission Vehicle

Victor Valley Transit Authority Meeting Procedures

The Ralph M. Brown Act is the state law which guarantees the public's right to attend and participate in meetings of local legislative bodies. These rules have been adopted by the Victor Valley Transit Authority (VVTA) Board of Directors in accordance with the Brown Act, Government Code 54950 et seq., and shall apply at all meetings of the (VVTA) Board of Directors.

1. **Agendas** - All agendas are posted at the VVTA Administrative offices, and the Victorville, Hesperia, Barstow and Apple Valley city/town halls at least 72 hours in advance of the meeting. Staff reports related to agenda items may be reviewed at the VVTA Administrative offices located at 17150 Smoke Tree Street, Hesperia, CA 92345.
2. **Agenda Actions** - Items listed on both the "Consent Calendar" and "Action/Discussion Items" contain suggested actions. The Board of Directors will generally consider items in the order listed on the agenda. However items may be considered in any order. New agenda items can be added and action taken by two-thirds vote of the Board of Directors.
3. **Closed Session Agenda Items** - Consideration of closed session items exclude members of the public. These items include issues related to personnel, pending litigation, labor negotiations and real estate negotiations. Prior to each closed session, the Chair will announce the subject matter of the closed session. If action is taken in closed session, the Chair may report the action to the public at the conclusion of the closed session.
4. **Public Testimony on an Item** - Members of the public are afforded an opportunity to comment on any listed item. Individuals wishing to address the Board of Directors should complete a "Request to Speak" form. A form must be completed for each item an individual wishes to speak on. When recognized by the Chair, speakers should be prepared to step forward and announce their name and address for the record. In the interest of facilitating the business of the Board, speakers are limited to three (3) minutes on each item. Additionally, a twelve (12) minute limitation is established for the total amount of time any one individual may address the Board at any one meeting. The Chair or a majority of the Board may establish a different time limit as appropriate, and parties to agenda items shall not be subject to the time limitations. If there is a Consent Calendar, it is considered a single item; thus the three (3) minute rule applies. Consent Calendar items can be pulled at Board member request and will be brought up individually at the specified time in the agenda allowing further public comment on those items.
5. **Public Comment** - At the beginning of the agenda an opportunity is also provided for members of the public to speak on any subject within VVTA's authority. Matters raised under "Public Comment" may not be acted upon at that meeting. The time limits established in Rule #4 still apply.
6. **Disruptive Conduct** - If any meeting of the Board is willfully disrupted by a person or by a group of persons so as to render the orderly conduct of the meeting impossible, the Chair may recess the meeting or order the person, group or groups of persons willfully disrupting the meeting to leave the meeting or to be removed from the meeting. Disruptive conduct includes addressing the Board without first being recognized, not addressing the subject before the Board, repetitiously addressing the same subject, failing to relinquish the podium when requested to do so, or otherwise preventing the Board from conducting its meeting in an orderly manner.

Please be aware that a NO SMOKING policy has been established for VVTA meetings. Your cooperation is appreciated!

VICTOR VALLEY TRANSIT AUTHORITY

MISSION STATEMENT

**Our mission is to serve the
community with excellent
public transportation
services in terms of quality,
efficiency, and
responsiveness.**

Quality

To increase ridership and community support by exceeding expectations.

Efficiency

To maintain an efficient operation that represents a highly-valued service.

Responsiveness

To provide services and facilities which are responsive to the needs of the community.

**AGENDA ITEM
ONE**

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VICTOR VALLEY TRANSIT AUTHORITY

AGENDA MATTER

Minutes from the Regular Meeting of the Board of Directors Conducted on September 17, 2018.

SUMMARY STATEMENT

Following are copies of the minutes from the regular meeting of the Board of Directors conducted on September 17, 2018.

RECOMMENDED ACTION

Move for approval.

PRESENTED BY	FISCAL IMPACT	MEETING DATE	ITEM NUMBER
Debi Lorrh, Clerk of the Board	N/A	October 15, 2018	1

**VICTOR VALLEY TRANSIT
REGULAR MEETING OF THE
BOARD OF DIRECTORS**

**September 17, 2018
MINUTES**

CALL TO ORDER

The Regular Meeting of the Board of Directors of the Victor Valley Transit Authority was called to order at 9:30 a.m. by Chair Rich Harpole at VVTA's offices at 17150 Smoke Tree Street, Hesperia, CA 92345.

ROLL CALL

Board Members Present: Chair Rich Harpole
Vice-Chair Barb Stanton
Director Larry Bird
Alternate-Director Eric Negrete
Alternate-Director John Woodard
Director Robert Lovingood
Alternate Director Sandy Baca

Staff Members Present:

Kevin Kane, VVTA	Jonathan McDowell, Transdev
Simon Herrera, VVTA	Steven Riggs, VVTA
Carol Greene, County Counsel	Debi Lorrah, VVTA
Aaron Moore, VVTA	Christine Plasting, VVTA
Nancie Goff, VVTA	Craig Barnes, VVTA
Marie Downing, VVTA	Christine Ortega, Transdev
Ro Ratliff, City of Victorville	Lora Sanchez, Transdev
Ron Zirges, VVTA	Fidel Gonzales, VVTA
Christine Ortega, Transdev	Nancy Strickert, SBCTA
Barbara Miller, VVTA	Sue Crane, Transdev
Denise Madrid, VVTA	Sylvia Harris, VVTA
Jazmin Castro, VVTA	David Flowers, VVTA
Barbara Miller, VVTA	Monica Zepeda, VVTA Intern

PLEDGE OF ALLEGIANCE

Director Bird led the audience in the pledge of allegiance.

ANNOUNCEMENTS

Mr. Kane thanked the Procurement Manager and the Senior Operations Manager for all their hard work obtaining signatures for both the Construction Manager and the Operations and Maintenance contracts prior to the Board meeting.

PUBLIC COMMENTS

Speaker: Nancy Strickert, SBCTA

Ms. Strickert stated that while the Unmet Needs Hearing took place in Barstow at the August 20th Board meeting, SBCTA will still take comments until November 30, 2018; these comments may be emailed to info@vvta.org or nstrickert@gosbcta.com as well as called in to VVTA customer service.

CONSENT CALENDAR

1. **Minutes from Public Hearing and Regular Meeting of The Board of Directors Conducted on August 20, 2018.**
Recommendation: Move for approval.
Presented by: None.
2. **Warrants, July 2018.**
Recommendation: Move for approval.
Presented by: None.
3. **Update to VVTA Personnel Policies and Procedures Manual to incorporate legislative changes and recommendations.**
Recommendation: Approve the amendment to VVTA's Personnel Policies and Procedures Manual to incorporate legislative changes and recommendations.
Presented by: None.
4. **Adopt Resolution 18-06 Destruction of Victor Valley Transit Authority records.**
Recommendation: Move for approval.
Presented by: None.

A MOTION WAS MADE BY Director Lovingood to approve the Consent Calendar. Seconded by Vice-Chair Stanton. The motion passed unanimously.

REPORTS

5. **Meeting Notes from The Technical Advisory Committee Meeting Conducted on September 5, 2018.**
Recommendation: Information item only.
6. **Management Reports for Hesperia and Barstow Divisions – Verbal Report from Executive Director.**
Recommendation: Information item only.

Mr. Kane stated that the reports are now substantially reduced as the Board requested and briefly reviewed the operations contractor invoice, which is below budget, as well as

ridership reports. Additionally, Mr. Kane pointed out that the Annual CTSA Metrics Report is included.

Vice-Chair Stanton inquired about different ways to get free passes to some of the non-profits in the area: Mr. Moore explained that there is a grant application process where consideration is given to all non-profits in the area that have submitted a request to VVTA. Mr. Moore also explained that United Way 211 is an umbrella for twelve (12) non-profits; they manage and distribute what fare media is issued to them.

Director Lovingood requested that VVTA provide the Board with a list of the non-profits that United Way 211 supports as well as a breakdown of their (United Way 211) corporate overhead at the October 15, 2018 meeting.

ACTION/DISCUSSION ITEMS

7. **VVTA Debt Management Policy (Policy no. 01.01.18).**

Recommendation: Approve VVTA Debt Management Policy (Policy no. 01.01.18)

Presented by: Steven Riggs, Finance Director.

Mr. Riggs said that SB1029 requires any agency issuing public debt have a policy in place using approved language to allow VVTA to issue public debt. This policy template was a customized policy for VVTA provided by PFM Asset Management and reviewed by VVTA Counsel.

A MOTION WAS MADE BY Director Lovingood to approve the recommended action. Seconded by Director Bird. The motion passed unanimously.

8. **Approve the issuance of a Not-to-Exceed amount of \$12 million of Certificates of Participation to pay for the Acquisition and Construction of Certain Improvements and Equipment to carry out the Purposes of VVTA in Constructing a New Maintenance Facility for its Barstow Division, and Approve the Form of the Financing documents and authorize VVTA's Executive Director to execute all necessary documents.**

Recommendation: Adopt Resolution 18-07 that approves the financing and form of documents, which include amendments to the trust agreement, lease agreement, and site agreement, and preliminary official statement and bond purchase agreement and authorize the Executive Director to execute all necessary documents to complete the transaction.

Presented by: Steven Riggs, Finance Director.

This item will allow VVTA to pursue funding via Certificates of Participation to build the Barstow Operations and Maintenance facility, Mr. Riggs explained. Additionally, Mr. Riggs stated that the structure for this COP issuance is identical to the previously approved issuance to build the Hesperia location. Mr. Riggs also explained that the current market interest rate is 4% and the bond coupon rate is currently 5%. If this rate remains the same, then the offering will provide a premium leaving the amount of

principal that VVTA will pay back less than the borrowed amount of \$10m. The item shows a not to exceed amount of \$12m to insure at least \$10m in project funding so that the facility is fully funded even if interest rates rise prior to issuance on October 11, 2018. Additional funds raised will be used to fund a Debt Service Reserve fund of \$633,000 and a Delivery Cost payment fund. Mr. Riggs noted that cost of issuance is currently estimated at \$263,000.

Mr. Kane mentioned that he and Mr. Riggs traveled to San Francisco for a presentation to PFM and Moody's in an effort to secure our credit rating; the presentation was successful with an A-2 credit rating and Mr. Riggs presentation was complimented by PFM staff as one of the best they have seen.

A MOTION WAS MADE BY Vice-Chair Stanton to approve the recommended action. Seconded by Alternate-Director Woodard. The motion passed unanimously.

9. **Ratify Contract #2018-16 with MARRS Services, Inc., for Construction Project Manager.**

Recommendation: Ratify Contract #2018-16 MARRS Service, Inc for the Construction Project Manager.

Presented by: Kevin Kane, Executive Director.

Mr. Kane stated that with this contract in place, the Construction Manager will assist with evaluations for the Design-Build award.

A MOTION WAS MADE BY Director Lovingood to approve the recommended action. Seconded by Vice-Chair Stanton. The motion passed unanimously.

10. **Ratify Contract #2018-14 with National Express Transit for Operations and Maintenance.**

Recommendation: Ratify Contract #2018-14 with National Express Transit for Operations and Maintenance.

Presented by: Kevin Kane, Executive Director.

VVTA staff worked hard on getting this contract finalized to present to the Board at this meeting. Mr. Kane also said that VVTA is working closely with Next management to ensure a smooth transition

A MOTION WAS MADE BY Alternate-Director Baca to approve the recommended action. Seconded by Alternate-Director Woodard. The motion passed unanimously.

11. **Closed Session.**

BOARD BUSINESS

Conference with Labor Negotiator per Government Code Section 54957.6(A) with Kevin Kane, Designated Labor Negotiator with regard to all other VVTA employees, with the exception of Executive Director.

Open Closed Session: 10:00 am

Ms. Greene stated that there is no reportable action from the closed session.

Close Closed Session: 10:45 am

PRESS CLIPS/CORRESPONDENCE

BOARD OF DIRECTORS COMMENTS

Director Bird said that he was honored to witness Vice-Chair Stanton's award from the California League of Cities. Chair Harpole mentioned that Vice-Chair Stanton will be missed and thanked her for her service over the years. Director Lovingood said that he has enjoyed a great relationship with Vice-Chair Stanton over the years. Alternate Directors Baca and Woodard said that they wish Vice-Chair Stanton well in her future. Alternate Director Negrete said that the Valley will miss Vice-Chair Stanton as it is hard to replace someone who contributes so much.

Vice-Chair Stanton stated that VVTA has the finest staff and she will retire knowing that the agency is in good hands.

Alternate-Director Woodard shared a slide that showed the detail of the future Rancho Adelanto City Center, including a City Hall expansion, medical offices and condominiums.

DATE OF NEXT MEETING

The next scheduled Board meeting will be on Monday, October 15, 2018 at 9:30 am at Victor Valley Transit Authority Board Room, 17150 Smoke Tree Street, Hesperia, CA 92345.

ADJOURNMENT

The meeting was adjourned at 10:46 am.

APPROVED: _____
Rich Harpole, Chair

ATTEST: _____
Debi Lorrach, Clerk of the Board

**AGENDA ITEM
TWO**

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VICTOR VALLEY TRANSIT AUTHORITY

AGENDA MATTER

Payrolls and Warrants for August 2018.

SUMMARY STATEMENT

The following registers of Payrolls and Warrants have been audited as required By Section 37202 and 37208 of the Government code, and said documents are accurate and correct.

Agency's Gross Payroll for Administrative Employees

<u>Payroll Date</u>	<u>Amount</u>	<u>Register#</u>
08/03/2018	\$ 64,992.24	PR0210-08-18
08/17/2018	\$ 63,713.00	PR0211-08-18
08/31/2018	\$ 62,601.40	PR0212-08-18
Total Payroll	\$ 191,306.64	

Agency's Register of Warrants

<u>Register Date</u>	<u>Amount</u>	<u>Check #</u>	<u>Register #</u>
08/03/2018	\$ 127,722.10	9424-9443	AP02128AAADCG
08/13/2018	\$ 1,425,847.66	9444-9462	AP02132AAADCK
08/17/2018	\$ 155,147.86	9463-9485	AP02137AAADCP
08/23/2018	\$ 104,830.99	9486-9507	AP02152AAADDE
08/30/2018	\$1,463,181.28	9508-9539	AP02156AAADDI
	\$ 3,276,729.89		

RECOMMENDED ACTION

Approve VVTA's expenditures for August 2018.

PRESENTED BY	FISCAL IMPACT	MEETING DATE	ITEM NUMBER
Steven Riggs, Finance Director	\$3,468,036.53	October 15, 2018	2

Bank Register Report

Victor Valley Transit Authority

August-18

Check Number	Date	Payee Name	Amount
009424	08/03/2018	ADArIde.com	\$6,839.50
009425	08/03/2018	Bonnie Baker Senior Center	\$2,894.65
009426	08/03/2018	Cryostar USA	\$3,429.25
009427	08/03/2018	Enterprise Ride Share	\$79,960.00
009428	08/03/2018	ENTERPRISE CAR SHARE	\$2,292.62
009429	08/03/2018	FRONTIER-OFFICE LINES	\$54.15
009430	08/03/2018	Frontier	\$94.39
009431	08/03/2018	Golden State Water Company	\$829.92
009432	08/03/2018	High Desert Laser Graphics	\$42.83
009433	08/03/2018	Knight Guard Alarm Services, LLC	\$375.00
009434	08/03/2018	Lincoln Financial Group	\$921.83
009435	08/03/2018	Loomis	\$395.95
009436	08/03/2018	Principal Life Insurance Company	\$2,013.60
009437	08/03/2018	Southern California Fleet Services Inc	\$6,668.03
009438	08/03/2018	Special District Risk Management	\$403.14
009439	08/03/2018	SOUTHWEST GAS CORPORATION	\$11.00
009440	08/03/2018	Trillium Solutions	\$4,200.00
009441	08/03/2018	Trona Community Senior Center	\$772.24
009442	08/03/2018	UCR Forecasting, LLC	\$3,250.00
009443	08/03/2018	City Of Victorville	\$12,274.00
009444	08/13/2018	BROADLUX	\$1,140.42
009445	08/13/2018	Southern California Edison-CNG	\$13,484.82
009446	08/13/2018	Southern California Edison	\$14,290.45
009447	08/13/2018	Frontier	\$280.42
009448	08/13/2018	Kevin Kane	\$1,750.91
009449	08/13/2018	Labor Finders	\$851.20
009450	08/13/2018	Public Surplus	\$1,464.00
009451	08/13/2018	Tolar Manufacturing Co., Inc	\$2,375.89
009452	08/13/2018	US BANK VOID	\$0.00
009453	08/13/2018	US BANK VOID	\$0.00
009454	08/13/2018	US BANK VOID	\$0.00
009455	08/13/2018	US BANK VOID	\$0.00
009456	08/13/2018	US BANK VOID	\$0.00
009457	08/13/2018	US BANK VOID	\$0.00
009458	08/13/2018	US BANK VOID	\$0.00
009459	08/13/2018	US BANK	\$29,744.78
009460	08/13/2018	Transdev	\$1,353,515.76
009461	08/13/2018	Verizon-Security Phones	\$5,238.56
009462	08/13/2018	Verizon	\$1,710.45
009463	08/17/2018	Allied Barton Security Services	\$4,351.20
009464	08/17/2018	BP Energy Company	\$56,345.81
009465	08/17/2018	SPECTRUM BUSINESS	\$134.17
009466	08/17/2018	Spectrum Business-Sec	\$90.00
009467	08/17/2018	Clean Energy	\$4,884.49
009468	08/17/2018	Daily Press	\$1,456.93
009469	08/17/2018	Diamond	\$162.49
009470	08/17/2018	Southern California Edison	\$1,239.07
009471	08/17/2018	GEOGRAPHICS	\$4,979.38
009472	08/17/2018	Golden State Water Company	\$900.73
009473	08/17/2018	Hesperia Chamber Of Commerce	\$420.00
009474	08/17/2018	HI-Desert Communications	\$1,308.00

009475	08/17/2018	Labor Finders	\$851.20
009476	08/17/2018	Letter Publications, Inc.	\$325.00
009477	08/17/2018	San Bernardino County	\$163.30
009478	08/17/2018	Special District Risk Management	\$30,685.68
009479	08/17/2018	Southwest Gas Corporation	\$42,632.46
009480	08/17/2018	Southwest Gas Corporation	\$521.53
009481	08/17/2018	Southwest Gas Corporation	\$52.64
009482	08/17/2018	Southwest Gas Corporation	\$68.10
009483	08/17/2018	State Compensation Insurance Fund	\$1,868.88
009484	08/17/2018	Type-Set-Go	\$1,206.80
009485	08/17/2018	V V College Dist. Foundation	\$500.00
009486	08/23/2018	Apple Valley Chamber Of Commerce	\$300.00
009487	08/23/2018	Lawrence Bird	\$125.00
009488	08/23/2018	SPECTRUM BUSINESS	\$1,948.23
009489	08/23/2018	Clean Energy	\$4,103.55
009490	08/23/2018	Southern California Edison	\$922.34
009491	08/23/2018	Flyers Energy LLC	\$49,329.67
009492	08/23/2018	Gloria L. Garcia	\$125.00
009493	08/23/2018	GFI Genfare	\$30,017.44
009494	08/23/2018	Richard Harpole	\$125.00
009495	08/23/2018	Labor Finders	\$851.20
009496	08/23/2018	Loomis	\$547.63
009497	08/23/2018	Robert Lovingood	\$125.00
009498	08/23/2018	Rise Interpreting Inc.	\$203.89
009499	08/23/2018	Ron Turley Associates, Inc	\$6,594.30
009500	08/23/2018	San Bernardino County	\$2,945.70
009501	08/23/2018	Southern California Fleet Services Inc	\$270.00
009502	08/23/2018	Shred Your Docs	\$65.00
009503	08/23/2018	Barbara Stanton	\$125.00
009504	08/23/2018	Type-Set-Go	\$457.94
009505	08/23/2018	VerizonBAT	\$952.03
009506	08/23/2018	Charles Meier	\$4,642.07
009507	08/23/2018	American Express	\$55.00
009508	08/30/2018	ADArIde.com	\$7,793.00
009509	08/30/2018	Bonnie Baker Senior Center	\$2,236.32
009510	08/30/2018	Clean Energy	\$4,975.51
009511	08/30/2018	Daily Press	\$339.40
009512	08/30/2018	Desert Communities FCU	\$40.00
009513	08/30/2018	ENTERPRISE CAR SHARE	\$1,269.61
009514	08/30/2018	Environmental Syst Research Inst	\$9,493.15
009515	08/30/2018	Federal Express Corp.	\$30.31
009516	08/30/2018	FRONTIER-OFFICE LINES	\$54.15
009517	08/30/2018	Frontier	\$212.79
009518	08/30/2018	GEOGRAPHICS	\$33.17
009519	08/30/2018	Labor Finders	\$680.96
009520	08/30/2018	Special District Risk Management	\$381.12
009521	08/30/2018	SONIC SYSTEMS IT	\$2,967.50
009522	08/30/2018	Southwest Gas Corporation	\$11.00
009523	08/30/2018	Syncromatics Corporation	\$2,700.00
009524	08/30/2018	Trona Community Senior Center	\$3,273.12
009525	08/30/2018	US BANK VOID	\$0.00
009526	08/30/2018	US BANK VOID	\$0.00
009527	08/30/2018	US BANK VOID	\$0.00
009528	08/30/2018	US BANK VOID	\$0.00
009529	08/30/2018	US BANK VOID	\$0.00
009530	08/30/2018	US BANK VOID	\$0.00
009531	08/30/2018	US BANK VOID	\$0.00
009532	08/30/2018	US BANK	\$22,284.30

009533	08/30/2018	Valley Tree Care	\$2,900.00
009534	08/30/2018	Transdev	\$1,389,926.78
009535	08/30/2018	City Of Victorville	\$500.00
009536	08/30/2018	City Of Victorville	\$6,118.08
009537	08/30/2018	Wirz And Co Printing Inc	\$1,987.99
009538	08/30/2018	Lincoln Financial Group	\$921.83
009539	08/30/2018	Principal Life Insurance Company	\$2,051.19
<hr/>			
TOTAL			\$3,276,729.89

**AGENDA ITEM
THREE**

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VICTOR VALLEY TRANSIT AUTHORITY

AGENDA MATTER

Amend Public Comment Polices on Service Changes and Fare Increases.

SUMMARY STATEMENT

VVTA's policies on Public Comment for Service Changes and Fare Increases were last updated on March 20, 1995. During VVTA's recent FTA Triennial Review, the auditor determined that while these policies described the public comment process for implementing major service changes and fare increases, they did not describe how these public comments are considered regarding decisions on implementing major service changes and fare increases.

With FTA concurrence, staff recommends the following language be added so that these policies will now address all the required elements for soliciting and considering public comments prior to a major service change or fare increase.

1. **VVTA Public Comment on Service Changes:** Added paragraph 2b, changed the verbiage of paragraph 4, and added paragraphs 5 and 6.
2. **VVTA Public Comment on Fare Increase:** Added paragraph 2b, changed the verbiage of paragraph 4, and added paragraphs 5 and 6.

RECOMMENDED ACTION

Ratify and approve amendment to VVTA's Public Comment on Service Changes and Public Comment on Fare Increases Policies to address FTA required elements.

PRESENTED BY	FISCAL IMPACT	MEETING DATE	ITEM NUMBER
None	None	October 15, 2018	3



VVTA Public Comment on Fare Increases

Organization Affected: VVTA Board of Directors

Effective Date: 10/15/2018

Approved by: Kevin Kane, Executive Director

As Authorized by the
Board of Directors on: 10/15/2018

Attest: Debi Lorrh, Clerk of the Board

POLICY / PROCEDURE NO. 1.02.18

PUBLIC COMMENT ON FARE INCREASES

The following procedures will be utilized to conduct a Public Hearing for the purposes of accepting public testimony regarding proposed fare increases.

A. Definition

1. **Public Hearing Notice.** Notice of a public hearing that includes: date, place, and specific purpose of the hearing.
2. **Fare Increase.** A proposed increase in the fare collected by the Authority for public transportation services.

B. Conditions and Procedures

1. Victor Valley Transit Authority shall ensure the establishment and implementation of a citizen participation process for the consideration of implementing an increase in public transportation fares.
 - a. A Fare Increase Public Hearing notice shall be publicly noticed, at least thirty (30) days in advance, in at least three locations accessible to the general public.
 - b. Said notice shall also be given at least thirty (30) days in advance through publication in a newspaper of general circulation.
2. Public Testimony presented at the fare increase public hearing may be either oral or written.

- a. A Fare Increase Public Hearing notice shall be publicly noticed, at least thirty (30) days in advance, in at least three locations accessible to the general public.
 - b. Staff will compile and summarize documentation of comments received prior to the Board meeting in which such proposed changes are scheduled for board action or review.
 - c. Said notice shall also be given at least thirty (30) days in advance through publication in a newspaper of general circulation.
 - d. Each person who addresses the Board shall state his/her name and address for the record, and state whether they are in favor of, or in opposition to, the proposed fare increase. Presentation time shall be limited to five (5) minutes or as defined by the Presiding Officer.
3. After a public hearing has been closed, no member of the public shall address the Board from the audience on the matter under consideration without first securing permission to do so by the Presiding Officer.
 4. The Board shall consider all public comments and deliberate the proposed increase before taking one of the following actions:
 - a. Render a decision.
 - b. Direct staff to provide them with additional information to be brought back to the Board for further consideration.
 5. Documentation of Board deliberations and disposition of comments will be made part of the meeting minutes.
 - a. Minutes of the major points made during the public comment process will be made part of the written record.
 6. Documentation of Public Comment and Responses.
 - a. VVTA will respond in a timely manner to questions or comments from the public concerning the public participation process. A summary analysis and report of disposition of comments may be made a part of the final plan (if applicable). Rationale for policy decisions will be available to the public in writing, if requested. Documentation will indicate the reason the suggestion should not be implemented.



VVTA Public Comment on Service Changes

Organization Affected: VVTA Board of Directors

Effective Date: 10/15/2018

Approved by: Kevin Kane, Executive Director

As Authorized by the
Board of Directors on: 10/15/2018

Attest: Debi Lorrh, Clerk of the Board

POLICY / PROCEDURE NO. 1.03.18

PUBLIC COMMENT ON SERVICE CHANGES

The following procedures will be utilized to conduct a Public Hearing for the purposes of accepting public testimony regarding proposed services changes.

A. Definition

1. **Public Hearing Notice.** Notice of a public hearing that includes: date, place, and specific purpose of the hearing.
2. **Service Change.** A change in service is defined by that which directly affects:
 - a. 25% or more of the number of transit route miles of a route;
 - b. 25% or more of the number of transit revenue vehicle miles of a route computed on a daily basis for the day of the week for which the change is made;
 - c. 25% or more of the ridership of a route computed on a daily basis for the day of the week for which the change is made; or
 - d. a new transit route is established.

Standard seasonal changes and emergencies are exempt from public hearing requirements unless the change will be in effect for more than 90 days.

Experimental service changes do not require public hearing unless the service becomes permanent. The hearing may be held during the period of experimental service, or the service discontinued and reinstated after the required public hearing

B. Procedures

1. The Victor Valley Transit Authority shall ensure the establishment and implementation of a citizen participation process for the consideration of implementing any service changes as described above.
 - a. A Service Change Public Hearing notice shall be publicly noticed, at least thirty (30) days in advance, in at least three locations accessible to the general public
 - b. Said notice shall also be given at least thirty (30) days in advance through publication in a newspaper of general circulation.
2. Public Testimony presented at the fare increase public hearing may be either oral or written.
 - a. Victor Valley Transit Authority staff may accept written testimony in favor of, or in opposition to, the proposed service changes. Said written testimony is to be submitted to VVTA staff up to the actual time of the public hearing.
 - b. **Staff will compile and summarize documentation of comments received prior to the Board meeting in which such proposed changes are scheduled for board action or review.**
 - c. Persons attending the public hearing who wish to address the Board on the proposed service changes are requested to complete a public comment card and return the card to the Clerk of the Board
 - d. Each person who addresses the Board shall state his/her name and address for the record, and state whether they are in favor of, or in opposition to, the proposed fare increase. Presentation time shall be limited to five (5) minutes or as defined by the Presiding Officer.
3. After a public hearing has been closed, no member of the public shall address the Board from the audience on the matter under consideration without first securing permission to do so by the Presiding Officer.
4. The Board shall **consider all public comments and** deliberate the proposed service changes before taking one of the following actions:

- a. Render a decision.

- b. Direct staff to provide them with additional information to be brought back to the Board for further consideration.
- 5. Documentation of Board deliberations and disposition of comments will be made part of the meeting minutes.
 - a. Minutes of the major points made during the public comment process will be made part of the written record.
- 6. Documentation of Public Comment and Responses.
 - a. VVTA will respond in a timely manner to questions or comments from the public concerning the public participation process. A summary analysis and report of disposition of comments may be made a part of the final plan (if applicable). Rationale for policy decisions will be available to the public in writing, if requested. Documentation will indicate the reason the suggestion should not be implemented.

**AGENDA ITEM
FOUR**

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VICTOR VALLEY TRANSIT AUTHORITY

AGENDA MATTER

Ratify Merchant Application and Agreement with Chase Paymentech for processing mobile ticketing and smart card fare collections.

SUMMARY STATEMENT

On September 18, 2017 the Authority's Board approved the addition of a mobile ticketing and smart card fare collection system to be added via the new Syncromatics ITS contract. Now that this new collection system is close to going live, a platform for collecting and processing the electronic fares is needed. VVTA staff requested proposals from three vendors, Vantiv, Merchant Services, and Chase Paymentech for processing the collected fares. Chase Paymentech, which is also used by other transit agencies in similar applications, provided the lowest bid with an average cost per ticket of just 1.3%.

VVTA's Executive Director executed the application and services agreement with Chase Paymentech on September 19, 2018.

RECOMMENDED ACTION

Ratify Merchant Application and Agreement with Chase Paymentech for processing mobile ticketing and smart card fare collections.

PRESENTED BY	FISCAL IMPACT	MEETING DATE	ITEM NUMBER
None	N/A	October 15, 2018	4

Select Merchant Application



Please print clearly. If you make any corrections to your information in the Application, you MUST initial each change.

THIS SECTION IS FOR INTERNAL USE		Rev. NAPSLECT 4/2018
Application ID: 9912974		Sales Rep: HOMER COWAN
Rep Fax:		Rep Phone: 214-849-2886

1. Merchant Business To help prevent the funding of terrorism and money laundering activities, Federal law and JP.MC policies require us to obtain, verify, and record information that identifies each person who opens an account. In order to comply with these requirements, we will ask for your business name, physical address, and government identification number in order to verify your identity.

A 'Doing Business As' (DBA) Information

Merchant DBA Name VICTOR VALLEY TRANSIT AUTHORITY			Business Start / Date of Incorporation 07 / 19 / 2018 (MM/DD/YYYY)
Address (No PO Box or Paid Mail Box) 17150 SMOKE TREE ST			Telephone # 760-948-4021
City HESPERIA	State CA	Zip Code 92345	Fax #
Name of Primary Contact STEVEN RIGGS		Merchant DBA Email Address sriggs@vvta.org	

B Legal Information

Merchant Legal Name VICTOR VALLEY TRANSIT AUTHORITY	State of Formation CA	Federal Tax ID/EIN 3 3 0 5 6 4 7 7 0
Business Type <input type="checkbox"/> Individual / Sole Proprietor <input type="checkbox"/> Private Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Partnership <input type="checkbox"/> Non-Profit		
<input type="checkbox"/> Public Corporation - Stock Exchange _____ Ticker Symbol _____ <input checked="" type="checkbox"/> Government Agency - Website URL: www.vvta.org		

Primary source of revenue for the legal entity transportation fees

If Government Owned or a Non Government Organization what is the primary source of funding? transportation fees

Does the merchant identify their legal entity as one of the following?

- Bank
- Non-Operating/Asset Holding Company (NOAH)
- Fund

If Fund selected, Does the legal entity invest money it receives from investors on a collective basis? No Yes

None of the above

Complete this section if different from DBA Information.

Address (No PO Box or Paid Mail Box) 17150 SMOKE TREE ST			Telephone # 760-995-3590
City HESPERIA	State CA	Zip Code 92345	Fax #
Legal Email Address sriggs@vvta.org			

(Application continues on next page)

C Taxpayer Information (For help, please consult the Instructions for IRS Form W-9, which are available upon request or online at www.irs.gov)

Taxpayer Name (as shown on Merchant's income tax return) VICTOR VALLEY TRANSIT AUTHORITY		Taxpayer Identification Number 3 3 0 5 6 4 7 7 0	
Business Name / disregarded entity name, if different from above			
Federal tax classification <input type="checkbox"/> Individual / Sole Proprietor or single-member LLC <input type="checkbox"/> Limited Liability Company. Enter the tax classification (C=C Corporation, S=S Corporation, P=Partnership) <input type="checkbox"/> Other		Exemptions (if any): Exempt payee code Exemption from FATCA reporting code	
Address 17150 SMOKE TREE ST		Requester's name and address Paymentech, LLC 8181 Communications Pkwy Plano, Texas 75024	
City HESPERIA	State CA	Zip Code 92345	

2. Merchant Profile

What merchandise do you sell or services do you provide? bus and transportation services	If Customers are required to pay a deposit, what % of total sale? %
Is your business seasonal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	What is your business industry type? <input type="checkbox"/> Retail <input type="checkbox"/> Restaurant <input type="checkbox"/> Lodging <input type="checkbox"/> Auto Rental <input type="checkbox"/> Cash Advance <input type="checkbox"/> Convenience Store/Gas <input type="checkbox"/> Other: <input checked="" type="checkbox"/> Internet - list all websites on which you accept payments and provide a customer service email address: www.vvta.org Customer Service Email Address:
Is your business home-based? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Do you ever charge a Customer on a recurring basis? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If "Yes" above, how often will you charge? <input type="checkbox"/> 30 Days <input type="checkbox"/> 60 Days <input type="checkbox"/> 90 Days <input type="checkbox"/> Annually <input type="checkbox"/> Other:	

3. Reporting, Statements, Chargeback Requests, and Retrieval Requests

Reporting and Statements – you may access transaction history and monthly statements online via Resource Online, or have your monthly statements emailed to you. <input checked="" type="checkbox"/> Resource Online. Set up a Resource Online account and use the following email address as the user login: sriggs@vvta.org	<input checked="" type="checkbox"/> Email Statements to the: <input checked="" type="checkbox"/> Legal email address <input type="checkbox"/> DBA email address	Chargeback and Retrieval Requests Mail Chargeback and Retrieval Requests to: <input checked="" type="checkbox"/> Legal address <input type="checkbox"/> DBA address
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4. Sales Information

What is the estimated annual breakdown (in %) of your annual Payment Card Transactions?

0 %	Via mail or phone order
100 %	Payments accepted on your website
0 %	Card is swiped
0 %	Card is present but keyed
100 %	Total

(Application continues on next page)

Do you have any additional owners not listed above that have 10% or greater ownership, either directly or indirectly?

Yes Owner/Officer Addendum required (Sales Representative will provide) No

Note: If an Entity/Parent Company is listed above in section 5 that has 10% or greater ownership of the applicant, please identify any owners (Individuals and/or Entities) of that Entity/Parent Company that ultimately have 10% or greater ownership in the applicant on the Additional Owner/Officer Addendum (Sales Representative will provide)

Is there anyone not listed above who has authority to make financial decisions or control company policy on behalf of your business?

Yes Owner/Officer Addendum required (Sales Representative will provide) No

Authorized Representative

Name of Authorized Representative/Controller KEVIN KANE		
Street Address (if individual provide home address. No PO Box or paid mailbox) 17150 SMOKE TREE ST		Country USA
City HESPERIA	State CA	Zip Code 92345

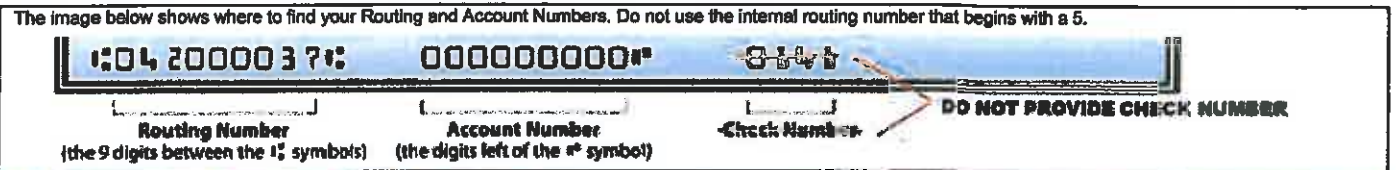
6. Funding and Account Information

The Merchant must own the bank account provided below and it shall be used by Merchant solely for business purposes and shall not be used for personal, family or household purposes. In accordance with the terms of the Agreement, Chase Paymentech may:

- deposit into this account amounts owed to Merchant by Chase Paymentech, such as proceeds from Merchant's Payment Card Transactions
- debit this account for amounts Merchant owes to Chase Paymentech associated with its Merchant account, such as fees for processing Merchant's Payment Card Transactions
- debit this account for any negative amounts presented, such as refunds, returns or Chargebacks

Merchant's Bank Account

Name of Financial Institution DESERT COMMUNITY BANK	Designating this bank account for the purposes outlined above must not violate any of Merchant's organizational documents or any agreement to which the Merchant is a party.
Routing Number (always consists of 9 digits) 1 2 2 2 3 7 7 0 6	Account Number (number of digits will vary) 8 0 9 5 0 0 2 2 6 0



7. Payment and Processing Information

If you have previously accepted payment cards, please include your three (3) most recent monthly processing statements.

Please check all payment methods you wish to accept: <input checked="" type="checkbox"/> Visa <input checked="" type="checkbox"/> MasterCard <input checked="" type="checkbox"/> Discover/JCB <input type="checkbox"/> Voyager <input type="checkbox"/> Wright Express <input type="checkbox"/> PIN Debit	Estimated Annual Visa/MasterCard/Discover/American Express* Sales Volume * American Express Volume should be included only if electing the OptBlue program in section 9 \$ 1,300,000
	Estimated Annual PIN Debit Sales Volume \$
	Estimated Average Ticket Amount (for all card types) \$ 3
	Highest Transaction Amount \$ 200

(Application continues on next page)

5. Ownership Information

If your business is privately owned by one or more individuals (e.g. LLC, Sole Prop, Partnership, or Private Corporation),

- ➔ Complete sections A and B for the owners with the greatest % of ownership.
- ➔ All owners listed below must sign the Application and Agreement in Section 10.
- ➔ Corporate Titles can be found below in Controlling Officer section

If your business is a US publicly traded on NYSE, NASDAQ or American Stock Exchange or US government entity,

- ➔ Complete section C only
- If an Entity/Parent Company owns your business,**
- ➔ Enter name and address of the legal entity(ies) in section A or A and B
- ➔ Complete Section C
- ➔ Substitute the parent company's Federal Tax ID for the SSN #

A Name of Individual/Sole Proprietor or Entity/Parent Company		Corporate Title	SSN/EIN*
Street Address (Individual/Sole Proprietor use home address) (No PO Box or paid mailbox)		Percentage of Ownership: %	
City	State	Zip Code	Date of Birth
(if Entity) Is Entity publicly traded? <input type="checkbox"/> No <input type="checkbox"/> Yes	Stock Exchange	Ticker Symbol	Country of Domicile
Telephone #			
* For Non-US Persons: Social Security Number, Passport Number and Country of Issuance or other similar identification number may be substituted. For Canadian individuals, this field is optional			
Government Issued ID #:		Type of ID (ex. Passport):	Country of Issuance:

B Name of Individual/Sole Proprietor or Entity/Parent Company		Corporate Title	SSN/EIN*
Street Address (Individual/Sole Proprietor use home address) (No PO Box or paid mailbox)		Percentage of Ownership: %	
City	State	Zip Code	Date of Birth
(if Entity) Is Entity publicly traded? <input type="checkbox"/> No <input type="checkbox"/> Yes	Stock Exchange	Ticker Symbol	Country of Domicile
Telephone #			
* For Non-US Persons: Social Security Number, Passport Number and Country of Issuance or other similar identification number may be substituted. For Canadian individuals, this field is optional			
Government Issued ID #:		Type of ID (ex. Passport):	Country of Issuance:

Controlling Officer – an individual with significant responsibility for managing the legal entity

Name		
Street Address (provide home address. No PO Box or paid mailbox)		Country
City	State	Zip Code

1 <input type="checkbox"/> Key Decision Maker i.e. Senior Mgr.	2 <input type="checkbox"/> Chairman	3 <input type="checkbox"/> Chief Executive Officer	4 <input type="checkbox"/> Chief Financial Officer
5 <input type="checkbox"/> Chief Operations Officer	6 <input type="checkbox"/> President	7 <input type="checkbox"/> Other (specify)	
DOB		SSN*	<input type="checkbox"/> Non-US Person (see below)

Selections (1-7) above require a Date of Birth (DOB) and SSN* (or if you selected "Non-Profit" in section 1B)

8 <input type="checkbox"/> Board of Directors (select)	<input type="checkbox"/> Voting	<input type="checkbox"/> Non-Voting
--	---------------------------------	-------------------------------------

* For Non-US Persons: Social Security Number, Passport Number and Country of Issuance or other similar identification number may be substituted. For Canadian individuals, this field is optional		
Government Issued ID #:	Type of ID (ex. Passport):	Country of Issuance:

(Application continues on next page)

8. IRS Certification

Under penalty of perjury, I certify that:

1. The number shown on this form (Section 1C) is my correct taxpayer Identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest in dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined in the Instructions), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification Instructions

You must cross out and initial #2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. IRS Form W-9 instructions are available upon request.

9. American Express check only one

Accept American Express (OptBlue Program). There is no need to contact American Express for an account.

Choose this option if your American Express annual processing volume is \$1,000,000.00 or less and you wish to accept American Express Payment Cards, Section 14 of the Terms and Conditions regarding participation in the American Express OptBlue Program will govern your rights and obligations regarding acceptance of the American Express Payment Cards and the settlement of the related Transactions. If you do choose this option, Merchant understands that, by signing below, Merchant agrees to participate in the American Express OptBlue Program, including consenting to the sharing of Merchant's data with American Express to allow American Express to directly communicate with Merchant as provided in section 14 of the Terms and Conditions.

**Please include your expected annual American Express Volume in the Estimated Annual Sales Volume amounts in section 7.*

***Your eligibility is subject to Merchant Segment approval and Franchise/Association Relationship review*

Accept American Express. (Corporate, Franchise, or large relationships with American Express)

Choose this option if your American Express processing volume is greater than \$1,000,000.00 (or you are an ineligible Merchant Segment, Franchise or unauthorized to participate in OptBlue as determined by American Express), and you wish to accept American Express Payment Cards, Section 4.3 of the Terms and Conditions regarding Conveyed Transactions will govern your rights and obligations regarding acceptance of the American Express Payment Cards and the settlement of the related Transactions.

Please enter your American Express SE# here: . If you do not have an American Express SE#, please contact American Express directly using the number provided and then advise us once you have obtained the information. (1-855-TAKE-AXP or 1-855-825-3297)

**When selecting this option do not include your American Express Volume in the Estimated Annual Sales Volume amounts in section 7.*

Accept American Express (Not OptBlue)

Choose this option if the Merchant qualifies for, but does not desire to participate in the American Express OptBlue Program or does not consent to the sharing of Merchant's data with American Express to allow American Express to directly communicate with Merchant, but Merchant does wish to accept American Express Cards, Section 4.3 of the Terms and Conditions regarding Conveyed Transactions will govern your rights and obligations regarding acceptance of the American Express Payment Cards and the settlement of the related Transactions.

Please enter your American Express SE# here: . If you do not have an American Express SE#, please contact American Express directly using the number provided and then advise us once you have obtained the information. (1-855-TAKE-AXP or 1-855-825-3297)

**When selecting this option do not include your American Express Volume in the Estimated Annual Sales Volume amounts in section 7.*

(Application continues on next page)

10. Authorized Representative(s)

This document is the Merchant's Application to establish a Merchant account with Paymentech, LLC ("Chase Paymentech") and JPMorgan Chase Bank, N.A. ("Member"). Once submitted, the Application belongs to Chase Paymentech and Member. Any application set up fee paid by Merchant is non-refundable. The Application is subject to approval by Chase Paymentech and Member. If the Application is approved, Chase Paymentech will establish one or more Merchant account(s). All Merchant accounts will be governed by the entire Agreement, which includes the Application, the Select Merchant Payment Processing Agreement, Schedule A (pricing), and any amendments, supplements or modifications provided to you.

I, the undersigned, certify:

- that I am an owner, partner, officer or other authorized representative of the Merchant ("Authorized Representative"); and
- that I am duly authorized to enter into agreements on behalf of Merchant and to legally bind Merchant to such agreements.

Furthermore, by signing below as an owner of Merchant, I authorize and instruct Chase Paymentech, Member or their designees to conduct the following in connection with establishing Merchant's account and maintaining the Agreement:

- obtain and use consumer credit reports (or other information derived therefrom) on me from time to time, and
- investigate and verify personal credit and financial information about me or any other owner identified in this Application or the Agreement (including within any amendment, addenda or attachment thereto)

By submitting this Application, Merchant, through the undersigned Authorized Representative:

- represents and warrants that the person submitting this Application is duly authorized to enter into agreements on behalf of Merchant and to legally bind Merchant to such agreements;
- represents and warrants that all information contained within the Application as well as any information submitted in conjunction with the Application is true, complete, and not misleading;
- represents and warrants that it owns the bank account provided in Section 6 and the account is being maintained solely for business purposes and not for personal, family or household purposes;
- understands that any unilateral changes to the pre-printed text of any part of the Application may result in Chase Paymentech declining Merchant's Application or terminating the Agreement;
- agrees that Chase Paymentech, Member, or their designees, may:
 - investigate and verify the credit and financial information of Merchant; and
 - obtain credit reports on Merchant from time to time and use them in connection with establishing Merchant's account and maintaining the Agreement; and
- agrees that Member and Chase Paymentech may share credit, financial information about Merchant and Chase Paymentech.

The Internal Revenue Service does not require your consent to any provision of this document other than the certification required to avoid backup withholding. (See Section 8 above).

Owner / Authorized Representative: Signer's name must appear in Section 5

X		Kevin Kane	Executive Director	09-19-2018
	Signature	Print Name	Title	Date

Owner / Authorized Representative: Signer's name must appear in Section 5

X				
	Signature	Print Name	Title	Date

If any of the information provided in this Merchant Application changes, you must promptly notify Merchant Services of such change(s)



Schedule A to Merchant Agreement

Merchant: **VICTOR VALLEY TRANSIT AUTHORITY**

NAPFINSCHEDAICPT2F 20180401 V3.18.1

Assumptions					
Transaction related assumptions		Other assumptions			
Payment Transaction Sales Volume	\$1,300,000	Number of locations	1		
Average Transaction Amount	\$3.00	Authorization / Capture %	105.0%		
PIN Debit / EBT Transactions	0	Chargebacks as % of Sales Transactions	0.0300%		
Conveyed Transactions	N/A	Billing Frequency	Monthly		
Safetech Encrypted Items	N/A				
Target Qualification Level:					
MasterCard:	Merit III	MM3	American Express:	Government - Tier 1	AMG1
Visa:	CPS Small Ticket	VCST	Discover:	PSL Express Services - Core	D162

1. Fees applied on every transaction

Payment Brand Interchange & any incremental discount rate % - MasterCard, Visa and Discover assess an Interchange Rate Assessment Fee and Network Fee for each transaction. American Express assesses a Wholesale Discount Rate and Network Fee for each transaction. These rates and fees will be passed through at cost. Payment Brand Interchange rates can be accessed by visiting the Support & Resources section of Chase Merchant Services website and selecting Interchange.

Interchange and Wholesale Discount Rates	as set by each Payment Brand
MasterCard, Visa & Discover Incremental Discount Rate	N/A
American Express Incremental Discount Rate	N/A
PIN Debit and/or EBT Network Fees	All standard PIN Debit Network Fees will be assessed
PIN Debit - Incremental Discount Rate	N/A
JCB (Japanese Credit Bureau)	N/A
Voyager Discount Rate (if settled)	N/A

Payment Brand Assessments		
MasterCard	Credit transactions < \$1000 and all Debit transactions	0.130%
	Credit transactions > \$1000	0.140%
Visa	Debit transactions	0.130%
	Credit transactions	0.130%
American Express OptiBlue Network Fee		0.150%
Discover		0.130%
MC File Transmission Fee per transaction *		\$0.0014

Payment Brand Network Fees	Credit	Debit
MasterCard Network Access & Brand Usage Fee (NABU) (Charged per Authorization & per Refund)	\$0.0195	\$0.0195
Visa Processing Fee (APF) (Charged per Authorization & per Refund)	\$0.0195	\$0.0155
Discover Data Usage Fee	\$0.0195	\$0.0195
Visa Financial Transaction Fee		\$0.0018

* MasterCard assesses a file transmission fee based on the number of bytes of data contained in a transmitted file. Because file size may vary from transaction to transaction, the parties acknowledge that it is not possible to accurately translate the byte based fee into a consistently accurate transaction-based fee. In light of the foregoing, the parties have agreed that Merchant shall pay Chase a fee in the amount stated above for each transaction submitted under this Agreement. Such fee shall be deemed to be the file transmission fee imposed by MasterCard on each transaction for all purposes of this Agreement, and Chase may change the amount of such fee in accordance with the terms of this Agreement in the event MasterCard changes the amount or calculation of its file transmission fee.

Transaction Fees	
MasterCard per transaction	N/A
Visa per transaction	N/A
Discover per transaction	N/A
JCB per transaction	N/A
American Express per transaction	N/A
PIN Debit per transaction	\$0.2000
EBT per transaction	N/A
Check Verification - Scan per transaction	N/A
Voyager per transaction	N/A
Wright Express per transaction	N/A
Hosted Pay Page per transaction	N/A

Authorization Fees	
MasterCard per authorization	\$0.0150
Visa per authorization	\$0.0150
Discover per authorization	\$0.0150
JCB per authorization	N/A
American Express per authorization	\$0.0150
Voyager per authorization	N/A
Wright Express per authorization	N/A
Private Label per authorization	N/A
Dial Backup authorization surcharge	N/A

Encryption Fees	
Safetech Encryption per transaction	N/A
Safetech Tokenization per transaction	N/A

Customer initials: x KK Please initial to acknowledge page 1 of the Schedule A pricing sheet

2. One Time and Periodic Fees					
One Time Fees		Monthly Fees		Annual Fees	
Account Setup Fee	N/A	Monthly Service Fee ¹	\$5.00	Annual Fee	N/A
Rush Fee	N/A	Monthly Minimum Fee ²	\$25.00	Payment Brand Fees	
Terminal Reprogram Fee	N/A	Monthly Helpdesk Fee	N/A	Visa Fixed Acquirer Network Fee ⁴	Varies
PIN Debit Setup Fee	N/A	Online Reporting Tool	N/A	MC Merchant Location Fee ⁵	\$1.25
PIN Pad Encryption Fee	N/A	Safetech Encryption ³	N/A		
Internet Product: Orbital Gateway					
Setup fee	N/A	Monthly fee	N/A		
Third Party Setup fee	N/A	Third Party Monthly fee	N/A		


- 1 – Monthly service fees will be debited for the first time in the month after your account has been set up. These fees will be debited regardless of whether you are processing transactions through your account.
- 2 – We will apply the Monthly Minimum Fee only when the total amount of all processing fees (Sections 1, 3A, & 4) is less than \$25.00. If your processing fees do not reach \$25.00, we will charge the difference. For example, if processing fees total \$17.00 we would charge an additional \$8.00 to meet the \$25.00 minimum.
- 3 – If Merchant obtains point of sale device(s) from Chase for use with Safetech Encryption, the following additional fees shall be assessed: (a) a one-time fee of \$10.90 per device, and (b) an encryption injection fee of \$34.95 per device per occurrence. These assessments are in addition to the above Safetech Encryption Fee(s). If Merchant obtains point of sale device(s) from a third party, additional fees may apply. Merchant acknowledges and understands that its use of any fraud mitigation or security enforcement solution (e.g. an encryption product or service), whether provided to merchant by Chase or a third party, in no way limits Merchant's obligation to comply with the Security Standards or Merchant's liabilities set forth in this Agreement.
- 4 – Visa Fixed Acquirer Network Fee is a monthly fee assessed by Visa based on Merchant Category Code (MCC), dollar volume, number of merchant locations, number of Tax IDs, and whether the physical Visa card is present or not present at the time of the transaction. This fee can vary monthly.
- 5 – MC Merchant Location Fee of \$1.25 will be applicable for each month with \$200 or more in MasterCard volume. This fee will be assessed annually in May based on the previous 12 months activity.

3. Per Incidence Fees		
3A. Per Incidence Fees: Charged every time your account incurs one of the below items		
Chargeback Fee	\$10.00	Charged when a cardholder or card-issuing bank formally protests a charge
Voice Authorization Fee	\$0.65	Charged when you call the Voice Authorization phone number to authorize a credit card
AVS Fee – Electronic	N/A	Charge for each electronic address verification authorization
Batch Settlement Fee	N/A	Charged for each batch of transaction(s) you submit for settlement
ACH fee	N/A	Charged for each ACH (transmission of funds) sent to your account
ACH Return Fee	\$25.00	Charged when Chase is unable to debit fees from your account
3B. Per Request Fees: Charged every time you request one of the below items		
Statement Fee (Email / ROL)	N/A	No charge if statements are sent to a valid email address or accessed by Merchant through Resource Online, as elected by Merchant on the Application.
Statement Fee (Mail)	\$5.00	Charged each month Chase mails a statement (whether at the request of Merchant or because delivery to a valid email address has failed)
Statement Fee (Reprint)	N/A	Charged for each archived statement you request to have printed
Supplies: Billed Per Order	N/A	Charges for supply orders vary based on the items ordered
Dynamic Debit Surcharge Fee	N/A	Charged for each PIN Debit transaction routed with the Dynamic Routing product
PIN Debit Injection Fee	\$40.00	Charged when merchant elects PIN Debit processing and applies to each device not purchased from Chase.
Statement Type:	Resource Online	No Statement / No Recap
Statement Frequency:	N/A	

Customer initials	x <u>KK</u>	Please initial to acknowledge page 2 of the Schedule A pricing sheet
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4. Payment Brand Fees – Per Incidence		
MC Acquiring License Fee *	0.004%	Charged on MasterCard Gross Sales volume. See additional information under Payment Brand Charges section on page 4.
MC Digital Enablement / Card Not Present Fee	0.010%	Charged on MasterCard Card Not Present Gross Sales volume.
AX OptBlue Card Not Present Fee	0.300%	Charged on American Express Card Not Present Gross Sales volume.
AX OptBlue Application-initiated Fee	0.300%	Charged on American Express transactions initiated by a digital wallet application.
Discover Network Authorization Fee	\$0.0025	Charged by Discover on all authorizations for card transactions that are settled through the Discover Network
MC Auth Access Fee – AVS Card Present	\$0.010	Charged by MasterCard when a merchant uses the address verification service to validate a cardholder address
MC Auth Access Fee – AVS Card Not Present	\$0.010	
MC Auth Access Fee	\$0.005	Charged by MasterCard when an authorization is reversed or the authorization is provided by MasterCard if the card Issuer is not available.
MC Card Validation Code 2 Fee	\$0.0025	Charged by MasterCard when a merchant submits the Card Validation Code 2 (CVC2) in an authorization request
MC SecureCode Transaction Fee	\$0.030	Charged on MC SecureCode transactions that are sent for verification.
MC Account Status Fee (Intra-regional)	\$0.025	Charged by MasterCard or Visa when a merchant uses this service to do an inquiry that a card number is valid
MC Account Status Fee (Inter-regional)	\$0.03	
Visa Zero \$ Account Verification Fee	\$0.025	
MC Processing Integrity Fee Pre Authorization	\$0.045	Charged when a card is authorized but not deposited and the authorization is not reversed in a timely manner. * the minimum fee amount for a Final Authorization is \$0.04
Final Authorization *	0.250%	
Visa Misuse of Authorization Fee	\$0.093	
Visa Zero Floor Limit Fee	\$0.20	Charged when a transaction is deposited but never authorized
Visa Transaction Integrity Fee – Credit	\$0.10	Charged on Visa transactions that do not meet qualification criteria for US Custom Payment Service (CPS) categories.
Visa Transaction Integrity Fee – Debit / Prepaid	\$0.10	
MC Ineligible Chargeback Blocking Fee	\$3.00	Charged when a fraud related Chargeback is blocked by MasterCard.
MC Cross Border Assessment Fee	0.60%	Charged by MasterCard, Visa, American Express, and Discover on foreign bank issued cards.
Visa International Service Assessment Fee	0.80%	
AX OptBlue International Fee	0.40%	
Discover International Service Fee	0.80%	
MC International Support Fee	0.85%	Additional fee charged by MasterCard, Visa and Discover on foreign bank issued cards.
Visa Interregional Acquiring Fee	0.45%	
Discover International Processing Fee	0.50%	
Visa Partial Auth Non-Participation Fee	\$0.01	Applies to Petroleum merchants using automated fuel pumps that do not support Partial Authorization
MC Global Wholesale Travel Transaction Program B2B Fee	1.57%	Applies to Travel merchants for transactions qualifying at the MasterCard Commercial Business-to-Business interchange category.
Visa Global B2B Virtual Payment Service Fee	1.55%	Applies to Travel merchants for transactions qualifying at the Visa Global B2B Virtual Payments interchange category.
MC Humanitarian Program Fee	0.25%	Applies to transactions qualifying at the MasterCard Humanitarian Prepaid card interchange category. When this fee applies, other MC Payment Brand fees will be waived.

5. Other Fees			
Fee Description	Amount	Fee Description	Amount

Customer initials	x 	Please initial to acknowledge page 3 of the Schedule A pricing sheet
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Equipment Swap Fees

Type	Description	Fee
Replacement Fee (swap)	In Warranty - Terminals, Printers, & Pinpads ¹	\$50.00
Replacement Fee (swap)	Out of warranty - Terminals, Printers, & Pinpads: Replacement (swap) fees vary based on Manufacturer and Model and will fall within the specified range to the right	\$100 - \$250
Injection Fee (swap)	Safetech Encryption Injection	\$34.95
Late Fee	For all equipment returned late, or not returned	\$500.00

1) Equipment: In Warranty timeframe

1 Year – applies only to new equipment purchased from Chase

Amount payable upon Termination

In addition to the other amounts due under this Agreement (including without limitation, the fees and charges described in this Schedule A), you may owe an amount in the event you terminate this Agreement. Whether you will owe that amount, and how much you will owe, will be determined in accordance with Section 10 of the Merchant Agreement.

Payment Brand Charges

Part of the fees that we charge you for processing your transactions consist of fees we pay to the Payment Brands. These charges, called "Payment Brand Charges", include, but are not limited to, interchange rates, assessments, file transmission fees, access fees, and international and cross border fees. Therefore, in addition to the rates set forth above, you also will be charged Payment Brand Charges. Payment Brand interchange rates can be accessed online by visiting the Learning & Resources section of Chase Merchant Service's website, and selecting "Understanding Interchange".

Please note that Paymentech, LLC ("Chase") may, from time to time, elect not to charge you for certain existing, new or increased Payment Brand Charges. If we elect not to charge you, we still reserve the right to begin charging you for existing, new or increased Payment Brand Charges at any time in the future, upon notice to you. No such Payment Brand Charges will be imposed retroactively.

* MasterCard assesses the MasterCard Acquiring License Fee annually to each Acquirer based on the total annual volume of MasterCard-branded sales (excluding Maestro PIN debit volume) of its U.S. domiciled merchants. To fairly distribute the fee across all Chase MasterCard-accepting merchants, a rate of 0.004% will be applied to all of your MasterCard gross sales transactions.

NOTICE REQUIRED BY AMERICAN EXPRESS: American Express requires that Chase inform you that (i) American Express charges Chase a wholesale discount rate and not interchange and (ii) American Express operates a non-interchange based network.

6. Authorized Signature

Authorized Representative Signature: Must appear on Merchant Application section 10

Kevin Kane Executive Director
 Print Name Title

x [Signature] 9/19/18
 Signature Date

Please ensure you have initialed pages 1, 2 and 3

U.S. SELECT MERCHANT PROCESSING AGREEMENT

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U.S. SELECT MERCHANT PROCESSING AGREEMENT

THIS U.S. SELECT MERCHANT PROCESSING AGREEMENT (the "Agreement") is entered into by and between JPMorgan Chase Bank, N.A., a national banking association ("Chase"), Paymentech, LLC, ("Paymentech") a Delaware limited liability company, and VICTOR VALLEY TRANSIT AUTHORITY, an entity duly organized under the laws of CALIFORNIA ("Merchant").

WHEREAS, Chase is a member of several Card Networks and Paymentech is authorized, through Chase, to process the Merchant's Transactions, and

WHEREAS, Merchant wishes to accept Cards from its Customers as a method of payment for goods or services offered by Merchant,

ACCORDINGLY, in consideration of the mutual promises made and the mutual benefits to be derived from this Agreement, Paymentech, Chase and Merchant agree to the following terms and conditions intending to be legally bound

1. Services; Exclusivity; Compliance with Applicable laws and Card Network Rules.

1.1 Services.

Paymentech agrees to provide authorization, conveyance, settlement and related services with respect to Merchant's Transactions, together with those additional ancillary services identified or described in any schedule, addendum or amendment hereto (the "Services") The parties acknowledge that the pricing set forth in this Agreement, and Paymentech's ability to provide the Services set forth herein is dependent upon satisfactory completion of a technical discovery process related to Merchant's specific technical implementation requirements. In the event that such process reveals any significant costs, expenses, development requirements or technical obstacles not currently known to Paymentech and which materially impact Paymentech's ability to implement and provide the Services for Merchant (or the cost to Paymentech of doing so), the parties agree to discuss such issues in good faith in an attempt to resolve such issues, provided, however, that in the event that such matters cannot be resolved in a manner satisfactory to Paymentech, Paymentech shall be entitled to terminate the Agreement with no further obligation hereunder. Except as otherwise agreed in writing between the parties, this Agreement shall apply only to Merchant's Transactions originating in the U.S.

1.2 Exclusivity.

Paymentech shall be Merchant's exclusive provider of the Services with respect to those methods of payment supported by Paymentech, and accepted by Merchant for its bus fare payment card program. Without limiting the generality of the foregoing, Merchant agrees that it will send to Paymentech exclusively (and not to any other merchant acquirer) all of its Transactions for its bus fare payment card program involving Eligible Chase Cards for processing under this Agreement.

1.3 Compliance with Applicable Laws and Card Network Rules.

Merchant agrees to comply with all Card Network Rules for any Card accepted by Merchant, including, without limitation, those specific Card Network Rules required by the Card Networks to be included in every processing agreement which are set forth on Schedule B, Certain Specific Card Network Requirements, attached hereto. Merchant shall not, through act or omission, cause Paymentech or Chase to violate any Card Network Rules. Merchant shall perform its obligations under this Agreement in compliance with all applicable federal, state and local laws and regulations and shall not submit any Transaction that it knows to be illegal. Merchant acknowledges receipt of the Chase Requirements and agrees to abide by the Chase Requirements with respect to all Chase Transactions. Paymentech reserves the right to refuse to process any Transaction prepared in violation of any provision of this Agreement, applicable law, or the Card Network Rules.

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Merchant agrees to pay any and all fines, fees, penalties, liabilities, charges and other amounts which may be imposed or assessed by the Card Networks on Merchant, Chase or Paymentech as a result of Merchant's actions, omissions, Transactions or Chargebacks, including without limitation, Merchant's failure to comply with the Card Network Rules, Chase Requirements, this Agreement or Security Standards (the "Card Network Liabilities"). Paymentech shall provide Merchant with prompt written notification of any Card Network Liabilities of which it receives notification from the Card Networks. In the event that Merchant desires to contest or appeal any such Card Network Liabilities, and such contest or appeal is permitted under the applicable Card Network Rules, Paymentech shall reasonably assist and cooperate with Merchant, and reasonably advocate on Merchant's behalf, in connection with such contest or appeal, provided, however, that Merchant shall be responsible for the payment of any appeal fees or other direct costs associated therewith.

1.4 Chase Pay

If Paymentech makes Chase Pay available to Merchant and Merchant decides to implement Chase Pay, then the terms of this Section shall apply to the Parties.

- (a) Support. Merchant and Paymentech shall integrate, implement and support Chase Pay, and accept Chase Pay Transactions: (i) at Merchant's retail Points-of-Sale (via the Chase Pay Application and/or the Merchant Application, if any), (ii) within the Merchant Application (if any), or (iii) on any of Merchant's online or mobile ecommerce website(s) (via the Chase Pay "button").
- (b) Technical and Security Requirements. Paymentech will provide or make available to Merchant all technical specifications and requirements (including, but not limited to, all required software development kits ("SDKs")) and security requirements (including, without limitation, Chase's authentication requirements for any Merchant mobile-application(s) in which Chase Pay is enabled), and Merchant shall comply with such specifications and requirements in connection with the development, testing, enablement, operationalization, and processing of Chase Pay Transactions. To the extent Merchant utilizes any fraud screening or prevention technologies, tools or other measures with respect to its Transactions, Merchant agrees to utilize the same technologies, tools or measures for its Chase Pay Transactions (to the extent such technologies, tools or measures can be reasonably applied to Chase Pay Transactions).
- (c) Acceptance Technologies. Except as may otherwise be agreed between the parties, Paymentech shall provide or license (or sublicense) to Merchant, and Merchant shall use, the Acceptance Technologies in connection with acceptance of Chase Pay Transactions at the Point of Sale. Without limiting the generality of the immediately preceding sentence, Merchant represents, warrants and covenants that when processing Chase Pay Transactions at a Point of Sale, (i) any data or information (including, without limitation, Card Information and other payment credentials) captured, obtained or processed by Merchant from or through the Acceptance Technologies in connection with a Chase Pay Transaction will pass through Merchant's systems only on a transitory basis and will not be retained, stored, copied, or saved (including on any backup system or server's random access memory), and (ii) Merchant will not (and will not attempt to) reverse engineer, encrypt or decrypt, reveal, convert to readable form or otherwise access any information or data captured from or during transmission by or through the Acceptance Technologies other than as expressly permitted by the applicable Acceptance Technologies specifications, provided, however, that the foregoing shall not prevent Merchant from receiving, utilizing, retaining, storing and/or saving any payment tokens or other Chase Pay Transaction data which Paymentech may provide to Merchant separately and apart from its use of the Acceptance Technologies for use in connection with the processing of post-transaction activity (e.g. refunds, recurring billing, etc.). If the applicable Acceptance Technology is licensed by Paymentech from a third party, then the applicable Acceptance Technologies may include pass-through sublicense terms that Merchant must comply with. The Acceptance Technologies provided by Paymentech to Merchant may be updated from time to time, and Merchant will implement each such update communicated by Paymentech to Merchant within six (6) months of the update being received by Merchant, or such shorter time as Paymentech may require in its commercially reasonable discretion if necessary to address a third party claim of intellectual property infringement or to remediate a significant security, interoperability, or functional defect.
- (d) Intellectual Property and Trademarks. Paymentech and its respective licensors will retain ownership of all of their trademarks, service marks and logos, and SDKs, application program interfaces ("APIs") and other technology developed, acquired or licensed by any of them (other than any SDKs, APIs or technology licensed to Paymentech by Merchant or its affiliate under this Agreement), and all derivative

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works thereof and all related intellectual property rights therein (collectively "Chase IP"). Except for any license expressly provided in this Agreement, nothing in this Agreement grants or transfers to Merchant any rights in Chase IP. No party will use any other party's trademarks or service marks in any marketing materials without the other party's prior written approval, and a party may withdraw any such approval(s) by giving the other party reasonable prior notice of the same. Any party's use of the other party's trademarks under this Agreement shall be limited to the approved use, for the marketing, promotion, and administration of the acceptance of Chase Transactions, and in compliance with such other party's current brand guidelines, as the same may be provided by each party to the other from time to time. Notwithstanding the foregoing, Chase shall be entitled to identify Merchant by name as a Chase Pay acceptor, and specify Merchant locations accepting Chase Pay (by address or otherwise), including, without limitation within a directory of Chase Pay acceptors, on a map displaying each location) within the Chase Application or on Chase's website.

- (e) **Non-Discrimination and Complaints.** Merchant agrees that it will not in any way discourage Chase Pay usage or discriminate against or disadvantage Chase Pay or Chase Pay Transactions (relative to customers using, or Transactions involving, other payment methods), including, without limitation, by excluding them from receiving or participating in any discounts, rebates, savings, offers, incentives, or loyalty program benefits, points or rewards, which may offered by Merchant to its Customers using other methods of payment. Merchant will reasonably notify Paymentech of any material issues or complaints of Chase Customers related to the acceptance of Chase Pay Transactions at Merchant and to address any such issues that require such cooperation to resolve. Merchant shall cooperate reasonably (such cooperation including, but not limited to, making any requested or required changes) with any Paymentech inquiry or concern regarding Merchant's or Paymentech's compliance with any applicable law with respect to this Agreement.

2. Authorization and Settlement.

2.1 Submission of Data

Merchant shall submit all of its Transactions to Paymentech electronically in accordance with Paymentech's standard protocols, specifications, formats and procedures for the creation and transmission of data to Paymentech. Paymentech shall not be liable or responsible for (i) the authenticity, or accuracy, of transaction data received from Merchant, or (ii) the corruption, loss, alteration, theft, or destruction of Transactions or Transaction data, during transmission of such data to Paymentech (by Merchant or its service provider), and Paymentech shall be entitled to rely on data received from or on behalf of Merchant in the discharge of its obligations hereunder.

2.2 Authorizations.

Merchant shall obtain an authorization code through Paymentech for each Transaction and Paymentech reserves the right to refuse to process any Transaction presented by Merchant unless it includes a proper authorization. Merchant acknowledges that authorization of a Transaction does not constitute a representation from Paymentech, a Card Network, or a card issuing bank that a particular Transaction is in fact valid or undisputed.

2.3 Merchant's Settlement Account.

Merchant shall designate and maintain one or more accounts to be used exclusively for business purposes and that are capable of receiving ACH or wire transfers and that permit Paymentech to debit and credit such account for amounts due under this Agreement (collectively referred to as "Settlement Account"). During the term of this Agreement, and for 180 days thereafter or such longer period of time as Paymentech may notify Merchant is reasonably required for the payments of amounts due under this Agreement, Merchant shall not close or revoke its consent to debit its Settlement Account without giving Paymentech at least five (5) business days' prior written notice and designating another Settlement Account. Merchant shall be liable for all fees, costs, and overdrafts associated with the Settlement Account. Merchant authorizes Paymentech or its authorized agent(s) to initiate electronic credit and debit entries (via ACH, wire transfer, or other means) to the Settlement Account, or to any other bank account designated by Merchant in writing, at any time and from time to time, for amounts due under this Agreement, without regard to the source of any monies therein, and this authority will remain in full force and effect until all amounts which are or may reasonably become due from Merchant under this Agreement have been paid in full.

2.4 Transfer of Settlement Funds.

Paymentech shall submit Merchant's Transactions to the applicable Card Network. Promptly after Paymentech receives funds for Merchant's Transactions from the applicable Card Network, Paymentech will fund the Settlement Account. Transactions received after the established cutoff time will be combined with the next business day's transactions. Paymentech will not be liable for any delays in receipt of funds or errors in Settlement Account entries caused by third parties, including, without limitation, delays or errors by the Card Networks or Merchant's bank. The funds payable to Merchant in this Section shall be equal to the total Transaction amounts minus the sum of the following: (a) all fees, charges, and other amounts described on Schedule A or that Merchant has otherwise agreed to pay; (b) all Chargebacks and Refunds; (c) any required Reserve Account amounts; (d) any Card Network Liabilities. Merchant agrees that all fees and other amounts are due and payable at the time the Services are performed or such fees or amounts are incurred. In the event Paymentech does not deduct any such amounts from Merchant's proceeds when such amounts first become due and payable, Paymentech may collect such amounts in any manner set forth for the collection of amounts due, as set forth in this Agreement.

2.5 Collection of Amounts Due.

In addition to any other rights and remedies Paymentech may have under this Agreement, Paymentech may pursue one or more of the following options with respect to amounts due under this Agreement:

- (a) withhold all or some of Merchant's settlement funds (or any other funds that would otherwise be payable by Paymentech to Merchant) and apply them against the amounts due;
- (b) debit the Settlement Account for the amounts due;
- (c) request and receive prompt payment for such amounts; and
- (d) apply funds held in any existing Reserve Account against the amounts due.

2.6 Reserve Account.

if:

- (a) there is a material adverse change in Merchant's financial condition or its payment record with creditors, or Merchant fails to comply with its obligations in [Section 9.1](#) or [Section 9.2](#);
- (b) Merchant begins accepting payment in advance of the shipment of goods or fulfillment of services, or materially increases the amount of time between Merchant's acceptance of payment and the anticipated shipment or delivery of goods or fulfillment of services;
- (c) Merchant receives a number of Chargebacks in excess of 1% of its total number of Transactions over a period of sixty (60) or more consecutive days, or Paymentech is notified by any Card Network of Merchant's inclusion in any chargeback monitoring or similar risk-based program, or of any Card Network Liabilities to be assessed as a result of Merchant's Chargebacks;
- (d) Paymentech has received notification from any Card Network(s) or has otherwise become aware of any material violation of the Card Network Rule(s), causing Paymentech to believe that it is reasonably likely to be subject to Card Network Liabilities;
- (e) either party provides notification of non-renewal or termination of this Agreement, or this Agreement is terminated for any reason; or
- (f) required by Paymentech, and communicated to Merchant in writing prior to the execution of this Agreement, as a condition of Paymentech's entering into this Agreement and communicated in writing to Merchant;

then Paymentech may designate an amount of funds that shall be funded by Merchant and maintained by Paymentech to protect Paymentech against the reasonably anticipated risk associated with Merchant's account (such funds being hereinafter referred to as the "Reserve Account"). Any required Reserve Account shall be due upon request, and may be collected by Paymentech in any manner provided in this Agreement for the collection of amounts due. The amount of such Reserve Account shall not exceed the sum of (i) one month's average fees including without limitation, processing fees, interchange assessments and third-party fees collected by Paymentech; plus (ii) one month's average monthly Chargebacks multiplied by six; plus (iii) one month's average monthly Refunds multiplied by two; plus (iv) the aggregate value of Transactions, if any, submitted by Merchant to Paymentech with respect to goods and/or services not yet delivered to Customers; plus (v) the amount of any Card Network Liabilities reasonably anticipated by Paymentech. For purposes of this calculation, each monthly average shall be calculated over the immediately preceding consecutive twelve (12) month period (or, if Paymentech has not yet been processing for

Merchant for twelve (12) consecutive months, such shorter period of time as Paymentech may have been processing for Merchant or the parties may otherwise agree) Paymentech may (but is not required to) apply funds in the Reserve Account toward, and set off any funds that would otherwise be payable by Paymentech to Merchant against, the satisfaction of any amounts due from Merchant pursuant to this Agreement. Funds in the Reserve Account will be held and controlled by Paymentech, will not bear interest, and may be commingled with other funds, (but will be accounted for separately) Merchant shall have no interest in the Reserve Account other than a contingent right to receive funds, as set forth below. Reserve Accounts (and Paymentech's right to require a Reserve Account after termination of this Agreement as set forth above) shall survive termination of the Agreement. Upon satisfaction of all of Merchant's reasonably anticipated obligations under this Agreement and the expiration of the applicable timeframes for Chargebacks (as set by the various Card Networks), Paymentech will return to Merchant any unused funds remaining in the Reserve Account. In addition, upon Merchant's request from time to time, but in no event more than once per month, Paymentech will review the risk associated with Merchant's account and as needed adjust the amount currently held in the Reserve Account and return to Merchant any funds in the Reserve Account which Paymentech no longer believes to be reasonably necessary to cover the remaining risk.

3. Online Reporting.

Paymentech will provide online access to reporting reflecting the activity of Merchant's account(s) and allowing Merchant to generate detailed statements of such activity. Merchant agrees that it has responsibility to monitor its account activity and that it waives all claims against Paymentech for any errors that are not reported to Paymentech within 190 days from the posting of the activity in Merchant's online account report.

4. Future Deliverables, Installment Sales, and Deferred Payment; Refunds; Chargeback Liability.

4.1 Future Deliverables.

Unless Merchant has notified Paymentech on its Application or Paymentech has otherwise agreed in writing in advance, Merchant shall not submit Transactions to Paymentech (including in connection with any installment sales or deferred payment plans) until (i) the goods are delivered or shipped or (ii) the services are performed. The foregoing restriction applies to installment sales, deferred payment plans and recurring transactions.

4.2 Refunds.

To the extent required by the Card Network rules, Merchant shall maintain a written policy with regards to Refunds and shall disclose or make available such policy to its customers. Upon request, Merchant shall make such policy available to Paymentech. Merchant shall not accept any payment from a Customer as consideration for issuing a Refund. Except to the extent permitted by the Card Network Rules or expressly required by applicable law, Merchant shall not give cash (or cash equivalent) refunds to a Customer in connection with a prior Transaction. Unless otherwise required by the Chase Requirements or Card Network rules, any Refunds shall be prepared and submitted to Paymentech within three (3) days of Merchant's approval of Customer's request for such Refund. Merchant has liability for all Refunds it submits or submitted by its representatives, Merchant shall have liability for all Refunds submitted by Merchant, its employees, agents or representatives. In addition, Merchant shall have liability for Refunds submitted by third parties using Merchant's identification number without Merchant's authorization, except where such third party obtained Merchant's identification number as a result of the negligence of Paymentech.

4.3 Chargeback Liability.

Merchant shall have full liability for all Chargebacks assessed to Paymentech in accordance with the applicable Card Network Rules; provided, however, that (i) in the event that any Chargeback is ultimately reversed in favor of Merchant, Paymentech shall refund Merchant for the amount thereof, and (ii) Merchant shall not be liable for Chargebacks resulting from consumer-initiated, fraudulent Chase Pay Transactions made at Merchant except to the extent that Merchant or any of its employees, affiliates, agents, vendors or Service Providers is complicit in the fraudulent activity. For purposes of the foregoing, consumer-initiated fraudulent Chase Pay Transactions means sales that are initiated through activities such as the unauthorized use of a lost/stolen mobile device or other unauthorized use of a Chase Card to process a Chase Pay Transaction at Merchant. Merchant shall use reasonable efforts to provide Paymentech with all necessary data relating to the investigation and management of the fraud that is reasonably requested by Paymentech (such data to be used by Paymentech and Chase for fraud protection and prevention purposes only).

5. Fees; Adjustments.

5.1 Schedule A.

Merchant shall pay all fees and amounts (e.g. interchange and assessments) set forth on Schedule A. Unless otherwise indicated on Schedule A, Merchant shall be solely responsible for all communication expenses required to transmit Transactions to Paymentech. For each file or batch submitted by Merchant, Paymentech will group the Transaction data by Transaction characteristics, including, without limitation, type of Transaction, method of payment, and interchange qualification category. For each such group, Paymentech will calculate the applicable fees to two decimal places. The fees for each will be rounded to the nearest full cent using conventional mathematical rounding logic for currency.

5.2 Price Adjustments.

Fees set forth in this Agreement are based upon Merchant's annual volume, average Transaction size, as set forth in Schedule A, or in any amendment to this Agreement, and other information provided by Merchant. To the extent any of the foregoing proves to be materially inaccurate, Paymentech may modify Merchant's pricing set forth in this Agreement upon thirty (30) days' prior written notice, provided, however, that in such event, Merchant shall be entitled to terminate this Agreement by providing Paymentech with notice of termination no later than 180 days after Merchant's receipt of notification of such increase. In addition, Merchant's fees may be adjusted to reflect (i) increases by Card Networks in interchange, assessments, (ii) other Card Network fees, additional fees imposed by the Card Networks, or (iii) increases in third party fees identified in this Agreement, Schedule A or as otherwise agreed by the parties in writing. Merchant shall pay all such fees, as so adjusted. Each such adjustment shall become effective upon the date the corresponding increase or additional fee is implemented by the Card Network or third party provider.

6. Termination.

6.1 Term.

This Agreement takes effect upon the date on which it first becomes signed by all parties hereto (i.e. the date on which the last party to the Agreement signs), and continues for three (3) years from such date. Unless otherwise terminated by either party as provided in this Agreement, this Agreement will automatically renew for successive one-year terms. Either party may give notice of non-renewal of this Agreement in writing no more than ninety (90) days and no less than thirty (30) days prior to any expiration date.

6.2 Events of Default.

In the event that either party fails in any material respect to comply with any provision, term, warranty, condition, covenant, or agreement contained in this Agreement, including, without limitation, the Card Network Rules and Security Standards, or any representation in this Agreement is or was false or incorrect in any material respect when made (any such event, an "Event of Default"), and such party fails to cure such Event of Default within thirty (30) days of its receipt of written notification from the non-defaulting party specifying such Event of Default, then the non-defaulting party shall be entitled to terminate this Agreement upon written notice of termination; provided, however, that no cure period shall be allowed, and Paymentech shall be entitled to terminate this Agreement immediately, in the event that Merchant fails in any material respect to perform any of its obligations with respect to the funding or establishing of a Reserve Account, as detailed in Section 2.6 above.

6.3 Other Termination Events.

In addition, Paymentech shall be entitled to terminate this Agreement immediately upon written notice to Merchant in the event of any of the following:

- (a) Merchant is placed in any Chargeback monitoring or similar risk-based program designated by any Card Network for merchants with high levels of Chargebacks or presenting high levels of risk, and are not removed from such program by the applicable Card Network within 90 days;
- (b) Paymentech reasonably determines Merchant, based on its financial statements, payment record with creditors, and other relevant factors, to be financially insecure and unlikely to be able to meet its obligations under this Agreement;
- (c) any Card Network (i) notifies Paymentech or Chase that it is no longer willing to accept Merchant's Transactions; (ii) requires Paymentech or Chase to terminate or limit this Agreement or Merchant's

- ability to accept Cards; or (iii) imposes unduly burdensome, costly or impractical conditions or requirements relating to Merchant or Merchant's transactions.
- (d) a party or any individual entity or organization holding any material ownership interest in such party or any officer or director of such party, is determined at any time to be an individual, entity, or organization (i) with whom the other parties are prohibited from dealing by any United States law, regulation or executive order, including names appearing on the U.S. Department of Treasury's Office of Foreign Asset Control's Specially Designated Nationals and Blocked Persons List, or (ii) that is listed in one or more databases of terminated or high risk merchants maintained by the Card Networks;
 - (e) Merchant (i) ceases to exist (other than as a result of a permitted assignment or sale by such party) or to conduct its normal and customary business operations, (ii) becomes involved in a material violation of applicable law or other domestic or foreign law or regulation, (iii) engages in bribery, fraud, money laundering or corruption, (iv) is convicted of or pleads no contest to a felony charge, or (v) otherwise becomes the subject of public disrepute, contempt, or scandal that Paymentech reasonably determines may cause a material adverse impact on the reputation and goodwill of Paymentech, Chase, or any Card Network, regardless of whether such controversy relates to this Agreement,
 - (f) Merchant is in material breach or default of any term, condition, covenant, representation, or warranty contained in any credit facility, loan document or other agreement between Merchant and Chase or any affiliate of Chase (and such breach is not cured in any applicable cure period provided in such document); or
 - (g) Merchant does not transmit Transactions to Paymentech for a period of more than 180 consecutive days.

6.4 Account Activity After Termination.

After termination of this Agreement, Merchant shall continue to be liable for Chargebacks, Refunds, fees, Card Network Liabilities, credits, and adjustments resulting from or relating to Transactions processed pursuant to this Agreement. If Merchant submits Transactions to Paymentech after the date of termination, Paymentech may, but is not required to process such Transactions in accordance with and subject to all of the terms of this Agreement.

7. Indemnification.

7.1 Paymentech.

Paymentech agrees to indemnify and hold harmless Merchant and its affiliates, officers, directors, employees, and agents from any losses, liabilities, and damages of any and every kind (including, without limitation, Merchant's costs, expenses, and reasonable attorneys' fees) arising out of any third party claim or complaint relating to: (a) Paymentech's noncompliance with Card Network Rules, the Security Standards, or the terms of this Agreement or (b) a Data Compromise Event of Paymentech or its service providers, (c) any voluntary or involuntary bankruptcy or insolvency proceeding by or against Paymentech; (d) Paymentech's violation of applicable federal, state and local laws and regulations. This indemnification does not apply to any claim or complaint to the extent caused by Merchant's own negligence, recklessness or willful misconduct. The indemnification provided under this Section shall survive termination and is subject to the limitation of liability set forth in Section 11 of this Agreement.

7.2 Merchant.

Merchant agrees to indemnify and hold harmless Paymentech, the Card Networks, and their respective affiliates, officers, directors, employees, agents, and sponsoring banks from any losses, liabilities, and damages of any and every kind (including, without limitation, costs, expenses, and reasonable attorneys' fees) arising out of any third party claim or complaint and relating to: (a) any dispute concerning a Transaction of goods or services sold by Merchant; (b) Merchant's noncompliance with the Card Network Rules or the Security Standards, or the terms of this Agreement; or (c) a Data Compromise Event of Merchant or its Service Providers, (d) any voluntary or involuntary bankruptcy or insolvency proceeding by or against Merchant, or (e) Merchant's violation of applicable federal, state and local laws and regulations. This indemnification does not apply to any claim or complaint to the extent it is caused by Paymentech's own negligence, recklessness or willful misconduct. The indemnification provided under this Section shall survive termination and is subject to the limitation of liability set forth in Section 11 of this Agreement.

7.3 General.

Whenever an indemnified person believes it is entitled to indemnification hereunder with respect to a claim, the indemnified person will provide the indemnitor with prompt written notification of such claim (it being understood that failure to provide such notice promptly will not relieve indemnitor of its obligation to defend such

claim as long as the indemnitor's ability to defend the claim was not materially prejudiced by such failure), and the indemnified person will tender the sole control of the defense and settlement of the indemnified claim to indemnitor. When the indemnitor assumes the defense of a claim, the indemnified person will reasonably cooperate with indemnitor in the defense of the claim. No settlement or compromise that imposes any liability or obligation on any indemnified person will be made without the indemnified person's prior written consent (not to be unreasonably withheld).

8. Confidential Information; Use of Data; Card Industry Compliance.

8.1 Confidentiality.

- (a) Each party has made and will continue to make available to the other party information that is not generally known to the public and at the time of disclosure is identified as, or would reasonably be understood by the receiving party to be, proprietary or confidential ("Confidential Information"). Confidential Information may be disclosed in oral, written, visual, electronic or other form. Information meeting the definition of Confidential Information that is disclosed by a party during the term of this Agreement and that is not otherwise subject to a separate nondisclosure agreement between the parties will be considered Confidential Information, even if the information is unrelated to this Agreement or the Services to be provided hereunder. Each party's Confidential Information includes its (i) business plans, strategies, forecasts, projects and analyses, (ii) financial information and fee structures (including Paymentech's pricing and pricing proposals); (iii) business processes, methods and models; (iv) employee, customer, dealer, business partner and supplier information; (v) hardware and system designs, architectures, structure and protocols, (vi) product and service specifications and (vii) the terms of this Agreement. The following information shall be deemed the Confidential Information of Paymentech (i) any SOCI (Disclosure of Service Organization Control Report No. 1), SSAE-16 or 3SAE-18 (Statement on Standards for Attestation Engagements No. 16 or No. 18) report provided by Paymentech; (ii) any attestation of compliance or similar letter or report provided by Paymentech with respect to its compliance with the Security Standards; (iii) any data and information (including data analytics and attribution data) about Chase Customers provided to Merchant by Paymentech or any of its affiliates; (iv) Card Information associated with a Chase Card or Chase Customer; and (v) the fact that any Customer(s) is/are a Chase Customer. For Transactions that are processed under this Agreement, information (other than Card Information associated with a Chase Card) that is customarily part of the payment transaction (e.g., transaction date and amount) may be utilized by each of the parties subject to the Security Standards, Card Network and Chase Requirements, as applicable, and shall not be deemed the Confidential Information of any party.
- (b) Except as otherwise permitted under this Agreement or with the prior written consent of the disclosing party, the receiving party will not disclose, transmit or otherwise disseminate in any manner whatsoever any Confidential Information of the disclosing party to any third party. The receiving party will use the same care and discretion to avoid disclosure, publication or dissemination of any Confidential Information received from the disclosing party as the receiving party uses with its own similar information that it does not wish to disclose, publish or disseminate (but in no event less than a reasonable degree of care). Paymentech and Chase may disclose Merchant's Confidential Information: (i) to the Card Networks in connection with the processing of Transactions and the provision of ancillary services (including services made available directly through the Card Networks such as Address Verification and Account Updater, if used by Merchant) and activity for which such disclosure is otherwise required (e.g., Retrieval Requests, Chargeback adjudication, fraud detection and prevention), (ii) to its or its subcontractors' employees, consultants or agents for the purpose of performing its obligations under this Agreement and only to those who are obligated to maintain the confidentiality of Merchant's Confidential Information upon terms similar to those contained in this Agreement; and (iii) as may be necessary by reason of legal, accounting or regulatory requirements.
- (c) The obligations set forth in this Section do not apply to this Agreement in as much as Merchant is a public agency required by law to seek approval from its governing Board to enter into this Agreement and by which process this Agreement will go to the Freedom of Information Act and available for public viewing, and any Confidential Information that the receiving party can demonstrate (i) the receiving party possessed prior to disclosure by the disclosing party, without an obligation of confidentiality, (ii) is or becomes publicly available without breach of this Agreement by the receiving party, (iii) is or was independently developed by the receiving party without the use of any Confidential Information of the disclosing party, or (iv) is or was received by the receiving party from a third party that does not have

Commented [GR1]: Moved in a separate section below for clarity

an obligation of confidentiality to the disclosing party or its Affiliates. Either party may disclose the terms of this Agreement to potential parties to acquisition, divestiture or similar transactions to facilitate due diligence and closing of the transaction, provided that potential party is subject to written non-disclosure obligations and limitations on use only for the prospective or closed transaction, each party to that transaction using commercially reasonable efforts to limit the extent of the disclosure.

- (d) If the receiving party is legally required to disclose any Confidential Information of the disclosing party in connection with any legal or regulatory proceeding, the receiving party will, if lawfully permitted to do so, endeavor to notify the disclosing party within a reasonable time prior to disclosure and to allow the disclosing party a reasonable opportunity to seek appropriate protective measures or other remedies prior to disclosure and/or waive compliance with the terms of this Agreement. If these protective measures or other remedies are not obtained, or the disclosing party waives compliance with the terms of this Agreement, the receiving party may disclose only that portion of that Confidential Information that it is, according to the opinion of counsel, legally required to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to that Confidential Information. However, nothing contained in this Agreement will restrict Paymentech's or Chase's ability to disclose Merchant's Confidential Information to regulatory or governmental bodies asserting jurisdiction over Paymentech or its affiliates.
- (e) Merchant is a public agency required by law to seek approval from its Governing Board to enter into this Agreement, and pursuant to the Freedom of Information act, this Agreement must be available for public viewing in accordance with mandatory law. For the avoidance of doubt, Merchant's compliance with the law shall not be deemed a breach of this Section 8.1.

8.2 Use of Data.

Certain Merchant Confidential Information, including without limitation, financial information, information related to Merchant's Transactions, and other information that Merchant provides to Paymentech may be shared by Paymentech or Chase with its affiliates and the Card Networks. This may include the sharing or exchanging of Merchant information for the purposes of ~~administering any selected data requests for compliance with anti-refund use~~ ~~representing and administering such requests, and, in some cases,~~ servicing and managing Merchant's account. ~~The information that may be shared or otherwise exchanged may include Merchant's name, identification/account number, transaction volume, card summary, status with Paymentech (e.g. the existence and terms of this Agreement, whether Merchant's application was accepted or declined, and whether this Agreement has terminated or expired), and such other information that is reasonably necessary for the purposes described above.~~ The information that may be shared or otherwise exchanged may include Merchant's name, identification/account number, transaction volume, card summary, status with Paymentech (e.g. the existence and terms of this Agreement, whether Merchant's application was accepted or declined, and whether this Agreement has terminated or expired), Merchant's status with Referral Partner (e.g. membership or participation in any Referral Partner organization or program), and such other information that is reasonably necessary for the purposes described above. Merchant understands and agrees that Paymentech shall not be responsible for Referral Partner's subsequent use or disclosure of such information. Except as otherwise agreed by the parties in writing, Paymentech shall not otherwise use or disclose such information other than: (a) as necessary to process Merchant's transactions or otherwise provide services and maintain Merchant's account pursuant to this Agreement; (b) for Paymentech's and Chase's internal and operational purposes; (c) to monitor, detect, prevent, reduce, or otherwise address fraud, risk, security, or technical issues; (d) to enhance or improve Paymentech's and Chase's products and services generally; or (e) as required or permitted by the Card Networks or applicable law. Paymentech and Chase may use and/or share with third parties information derived from Transactions provided that it is either aggregated or de-identified (meaning that reasonable steps have been taken to ensure that the information does not identify Merchant and does not identify any individual person). Except as otherwise agreed by the parties in writing, Paymentech shall not otherwise use or disclose such information other than: (a) as necessary to process Merchant's Transactions or otherwise provide services and maintain Merchant's account pursuant to this Agreement, (b) for Paymentech's and Chase's internal and operational purposes, (c) to monitor, detect, prevent, reduce, or otherwise address fraud, risk, security, or technical issues, (d) to enhance or improve Paymentech's and Chase's products and services generally, or (e) as required or permitted by the Card Networks or applicable law. Paymentech and Chase may use and/or share with third parties information derived from Transactions provided that it is either aggregated or de-identified (meaning that reasonable steps have been taken to ensure that the information does not identify Merchant and does not identify any individual person).

8.3 Payment Card Industry Compliance.

- (a) Each party agrees to comply with all applicable Security Standards
- (b) Merchant further agrees to provide Paymentech, upon its request, with such tests, scans, and assessments of Merchant's compliance with Security Standards as may from time to time be required by the Card Network Rules in order for Paymentech to confirm or validate Merchant's compliance with the Security Standards.
- (c) Merchant understands that its or its Service Providers failure to comply with the Card Network Rules, including the Security Standards, may result in Card Network Liabilities for which Merchant shall be responsible
- (d) Merchant shall immediately notify Paymentech of its use of any Service Provider(s), and Merchant is responsible for ensuring that any and all Service Providers and third-party payment software or applications used by Merchant to transmit, store or process Card Information, are compliant with all applicable Security Standards and appropriately registered with, or otherwise recognized as being compliant with the Security Standards, by all applicable Card Networks.
- (e) If a forensic examination of Merchant or any of Merchant's Service Providers is required pursuant to the Card Network Rules, Merchant agrees to engage an approved PCI Forensic Investigator ("PFI") (a list of which is available from the PCI Council), and cause such forensic examination to be completed within the timeframe required by the Card Network Rules, and cooperate with the PFI in connection therewith. Notwithstanding the foregoing, the Card Networks may directly engage, or demand that Paymentech engage, an examiner on behalf of the Merchant in order to expedite the investigation of a suspected Data Compromise Event, and/or may require Paymentech to investigate such Data Compromise Event. Merchant agrees to pay for all costs and expenses related to any required forensic examination. Furthermore, if Merchant is undergoing a forensic investigation at the time this Agreement is executed, Merchant shall fully cooperate with the investigation and agrees to continue so cooperating until the investigation is completed.

8.4 Access to Information.

Merchant shall be responsible for ensuring that only employees and representatives with a need to know shall have access to Card Information. Merchant may, from time to time, designate certain employees or representatives for which Paymentech shall provide access (via login credentials or otherwise) to Merchant reporting, which may include access to Card Information. Merchant shall be responsible for any unauthorized access to such information or any unauthorized transactions submitted, utilizing the login credentials of Merchant's employees and representatives. In the event that any employee or other representative previously designated by Merchant to Paymentech for purposes of allowing such access, Merchant agrees to notify Paymentech promptly in the event such representative ceases to be employed by or associated with Merchant, or otherwise no longer has a reasonable business need to retain such access.

9. Information About Merchant and Merchant's Business.

9.1 Additional Financial Information.

Unless Merchant is a publicly-traded company current in its required filings with the United States Securities and Exchange Commission, upon five (5) business days' written notice, Merchant agrees to furnish to Paymentech (i) complete audited financial statements of Merchant (or such lesser format financial statements of Merchant as Paymentech may agree to accept) from the most recently completed fiscal year if such request occurs more than 120 days after the end of such fiscal year, and otherwise from the fiscal year immediately prior thereto, and (ii) its most recently prepared interim financial statements.

9.2 Other Information.

Merchant agrees to provide Paymentech at least thirty (30) days' prior written notice of: (i) any significant changes to the nature of its business, product lines or services, (ii) Merchant beginning to accept payment in advance of the shipment of goods or fulfillment of services, or materially increasing the amount of time between acceptance of payment and the anticipated delivery or shipment of goods or fulfillment of services, (iii) any sale of all or substantially all of the assets of Merchant, or (iv) any person or entity becoming the beneficial owner, directly or indirectly, of securities representing more than fifty percent (50%) of the combined voting power of Merchant's securities, or otherwise acquiring voting control of Merchant. If Paymentech determines such a change is material to its relationship with Merchant, Paymentech may refuse to process Transactions made subsequent to the change or

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terminate this Agreement. Merchant agrees to provide Paymentech with prompt written notice if Merchant is the subject of any voluntary or involuntary bankruptcy or insolvency petition or proceeding.

10. ChaseNet Availability.

Paymentech reserves the right to suspend or discontinue the processing of Merchant's eligible Transactions as Chase Transactions in the event Chase's agreement with Visa, Inc. which provides for Paymentech's ability to process Chase Transactions should expire or terminate for any reason, in which case Transactions involving Eligible Chase Cards (i.e. Transactions which would otherwise have been processed as Chase Transactions and/or Chase Pay Transactions) shall be processed as regular Visa Transactions subject to Visa pricing as set forth on Schedule A and normal Visa interchange rates; provided, however, that Paymentech shall provide at least 60 days' prior written notice of such event where Paymentech is reasonably able to do so (or such shorter period of notice as Paymentech may otherwise be reasonably able to provide) Merchant, at its discretion, may terminate this Agreement with 30 days written notice upon receiving notice under this paragraph.

11. Limitations of Liability; Disclaimer of Warranties.

Under no circumstances will Paymentech's and Chase's combined financial liabilities arising out of or related to this Agreement exceed the total fees paid to Paymentech under this Agreement (net of Card Network and other third party fees including, without limitation, Interchange, assessments, and Card Network Liabilities) for the six months prior to the time the liability arose; provided, however, that such limitation shall not apply with respect to Paymentech's indemnity obligations with respect to a Data Compromise Event pursuant to Section 7.1(b). EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, IN NO EVENT WILL ANY PARTY, ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR LOST PROFITS, REGARDLESS OF THE FORM OF ACTION AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ANY CARD NETWORK LIABILITIES SHALL BE DEEMED TO BE DIRECT DAMAGES. ALL PARTIES ACKNOWLEDGE THAT THIS IS AN AGREEMENT FOR COMMERCIAL SERVICES. THE UNIFORM COMMERCIAL CODE DOES NOT APPLY AND PAYMENTECH AND CHASE HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER PERSON, REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM, OR USAGE OF TRADE) OF ANY SERVICES PROVIDED UNDER THIS AGREEMENT OR ANY GOODS PROVIDED INCIDENTAL TO SUCH SERVICES.

12. Liquidated Damages Intentionally Omitted.

Commented [SR2]: VVTA requests deletion of this section. As a public agency VVTA is precluded from paying for services it did not receive.

13. Miscellaneous.

13.1 Taxes

The fees described in this Agreement are exclusive of all taxes. Unless Merchant is otherwise exempt, and, if applicable, provides a valid exemption certificate, Merchant agrees to pay all applicable taxes and similar charges however designated (other than taxes assessed on Paymentech's net income) including sales, use, property, lease, excise, goods and services, value added, gross receipts and like taxes (Taxes) which are imposed by any governmental authority on the Services, equipment, supplies, software, intellectual property and other goods provided under this Agreement. Merchant also agrees to pay any Taxes imposed on interchange, assessment or other third party fees collected by Paymentech pursuant to this Agreement. Merchant authorizes Paymentech to increase the amount collected from Merchant to reflect any and all such Taxes and any assessments or increases in the Taxes imposed on such sale or lease of the Services, equipment, supplies, software, intellectual property and other goods provided under this Agreement.

Commented [SR3]: We don't understand this sentence. Can you give an example?

Commented [GR4R3]: For example, if the Card Networks' interchange rates are subject to a specific tax, separate and apart from taxes on Paymentech-provided services, you would agree to pay that tax as well.

13.2 Section Headings.

The section headings of this Agreement are for convenience only and do not define, limit, or describe the scope or intent of this Agreement.

13.3 Assignment; Other Events.

- (a) Paymentech may not transfer or assign this Agreement, in whole or in part, without the prior written consent of Merchant, not to be unreasonably withheld, except that such prior written consent shall not

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be required in connection with (i) the transfer of all or substantially all of the merchant acquiring business of Paymentech (whether by merger, stock sale, asset sale or otherwise), (ii) an internal reorganization resulting in an assignment or transfer to an affiliate of Paymentech, or (iii) as permitted under the Card Network rules, the substitution of another Card Network member for Chase, as the member bank under whose sponsorship the Services are provided.

- (b) Merchant may not transfer or assign this Agreement without the prior written consent of Paymentech, not to be unreasonably withheld subject to Paymentech's standard credit and risk underwriting policies and procedures (which shall in no event be deemed unreasonable).

13.4 Parties; Independent Contractor.

This Agreement is binding upon and inures to the benefit of the parties and their respective heirs, administrators, representatives, and permitted successors and assigns. Merchant agrees that it is responsible for its employees' and Service Provider's actions. In providing services to Merchant, Paymentech will not be acting in the capacity of agent, partner, or joint venturer. Paymentech is acting solely as an independent contractor.

13.5 Representations.

- (a) Merchant represents and warrants that all written information that it has or will submit to Paymentech, including without limitation statements made on its Application and any subsequent addendums, are true, complete and not misleading as of the date the statements were or will be made. Merchant further represents and warrants that only its authorized representatives will submit written information to Paymentech.
- (b) Paymentech and Merchant each represent and warrant that its execution of and performance under this Agreement (i) in no way breaches, contravenes, violates, or in any manner conflicts with any of its other legal obligations, including, without limitation, its corporate charter or similar document or any agreement with any third party or affiliated entity, (ii) has been duly authorized by all necessary action and does not require any consent or other action by or in respect of any third party, and (iii) that the person signing this Agreement is duly authorized to do so.

13.6 Publicity.

Except to the extent required by applicable law, neither party shall make press releases or similar public statements regarding the business relationship that is the subject of this Agreement, without the prior written consent of the other. Neither party shall use the other party's name or trademarks, except as otherwise provided in this Agreement, without the other party's prior written permission.

13.7 Severability.

Should any provision of this Agreement be determined to be invalid or unenforceable under any applicable law, rule, regulation, or Card Network Rule, such determination will not affect the validity or enforceability of any other provision of this Agreement.

13.8 Waivers.

No term or condition of this Agreement may be waived, and failure by either party to enforce any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term or condition, except pursuant to a written waiver executed by the party against whom such waiver is sought to be enforced.

13.9 Entire Agreement.

The Application, taxpayer identification and certification documentation, and all schedules, supplements, exhibits and attachments to this Agreement are made a part of this Agreement for all purposes. This Agreement represents the entire understanding between Merchant, Chase and Paymentech with respect to the matters contained herein and supersedes any prior agreements between the parties. Merchant agrees that in entering into this Agreement it has not relied on any statement of Paymentech, Chase or their representatives. This Agreement shall prevail over any conflicting terms of any agreement governing the Settlement Account.

13.10 Notices.

Except as otherwise provided in this Agreement, all notices shall be given in writing and either hand delivered, mailed first class, postage prepaid (return receipt requested), or sent via overnight courier (with package tracking capability) (and will be deemed to be given when so delivered or mailed) to the addresses set forth below or to such other address as either party may from time to time specify to the other party in writing.

13.11 Governing Law; Waiver of Right to Contest Jurisdiction; Waiver of Jury Trial.

This Agreement will be governed by and construed in accordance with the laws of the State of California, which is the state where Merchant has its primary residence, without reference to conflict of law provisions, unless otherwise mandated by applicable law. Any action, proceeding, litigation, or mediation relating to or arising from this Agreement SHALL be brought by Paymentech against Merchant and determined exclusively in the county and state of Merchant's principal office as indicated below, and SHALL be brought by Merchant against Paymentech or Chase and determined exclusively in NEW YORK, NEW YORK. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS EITHER OF THEM MAY HAVE TO CONTEST JURISDICTION OR VENUE. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

Commented [SR5]: As a government agency, VVTA needs to have California be the governing law with venue for any action in California.

Commented [GR6R5]: Understand OK, with additional edits.

13.12 Force Majeure.

Neither party will be liable for delays in processing or other nonperformance caused by such events as fires, telecommunications failures, utility failures, internet failures, power failures, equipment failures, labor strife, riots, war, terrorist attack, acts of God, or other causes over which the respective party has no reasonable control, except that nothing in this Section will affect or excuse Merchant's liabilities and obligations for Chargebacks, refunds, or unfulfilled goods and services.

13.13 Amendment.

Except as otherwise set forth in this Agreement, the Agreement may be amended only by written agreement of the parties. Notwithstanding the foregoing, in the event the terms of this Agreement must be amended pursuant to a change required by the Card Network Rules or required for compliance with applicable law, such amendment will be effective immediately upon written notice to Merchant.

13.14 Counterparts and Electronic Signature.

This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A signature received via facsimile or electronically via email shall be as legally binding for all purposes as an original signature.

13.15 Merchant Taxpayer Certification and Paymentech Reporting Obligations.

Pursuant to 26 USC 6050W, Paymentech is a "payment settlement entity", obligated to collect and report certain taxpayer information to the United States Internal Revenue Service. Therefore, in conjunction with the execution of this Agreement, Merchant shall provide Paymentech with the appropriate taxpayer certification documentation, via Internal Revenue Service (IRS) Form W-9 (or the appropriate versions of Form W-8, if applicable). Merchant shall promptly notify Paymentech if there are any changes in this information. Paymentech may deduct withholding taxes, if any, from proceeds payable to Merchant or any entity that is a party to this agreement where required under applicable law. Paymentech may, in accordance with applicable law and from time to time during the term of this Agreement, request Merchant to recertify its taxpayer certification hereunder. Furthermore, Merchant shall be responsible for any penalties related to the reporting obligations of Paymentech hereunder to the extent such penalties accrue based on the actions or inactions of Merchant despite reasonable notice from Paymentech.

14. Survival.

The terms that expressly or by their nature contemplate performance after the termination or expiration of this Agreement shall survive and continue in full force and effect. For the avoidance of doubt the provisions relating to Authorization and Settlement, Refunds, Chargebacks, Termination, Indemnification, Confidentiality, Use of Data,

Audit Rights and Limitation of Liability each, by their nature, contemplate performance or observance after this Agreement expires or terminates and therefore shall survive.

15. Definitions.

"Acceptance Technologies" means the quick response code or other entry methods (e.g. near field communication or Bluetooth low energy enablement) following Chase's (or its licensor's) formats and specifications used by Merchant's Point of Sale terminals or a user's mobile device to relay data relating to the user and/or the user's Transaction between a user and Merchant, regardless of the interface, together with any upgrades, modifications or enhancements thereto.

"Application" means a statement of Merchant's financial condition, a description of the characteristics of Merchant's business or organization, and related information Merchant has previously or concurrently submitted to Paymentech, including credit, financial and other business related information, to induce Paymentech to enter into this Agreement with Merchant and that has induced Paymentech to process Merchant's Transactions under the terms and conditions of this Agreement.

"Card" means a physical or virtual credit or debit card, or any evidence thereof (e.g. account number, access number, token, code, payment credential, or other form factor or access device), or any device, mobile application, digital wallet or other technology, medium or method (regardless of form) used to access an account or account number through which Card Network payment services are delivered, authorized and established between a Customer and a Card Network, or representatives or members of a Card Network that Merchant accepts from Customers as payment for goods or services.

"Card Information" means information related to a Customer or the Customer's Card, that is obtained by Merchant from the Customer's Card, or provided by the Customer in connection with his or her use of a Card, including, without limitation, Card account numbers and expiration dates, security codes (e.g. CVV2, CVC2, etc.), PIN numbers, credit limits, account balances, or Customer billing address, phone numbers, or zip codes (when provided solely as part of an identity verification system), and any data read, scanned, imprinted, or otherwise obtained from the Card, whether printed thereon, or magnetically, electronically, or otherwise stored thereon. For the avoidance of doubt, information about Customers which is not specific to Customer's Card and which is voluntarily provided to Merchant by Customers for purposes of shipping or delivering goods or services, Customer's participation in a loyalty program, mailing list, special offers, or similar purposes (e.g., Customer's name, mailing address, phone number, email address, birthdate or age), shall not be deemed Card Information.

"Card Network" means any payment card network provider whose payment method is accepted by Paymentech for processing, including, without limitation, Visa Inc., MasterCard International, Inc., Discover Financial Services, LLC, American Express, Pulse, and STAR.

"Card Network Rules" means all bylaws, rules, programs, regulations, specifications, and manuals, as they exist from time to time, of the Card Networks. With respect to the Chase Transactions, the Chase Requirements are the applicable Card Network Rules.

"Chargeback" means a reversal of a Transaction Merchant previously presented to Paymentech pursuant to Card Network Rules.

"Chase Card" means a Card issued by Chase or its affiliates and used to access a line of credit, prepaid account, or deposit account, issued or maintained by Chase or its affiliates.

"Chase Customer" means any person or entity to whom a Chase Card is issued or who is otherwise authorized to use a Chase Card.

"ChaseNet" means Chase's payment processing platform(s) where Transactions involving Eligible Chase Cards are processed directly between Merchant and Chase, bypassing the traditional Card Network "interchange" system.

"Chase Transaction" means a Transaction utilizing an Eligible Chase Card and which is processed over the ChaseNet platform.

U.S. Select Merchant Processing Agreement - Rev. 2/26/2018.pdf

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"Chase Pay" means Chase's proprietary Chase Pay-branded digital wallet product allowing Chase Customers to use their Eligible Chase Cards to purchase goods or services from merchants by using (i) the Chase Pay Application at the Point of Sale, (ii) the Merchant Application, at the point of sale and/or for purchases made within the Merchant Application, (iii) any third party mobile application(s) which may support Chase Pay and which Paymentech has notified Merchant in writing can be utilized for Merchant's Chase Pay Transactions at the Point of Sale, or (iv) Chase's Chase Pay-branded "payment button" which may be incorporated into or embedded in Merchant's online and/or mobile ecommerce websites, in each case together with all associated Chase software, code, applications, technical specifications, application program interface, software development kit ("SDK"), and related tools and materials.

"Chase Pay Application" means a mobile software application published by Chase which houses Chase Pay and provides payment options and other loyalty solutions to Chase Customers.

"Chase Pay Transaction" means a Chase Transaction which is facilitated by use of Chase Pay and processed by Paymentech pursuant to this Agreement.

"Chase Requirements" means the Chase Merchant Program Requirements, as amended, revised and updated from time to time, which set forth the rules and requirements applicable to the acceptance of Chase Transactions.

"Customer" means the person or entity to whom a Card is issued or who is otherwise authorized to use a Card.

"Data Compromise Event" means an occurrence that results, or may have resulted, directly or indirectly, in the unauthorized access to or disclosure of Card Information in the possession or control of a party to this Agreement or its service providers.

"Effective Date" means the date the Agreement takes effect pursuant to Section 6.1.

"Eligible Chase Card" means a Chase Card of a type that Chase, in its sole discretion, has determined to be eligible for use in Chase Transactions processed over ChaseNet generally. Unless Paymentech has notified Merchant otherwise in writing (or the parties have agreed in writing to Chase Transaction pricing specific to another Card type, e.g. PIN debit), Eligible Chase Cards shall be limited to consumer and small business Chase Cards for which a Visa-branded credit or signature debit card has been issued.

"Merchant" means the legal entity identified in the Application and on the first and signature pages of this Agreement.

"Merchant Application" means any software application developed by or on behalf of Merchant that provides various services and capabilities for Merchant's customers including the ability purchase or otherwise effect payment for Merchant goods or services.

"Point of Sale" means the physical point of sales systems (including fuel pumps) owned or managed by Merchant and used by Merchant to accept payment for their own goods and services.

"Refund" means any refund or credit issued for any reason, including, without limitation, for a return of merchandise or cancellation of services, and any adjustment of a Transaction.

"Referral Partner" is a third party that has entered into a (i) formal referral relationship with Paymentech pursuant to which it referred Merchant to Paymentech for payment processing services and/or (ii) preferred pricing program with Paymentech. The Referral Partner may be involved in the servicing and maintenance of Merchant's account. Referral partners may include, as applicable, without limitation, financial institutions, Merchant's franchisor, independent sales organizations, trade associations or groups and service providers.

"Reserve Account" shall have the meaning set forth in Section 2.6.

"Security Standards" means all rules, regulations, standards, or guidelines adopted or required by the Card Networks or the Payment Card Industry Security Standards Council relating to privacy, data security, and the safeguarding, disclosure, and handling of Payment Card Information, including, without limitation, the Payment Card

Industry Data Security Standards ("PCI DSS"), Visa's Cardholder Information Security Program, Discover's Information Security & Compliance Program, American Express's Data Security Operating Policy, MasterCard's Site Data Protection Program, Visa's Payment Application Best Practices, the Payment Card Industry's Payment Application Data Security Standard, MasterCard's POS Terminal Security program, and the Payment Card Industry PIN Transmission Security program, in each case as they may be amended from time to time.

"Service Provider" means any party that processes, stores, receives, transmits, or has access to Card Information on Merchant's behalf, including, without limitation, its agents, business partners, contractors, and subcontractors.

"Transaction" means any transaction conducted between a Customer and Merchant utilizing a Card in which consideration is exchanged between the Customer and Merchant.

"U.S." means the forty eight (48) contiguous states of the United States, District of Columbia, Alaska and Hawaii. For the avoidance of doubt, all other United States possessions and territories are excluded, except as may otherwise be provided in an addendum hereto

IN WITNESS WHEREOF, the undersigned parties have duly executed this Agreement

Agreed and Accepted by

VICTOR VALLEY TRANSIT AUTHORITY
Merchant Legal Name

By (authorized signature)

Kevin Kane, Executive Director
Print Name and Title

9/18/18
Date

17150 Smokefree St
Address

Hesperia CA 92345
City, State Zip

Agreed and Accepted by

PAYMENTECH, LLC for itself and on behalf of
JPMORGAN CHASE BANK, N.A

By

Print Name and Title

Date

8181 Communications Pkwy, Bldg C, Floor 03
Address

Plano, Texas 75024
City, State Zip

M 14252

To Be Completed By Paymentech, LLC

Merchant Agreement Contract Number is: _____
Merchant Processing Identification Number Will Be Provided At Time of Processing Set Up

U.S. Select Merchant Processing Agreement - Rev. 2/26/2018.pdf

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SCHEDULE B: CERTAIN SPECIFIC CARD NETWORK REQUIREMENTS

1. Merchant agrees to:
 - Perform all of its obligations under this Agreement in compliance with applicable laws and regulations
 - Comply with the Card Network Rules regarding use of the Card Network trademarks or service marks ("Marks"), Card Network acceptance, risk management, Transaction processing, and any Card Network products, programs or services in which the Merchant is required to or chooses to participate
 - Not knowingly submit any Transaction that is illegal or that the Merchant should have known was illegal.
2. Merchant agrees that each Card Network shall be entitled to limit or terminate (or cause Paymentech to limit or terminate) this Agreement
3. Paymentech shall be entitled to immediately terminate this Agreement for any significant circumstances that create harm or loss of goodwill to the Card Networks or their respective payment systems. Merchant shall not submit any Transaction that it knows or should have known to be either fraudulent or not authorized by the Customer. Merchant is responsible for its employees' actions. Merchant shall not submit any Transaction that does not result from an act between the Customer and Merchant.
4. Merchant must not deposit a Transaction until the Transaction is completed and all goods or services are shipped or provided, except: (i) if the Customer has agreed to a delayed delivery or an advance deposit, (ii) in the case of a prepayment of services or custom merchandise, if the Merchant advises the Customer of the immediate billing at the time of the Transaction; or (iii) Customer consent has been obtained for a recurring transaction.
5. For recurring Transactions, Merchant shall (i) obtain the Customer's legally recognized consent to periodically charge the Customer on a recurring basis for the goods or services purchased, which consent shall include the frequency of recurring charges, the amount of the recurring Transactions (unless the recurring Transactions are for varying amounts), and the duration of time for which the charges may be made, (ii) retain such consent and provide it upon request to Paymentech or the issuing bank of the Customer's Card; (iii) not submit any recurring Transaction after beyond the duration specified in such consent or after receiving a cancellation notice from the Customer or a notice from Paymentech or any Card Network (via authorization decline response code or otherwise) that the Transaction is not authorized or that the Card is not to be honored, and (iv) include in its Transaction data the electronic indicator that the Transaction is a recurring Transaction
6. Merchant must not establish a minimum or maximum Transaction amount as a condition for honoring a Card except as permitted by the applicable Card Network Rules or to the extent applicable laws or regulations expressly require that Merchant be permitted to impose such minimum or maximum.

Merchant must not require any Customer to pay a surcharge, any part of Merchant's discount rate, or any contemporaneous finance charge in connection with a MasterCard Transaction, and shall not add any amount over the advertised or normal price to a Transaction, except to the extent expressly permitted by the applicable Card Network Rules or by applicable laws or regulations expressly require that Merchant be permitted to impose such surcharge or amount. Any surcharge amount, if allowed, must be included in the Transaction amount and not collected separately. If Merchant chooses to impose any surcharge, Merchant shall provide each Card Network and Paymentech with no less than 30 days' advance written notice that the Merchant intends to impose such surcharge on Transactions at either the brand level or product level. Merchant may not impose any such surcharge at both the brand and product level.
7. Merchant may request but may not require Customer identification as a condition of Card Acceptance, unless such information is required to complete the Transaction, such as for shipping purposes. If the name on the identification does not match the name on the Card, Merchant may decide whether to accept the Card. If the Customer does not have or is unwilling to present Customer identification, Merchant must honor the Card.
8. Merchant must not accept a Card to collect or refinance an existing debt. Merchant must not (i) accept Customer payments for previous card charges, or (ii) complete a Transaction that represents the collection of a dishonored check.
9. Merchant must not accept a Card for the purchase of scrip.
10. Merchant must not provide cash to a Customer (unless the Merchant is a hotel or cruise line, or is participating in a Card Network program that specifically allows cash back). A prepaid Card must not be redeemed for cash.

Schedule B: Certain Specific Card Network Requirements Rev. 10/3/2017.pdf

INTERNAL PAYMENTECH USE

Merchant Name:

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11. Merchant and its Service Providers shall comply with the provisions of VISA's Cardholder Information Security Program ("CISP"). Merchant shall be responsible for demonstrating compliance by its Service Providers with the requirements of CISP. Merchant shall notify MasterCard and Paymentech immediately if Merchant becomes aware of a Data Compromise Event. If Merchant is undergoing a forensic investigation at the time this Agreement is signed, Merchant shall fully cooperate with the investigation until completed.

12. Merchant agrees to accept all categories of Visa and MasterCard Cards (i.e., debit and credit cards), unless Merchant has notified Paymentech on its Application or otherwise in writing of its election to accept one of the following "limited acceptance" options: (i) all Visa and MasterCard consumer credit cards and Visa and MasterCard commercial credit and debit cards; or (ii) Visa and MasterCard debit cards only (but no credit cards). Notwithstanding the election of one of the foregoing limited acceptance options, Merchant must honor all foreign bank-issued Visa and MasterCard Cards. If Merchant elects one of the limited acceptance categories, Merchant must display appropriate signage to indicate the limited acceptance category, and Paymentech, at its option, may process any Transactions submitted to Paymentech outside of the limited acceptance category, in which case such Transactions will be assessed the applicable interchange fees plus any additional fees/surcharges assessed by Paymentech or the Card Networks. Merchant must honor all valid Cards within Merchant's range of acceptance without discrimination when properly presented for payment. Merchant must maintain a policy that does not discriminate among customers seeking to make purchases with a Card.

13. Merchant's use or display of any Card Network Marks will terminate effective with the termination of this Agreement or upon notification by the Card Network to discontinue such use or display. Any use of a Card Network Mark by Merchant in advertising, acceptance decals, or signs, must be in accordance with the Card Network Rules, including the Card Network's reproduction, usage, and artwork standards, as may be in effect from time to time.

14. Merchant shall prominently and unequivocally inform the Customer of the identity of the Merchant at all points of interaction, so that the Customer readily can distinguish the Merchant from any other party, such as a supplier of products or services to the Merchant.

15. Merchant's electronic commerce website shall:

- Prominently display the name of the Merchant (at least as prominently as any other information depicted on the website, other than images of the products or services being offered for sale) and identify such displayed name as both the Merchant and as the name that will appear on the Customer statement
- Display a customer service contact, including email address and telephone number;
- Display the address, including the country, of Merchant's fixed place of business (regardless of website or server locations), either on the same screen view as the checkout screen used to present the final Transaction amount, or within the sequence of web pages the Customer accesses during the checkout process;
- Clearly indicate Merchant's return/refund policies either on the checkout screen used to present the final Transaction amount, or within the sequence of web pages the Customer accesses during the checkout process;
- Contain the Merchant's policy for delivery of multiple shipments, and
- Provide a description of its security methods, capabilities, and policy for transmission of Card information.

Merchant must ensure that the Customer understands that the Merchant is responsible for the Transaction, including delivery of the products (whether physical or digital) or provision of the services that are the subject of the Transaction, and for customer service and dispute resolution, all in accordance with the terms applicable to the Transaction.

16. Merchant shall prominently display the appropriate Card Network Marks indicating acceptance at the point of interaction, wherever payment options are presented. Such Card Network Marks may also be displayed in advertising or other materials or images at the physical or electronic point of interaction to indicate brand acceptance. No other Card Network Marks or marks may be used for these purposes. Upon request, Merchant shall supply Paymentech with samples of any materials or images bearing the appropriate acceptance Card Network Marks.

17. Merchant may request or encourage a customer to use another form of payment, a Card of a different Card Network, or a Card of a different type (for example, traditional cards, premium cards, or rewards cards) than the one the customer initially presents. Except where prohibited by law, it may do so by methods that include, but are not limited to:

- Offering the customer an immediate discount from the Merchant's list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the customer uses a particular Card with an acceptance brand other than the Card Network or other particular form of payment.
- Offering the customer an immediate discount from the Merchant's list, stated, or standard price, a rebate, a free or discounted product or service, or any other incentive or benefit if the customer, who initially presents a Card, uses instead another Card or another form of payment.

Schedule B - Certain Specific Card Network Requirements - Rev. 10/2017.pdf

INTERNAL PAYMENTECH USE

Merchant Name:

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- Expressing a preference for the use of a particular Card or form of payment,
- Promoting the use of a particular general purpose Card with an acceptance brand other than the Card Network or the use of a particular form or forms of payment through posted information, through the size, prominence, or sequencing of payment choices, or through other communications to customers (provided that the Merchant will abide by the Card Network Rules relating to the display of the Card Network Marks including, but not limited to, the Card Network Mark indicating acceptance); or
- Communicating to customers the reasonably estimated or actual costs incurred by the Merchant when a customer uses particular Cards or forms of payment or the relative costs of using different general purpose Cards or forms of payment

Notwithstanding the foregoing, Merchant may not offer a discount or other benefit to a Customer if the Customer uses a particular issuing bank's Card, unless the discount or other benefit is available for all other Cards of the same product type or is accessed 1) after the Transaction has been completed (for example, a credit on the billing statement or a rebate), or 2) at the time of or after the Transaction and is effected by a separate instrument and not by the Card (for example, a coupon or a voucher). Merchant must not promote a discount or other benefit for use of a particular issuing bank's Card.

18. At its sole discretion, at any time, a Card Network may, either itself or through Paymentech or any agent of such Card Network, investigate, review, audit, or inspect Merchant, including by inspecting the premises and auditing the books, records, and procedures of Merchant to ensure that it is complying with the Card Network Rules and applicable brand and security standards and procedures. Merchant agrees that in such event it shall cooperate fully with such Card Network (or its agent) in connection with such investigation, inspection, audit or review, including, without limitation by providing access to Merchant's premises and to all pertinent records and requested information.

19. Except as expressly permitted in the Card Network Rules, Merchant must not directly or indirectly require any Customer to pay a surcharge or any part of any Merchant discount or any contemporaneous finance charge in connection with a Transaction. Merchant may provide a discount to its customers for cash payments. Merchant that chooses to impose a permitted surcharge must provide the Card Networks and Paymentech with no less than 30 days' advance written notice that the Merchant intends to impose a surcharge on Transactions at either the brand level or product level.

20. Merchant may set a minimum Transaction amount to accept a Card that provides access to a credit account, under the following conditions: (i) the minimum Transaction amount does not differentiate between Card issuers; and (ii) the minimum Transaction amount does not differentiate between one Card Network and another Card Network; and (iii) the minimum Transaction amount does not exceed USD 10 (or any higher amount established by the Federal Reserve by regulation).

21. The Card Network Marks indicating acceptance must not be displayed at any POS Terminal that dispenses scrip. Merchant must not submit to Paymentech any Transaction that arises from the acceptance of a Card at a scrip-dispensing Terminal.

22. Merchant must not submit any Transaction that represents the refinancing or transfer of an existing Customer obligation that is deemed to be uncollectible, or arises from the dishonor of a Customer's personal check.

23. Merchant shall not impose, as a condition of acceptance of a Card, a requirement that the Customer waive a right to dispute a Transaction.

24. Merchant shall not submit any Transaction that is illegal, or in the sole discretion of any Card Networks, may damage the goodwill of the Card Network or reflect negatively on the Card Network Marks, including, without limitation, (i) for the sale or offer of sale of a product or service other than in full compliance with any law then applicable to Paymentech, the issuing bank, Merchant, Customer, or the Card Networks, or (ii) for the sale of a product or service, including an image, which is patently offensive and lacks serious artistic value (such as, by way of example and not limitation, images of nonconsensual sexual behavior, sexual exploitation of a minor, nonconsensual mutilation of a person or body part, and bestiality), or any other material that a Card Network deems unacceptable to sell in connection with a Card Network Mark. Merchant shall submit to Paymentech only valid Transactions between the Merchant and a bona fide Customer, and shall not submit any Transaction which it knows or should have known to be fraudulent or not authorized by the Customer, or to be authorized by a Customer colluding with the Merchant for a fraudulent purpose.

25. Merchant shall not disparage any Card Network or any of the Card Networks' products, programs, services, networks, or systems.

26. Merchant must not sell, purchase, provide, exchange or in any manner disclose Card Information to anyone other than Paymentech, to the Card Networks, or in response to a valid government demand. This prohibition applies to Card imprints, TIDs, carbon copies, mailing lists, tapes, database files, and all other media created or obtained as a result of a Transaction.

**AGENDA ITEM
FIVE**

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VICTOR VALLEY TRANSIT AUTHORITY

AGENDA MATTER

Memorandum of Agreement (MOA) Between Victor Valley Transit Authority and Mojave Desert AQMD for The Designation of AB 2766 Funds to Be Granted for Public Transit Support.

SUMMARY STATEMENT

In September 1990, California AB 2766 was signed into law ([Health & Safety Code Sections: 44220 - 44247](#)). This money is used to fund the implementation of programs to reduce air pollution from motor vehicles pursuant to air quality plans and provisions of the California Clean Air Act.

In prior years, AB2766 funds were granted directly to the Authority's JPA members and allocated by those jurisdictions to eligible projects within the funding guidelines, including transit projects administered by the Authority. Beginning July 1, 2018 (FY2018-19), MDAQMD will begin directly funding these allocations to the Authority on behalf of its JPA members. These amounts will be programmed into the VVTA budget for use in all eligible projects. To receive these funds, VVTA must commit to the eligible use of these program funds and enter into a Memorandum of Agreement with the District.

Anticipating the receipt of these funds beginning in FY 19, staff has already included them in the Authority's FY 19 Annual Operating Budget in support of Fixed and Deviated transit services for the general public. This commitment will include minimal administrative, accounting and grant support.

RECOMMENDED ACTION

Approve MOA between VVTA and MDAQMD for the designation of AB 2766 funds to be Granted for Public Transit Support.

PRESENTED BY	FISCAL IMPACT	MEETING DATE	ITEM NUMBER
None	Annual AB 2766 Operating Revenues \$250,000 (in budget)	October 15, 2018	5

**MEMORANDUM OF AGREEMENT BETWEEN
VICTOR VALLEY TRANSIT AUTHORITY AND
MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT**

WHEREAS the Mojave Desert Air Quality Management District (“MDAQMD”) has established a program as set forth in the “Mobile Source Emission Reductions Program Work Plan” (PROGRAM”), amended on March 26, 2018; and

WHEREAS, the PROGRAM sets forth the uses of and a distribution method of funds received under the authority of the Health & Safety Code §44220 (“AB 2766”); and

WHEREAS, the PROGRAM sets forth the allowable uses of the AB 2766 funds to support programs that reduce air pollution from motor vehicles; and

WHEREAS, the PROGRAM designates a portion of the AB 2766 funds (“Grant Funds”) to be granted for Public Transit Support and specifies a designation of \$250,000.00 to Victor Valley Transit Authority (VVTA); and

WHEREAS, the PROGRAM requires VVTA to enter into an agreement with the DISTRICT for the use of Grant Funds.

NOW THEREFORE, in consideration of mutual covenants and conditions the parties agree to the following:

1. DISTRICT will disburse Grant Funds in the amount of \$250,000.00 to VVTA on or about October 31;
2. VVTA agrees to commit use Grant Funds for eligible projects as described in the PROGRAM;
3. VVTA agrees to annually submit not later than August 30 a Scope of Work describing the planned use of funds for the next fiscal year. The eligibility of the proposed planned use of funds is subject to approval by the DISTRICT as described in the PROGRAM.
4. VVTA agrees to fully expend all of the Grant Funds on or before June 30 of the fiscal year in which they were received.
5. VVTA agrees to report annually, by August 30, the amount of Grant Funds used and how the Grant Funds were used during the previous fiscal year;
6. VVTA agrees to refund to the DISTRICT by August 30 any amount not used or any amount spent on ineligible programs or projects during the previous fiscal year.

MOJAVE DESERT AIR QUALITY
MANAGEMENT DISTRICT

VICTOR VALLEY TRANSIT
AUTHORITY

BRAD POIRIEZ
Executive Director

Kevin Kane
Executive Director

Dated: _____

Dated: _____

Approved as to legal form:

KAREN K. NOWAK
District Counsel

Dated: _____

END OF AGREEMENT

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**AGENDA ITEM
SIX**

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VICTOR VALLEY TRANSIT AUTHORITY

AGENDA MATTER

Update VVTA's Technical Advisory Committee Purpose and Organization.

SUMMARY STATEMENT

VVTA's Technical Advisory Committee Purpose and Organization were last updated on January 3, 2000. After reviewing this document, VVTA determined that the Committee's purpose and organization needed clarification regarding informational sharing between VVTA and member jurisdictions, including the addition of SBCTA updates as it relates to transit.

This document also specifies that member jurisdictions should identify a Technical Advisory Committee member from their individual staff in an effort to maintain a fully informed governing Board.

RECOMMENDED ACTION

Approve the update to VVTA's Technical Advisory Committee Purpose and Organization.

PRESENTED BY	FISCAL IMPACT	MEETING DATE	ITEM NUMBER
Kevin Kane, Executive Director	None	October 15, 2018	6

VVTA Technical Advisory Committee Purpose and Organization.

Organizations Affected:

Victor Valley Transit Authority

Effective Date: 10/15/18

Approved by:

Kevin Kane, Executive Director

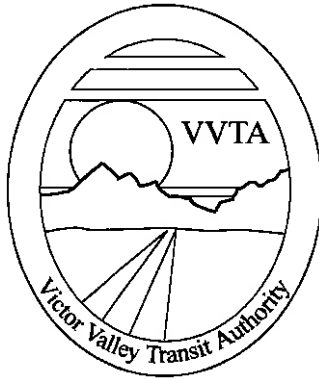
As Authorized by the

Board of Directors on: 10/15/2018

Attest:

Debi Lorrh, Clerk of the Board

POLICY / PROCEDURE NO. 1.03.18



VVTA TECHNICAL ADVISORY COMMITTEE Purpose and Organization

Purpose:

VVTA's Technical Advisory Committee was formed by the VVTA Board of Directors to receive and provide input to VVTA staff on transit-related matters, VVTA Board agendas, and the formulation of transit-related policy recommendations to the VVTA Board.

Topics on the committee agendas commonly include review and discussion of the upcoming VVTA Board Agenda, VVTA staff activities, **SBCTA** updates as related to transit locally and countywide, FTA and state funding, state and federal legislation impacting transit as **related to member jurisdictions**, and local issues of interest as pertaining to transit in the VVTA service area of 950 square miles.

Membership:

Committee membership consists of a primary staff representative of each VVTA member agency designated by the City Manager, Town Manager or County Supervisor. Members should be an individual who is (or will become) most knowledgeable about the transit/transportation issues and needs **of their jurisdiction**. Members should also have the capacity to communicate important policy implications to each jurisdiction's VVTA Board member as well as management regarding matters of interest to their individual jurisdiction in addition to VVTA service area as a whole.

VVTA will ensure that primary representatives receive appropriate notice of meetings, agenda materials, and other information, as required. Other member agency staff may be added to the Committee's interested party mailing list upon request. However, VVTA will use the primary membership list as the main conduit to ensure that all jurisdictions receive proper notification and critical information related to VVTA activities and plans. It is important that member agencies notify the VVTA Clerk of the Board when a change in agency member designation occurs.

**AGENDA ITEM
SEVEN**

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VICTOR VALLEY TRANSIT AUTHORITY

AGENDA MATTER

Meeting Notes from The Technical Advisory Committee Meeting Conducted on October 3, 2018.

SUMMARY STATEMENT

Meeting Notes from the Technical Advisory Committee meeting conducted on October 3, 2018.

RECOMMENDED ACTION

Information item only.

PRESENTED BY	FISCAL IMPACT	MEETING DATE	ITEM NUMBER
Debi Lorrh, Clerk of the Board	N/A	October 15, 2018	7

**VICTOR VALLEY TRANSIT AUTHORITY
TECHNICAL ADVISORY COMMITTEE**

October 3, 2018

MEETING NOTES

The meeting of the Technical Advisory Committee (TAC) of Victor Valley Transit Authority was opened at 3:05 p.m. at Victor Valley Transit Authority, Board room, 17150 Smoke Tree Street, Hesperia, CA.

ROLL CALL

TAC Members

Present: Tina Souza, City of Hesperia
Doug Matthews, City of Victorville
Jennifer Jackson, Town of Apple Valley
Cindy Prothro, City of Barstow

Staff Present: Nancie Goff, VVTA Craig Barnes, VVTA
Debi Lorrach, VVTA Ron Zirges, VVTA
Steven Riggs, VVTA Marie Downing, VVTA
Christine Plasting, VVTA David Flowers, VVTA

1. Public Comment.
None.

2. Review Draft Board Agenda.

a. VVTA Public Comment on Service Changes and Fare Increases Policies Update.

After VVTA's recent Triennial review, it was brought to VVTA's attention that the policies in place for Public Comment for Service Changes and Public Comment for Fare Increases needed to be more specific on how VVTA staff documents and the Board handles any comments received from the public, Ms. Goff shared. This item is to ratify the changes to the policies in order to remove the item as a review finding.

b. Ratify Chase Paymentech Application and Agreement (tap cards).

Mr. Riggs commented that this agreement is for the vendor who will be responsible payment processing from fares collected with the new tap card system; Chase Paymentech offered a much lower rate than other vendors at 1.3%.

c. Memorandum of Agreement with Mojave Desert AQMD.

As TAC is aware, Ms. Goff shared that the funds previously distributed to member jurisdictions is now being distributed to VVTA by the Mojave Desert Air Quality Management District (MDAQMD). This agreement is finalizing this process.

Ms. Souza asked about current distribution formulas and Ms. Goff offered to send the Mobile Source Emission Reductions Program Work Plan from MDAQMD to all TAC members.

d. VVTA TAC Purpose and Organization Update.

Ms. Goff said that this is another policy update added to the consent calendar.

e. Budget Amendment Battery Electric Buses (tentative).

VVTA applied for two (2) different types of competitive grants for 5339 funding of Battery/Electric Buses (BEB), Ms. Goff informed TAC. While VVTA was not awarded the grant for incremental expenses associated with BEB's, VVTA was awarded the second grant in the amount of \$867,007. Ms. Goff explained that some additional funds will need to be spent, but it will come from other sources such as 5309, other 5339, CMAQ, CNG credits and HVIP rather than LTF.

f. Approve Award for RFP 2018-13 Design Build Barstow Maintenance Facility.

Ms. Plasting stated that the evaluations for this award are now complete and the next step is to enter into best and final offer (BAFO) negotiations with the highest scoring bidder, Macro Z Technologies. Included in the BAFO will be redlined building plans and some value engineered components of the original plans. While VVTA does not have a completed Board item for TAC to review, it will be included in the Board packet when it is released.

g. VVTA Compensation Policy Update.

Mr. Riggs shared that the original compensation study was presented to the Board in January of 2018; after the Board formed a compensation study review committee and several closed sessions, this item is finalizing the direction of the Board at a closed session on September 17, 2018.

h. VVTA Personnel Policies Revision 6.

VVTA's Personnel Policies are being revised regarding employee benefits as directed by the Board at a closed session on September 17, 2018. Mr. Riggs stated that this policy increases the employee benefits share-of-cost.

i. Closed Session – Executive Director Evaluation.

No discussion

3. Bus stop shelters/benches/lighting.

Ms. Goff said that Adelanto is currently doing some paving projects for their "Safe Route to School" project and will be needing some bus stop amenities along the way. Additionally, Ms. Goff said that if any jurisdictions have a need for shelters or other amenities to please let VVTA know.

4. SBCTA Update.

None.

5. Other Business.

Ms. Goff shared that most of the Operations staff that are usually in attendance at the TAC meetings were in the field handling the threat of a shooter at Victor Valley College; VVTA's buses were on hand to assist in evacuating the school and will not service the stops at the College for the remainder of the day.

6. Adjournment: 3:27 pm

**AGENDA ITEM
EIGHT**

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VICTOR VALLEY TRANSIT AUTHORITY

AGENDA MATTER

Management reports.

SUMMARY STATEMENT

The attached Performance Reports are presented to the Board of Directors to provide an overview of the transit system's costs and performance.

- Transdev invoice for August, BAT and VVTA.
- Monthly Performance Statistics Systemwide Summary.
- Monthly Ridership Report.
- Monthly ADA Denial Report.
- Monthly Road Call Report.
- Monthly Commendation Report.
- Transdev On Time Performance Report FY 2018.

RECOMMENDED ACTION

Information items only.

PRESENTED BY	FISCAL IMPACT	MEETING DATE	ITEM NUMBER
Kevin Kane, Executive Director	N/A	October 15, 2018	8

Transdev
Transportation Services
 17150 Smoke Tree St.
 Hesperia Calif. 92345

INVOICE NO. "000818-IN0008-Revised

BILL TO
 Victor Valley Transit Authority
 17150 Smoke Tree St.
 Hesperia, Calif 92345

DATE 09/10/2018

CONTRACT NAME:
 Victor Valley Transit

Attention: Mr. Kevin Kane
 Executive Director

BILLING PERIOD 08/01/2018 to 08/31/2018

MONTH August

	Budgeted Revenue hours	Actual Revenue hours	Budgeted Expense	Actual Expense	Variance (+ or -)	Budgeted Expense Year-to-date	Actual Expense Year-to-date	Variance (+ or -) Year-to-date
ADA ParaTransit	3,522.00	4,018.61	\$248,406.66	\$283,432.56	\$35,025.90	\$496,813.32	\$536,917.38	\$40,104.06
Subscription	1,055.00	1,259.53	\$74,409.15	\$88,834.65	\$14,425.50	\$148,818.30	\$165,853.41	\$17,035.11
Regional Fixed Rt	10,845.80	10,828.00	\$674,283.39	\$673,176.76	(\$1,106.63)	\$1,312,290.58	\$1,310,419.26	(\$1,871.32)
County	2,600.90	2,597.00	\$161,697.95	\$161,455.49	(\$242.46)	\$315,827.95	\$315,388.41	(\$439.54)
Dead Head I.V.-Rte.#23	15.50	15.50	\$963.64	\$963.64	\$0.00	\$1,896.19	\$1,896.19	\$0.00
Rte. 200	50.00	50.00	\$3,108.50	\$3,108.50	\$0.00	\$5,595.30	\$5,595.30	\$0.00
B.V. Link/Lifeline	661.68	662.00	\$41,136.65	\$41,156.54	\$19.89	\$79,122.52	\$78,955.90	(\$166.62)
Dead Head BV	23.00	23.00	\$1,429.91	\$1,429.91	\$0.00	\$2,735.48	\$2,735.48	\$0.00
Port Irwin	664.70	662.00	\$41,324.40	\$41,156.54	(\$167.86)	\$79,055.37	\$78,707.22	(\$348.15)
Dead Head FI	86.25	86.25	\$5,362.16	\$5,362.16	\$0.00	\$10,258.05	\$10,258.05	\$0.00
SUBTOTALS	19,524.83	20,201.89	\$1,252,122.40	\$1,300,076.75	\$47,954.35	\$2,452,413.06	\$2,506,726.60	\$54,313.54

* County routes include 20,21,22,23 and 24

TOTAL INVOICE INCLUDING VARIANCE

\$1,300,076.75

Please REMIT TO:
 Transdev Inc.
 4157 Collection Center Drive
 Chicago, IL 60693

Manager's Signature and Business Phone

Transdev
Transportation Services
1612 State St.
Barstow Ca. 92311

INVOICE NO. "000083118-INS-08B"

DATE 09/10/2018

BILL TO Victor Valley Transit Authority
 17150 Smoke Tree St.
 Hesperia, Calif 92345

CONTRACT NAME:
 Victor Valley

Attention: Mr. Kevin Kane
 Executive Director

MONTH August BILLING PERIOD 08/01/18 to 08/31/18

	August 18 Budgeted HOURS	August 18 ACTUAL HOURS	August 18 Budgeted REVENUE	August 18 ACTUAL REVENUE	August 18 Variance (+ or -)	Budgeted Expense Year-to-date	Actual Expense Year-to-date	Variance (+ or -) Year-to-date
Fixed Route	1951.71	1952.00	\$121,337.81	\$121,355.84	\$18.03	\$236,806.15	\$236,805.53	(\$0.62)
County	803.31	803.00	\$49,941.78	\$49,922.51	(\$19.27)	\$97,333.97	\$97,296.05	(\$37.92)
DAR	454.00	354.50	\$32,020.62	\$25,002.89	(\$7,017.74)	\$64,041.24	\$45,456.59	(\$18,584.65)
SUBTOTALS	3,209.02	3,109.50	\$203,300.21	\$196,281.24	(\$7,018.98)	\$398,181.36	\$379,558.17	(\$18,623.19)

TOTAL INVOICE \$196,281.24

Please REMIT TO:
 Transdev Inc.
 4157 Collection Center Drive
 Chicago, IL 60693

 Manager's Signature and Business Phone



FY 2019 -- Monthly Performance Statistics by Mode
Systemwide Summary
All Routes

Performance Statistics for August

Mode	Passengers	Revenue Hours	Operating Costs	Passenger Revenue	Passengers		Operating Cost		Passenger Revenue		Farebox Recovery Ratio
					Per Rev. Hour	Per Passenger	Per Rev. Hour	Per Passenger	Per Rev. Hour	Per Passenger	
Bus (Motorbus)	116,970	16,891.7	\$1,386,757	\$175,924	6.9	\$11.86	\$82.10	\$1.50	\$10.41	12.69%	
Commuter Bus	3,086	661.7	\$77,768	\$30,947	4.7	\$25.20	\$117.53	\$10.03	\$46.77	39.79%	
Demand Response	17,235	5,631.8	\$509,537	\$45,563	3.1	\$29.56	\$90.48	\$2.64	\$8.09	8.94%	
System Total	137,291	23,185.2	\$1,974,061	\$252,434	5.9	\$14.38	\$85.14	\$1.84	\$10.89	12.79%	



Monthly Ridership Report

August, FY 2019

Bus (Motorbus), Commuter Bus, Demand Response Only

Total (All Day Types)

Mode	Passengers		Passengers Per Revenue Hour		Farebox Recovery Ratio	
	Prior Year	Current Year	Prior Year	Current Year	Prior Year	Current Year
Bus (Motorbus)	130,793	116,970	8.5	6.9	16.42%	12.69%
Commuter Bus	4,123	3,086	6.3	4.6	61.70%	39.79%
Demand Response	16,561	17,235	3.0	3.0	10.28%	8.94%
System Total	151,477	137,291	7.0	5.9	16.39%	12.79%

**ADA Dispatch Denial Report
For the Month of August**

Hesperia

Date	Reservationist Name	Passenger Name	Time Requested	Reason for Denial	Was An Alternate Ride Provided?
ALL RIDES NEGOTIATED					

August 2018
Major and Non-Major
Miles between road calls - VVTA and Barstow

	Total Miles	Road Calls	Miles Between Road Calls
Demand Response	88,961	7	12,709
Commuter Bus	23,884	1	23,884
Motor Bus	296,465	65	4,561
Total System	409,310	73	41,154



Employee Commendations! Month of August 2018

Fixed Route caller wanted to compliment dispatcher Patty Hernandez for doing a phenomenal job of assisting her plan her trip.

Fixed route passenger called to compliment Supervisor LaTisha Woods for stepping outside of the box when assisting two Mandarin speaking passengers; she was able to penetrate the language barrier and see that their needs were met.

Passenger called to compliment Shelly Cable for being extremely helpful during a crisis with another passenger; she was able to keep the passenger calm and collected.

ADA Driver Talia Pruitt was complimented for being friendly and cheerful and providing a wonderful ride.

Fixed route passenger wished to compliment Route 52 driver Victoria Martin for being nice, polite and extremely helpful.



Company Website: www.transdev.com

ADA PARATRANSIT ON TIME PERFORMANCE

Aug-18

Rides Sampled	More Than 10 Minutes Before	More Than 30 Minutes After	TOTAL	% On Time
15320	0	19	15301	99.88%

FIXED ROUTE ON TIME PERFORMANCE

Aug-18

				% On Time
				75.45%

COUNTY ROUTE ON TIME PERFORMANCE

Aug-18

				% On Time
				66.20%

BV Link ROUTE 15 ON TIME PERFORMANCE

Aug-18

				% On Time
				57.00%

FT. IRWIN ROUTE ON TIME PERFORMANCE

Aug-18

				% On Time
				74.40%

**AGENDA ITEM
NINE**

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VICTOR VALLEY TRANSIT AUTHORITY

AGENDA MATTER

Creation of a New VVTA Public Routes #501 - #504 (Barstow Light Fest) to Operate One-Day-Only, November 3, 2018.

SUMMARY STATEMENT

These free public routes connect, a community supported event for the city of Barstow. The event will be held at the Robert A Sessions Sports Park, 2800 Mayor Katy Pkwy Barstow, CA 92311 on Saturday November 3, 2018 between 2:00 PM and 9:30PM. In order to facilitate transportation to and from the event for the public throughout the Barstow area, staff proposes the creation of a one-day-only special free public routes 501 - 504. The cost of the service will be borne by the City of Barstow.

Schedule November 3, 2018

Route 501

Departs Dana Park on a 10 min schedule 2:00PM

Last trip arrives at Sports Park 7:15PM

Route 502

Departs Pitcher Park on a 10 min schedule 2:00PM

Last trip arrives at Sports Park 7:15PM

Route 503

Departs Barstow Jr High on a 10 min schedule 2:00PM

Last trip arrives at Sports Park 7:15PM

Route 504

Departs Barstow College on a 10 min schedule 2:00PM

Last trip arrives at Sports Park 7:15PM

*The buses will then cycle between the locations after the event. This is a public route meeting the requirements of FTA and is not considered a "Charter". As such staff will prepare a public route map and schedule.

RECOMMENDED ACTION

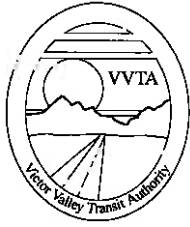
Create VVTA Public Routes #501 - #504 (Barstow Light Fest) to Operate One-Day Only, November 3, 2018.

PRESENTED BY	FISCAL IMPACT	MEETING DATE	ITEM NUMBER
Kevin Kane, Executive Director	\$700	October 22, 2018	9

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**DISCLOSURE
POTENTIAL
CONFLICTS OF
INTEREST ISSUES**

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VICTOR VALLEY TRANSIT AUTHORITY

representing the communities of Apple Valley, Adelanto, Hesperia,
Victorville and San Bernardino County

MEMORANDUM

Date: October 15, 2018

To: Victor Valley Transit Board of Directors

From: Victor Valley Transit Executive Director

Subject: Disclosure(s) regarding recommendations for action by the VVTA Board of Directors.

Staff hereby provides the Victor Valley Transit Board of Directors with a listing of principals and subcontractors associated with action items on the agenda for the Board meeting on October 15, 2018.

Agenda Item No.	Contract No.	Principals and Agents	Subcontractors
10	2018-13	Bryan Zatica – President Micro-Z-Technology	Mike Simmonds, ZGA Architects & Planners Allen Wu, AQX Engineering Bill Fang, BK Engineering

The foregoing information has no financial impact on the Agency and is provided relative to potential conflicts of interests, which may precipitate member abstentions under California Government Code 84308.



VICTOR VALLEY TRANSIT AUTHORITY

representing the communities of Apple Valley, Adelanto, Hesperia,
Victorville and San Bernardino County

Conflict of Interest Form

Purpose: This form is provided to assist members of the VVTA Board of Directors in meeting requirements of Government Code Section 84308 and 87100 in documenting conflict of interest as related to VVTA Board/Committee agenda items.

Instructions: Under certain circumstances, VVTA Board of Directors may be required to disclose and disqualify themselves from participating in, influencing, or voting on an agenda item due to personal income, real property interests, investments, business positions, or receipt of campaign contributions. If applicable, Board members must personally state the following information, for entry into the public record, prior to consideration of the involved agenda item(s) and turn in the completed form to the Clerk of the Board prior to leaving the meeting.

I. Board Member Information

Board Member Name	City/County Name	Meeting Date

II. Campaign Contributions

- I have a disqualifying campaign of over \$250 from _____
(Name of Company and/or individual)
and therefore I am abstaining from participation on Agenda Item _____ Subject: _____
- I have a disqualifying campaign of over \$250 from _____
(Name of Company and/or individual)
and therefore I am abstaining from participation on Agenda item _____ Subject: _____
- I have a disqualifying campaign of over \$250 from _____
(Name of Company and/or individual)
and therefore I am abstaining from participation on Agenda item _____ Subject: _____
- I have a disqualifying campaign of over \$250 from _____
(Name of Company and/or individual)
and therefore I am abstaining from participation on Agenda item _____ Subject: _____

III. Financial Interest

- I have a financial interest of _____, from/in _____
(State income, real property interest, or business position) (Identify company or property location)
and therefore I am abstaining from participation on Agenda Item _____ Subject: _____
- I have a financial interest of _____, from/in _____
(State income, real property interest, or business position) (Identify company or property location)
and therefore I am abstaining from participation on Agenda Item _____ Subject: _____

IV. Signature

Board Member Signature: _____ Date: _____

Please remember you must state the information into the public record prior to consideration of the involved agenda item(s) and turn in the complete form to the Recording Secretary prior to leaving the meeting.

**AGENDA ITEM
TEN**

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VICTOR VALLEY TRANSIT AUTHORITY

AGENDA MATTER

VVTA RFP 2018-13 Design-Build Barstow Facility.

SUMMARY STATEMENT

At its April 2018 meeting, the VVTA Board approved the release of RFP 2018-13 Design-Build Barstow Maintenance Facility to the two design build teams who were prequalified, as the result of the Request for Qualifications (RFQ) 2017-14.

VVTA RFP 2018-13 was forwarded to the two bidders on June 7, 2018. There was a job walk conducted at the location of the new facility on June 26, 2018. Addenda 1-4 were also forwarded to the two proposers. Proposals were due on August 16, 2018.

Thursday, September 27, 2018, the evaluation committee met to discuss the proposals, gather scores and determine a recommendation for award. The final scores tabulated, of a maximum possible score of 210 points:

Facility Builders and Erectors, Anaheim, CA	138.23 Points
Macro Z Technologies, Santa Ana, CA	155.75 Points

The recommendation is to award the contract to Macro Z Technologies whose Evaluation score is the highest.

Fiscal Impact is pending results of the Best and Final Offer (BAFO). This project is being funded by COP funds.

RECOMMENDED ACTION

1) Authorize Executive Director to enter into the BAFO process with Macro Z Technologies and delegate authority for executing and overseeing the contract and 2) Direct the Executive Director to present the executed Design-Build contract to the Board of Directors for ratification at the first meeting following execution.

PRESENTED BY	FISCAL IMPACT	MEETING DATE	ITEM NUMBER
Christine Plasting, Procurement Manager	Not to Exceed \$9.3m Pending BAFO	October 15, 2018	10



VICTOR VALLEY TRANSIT AUTHORITY BARSTOW AREA

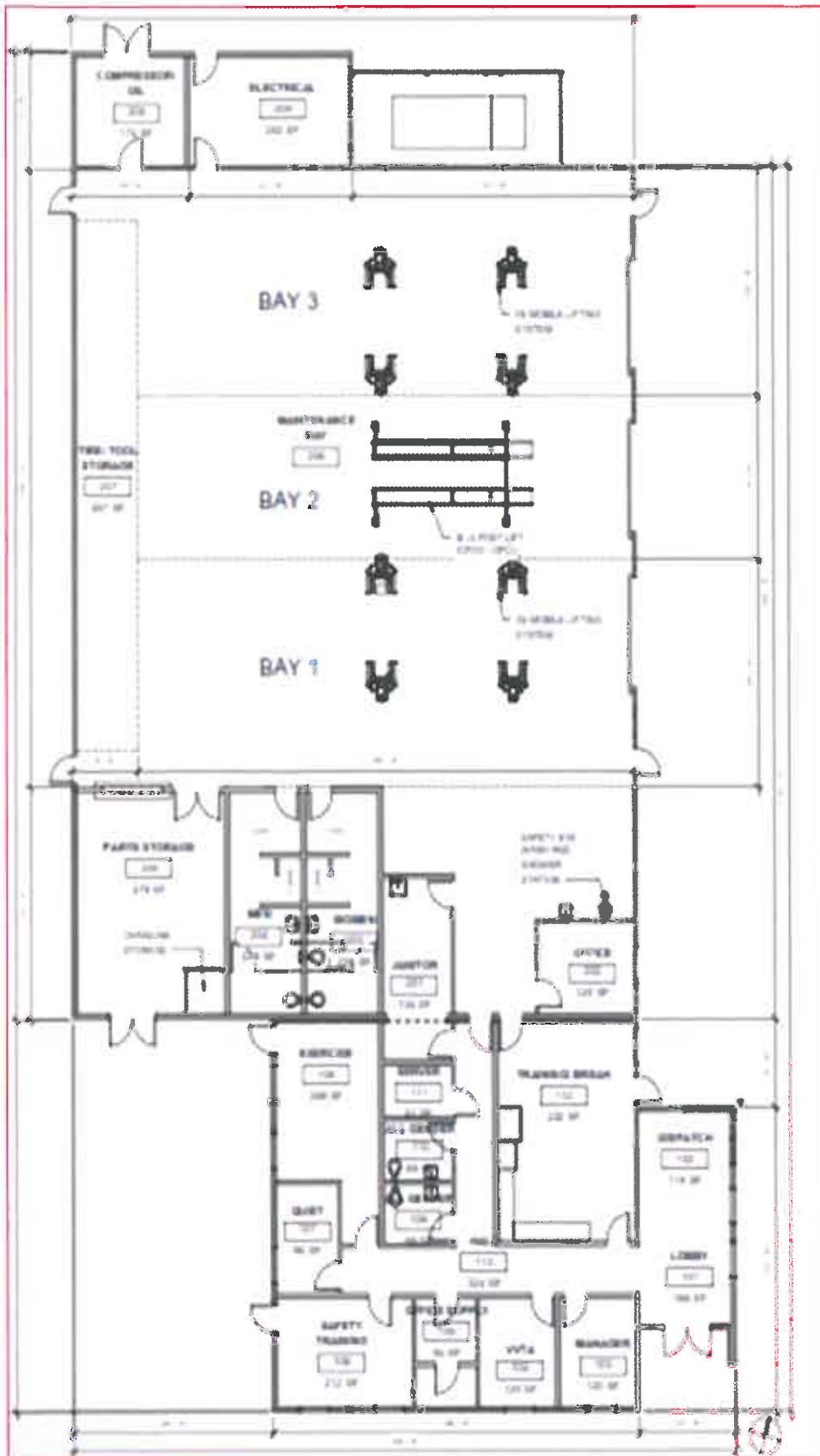
FACILITY DEVELOPMENT
100 SANDSTONE CT. BARSTOW, CA 92311

DESIGN BID DRAWINGS



ZCA ENGINEERING & PLANNING, CHARTERED





BACKGROUND INFORMATION

- I. CONTRACTOR: MZT
- II. CONTRACT NO.: TBD
- III. PROJECT NAME: DESIGN-BUILD VVTA BARSTOW MAINTENANCE FACILITY
- IV. PROJECT DESCRIPTION:

The purpose of the Barstow Maintenance and Operations Facility is to enhance the performance and reliability of a public fixed route and demand response transit services provided by the Victor Valley Transit Authority (VVTA) in its Barstow and associated unincorporated San Bernardino County service area. This new transit facility would improve services and reduce operating inefficiencies by providing dedicated administrative, operations, and maintenance facilities. Emphasis will be placed on providing functional and durable design and construction that requires minimal ongoing expense to operate and maintain.

This Project includes the design and construction of a new Facility in Barstow, CA. The Facility is anticipated to be approximately 8500 square feet with three maintenance bays, parts, tools, office space and tire storage consisting of approximately 6,000 square feet, and 2,400 square feet of office space for operations. The Facility will be of a metal structure with an appealing façade and internal walls for necessary office and maintenance space. The Facility will require a parking lot with sufficient spaces to accommodate staff, including the installation of four (4) plugin electric charging stations.

The facility will be located on approximately 5.5 acres that surrounds the current Barstow LCNG Fuel station located at 100 N. Sandstone Court, Barstow, CA 92311

Technical Evaluation:

Weight	Company	E1	E3	E4	Total
1. Changes to Team					
5.00					
	C-1	3.00	3.00	2.00	2.67
	C-2	4.00	4.00	3.00	3.67
Comments:					
2. Mgmt structure					
5.00					
	C-1	3.00	4.00	4.00	3.67
	C-2	4.00	4.00	3.00	3.67
Comments:					
3. Project Approach					
Design Build Approach					
3.i Approach to design					
5.00					
	C-1	3.00	3.00	4.00	3.33
	C-2	4.00	4.00	3.00	3.67
Comments:					
3.ii Process for budgets					
5.00					
	C-1	3.00	3.00	4.00	3.33
	C-2	4.00	3.00	3.00	3.33
Comments:					
3.iii DB participation in design					
5.00					
	C-1	3.00	3.00	3.00	3.00
	C-2	4.00	4.00	3.00	3.67
Comments:					
3.iv Opps for Sustainable Design					
3.00					
	C-1	3.00	4.00	4.00	2.20
	C-2	4.00	3.00	2.00	1.80
Comments:					
3.v Dev of bld packages					
5.00					
	C-1	3.00	4.00	3.00	3.33
	C-2	4.00	3.00	2.00	3.00
Comments:					
3.vi Quality Control Plan					
3.00					
	C-1	3.00	3.00	3.00	1.80
	C-2	4.00	4.00	4.00	2.40
Comments:					
3.vii Prequalification of Trade Contr.					
3.00					
	C-1	3.00	3.00	3.00	1.80
	C-2	4.00	4.00	1.00	1.80

Comments:									
3.viii Experience with/recomm design assts trades	5.00								
		C-1	3.00	3.00	3.00	3.00	2.00	3.00	3.00
		C-2	4.00	3.00	3.00	2.00			3.00
Comments:									
3.ix Procces for presenting design	3.00								
		C-1	3.00	3.00	3.00	3.00	1.80		
		C-2	4.00	4.00	4.00	4.00	4.00	4.00	4.00
Comments:									
3.x Process for finalizing Program	5.00								
		C-1	3.00	3.00	3.00	3.00	3.00	3.00	3.00
		C-2	4.00	4.00	4.00	2.00	2.00	3.33	3.33
Comments:									
3.xi Procces for obtaining approval	3.00								
		C-1	3.00	3.00	3.00	3.00	3.00	3.00	3.00
		C-2	4.00	3.00	3.00	3.00	3.00	3.00	3.33
Comments:									
Construction Approach									
3.i Administration of schedule	10.00								
		C-1	3.00	3.00	3.00	3.00	6.00		
		C-2	4.00	4.00	4.00	3.00	7.33		
Comments:									
3.ii Preconstruction	5.00								
		C-1	3.00	3.00	3.00	3.00	3.00	3.00	3.00
		C-2	4.00	4.00	3.00	2.00			3.00
Comments:									
3.iii Procces for review of trades	5.00								
		C-1	3.00	3.00	3.00	3.00	3.00	3.00	3.00
		C-2	4.00	4.00	4.00	3.00	3.67		
Comments:									
3.iv Coordination of trades, schedule, resolution	5.00								
		C-1	3.00	3.00	3.00	3.00	3.00	3.00	3.00
		C-2	4.00	4.00	4.00	3.00	3.67		

Comments:									
3.v Quality Control Plan	10.00								
		C-1	3.00	3.00	3.00	3.00	3.00	3.00	6.00
		C-2	4.00	4.00	4.00	4.00	4.00	4.00	8.00
Comments:									
4. Project Schedule and Plan									
4.i CPM Schedule	15.00								
		C-1	3.00	4.00	4.00	4.00	3.00	3.00	10.00
		C-2	4.00	4.00	4.00	4.00	4.00	4.00	12.00
Comments:									
4.II Understanding of approvals	15.00								
		C-1	3.00	3.00	3.00	3.00	3.00	3.00	9.00
		C-2	4.00	4.00	4.00	4.00	3.00	3.00	11.00
Comments:									
4.III Coordination of milestones	10.00								
		C-1	3.00	3.00	3.00	3.00	3.00	3.00	6.00
		C-2	4.00	4.00	4.00	4.00	3.00	3.00	7.33
Comments:									
4.IV Sequences and Relations	10.00								
		C-1	3.00	3.00	3.00	3.00	3.00	3.00	6.00
		C-2	4.00	4.00	4.00	4.00	3.00	3.00	7.33
Comments:									
5. Sketch or Rendering	50.00								
		C-1	3.00	3.00	4.00	4.00	4.00	4.00	36.67
		C-2	4.50	4.50	4.00	4.00	5.00	5.00	45.00
Comments:									
Total Weight Score = 190	190.00								
			Eval 1	Eval 3	Eval 4	Eval 4	Average Weighted Score		
		C-1	114.00	122.26	120.61	120.61	118.96		
		C-2	152.83	142.09	112.35	112.35	135.75		

Cost Evaluation	20.00	Cost	Factor	Score
Facility Builders		\$ 10,711,637.00	0.963447169	19.2689
MZT		\$ 10,320,000.00	1.0000	20.0000

	Technical Score	Cost Score	Total Score
Facility Builders	118.96	19.2689	138.23
MZT	135.75	20.0000	155.75

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THIS AGREEMENT is made and entered into this ___ day of ____, 20___, 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 a request for proposal (“RFP”) to the two firms who submitted Statements of Qualifications per RFQ 2017-14 and were deemed adequate to proceed to set two of the procurement process. The RFP was for the Design-Build of the Barstow Maintenance and Operations Facility, a copy which is attached herein as Exhibit 1; and

WHEREAS, CONTRACTOR submitted a proposal 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 (Exhibit 2) 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 – RFP 2018-13 DESIGN BUILD BARSTOW MAINTENANCE AND OPERATIONS FACILITY, including Addenda and all Attachments.

- B. Exhibit 2 – RFP 2018-13 Attachment A – Scope of Work

- C. Exhibit 3 – CONTRACTOR's Offer and Bid Submission dated _____

- D. Exhibit 4 - Insurance Certificate, dated _____

- E. Exhibit 5 – CONTRACTOR's Price Proposal Sheets dated _____

- F. Exhibit 6 – CONTRACTOR's Required Forms dated _____

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 _____, 20__, and shall continue in full force and effect through _____, 20__, 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 for 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. ACCEPTANCE, INVOICING AND PAYMENT

A. Acceptance

When the whole Project has been completed in all respects in accordance with the completed, plan-checked and VVTA approved Plans and Specifications, to the full satisfaction of VVTA, VVTA will then file a Notice of Completion with the County Recorder in San Bernardino County. Projects bid with a segregation of costs for separate, independent portions may, at VVTA's discretion, have each of the separate portions accepted individually. The date of acceptance of the Project as stated on the Notice of Completion shall be the official completion date relating to the assessment of liquidated damages. Acceptance shall be final and conclusive except for latent defects, gross mistakes amounting to fraud, audit rights, or Trustees' rights under any warranty or guarantee.

The County Recorder's date of recording on the Notice of Completion, if filed timely (within fifteen Days of acceptance), shall be the official completion date relating to stop notices and stop payment notices. All stop notices and stop payment notices must be filed with VVTA within 30 Days after the County Recorder's recordation date on VVTA's timely filed Notice of Completion. All claims arising from this Contract shall be submitted in writing to VVTA no later than 30 Days after the recordation date on VVTA's Notice of Completion (Section 25. SUBMITTAL OF CLAIMS BY CONTRACTOR).

B. Partial Payment

To assist in computing payments, CONTRACTOR shall submit to the Project Manager and VVTA a "Schedule of Values" of CONTRACTOR's actual and estimated costs for each item of

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Work, including approved change orders. The cost breakdowns shall be in sufficient detail for use in estimating the Work to be completed each month and shall be submitted within 21 Days after the date of commencement of Work given in the Notice to Proceed. CONTRACTOR shall also provide the breakdown of the awarded Contract value by completing the Unifomat Building Systems form. This information is valuable to VVTA for budgeting purposes and shall be submitted by CONTRACTOR to the Project Manager along with the initial submittal of the Schedule of Values.

Once each month during the progress of the Work, CONTRACTOR shall submit to the Project Manager a partial payment request. CONTRACTOR shall base the partial payment request on the approved bid breakdown for the cost of the Work completed plus, where applicable, a maximum of 90% of the verified supplier-invoiced and CONTRACTOR-purchased value for the acceptable materials delivered to the site, or stored subject to the control of CONTRACTOR but identified as the property of VVTA, and not yet installed and as allowed on the Contract Payment Request Form, line 2-f. CONTRACTOR must make any materials stored offsite accessible to VVTA to verify invoiced value and shall deliver these materials to VVTA upon request. When submitting a request for payment for materials, CONTRACTOR shall submit the Request for Materials On Hand Form with its partial payment request.

The partial payment request shall be submitted on the monthly anniversary of the day selected by CONTRACTOR in the job start meeting. The Project Manager shall review and certify the validity of the request, which, if the request includes an invoice for materials, then it shall include an inspection by the Project Manager of materials invoiced. No partial payment shall be made without the certification of the Project Manager, unless the partial payment is strictly administrative, and is processed after the completion of the Work (e.g. release of stop notice and stop payment notice claims).

Partial payment requests shall be processed with five percent (5%) retention. VVTA shall hold retention in part as security for the fulfillment of the Contract by CONTRACTOR. VVTA will withhold sufficient funds in addition to the retention to cover for anticipated liquidated damages, stop payment notices, Labor Code wage and penalty assessments, unacceptable Work, punch list Work, and VVTA's back-charges such as for retesting and re-inspection. VVTA will withhold monies from partial payments for incomplete punch list Work in addition to retention. VVTA shall not process partial release of retention before Contract completion (Public Contract Code section 10851) unless the Project is phased with a segregation of costs.

Partial payments shall not be construed as acceptance of any Work which is not in accordance with the requirements of the Contract. Once the Project Manager has certified the partial payment request, it shall be submitted to VVTA's Construction Administrator for approval and processing (Public Contract Code section 10851). Payment will then be processed in accordance with section 10853 of the Public Contract Code. Such procedure provides for 39 Days processing, from the date of receipt of an undisputed and properly submitted payment request by the Construction Administrator.

CONTRACTOR shall submit invoices in duplicate to:

VICTOR VALLEY TRANSIT AUTHORITY
ATTN: CHRISTINE PLASTING/CONTRACT ADMINISTRATOR
17150 SMOKETREE STREET

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HESPERIA, CA 92345-8305

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

D. Stop Payment Notices

VVTA shall retain out of any money due or that may become due CONTRACTOR, sums sufficient (125 percent of the claim) to cover claims filed pursuant to the stop payment notice provisions of the law (Civil Code section 9000 *et seq.*).

Preliminary notices and stop payment notices shall be presented to VVTA in proper form and should be addressed to the Construction Administrator and sent to VVTA at the address above and at the preconstruction conference. CONTRACTOR shall be responsible to communicate this information to all subcontractors.

E. Final Payment

After VVTA's acceptance of the Project as complete, CONTRACTOR shall submit to the Construction Administrator a payment request stating the total due under the Contract less the retention. This payment request will be processed in the same manner as the partial payment requests. Refer to 5.B, Partial Payments.

VVTA shall notify CONTRACTOR of the date of recordation of the Notice of Completion. CONTRACTOR shall then submit a request for payment of the retention to the Construction Administrator, who will process the retention payment 45 Days after the date of recordation by the County Recorder.

VVTA shall continue to retain funds to cover liquidated damages, stop notices and stop payment notices, state labor commissioner claims, back charges from VVTA, unexecuted credit change orders, and other such claims that may be received up to the end of the 45 Days period following recordation. If any stop notices or stop payment notice has been filed, payment shall be withheld in an amount of at least 125 percent of the total claims filed until either the rights under the stop notice or stop payment notice have been settled or CONTRACTOR has posted sufficient bond in an amount of at least 125 percent of the total claims filed to secure payment of such claims.

On projects bid with a segregation of costs for separate, independent portions which portions are accepted individually pursuant to Section 5.A, Acceptance, the final payment procedure specified in this Article shall be followed. The total amount due under the Contract, the amounts retained, other claims for compensation, and the filing of stop notices and stop payment notices shall refer only to the portion accepted.

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

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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. **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 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.

- B. 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.

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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

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:

Name

Role

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Any propose/substitution or replacement by Contractor of Contractor's key personnel shall ensure 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.

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

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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 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

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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 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

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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.

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));
 - (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

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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 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.

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- (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 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

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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 CONTRACT, 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

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 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

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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.
- F. Project Design: VVTA does not intend to contract for, pay for, or receive any design services which are in violation of any professional licensing laws, and by execution of the Contract, CONTRACTOR acknowledges that VVTA has no such intent. It is the intent of the Parties that CONTRACTOR is fully responsible for furnishing the design of the Project, although the fully licensed CONTRACTOR's Design Team will perform the design services required by the CONTRACT.
- G. Standard of Care: All design Services to be performed by the CONTRACTOR, its design consultant, subcontractors, and their employees identified by the CONTRACTOR shall be performed in an expeditious and professional manner using architects, engineers and other professional properly licensed and duly qualified in the jurisdiction in which the Project is located. The professional obligations of such person shall be undertaken and performed in the interest of the CONTRACTOR. All design services performed pursuant to this Contract shall be performed with the degree of skill and learning ordinarily possessed by architects and engineers in good standing in the community regularly engaged in the design and construction of a facility such as this Project and must apply that knowledge with the diligence ordinarily exercised by reputable architects and engineers under similar circumstances ("Standard of Care").

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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.

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) as may be authorized in writing 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 Agreement) with limits of liability of not less than the following:

\$10,000,000 per occurrence for bodily injury and property damage
\$10,000,000 per occurrence for personal and advertising injury
\$20,000,000 aggregate for products and completed operations
\$20,000,000 general aggregate applying separately to the work performed under the Agreement

- (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 \$10,000,000 per accident for bodily injury and property damage.

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- (iii) **WORKERS' COMPENSATION** insurance as required under the California Labor Code.
- (iv) **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.
- (v) **PROFESSIONAL LIABILITY (Errors and Omissions)** insurance appropriate to Consultant's profession, with limits of liability of \$2,000,000 per claim/occurrence and \$2,000,000 policy aggregate.
- (vi) **BUILDERS RISK (Course of Construction)** insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions.

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 VVTA's Executive Director or his/her designee in his/her sole discretion. At the option of VVTA's Executive Director or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects 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 in his/her sole discretion, 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. The General Liability (including ongoing operations and completed operations) and Automobile Liability insurance policies shall name VVTA, its members, board members, officers, officials, employees, agents and volunteers as an additional insured. All such policies of insurance shall be endorsed so Contractor's insurance shall be primary and no contribution shall be required of VVTA, its members, board members, officers, officials, employees, agents and volunteers. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to VVTA, its members, board members, officers, officials, employees, agents and volunteers. The Builders Risk (Course of Construction) insurance policy shall name VVTA as a loss payee. The coverage(s) shall contain no special limitations on the scope of protection afforded to VVTA, its members, board members, officers, officials, employees, agents and volunteers. Should Contractor maintain

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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 City.

Claims-Made Policies - If Professional Liability (Errors and Omissions) insurance is written on a claims-made coverage form:

- a. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Contractor.
- b. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the work or termination of the Agreement, whichever first occurs.
- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, Contractor must purchase extended reporting period coverage for a minimum of 5 years after completion of the work or termination of the Agreement, whichever first occurs.
- d. A copy of the claims reporting requirements must be submitted to VVTA for review.
- e. These requirements shall survive expiration or termination of the 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 the 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 Agreement, 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 the 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 Contractor 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

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

If Contractor should contract or 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, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that subcontractor's certificates and endorsements shall be on file with Contractor and VVTA prior to the commencement of any work by subcontractor.

B. 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

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 Smoketree Street

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Hesperia, California 92345

D. 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.

E. MINIMUM INSURANCE COVERAGE

- 1) Commercial General Liability including Products/Completed Operations: \$10,000,000; per occurrence for bodily and property damage liability and \$10,000,000 aggregate; *VVTA named and endorsed as an Additional Insured.*
- 2) Automobile Liability: \$10,000,000; 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.
- 5) Professional Liability: \$2,000,000 per claim/occurrence
- 6) Builder's Risk: at an amount equal to the completed value of the project.

19. INDEMNIFICATION

- A. To the furthest extent allowed by law, including California Civil Code section 2782, Contractor shall indemnify, hold harmless and defend VVTA and each of 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 or agents are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or 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 services to be performed under this Agreement, Contractor shall require each subcontractor to indemnify, hold harmless and defend VVTA and each of its members, board members, officers, officials, employees, agents and volunteers in

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accordance with the terms of the preceding paragraph.

Notwithstanding the preceding paragraph, to the extent that Contractor and/or Subcontractor is a "design professional" as defined in Section 2782.8 of the California Civil Code and performing work hereunder as a "design professional" shall, in lieu of the preceding paragraph, indemnify, hold harmless and defend VVTA and each of its members, board members, officials, officers, 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), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) to the extent that any loss, liability, fines, penalties, forfeitures, costs, damages, claims, demands or actions in law or equity arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of "design professional," its principals, officers, employees or agents in the performance of this Agreement. In no event shall the cost to defend charged to the design professional exceed the design professional's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other parties regarding unpaid defense costs.

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

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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.

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

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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 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 hereon 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

A. Claim and Dispute Submittals.

Any dispute related to this Contract or its breach that is not resolved by agreement shall be promptly submitted in accordance with this Section, with adequate supporting data. Adequate supporting data shall include but is not limited to a statement of the reasons for the asserted entitlement, the certified payrolls, invoice(s) for material and equipment rental, an itemized breakdown of any adjustment sought, and supporting schedules.

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At the time of submission of any claim, Design-Builder shall certify as follows:

SUBMISSION UNDER PENALTY OF PERJURY

"I, (insert full name) , am the (insert title--must be an Officer) of (insert name of firm) , and I declare under penalty of perjury under the laws of the State of California and do personally certify and attest that: I have thoroughly reviewed the attached claim for additional compensation and/or extension of time, and know its contents, and said claim is made in good faith; that the supporting data is truthful and accurate; that the amount requested accurately reflects the contract adjustment for which I believe the Trustees are liable, and further, that I am familiar with California Penal Code section 72 and California Government Code section 12650 *et seq.*, pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment and/or other severe legal consequences."

BY: (signature) _____ Date: (insert date of signature)

CONTRACTOR's submission of a claim, properly certified, with all required supporting documentation, and VVTA's written rejection or denial of all or part of the claim(s) are conditions precedent to any action, proceeding, litigation, suit, or demand for arbitration by CONTRACTOR.

B. CONTRACTOR's Claim(s) – Notice of Claim.

Should CONTRACTOR disagree with the determination of VVTA on a matter that substantially affects CONTRACTOR's costs, compensation or extent of Work, CONTRACTOR shall file a preliminary claim with VVTA. For purposes of this Section "claim" means a separate demand by CONTRACTOR, sent by registered or certified mail with return receipt requested, for one or more of the following:

- (1) A time extension for relief from damages or penalty for delay;
- (2) VVTA's payment which is not otherwise expressly provided or to which CONTRACTOR is not otherwise entitled;
- (3) Payment of an amount that is disputed by VVTA; and/or
- (4) Subcontractor claims.

C. Actions Prior to Claims Review

- (1) CONTRACTOR's Claim Submittal / Documentation.

CONTRACTOR submitted its claim in accordance with this Section, subsections 'A' and 'B'.

- (2) VVTA's Review of CONTRACTOR's Claim upon Receipt.

VVTA shall conduct a reasonable review of the claim upon receipt and, within a period not to exceed 45 days, shall provide CONTRACTOR a written statement identifying disputed and undisputed portions of the claim. Upon receipt of the claim, VVTA and CONTRACTOR may, by mutual agreement, extend the time provided herein. VVTA'S failure to issue a written statement shall result in the rejection of the claim in its entirety. A claim that is denied by reason of the VVTA's failure to respond to the claim or to meet the time requirements contained herein shall not constitute an adverse finding regarding the merits of the claim or the responsibility/qualifications of CONTRACTOR.

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(3) VVTA's Payment of Undisputed Portion of Claim.

VVTA shall pay the undisputed portion of the claim within 60 days after issuing the written statement.

D. Informal Meet and Confer Conference

(1) If CONTRACTOR disputes VVTA'S response, or if VVTA fails to respond to CONTRACTOR'S claim within the time prescribed, CONTRACTOR may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered or certified mail with return receipt requested, VVTA shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(2) Post-Meet and Confer Conference

Within ten business days following conclusion of meet and confer conference, VVTA shall provide CONTRACTOR a second written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. VVTA shall pay the undisputed portion within 60 days after VVTA issues the second written statement.

E. Unresolved Claims Review

Any remaining disputed portion of the claim, CONTRACTOR may submit the disputed portion of the claim to mediation.

F. CONTRACTOR Submission of Unresolved Claims.

CONTRACTOR shall submit all claims in writing in accordance with this Section to VVTA no later than 30 Days after the County Recorder's recordation date on the VVTA's Notice of Completion. CONTRACTOR's failure to submit its claims to VVTA within this 30-Day period shall constitute a waiver by CONTRACTOR of such claims.

Once the claims have been submitted, and the 30 Days after the County Recorder's recordation date on the Notice of Completion have expired, CONTRACTOR may not submit any additional claims. CONTRACTOR shall have 30 additional Days in which to submit six copies of a total and detailed claims package. Failure to submit the full detailed package within this second 30-Day period shall constitute a waiver by Design-Builder of such claims.

G. False Claims.

CONTRACTOR submits the claim recognizing the significant civil penalties and treble damages, which follow from making a false claim or presenting a false claim to VVTA (see Government Code sections 12650 *et seq.*).

H. VVTA's Claim(s) Submittal.

VVTA shall submit a rebuttal to CONTRACTOR's claim within a reasonable time after the submission by CONTRACTOR of a total and detailed claims package or the expiration of the time to file CONTRACTOR's claims.

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I. CONTRACTOR's Rebuttal to VVTA's Claims.

Upon submission of any VVTA claims, CONTRACTOR shall have an additional 30-day period to submit to the CONTRACTOR's rebuttal to VVTA's claims.

J. Actions Post Claims Review.

(1) Initial Mediation.

Should a dispute remain unresolved following exhaustion of the Claims Review process, the parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute.

Within ten business days after the disputed portion has been identified in the VVTA's second written statement, VVTA and CONTRACTOR shall mutually agree to a mediator, for which VVTA and CONTRACTOR shall share the costs equally. If CONTRACTOR and VVTA cannot agree on a mediator, each party shall select a mediator, and these mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

(2) Other Dispute Resolution.

If, on completion of such mediation, the parties are unable to agree and settle the dispute, then the dispute may be pursued in litigation or through some other dispute resolution technique, except arbitration.

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.

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.

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- 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

- 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.

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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

- 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

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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 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.

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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 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.

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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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**AGENDA ITEM
ELEVEN**

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VICTOR VALLEY TRANSIT AUTHORITY

AGENDA MATTER

Amend VVTA's Employee Personnel Policy Benefits Contribution Rates, Revision 6; Initiate a Five Percent (5%) Wage Increase for All VVTA Staff; eliminate steps that will be below the statutory increase to minimum wage; and Include a Yearly Cost of Living Increase for Staff to be Reviewed by the VVTA Board Prior to Incorporation Into the VVTA Annual Budget.

SUMMARY STATEMENT

On February 19, 2018, the VVTA Board appointed a Compensation sub-committee consisting of three of its members to review the compensation of all VVTA employees, other than the Executive Director, and the VVTA Compensation Policy to provide a recommended action to the Board. As part of this process the sub-committee was also tasked by the Board to review benefits costs as they relate to compensation.

The sub-committee reported to the Board in closed session on September 17, 2018 recommending that the employer share of benefits cost should be frozen at current levels for all incumbent employees who were receiving in excess of one thousand dollars (\$1,000.00) in employer cost sharing, and capped at one thousand dollars (\$1,000.00) for all new hires and incumbent employees who are receiving less than that level of cost sharing. Furthermore, the Board directed staff to increase VVTA employee wages by 5% across the Board.

In order to follow the direction of the Board, staff has prepared Revision 6 to the VVTA Employee Personnel Policy manual and Revision 1 to the VVTA Compensation policy.

RECOMMENDED ACTION

- 1) Amend VVTA's Employee Personnel Policy Benefits Contribution Rates, Revision 6.
- 2) Initiate a five percent (5%) wage increase for all VVTA staff and amend the salary table to include the salary changes and to remove steps 5 through 10 made obsolete by the increased minimum wage.
- 3) Amend VVTA's Compensation Policy by Updating the Range and Step Plan in accordance with Board direction and add a requirement that staff bring an item to the Board by April of each year, commencing in 2019 for consideration of a cost of living increase based upon the Consumer Price Index.

PRESENTED BY	FISCAL IMPACT	MEETING DATE	ITEM NUMBER
None	\$68,412 and fiscal savings from benefits cost	October 15, 2018	11

VICTOR VALLEY TRANSIT AUTHORITY

AGENDA MATTER

Amend VVTA's Employee Personnel Policy Benefits Contribution Rates, Revision 6; Initiate a Five Percent (5%) Wage Increase for All VVTA Staff; eliminate steps that will be below the statutory increase to minimum wage; and Include a Yearly Cost of Living Increase for Staff to be Reviewed by the VVTA Board Prior to Incorporation Into the VVTA Annual Budget.

SUMMARY STATEMENT

Revision Six (6) of the VVTA Employee Personnel Policy

- **New Employees** - VVTA provides the following Insurance benefits to all full-time employees (40 hours/week)
 - VVTA pays ~~100%~~**\$1,000.00** of insurance premiums for combined costs of Health, Dental and Vision insurance for each employee ~~based on FY 2011 rates, PLUS 80% of annual increases.~~ **Existing Employees as of October 15, 2018 shall be capped at the amount VVTA was paying towards their premiums on that date.** Premium rates above these levels, as well as deductibles and copayments will be paid by the employee. All employee participation in insurance premiums will be deducted from pre-tax dollars through our 125 cafeteria plan.
- **Blue Shield of California Gold Preferred Plan (PPO), Silver PPO, and Kaiser HMO plans**
 - ~~Extensive PPO Network~~**Choose the plan that's right for you.** Access to a large variety of physician services.
- **Dental PPO Benefits – Premier Dental (DD)**
 - Preventive care paid at 100% - no deductible
 - Once annual \$50 (individual), \$150 (family) deductible is met:
 - Basic care paid at 80% in network, 80% out of network (based on DD rates)
 - Major care paid at 60% in network, 60% out of network (based on DD rates)
- **Vision Benefits - Vision Services Plan (VSP)**
 - Examinations every 12 months \$15.00 co-pay
 - Lenses every 12 months if necessary \$15 co-pay
 - Frames every 24 months covered up to \$120
- **Pre-tax Flexible Spending Account**
 - Designate pre-tax pay check contributions to reimburse yourself for eligible health care (health, dental, vision) and dependent care expenses
 - Estimate carefully – use it or lose it
- **Deferred Compensation- Retirement Plan- CALPERS.** Minimum vesting is 5 years. Employee pays 6.25% of salary into fund. No deductions for Social Security tax will be taken. Provides a monthly retirement payment based on a percentage of pay at time of retirement.

Continued

5.11 Health Insurance Benefits:

Participation in VVTA sponsored health insurance programs is effective after hiring based on the benefits date and any applicable waiting period required under the particular health insurance program.

1. Insurance Premiums

VVTA pays ~~100%~~ a defined contribution towards ~~of~~ insurance premiums for combined costs of Health, Dental and Vision insurance for each employee based on the following table:

~~FY2011 rates, PLUS 80% of annual increases.~~

Employees Hired Prior to October 15, 2018 ~~Revision 6:~~

Employee only: up to \$1,000.00

Employee +1: fixed at current Employer contribution

Employee + Family: fixed at current Employer contribution

Employees Hired on or after October 15, 2018 ~~Revision 6:~~

All coverage levels: (EE, E+1, Fam): up to \$1,000.00

Premium rates above these levels, as well as deductibles and copayments will be paid by the employee. All employee participation is deducted from pre-tax dollars through our sec125 Flexible Benefits plan.

2. Deductibles and Copayments

Some benefit programs require additional contributions from the employee such as insurance “deductibles” and “co-payments” for services received. To help defray the costs of these types of payments, VVTA provides an elective Flexible Spending Account where the employee can elect to have pre-tax earnings allocated to pay for a variety of medical related expenses excluding insurance premiums. (See “Flexible Spending Account” p.22)

3. ~~MPPO~~ medical care plan:

- a. Comprehensive medical, hospital, surgical, and prescription drug coverage for you and your eligible dependents.
- b. Extensive PPO/HMO Networks. Access to a large variety of physician services.

c. Cafeteria Plan. Choose the plan that i's right for you.

4. Dental care plan:

- a. Employee choice of eligible provider.
- b. Dental checkups and teeth cleaning services including x-rays are provided.

Continued

VICTOR VALLEY TRANSIT AUTHORITY

AGENDA MATTER

Amend VVTA's Employee Personnel Policy Benefits Contribution Rates, Revision 6; Initiate a Five Percent (5%) Wage Increase for All VVTA Staff; eliminate steps that will be below the statutory increase to minimum wage; and Include a Yearly Cost of Living Increase for Staff to be Reviewed by the VVTA Board Prior to Incorporation Into the VVTA Annual Budget.

SUMMARY STATEMENT

- c. Benefits include minor and major oral care services as well as a limited benefit for orthodontics.
- 5. **Vision Service Plan:**
 - a. Employee choice of eligible provider.
 - b. Benefits include examinations, frames, lenses and contact lenses.
 - c. These benefits have co-pay requirements covered by the employee.
- 6. **Flexible Spending Account (FSA)**
 - a. Designate pre-tax pay check contributions to reimburse yourself for eligible health care (health, dental, vision) and dependent care expenses up to ~~\$5,000~~legal maximum per calendar year.
 - b. No claims to file. Use an FSA debit card (FLEX Card) to pay for your qualified expenses.
 - c. **Estimate carefully – *use it or lose it.*** Amounts deducted from your pay must be used by the plan year end (90 days following calendar year end) or they will be lost. Additionally, amounts set aside but not used may be subject to repayment of tax liability.

Revision 1 to VVTA's Compensation Policy

1. (Add Paragraph 6) **COST OF LIVING ADJUSTMENT.**

6. COST OF LIVING ADJUSTMENT

A Cost of Living adjustment based on the Consumer Price Index (CPI) shall be included in the VVTA annual budget. To that end, each year no later than April, staff will present the CPI report to the Board for review and a determination for an amount to be included in the following year VVTA budget and authorize the necessary adjustments to the salary range table. Adjustments will become effective July 1 of each year commencing in 2019.

VICTOR VALLEY TRANSIT AUTHORITY

2. Update Salary Range Table

A. Eliminate ranges 5-10 made obsolete by minimum wage laws

B. Increase values within each range five percent (5%) across all steps.

Salary Range	Calculated Midpoint										
	STEP 1	2	3	4	5	6	7	8	9	10	11
11	\$26,189	\$26,974	\$27,783	\$28,617	\$29,475	\$30,360	\$31,270	\$32,209	\$33,175	\$34,170	\$35,195
12	\$27,498	\$28,323	\$29,173	\$30,048	\$30,949	\$31,878	\$32,834	\$33,819	\$34,833	\$35,879	\$36,955
13	\$28,873	\$29,739	\$30,631	\$31,550	\$32,497	\$33,471	\$34,476	\$35,510	\$36,575	\$37,672	\$38,803
14	\$30,317	\$31,226	\$32,163	\$33,128	\$34,121	\$35,145	\$36,199	\$37,285	\$38,404	\$39,556	\$40,743
15	\$31,833	\$32,787	\$33,771	\$34,784	\$35,827	\$36,902	\$38,009	\$39,150	\$40,324	\$41,534	\$42,780
16	\$33,424	\$34,427	\$35,459	\$36,523	\$37,619	\$38,747	\$39,910	\$41,107	\$42,340	\$43,611	\$44,919
17	\$35,096	\$36,148	\$37,232	\$38,349	\$39,500	\$40,685	\$41,905	\$43,162	\$44,457	\$45,791	\$47,165
18	\$36,850	\$37,955	\$39,094	\$40,267	\$41,475	\$42,719	\$44,001	\$45,321	\$46,680	\$48,081	\$49,523
19	\$38,693	\$39,853	\$41,049	\$42,280	\$43,549	\$44,855	\$46,201	\$47,587	\$49,014	\$50,485	\$51,999
20	\$40,628	\$41,846	\$43,101	\$44,394	\$45,726	\$47,098	\$48,511	\$49,966	\$51,465	\$53,009	\$54,599
21	\$42,659	\$43,938	\$45,256	\$46,614	\$48,012	\$49,453	\$50,936	\$52,464	\$54,038	\$55,659	\$57,329
22	\$44,792	\$46,135	\$47,519	\$48,945	\$50,413	\$51,925	\$53,483	\$55,087	\$56,740	\$58,442	\$60,196
23	\$47,032	\$48,442	\$49,895	\$51,392	\$52,933	\$54,521	\$56,157	\$57,842	\$59,577	\$61,364	\$63,205
24	\$49,383	\$50,864	\$52,390	\$53,961	\$55,580	\$57,248	\$58,965	\$60,734	\$62,556	\$64,433	\$66,366
25	\$51,852	\$53,407	\$55,009	\$56,659	\$58,359	\$60,110	\$61,913	\$63,771	\$65,684	\$67,654	\$69,684
26	\$54,445	\$56,077	\$57,760	\$59,492	\$61,277	\$63,115	\$65,009	\$66,959	\$68,968	\$71,037	\$73,168
27	\$57,167	\$58,881	\$60,648	\$62,467	\$64,341	\$66,271	\$68,259	\$70,307	\$72,416	\$74,589	\$76,826
28	\$60,026	\$61,825	\$63,680	\$65,590	\$67,558	\$69,585	\$71,672	\$73,822	\$76,037	\$78,318	\$80,668
29	\$63,027	\$64,916	\$66,864	\$68,870	\$70,936	\$73,064	\$75,256	\$77,514	\$79,839	\$82,234	\$84,701
30	\$66,178	\$68,162	\$70,207	\$72,313	\$74,483	\$76,717	\$79,019	\$81,389	\$83,831	\$86,346	\$88,936
31	\$69,487	\$71,570	\$73,717	\$75,929	\$78,207	\$80,553	\$82,970	\$85,459	\$88,023	\$90,663	\$93,383
32	\$72,961	\$75,149	\$77,403	\$79,725	\$82,117	\$84,581	\$87,118	\$89,732	\$92,424	\$95,196	\$98,052
33	\$76,610	\$78,906	\$81,274	\$83,712	\$86,223	\$88,810	\$91,474	\$94,218	\$97,045	\$99,956	\$102,955
34	\$80,440	\$82,852	\$85,337	\$87,897	\$90,534	\$93,250	\$96,048	\$98,929	\$101,897	\$104,954	\$108,103
35	\$84,462	\$86,994	\$89,604	\$92,292	\$95,061	\$97,913	\$100,850	\$103,876	\$106,992	\$110,202	\$113,508
36	\$88,685	\$91,344	\$94,084	\$96,907	\$99,814	\$102,808	\$105,893	\$109,069	\$112,342	\$115,712	\$119,183
37	\$93,119	\$95,911	\$98,788	\$101,752	\$104,805	\$107,949	\$111,187	\$114,523	\$117,959	\$121,497	\$125,142
38	\$97,775	\$100,707	\$103,728	\$106,840	\$110,045	\$113,346	\$116,747	\$120,249	\$123,857	\$127,572	\$131,399
39	\$102,664	\$105,742	\$108,914	\$112,182	\$115,547	\$119,014	\$122,584	\$126,261	\$130,049	\$133,951	\$137,969
40	\$107,797	\$111,029	\$114,360	\$117,791	\$121,325	\$124,964	\$128,713	\$132,575	\$136,552	\$140,648	\$144,868
41	\$113,187	\$116,581	\$120,078	\$123,680	\$127,391	\$131,212	\$135,149	\$139,203	\$143,379	\$147,681	\$152,111
42	\$118,847	\$122,410	\$126,082	\$129,864	\$133,760	\$137,773	\$141,906	\$146,163	\$150,548	\$155,065	\$159,717
43	\$124,789	\$128,530	\$132,386	\$136,358	\$140,448	\$144,662	\$149,002	\$153,472	\$158,076	\$162,818	\$167,703
44	\$131,028	\$134,957	\$139,005	\$143,175	\$147,471	\$151,895	\$156,452	\$161,145	\$165,980	\$170,959	\$176,088
45	\$137,580	\$141,704	\$145,956	\$150,334	\$154,844	\$159,490	\$164,274	\$169,202	\$174,279	\$179,507	\$184,892

VVTA COMPENSATION POLICY

March 18, 2013

DRAFT Amendment 1, October 15, 2018 (effective July 1, 2018)

1. COMPENSATION OVERVIEW

1.A. OBJECTIVE

This plan underscores VVTA's commitment to achieving results and providing the best service with the finest employees.

VVTA strives to administer the compensation program in a flexible but consistent manner. The purpose of the compensation program is to attract, retain, and motivate employees.

VVTA achieves this, in part, by providing competitive wages based on the Relevant Labor Market. The "relevant labor market" may vary depending upon classification and is primarily defined by the geographic region when possible (local, state-wide, or national) and key markets (transit, other government agencies, private sector) where labor talent is found, recruited from, and/or lost.

When the relevant labor market is defined as "local"; local private sector compensation data will be considered along with local public sector compensation (transit and other government agencies. When the relevant labor market is statewide or national, VVTA will consider compensation data for public sector agencies (transit and other government) with several comparable demographic data points including but not limited to population, median home price, median household income, median age, median education level, services provided, and unemployment rate. Quality of life should also be considered when selecting comparable transit and other government agencies.

Employees are recognized for their contributions only through performance-based merit increases. No automatic "step" plan shall be used.

1.B. PURPOSE

The purpose is to:

- attract and retain a workforce dedicated to excellence, thereby ensuring VVTA's ability to meet the present and future business objectives of the organization,
- maintain a salary program, which will give maximum incentive to real accomplishments and compensate individuals on the basis of merit without discrimination, while providing necessary administrative control of salary costs, and;
- provide salary structures, which are internally equitable and externally competitive.

1.C. STRUCTURE

The Executive Director assigns each job classification to a “salary range” according to the level of responsibility involved. Classifications share a salary range with other jobs that have different duties but approximately the same degree of responsibility.

Salary ranges for classifications contain eleven salary “steps”, each three (3) percent above the previous. As VVTA does not embrace a formal “step” progression employees are hired into their classification at a step commensurate with their ability, experience, and knowledge. However, most non-management employees will start at the first step of the range for their classification. With continuous good performance, employees may progress to higher steps at regular intervals.

The salary structure is designed to provide:

- salary grade ranges for classifications based upon the scope and level of responsibility of work performed in comparison to other work performed within VVTA and in comparison to the external market, and
- salaries paid to employees that reflect the level of responsibilities of the classification and the performance of the individual.

2. ADMINISTRATION OF COMPENSATION

The Executive Director is responsible for the establishment of definitive guidelines for adjusting individual salaries and salary ranges. The development and administration of these guidelines may be delegated to appropriate staff.

Within guidelines established by the Executive Director, compensation adjustments may be given:

- as an increase to base pay,
- in a lump sum payment, and/or
- as deferred compensation

The Executive Director is authorized to adjust staff salaries. In any fiscal year the total dollar amount of all salary increases granted pursuant to this policy will be a percentage of the total budgeted salaries for Administrative positions and shall be authorized by the Board of Directors with the approval of the VVTA fiscal year budget.

3. FULL-TIME AND PART-TIME EMPLOYEES

An employee may be hired or promoted into a position at any salary within the range for the classification; such salary is to be determined based on individual qualifications. Approval by the Executive Director is required for all starting salaries. A new employee will complete an introductory (probation) period per current VVTA employment policy. At the end of the introductory period, the employee's performance will be evaluated and the employee may be eligible for a merit increase based on the employee's performance level during the introductory period.

Following the completion of the introductory period, subsequent performance reviews will be conducted annually on a common review date and merit increases may be authorized at that time.

4. RECLASSIFICATIONS

When an employee is assigned to a classification with a lower salary range, or when the employee's position is reclassified to a lower salary range:

- the employee's salary may be reduced to the maximum of the new range, or
- with the approval of the Executive Director, the employee may retain his or her salary paid prior to the new assignment.

Any employee promoted from one defined position to a different position at a higher salary grade will be brought at least to the minimum of the salary range for the different position. The promoted or laterally transferred employee may serve an introductory period per current VVTA employment policy. At the end of any introductory period, the employee's performance will be evaluated and a merit increase may be authorized.

5. MERIT INCREASES (RAISES)

An employee may receive a merit increase based on his/her performance evaluation rating at the time of the common review unless the overall rating is "needs improvement" or "unsatisfactory".

Individual merit increases may vary in size depending on performance but shall not be increased by more than one "step" unless approved in writing by the Executive Director and in such case shall never exceed one and one-half "steps". Dollars unspent in this budget may be used to supplement the special performance award budget for the same fiscal year.

An employee's performance may be reviewed at any time during the year as appropriate, but his/her salary may not be adjusted other than as provided in this Compensation Plan.

6. COST OF LIVING ADJUSTMENT

A Cost of Living adjustment based on the Consumer Price Index (CPI) shall be included in the VVTA annual budget. To that end, each year, no later than April, staff will present the CPI report to the Board for review and a determination for an amount to be included in the following year VVTA budget along with an adjustment to the salary range table. Adjustments will become effective July 1 of each year commencing in 2019.

7. TEMPORARY ASSIGNMENTS

When an employee is assigned duties of a different classification with the same or higher salary grade, the employee's salary may be increased by an amount not to exceed 5%. Such increases may be made only in those instances where the assignment will last at least 30 days and will not, in any event, be paid for a period in excess of 180 days, without written authorization by the Executive Director.

8. COMPENSATION PROGRAM EVALUATION

Approximately every five years and no more than every seven years, VVTA will evaluate its compensation structure, programs, and policies to assess market competitiveness, effectiveness, and compliance with State Law. Adjustments to the compensation structure may be made as a result of this periodic evaluation and will be brought to the VVTA Board for approval.

9. ANNUAL PERFORMANCE EVALUATIONS

Employees shall receive an annual performance evaluation in order to be eligible for a merit increase.

9.1. CONTENT

Annual performance evaluations shall include review of the current year's performance, completion of the current year's performance evaluation form, and preparation of the next year's performance plan.

9.2. RATING PROCEDURE

Seventy-five percent (75%) of an employee's overall performance rating shall be based on five to eight job-related behaviors. All of the following five behaviors must be rated:

- **Initiative:** identifying problems and finding opportunities for innovative solutions.
- **Customer Service:** responding to the needs of external and internal customers; continually increasing the value of services delivered.
- **Job Knowledge:** demonstrating expertise; keeping skills current through professional development.
- **Teamwork:** communicating and collaborating well with others to solve problems and accomplish tasks.
- **Stewardship:** promoting the public trust by using the Authority's resources wisely, communicating honestly, and being accountable.

For managers, at least one and up to three of the following behaviors must be rated:

- **Organization Development:** improving organization responsiveness and productivity.
- **Human Resources Management:** encouraging excellent performance from employees.
- **Leadership:** defining and communicating overall issues and priorities for the organization.

The remaining twenty-five Percent (25%) of a staff employee's overall performance rating shall be based on standard employment requirements (such as attendance and following requirements of the employee handbook). For management the remaining twenty-five Percent (25%) of a the overall performance rating shall be based on accomplishment stated goals and objectives. These objectives shall be directly related to the Board goals, VVTA objectives, and personal objectives.

9.3. RATING DEFINITIONS

On the performance evaluation each job-related behavior or management objective shall receive an individual performance rating based on the following scale:

- **Unacceptable:** Performance consistently fails to meet minimum requirements and expectations.
- **Needs Improvement:** Performance is inconsistent, only sometimes or partially meeting expectations. Sustained improvement is needed to fully meet expectations.
- **Meets Expectations:** Performance fully meets expectations, with only a normal amount of supervision or direction necessary. Performance reflects competent skills and a good attitude.
- **Exceeds Expectations:** Performance consistently exceeds expectations, with higher quality, more innovation, and less supervision or direction than typically required. Specific examples document this above average achievement.
- **Outstanding:** Performance is clearly superior. While specific examples document this superiority, achievement is usually self-evident to others because this level of performance is extraordinary.

10. SALARY RANGES AND STEPS

VVTA's Salary Range provides equal in-range salary opportunity of approximately 35% from Minimum Step to Maximum Step. The salary ranges are separated by a uniform 5%, permitting job classes to be precisely linked to the external prevailing rates. VVTA uses an eleven (11) step plan within each range. Each "step" is 3% above the previous "step".

The forty (40) ranges meet the dollar values required to encompass prevailing rates, permitting the plan to be updated in future years to accommodate any anticipated increases in the prevailing rates. Additional salary ranges may be added by the Executive Director if needed.

Job classes can be individually reassigned to different salary ranges on a pre-scheduled basis (i.e. every 3 years) to reflect the varying movement in the external prevailing rate (if any) for each job class. The Salary Range Table shall not be adjusted by large blanket percentages or flat dollar amounts, as that will adversely impact the external competitiveness and the internal equity of the salary plan.

VVTA SALARY RANGE TABLE

(Approved by VVTA Board ~~January 29, 2013~~ October 15, 2018)

Salary Range	Step-1	Step-2	Step-3	Step-4	Step-5	Step-6 Calculated Midpoint	Step-7	Step-8	Step-9	Step-10	Step-11
-											
5	\$18,612	\$19,170	\$19,746	\$20,338	\$20,948	\$21,576	\$22,224	\$22,890	\$23,577	\$24,284	\$25,013
6	\$19,543	\$20,129	\$20,733	\$21,355	\$21,995	\$22,655	\$23,335	\$24,035	\$24,756	\$25,499	\$26,264
7	\$20,520	\$21,135	\$21,769	\$22,423	\$23,095	\$23,788	\$24,502	\$25,237	\$25,994	\$26,774	\$27,577
8	\$21,546	\$22,192	\$22,858	\$23,544	\$24,250	\$24,977	\$25,727	\$26,499	\$27,294	\$28,112	\$28,956
9	\$22,623	\$23,302	\$24,004	\$24,724	\$25,462	\$26,226	\$27,013	\$27,823	\$28,658	\$29,518	\$30,403
10	\$23,754	\$24,467	\$25,204	\$25,957	\$26,736	\$27,538	\$28,364	\$29,215	\$30,091	\$30,994	\$31,924
11	\$24,942	\$25,690	\$26,461	\$27,255	\$28,072	\$28,915	\$29,782	\$30,675	\$31,596	\$32,544	\$33,520
12	\$26,189	\$26,975	\$27,784	\$28,617	\$29,476	\$30,360	\$31,271	\$32,209	\$33,175	\$34,171	\$35,196
13	\$27,498	\$28,323	\$29,173	\$30,048	\$30,950	\$31,878	\$32,835	\$33,820	\$34,834	\$35,879	\$36,956
14	\$28,873	\$29,740	\$30,632	\$31,551	\$32,497	\$33,472	\$34,476	\$35,511	\$36,576	\$37,673	\$38,803
15	\$30,317	\$31,227	\$32,163	\$33,128	\$34,122	\$35,146	\$36,200	\$37,286	\$38,405	\$39,557	\$40,744
16	\$31,833	\$32,788	\$33,772	\$34,785	\$35,828	\$36,903	\$38,010	\$39,150	\$40,325	\$41,535	\$42,781
17	\$33,425	\$34,427	\$35,460	\$36,524	\$37,620	\$38,748	\$39,911	\$41,108	\$42,341	\$43,614	\$44,920
18	\$35,096	\$36,149	\$37,233	\$38,350	\$39,501	\$40,686	\$41,906	\$43,163	\$44,458	\$45,792	\$47,166
19	\$36,851	\$37,956	\$39,095	\$40,268	\$41,476	\$42,720	\$44,001	\$45,322	\$46,681	\$48,082	\$49,524
20	\$38,693	\$39,854	\$41,049	\$42,281	\$43,549	\$44,856	\$46,202	\$47,588	\$49,015	\$50,486	\$52,000
21	\$40,628	\$41,847	\$43,102	\$44,395	\$45,727	\$47,099	\$48,512	\$49,967	\$51,466	\$53,010	\$54,600
22	\$42,659	\$43,939	\$45,257	\$46,615	\$48,013	\$49,454	\$50,937	\$52,465	\$54,039	\$55,660	\$57,330
23	\$44,792	\$46,136	\$47,520	\$48,946	\$50,414	\$51,926	\$53,484	\$55,089	\$56,741	\$58,444	\$60,197
24	\$47,032	\$48,443	\$49,896	\$51,393	\$52,935	\$54,523	\$56,158	\$57,843	\$59,578	\$61,366	\$63,207
25	\$49,383	\$50,865	\$52,391	\$53,962	\$55,584	\$57,249	\$58,966	\$60,735	\$62,557	\$64,434	\$66,367
26	\$51,852	\$53,408	\$55,010	\$56,661	\$58,360	\$60,111	\$61,915	\$63,772	\$65,685	\$67,656	\$69,685
27	\$54,445	\$56,078	\$57,761	\$59,494	\$61,278	\$63,117	\$65,010	\$66,961	\$68,969	\$71,038	\$73,170
28	\$57,167	\$58,882	\$60,649	\$62,468	\$64,342	\$66,273	\$68,261	\$70,309	\$72,418	\$74,590	\$76,828
29	\$60,026	\$61,826	\$63,681	\$65,592	\$67,559	\$69,586	\$71,674	\$73,824	\$76,039	\$78,320	\$80,669
30	\$63,027	\$64,918	\$66,865	\$68,871	\$70,937	\$73,066	\$75,257	\$77,515	\$79,841	\$82,236	\$84,703
31	\$66,178	\$68,164	\$70,209	\$72,315	\$74,484	\$76,719	\$79,020	\$81,391	\$83,833	\$86,348	\$88,938
32	\$69,487	\$71,572	\$73,719	\$75,931	\$78,208	\$80,555	\$82,971	\$85,461	\$88,024	\$90,665	\$93,385
33	\$72,962	\$75,150	\$77,405	\$79,727	\$82,119	\$84,582	\$87,120	\$89,734	\$92,426	\$95,198	\$98,054
34	\$76,610	\$78,908	\$81,275	\$83,713	\$86,225	\$88,812	\$91,476	\$94,220	\$97,047	\$99,958	\$102,957
35	\$80,440	\$82,853	\$85,339	\$87,899	\$90,536	\$93,252	\$96,050	\$98,931	\$101,899	\$104,956	\$108,105
36	\$84,462	\$86,996	\$89,606	\$92,294	\$95,063	\$97,915	\$100,852	\$103,878	\$106,994	\$110,204	\$113,510
37	\$88,685	\$91,346	\$94,086	\$96,909	\$99,816	\$102,811	\$105,895	\$109,072	\$112,344	\$115,714	\$119,186
38	\$93,120	\$95,913	\$98,791	\$101,754	\$104,807	\$107,951	\$111,190	\$114,525	\$117,961	\$121,500	\$125,145
39	\$97,776	\$100,709	\$103,730	\$106,842	\$110,047	\$113,349	\$116,749	\$120,252	\$123,859	\$127,575	\$131,402
40	\$102,664	\$105,744	\$108,917	\$112,184	\$115,550	\$119,016	\$122,587	\$126,264	\$130,052	\$133,954	\$137,972
41	\$107,797	\$111,031	\$114,362	\$117,793	\$121,327	\$124,967	\$128,716	\$132,577	\$136,555	\$140,651	\$144,871
42	\$113,187	\$116,583	\$120,080	\$123,683	\$127,393	\$131,215	\$135,152	\$139,206	\$143,382	\$147,684	\$152,114
43	\$118,847	\$122,412	\$126,085	\$129,867	\$133,763	\$137,776	\$141,909	\$146,166	\$150,551	\$155,068	\$159,720
44	\$124,789	\$128,533	\$132,389	\$136,360	\$140,451	\$144,665	\$149,005	\$153,475	\$158,079	\$162,821	\$167,706
45	\$131,029	\$134,959	\$139,008	\$143,178	\$147,474	\$151,898	\$156,455	\$161,149	\$165,983	\$170,963	\$176,091

**Schedule filler only works 12.5 hours per week or \$7,079 per year based on \$10.80/hr.*

Salary Range	Calculated Midpoint										
	STEP 1	2	3	4	5	6	7	8	9	10	11
11	\$26,189	\$26,974	\$27,783	\$28,617	\$29,475	\$30,360	\$31,270	\$32,209	\$33,175	\$34,170	\$35,195
12	\$27,498	\$28,323	\$29,173	\$30,048	\$30,949	\$31,878	\$32,834	\$33,819	\$34,833	\$35,879	\$36,955
13	\$28,873	\$29,739	\$30,631	\$31,550	\$32,497	\$33,471	\$34,476	\$35,510	\$36,575	\$37,672	\$38,803
14	\$30,317	\$31,226	\$32,163	\$33,128	\$34,121	\$35,145	\$36,199	\$37,285	\$38,404	\$39,556	\$40,743
15	\$31,833	\$32,787	\$33,771	\$34,784	\$35,827	\$36,902	\$38,009	\$39,150	\$40,324	\$41,534	\$42,780
16	\$33,424	\$34,427	\$35,459	\$36,523	\$37,619	\$38,747	\$39,910	\$41,107	\$42,340	\$43,611	\$44,919
17	\$35,096	\$36,148	\$37,232	\$38,349	\$39,500	\$40,685	\$41,905	\$43,162	\$44,457	\$45,791	\$47,165
18	\$36,850	\$37,955	\$39,094	\$40,267	\$41,475	\$42,719	\$44,001	\$45,321	\$46,680	\$48,081	\$49,523
19	\$38,693	\$39,853	\$41,049	\$42,280	\$43,549	\$44,855	\$46,201	\$47,587	\$49,014	\$50,485	\$51,999
20	\$40,628	\$41,846	\$43,101	\$44,394	\$45,726	\$47,098	\$48,511	\$49,966	\$51,465	\$53,009	\$54,599
21	\$42,659	\$43,938	\$45,256	\$46,614	\$48,012	\$49,453	\$50,936	\$52,464	\$54,038	\$55,659	\$57,329
22	\$44,792	\$46,135	\$47,519	\$48,945	\$50,413	\$51,925	\$53,483	\$55,087	\$56,740	\$58,442	\$60,196
23	\$47,032	\$48,442	\$49,895	\$51,392	\$52,933	\$54,521	\$56,157	\$57,842	\$59,577	\$61,364	\$63,205
24	\$49,383	\$50,864	\$52,390	\$53,961	\$55,580	\$57,248	\$58,965	\$60,734	\$62,556	\$64,433	\$66,366
25	\$51,852	\$53,407	\$55,009	\$56,659	\$58,359	\$60,110	\$61,913	\$63,771	\$65,684	\$67,654	\$69,684
26	\$54,445	\$56,077	\$57,760	\$59,492	\$61,277	\$63,115	\$65,009	\$66,959	\$68,968	\$71,037	\$73,168
27	\$57,167	\$58,881	\$60,648	\$62,467	\$64,341	\$66,271	\$68,259	\$70,307	\$72,416	\$74,589	\$76,826
28	\$60,026	\$61,825	\$63,680	\$65,590	\$67,558	\$69,585	\$71,672	\$73,822	\$76,037	\$78,318	\$80,668
29	\$63,027	\$64,916	\$66,864	\$68,870	\$70,936	\$73,064	\$75,256	\$77,514	\$79,839	\$82,234	\$84,701
30	\$66,178	\$68,162	\$70,207	\$72,313	\$74,483	\$76,717	\$79,019	\$81,389	\$83,831	\$86,346	\$88,936
31	\$69,487	\$71,570	\$73,717	\$75,929	\$78,207	\$80,553	\$82,970	\$85,459	\$88,023	\$90,663	\$93,383
32	\$72,961	\$75,149	\$77,403	\$79,725	\$82,117	\$84,581	\$87,118	\$89,732	\$92,424	\$95,196	\$98,052
33	\$76,610	\$78,906	\$81,274	\$83,712	\$86,223	\$88,810	\$91,474	\$94,218	\$97,045	\$99,956	\$102,955
34	\$80,440	\$82,852	\$85,337	\$87,897	\$90,534	\$93,250	\$96,048	\$98,929	\$101,897	\$104,954	\$108,103
35	\$84,462	\$86,994	\$89,604	\$92,292	\$95,061	\$97,913	\$100,850	\$103,876	\$106,992	\$110,202	\$113,508
36	\$88,685	\$91,344	\$94,084	\$96,907	\$99,814	\$102,808	\$105,893	\$109,069	\$112,342	\$115,712	\$119,183
37	\$93,119	\$95,911	\$98,788	\$101,752	\$104,805	\$107,949	\$111,187	\$114,523	\$117,959	\$121,497	\$125,142
38	\$97,775	\$100,707	\$103,728	\$106,840	\$110,045	\$113,346	\$116,747	\$120,249	\$123,857	\$127,572	\$131,399
39	\$102,664	\$105,742	\$108,914	\$112,182	\$115,547	\$119,014	\$122,584	\$126,261	\$130,049	\$133,951	\$137,969
40	\$107,797	\$111,029	\$114,360	\$117,791	\$121,325	\$124,964	\$128,713	\$132,575	\$136,552	\$140,648	\$144,868
41	\$113,187	\$116,581	\$120,078	\$123,680	\$127,391	\$131,212	\$135,149	\$139,203	\$143,379	\$147,681	\$152,111
42	\$118,847	\$122,410	\$126,082	\$129,864	\$133,760	\$137,773	\$141,906	\$146,163	\$150,548	\$155,065	\$159,717
43	\$124,789	\$128,530	\$132,386	\$136,358	\$140,448	\$144,662	\$149,002	\$153,472	\$158,076	\$162,818	\$167,703
44	\$131,028	\$134,957	\$139,005	\$143,175	\$147,471	\$151,895	\$156,452	\$161,145	\$165,980	\$170,959	\$176,088
45	\$137,580	\$141,704	\$145,956	\$150,334	\$154,844	\$159,490	\$164,274	\$169,202	\$174,279	\$179,507	\$184,892

11. VVTA JOB CLASS / POSITION RANGES

Additional job titles may be added as VVTA expands and provides more transportation services and support for those services.

Job Class / Titles	Salary Range	Step 1	Step 6 Midpoint	Step 11
Deputy Executive Director	41	\$ 113,187	\$ 131,212	\$ 152,111
Fleet/Facilities Director	40	\$ 107,797	\$ 124,964	\$ 144,868
Finance Director	40	\$ 107,797	\$ 124,964	\$ 144,868
Operations Director	38	\$ 97,775	\$ 113,346	\$ 131,399
CTSA Director	37	\$ 93,119	\$ 107,949	\$ 125,142
I.T. Manager	36	\$ 88,685	\$ 102,808	\$ 119,183
Procurement Manager	31	\$ 69,487	\$ 80,553	\$ 93,383
Contract Compliance Manager	27	\$ 57,167	\$ 66,271	\$ 76,826
Accounting Supervisor	27	\$ 57,167	\$ 66,271	\$ 76,826
Senior Fleet Analyst	26	\$ 54,445	\$ 63,115	\$ 73,168
Route Planner	26	\$ 54,445	\$ 63,115	\$ 73,168
Financial Analyst-Grants	26	\$ 54,445	\$ 63,115	\$ 73,168
Grants Analyst	26	\$ 54,445	\$ 63,115	\$ 73,168
I.T. Systems Administrator	26	\$ 54,445	\$ 63,115	\$ 73,168
Clerk of the Board	26	\$ 54,445	\$ 63,115	\$ 73,168
Marketing - Civil Rights Coordinator	24	\$ 49,383	\$ 57,248	\$ 66,366
Administrative Assistant	20	\$ 40,628	\$ 47,098	\$ 54,599
Inventory Specialist	20	\$ 40,628	\$ 47,098	\$ 54,599
Accounting Technician	20	\$ 40,628	\$ 47,098	\$ 54,599
CTSA Administrative Assistant	19	\$ 38,693	\$ 44,855	\$ 51,999
Vanpool Administrator	16	\$ 33,424	\$ 38,747	\$ 44,919
Lead Customer Service Representative	15	\$ 31,833	\$ 36,902	\$ 42,780
Travel Trainer (Lead)	15	\$ 31,833	\$ 36,902	\$ 42,780
Travel Trainer (PT)	13	\$ 28,873	\$ 33,471	\$ 38,803
Customer Service Representative	13	\$ 28,873	\$ 33,471	\$ 38,803

VVTA EMPLOYEE EVALUATION FROM (rev 6/24/14)

EVALUATION YEAR ENDING: _____

JOB RELATED BEHAVIORS

For Non-Management employees enter an evaluation score from 1 to 20 for each of the first five job-related behaviors listed and place the total on Total Evaluation Score line (maximum 100)

For Management Employees enter an evaluation score from 1 to 15 for each of the first five job-related behaviors and a total of up to 25 points for the last three Management job-related behaviors. If one of the three Management job-related behaviors is not applicable, enter "N/A". Use the extra space to elaborate on expectations about selected behaviors.

Employee: _____ Signature: _____	Evaluation Score
Evaluator: _____	
Evaluation Date: _____	
Initiative: identifying problems and finding opportunities for innovative solutions (mandatory)	
Job Knowledge: demonstrating expertise; keeping skills current through professional development (mandatory)	
Teamwork: communicating and collaborating well with others to solve problems and accomplish tasks	
Stewardship/Ethics: promoting public trust by using Authority's resources wisely, communicating honestly and being accountable (mandatory)	
Customer Service: responding to the needs of internal and external customers; increasing the value of services delivered (mandatory)	
Organization Development: <i>improving organization responsiveness and productivity</i>	Mgmt Only
Human Resources Management: <i>encouraging excellent performance from employees</i>	Mgmt Only
Leadership: <i>defining and communicating overall issues, priorities, and directions for the organization</i>	Mgmt Only
Total Evaluation Score (maximum 100) weight 75% staff; 100% management	
Overall Performance Score (maximum 100) weight 25% staff	

Comments: _____

Goals: _____

Staff Only	Score	Weight	Total	Year	Class.	Step	Wage
Total Evaluation		0.75		FY			\$
Overall Performance		0.25		FY			\$
Final Evaluation Score							

CLOSED SESSION

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VICTOR VALLEY TRANSIT AUTHORITY

AGENDA MATTER

Closed Session.

SUMMARY STATEMENT

BOARD BUSINESS

Closed Session.

Personnel Matters - Government Code Section 54957(b)(1) – Public Employee Evaluation. Title: Executive Director.

RECOMMENDED ACTION

PRESENTED BY	FISCAL IMPACT	MEETING DATE	ITEM NUMBER
Carol Greene, County Counsel	N/A	October 15, 2018	12

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**CORRESPONDENCE
/PRESS CLIPS**

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Project Improves Accessibility

IN THE VILLAGE

Accessing the Apple Valley Village is now easier with the addition of sidewalks along Powhatan Road and the newly reconstructed John Glenn Road. The work is the result of a partnership between the Village Property and Business Improvement District (PBID) and the Town that aims to make the area more ADA accessible, pedestrian friendly and attract more visitors to the area.

The Town allocated Local Transportation Funds to close the sidewalk gaps along the east side of John Glenn Road between Powhatan Road and Outer Highway 18. Because John Glenn was a private street, the PBID Association provided funds to reconstruct the road. Now that it has been upgraded, it will be incorporated into the street system and will be maintained by the town going forward.

This is just the beginning of accessibility improvements to come. Earlier this year, the Town received a grant to study additional ways this historic corridor could be upgraded to attract more visitors to the area that boasts an eclectic mix of retail, industry, restaurants, art galleries and even Apple Valley's own craft brewery.

For more information regarding the Apple Valley Village Accessibility Project, visit www.applevalley.org or call (760) 240-7000 x7013. For more information about the Village Business District and upcoming events visit www.AppleValleyVillage.com.



Additional Paving to Include IMPROVING BUS ROUTES

Approximately 35 miles of road are sporting a fresh new surface with bright yellow striping following the completion of the 17-18 paving project, which prioritized residential areas and collector roads that connect neighborhoods to main arterial streets.

Work for the 18-19 fiscal year has already started and has been designed to resurface 42 extra miles in the coming weeks. In addition to residential areas, this year's fiscal cycle will also include segments to maintain our bus routes.

The work will focus on portions of Victor Valley Transit Authority (VTA) Route 41 along Outer Highway 18 South from Kasota Road to Piute Road and from Outer Highway 18 North from Rimrock Road North to Corwin Road. Each segment is heavily traveled by the VTA bus which services St. Mary's Hospital, the Apple Valley Post Office, and the Apple Valley Civic Center.

Resurfacing these critical areas will improve continuity with the routes, reducing the potential for delays or detours due to damaged pavement surfaces. In addition, the resurfaced segments will be sealed and protect the buses and other vehicles from excessive potholes.

Town staff evaluated each of the selected segments to determine the appropriate resurfacing method to ensure maximum value and longevity. The nearly \$2 million project will use Measure 1 and SB1 funding for the residential and collector roads and Local Transportation Funds (LTF) for the bus routes.

Extended Drive Time: Oct. 27

Victor Valley Bicycle Tour



Watch for cyclists traveling through town when the Victor Valley Bicycle Tour comes to Apple Valley on Oct. 27. Plan for extra drive time if traveling near the corner of Waalew

Road and Dale Evans Parkway where a three-way stop will be installed temporarily for the event.

Visit victorvalleybicycletour.com for more information about the routes or to participate.

Driver convicted in crash that killed Barstow man at Fort Irwin

By Shea Johnson

Staff Writer

Posted at 11:10 AM

Updated at 11:10 AM

RIVERSIDE — A tractor-trailer driver has been convicted of involuntary manslaughter for causing a bus crash that killed a man near the entrance of Fort Irwin National Training Center in June 2014.

Steven Kilty, 51, of Apache Junction, Arizona, was found guilty late Tuesday following a five-day trial in U.S. District Court. The verdict comes after Kilty was indicted in March 2016 and after an initial mistrial in the case late last year.

He faces a statutory maximum of eight years in federal prison when he is scheduled for sentencing Jan. 7, according to the U.S. Attorney's Office.

On June 1, 2014, Kilty was delivering a military tactical truck to the military base, arriving the night before the scheduled drop-off. He parked the tractor trailer in the right lane of Fort Irwin Road near "Painted Rocks."

Prosecutors said Kilty turned off his truck lights, did not put out safety triangle reflectors or turn on the hazard lights, and went to sleep in the berth of the truck.

Not long after 5 a.m., before sunrise, a Victor Valley Transit Authority bus transporting commuters to Fort Irwin collided into the rear of the parked truck.

Dail Keiper Sr., 62, of Barstow was killed and seven other bus passengers were seriously injured, including one who had an arm amputated.

The U.S. Attorney's Office said in a statement Wednesday that evidence presented at trial showed Kilty was "grossly negligent."

Keiper's wife and son filed a wrongful death lawsuit in April 2015 against Kilty, VVTA and companies linked to the bus and tractor trailer operations. The case, being heard in federal court, has been stayed pending the outcome of the criminal trial, records show.

In third-party complaints denied by the United States, it was alleged that the tractor trailer was stopped outside the military base in compliance with Fort Irwin's "recognized, mandatory, entry procedures" and that someone even told a Fort Irwin employee that the tractor trailer's presence was "an accident waiting to happen," but the warning fell on deaf ears.

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DAILY PRESS

Stanton honored for air-quality work

By Matthew Cabe

Staff Writer

Posted Sep 28, 2018 at 12:03 PM

Updated at 4:28 PM

Retiring Apple Valley Town Council member began serving on MDAQMD Governing Board in 2011.

VICTORVILLE — Barb Stanton was honored by the Mojave Desert Air Quality Management District (MDAQMD) on Monday following her decision to not seek re-election to a third term on the Apple Valley Town Council.

Stanton was appointed to the 13-member MDAQMD Governing Board after a Nov. 2, 2010, election win ushered her into the local political realm. She represented Apple Valley from 2011 to 2012, and again from 2015 to 2018, according to an MDAQMD statement.

Stanton told the Daily Press she was at a “loss of words” when MDAQMD Executive Director Brad Poiriez presented her with a plaque commemorating her years of service, which included a stint as vice chair in 2012.

“It just fills your heart. It’s humbling,” Stanton said. “I think of the citizens who put me there. As I say goodbye, I think of all the people who make things work.”

Reflecting on her political career, Stanton said she understood “why politicians stay around,” adding that time is necessary to build relationships and become an effective elected official.

The same was true, she noted, for her time with the MDAQMD — the air pollution control authority and permitting agency that oversees an expanse that includes most of San Bernardino County and the Palo Verde Valley of Riverside County, which includes the City of Blythe.

“Imagine sitting down at the table in an agency with this kind of regulatory power and to feel uninformed. There’s a huge learning curve, and it really does take a lot of work,” Stanton said before taking jestful aim at herself. “You read and you ask questions. And then, in about eight years when you know enough, you quit.”

On the board, Stanton and her colleagues adopted rules, set policies and offered direction on crucial air-quality issues that affect the Mojave Desert. During Monday’s presentation, Poiriez said Stanton’s contributions “shaped the policies of our district and helped forge a plan for continued success in the future.”

“She has always been thoughtful, attentive and fully engaged,” he said in the statement. “As an executive director, it is rewarding to see a board member show the same compassion for air quality, and the residents throughout our district, as she does for those who elected her to serve in Apple Valley.”

Stanton returned the sentiment in kind. She described several longtime MDAQMD staff members as “the glue” of the agency, and said Poiriez has been a “breath of fresh air” since he became MDAQMD’s executive director in August 2016.

She expanded on those comments Wednesday, saying Poiriez was part of a transition at MDAQMD in recent years that followed the retirement of former Executive Director Eldon Heaston.

“We said goodbye to Eldon, and we welcomed Brad, who has reorganized and revitalized the agency,” Stanton said. “He’s young and dynamic, and ready to take on the challenges. I leave the board with a great executive director in place.”

Stanton publicly announced her retirement in July. She said loss, loneliness and a need for family overcame her after the May 17 death of her father, 92-year-old Robert Momjian, [according to a previous Daily Press report.](#)

She purchased land in Tennessee adjacent to the home of her adoptive sister, Carol Baber, and her family. With her new home currently under construction, Stanton said she expects to move by Oct. 24. At that point, she expects to join Town Council meetings via teleconference through the end of the year.

Initially, Stanton planned on naming her Tennessee property the Happy Trails Ranch in honor of Roy Rogers and Dale Evans, Apple Valley's beloved celebrity couple. Her desire to become a beekeeper, however, soon fostered contemplation of a different name.

"I'm sort of leaning toward (the) Bee Happy Ranch now," Stanton said, laughing. "I'm going to have fun with a couple colonies."

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Apple Valley Town Council: On the agenda

By Matthew Cabe

Staff Writer

Posted Sep 10, 2018 at 3:42 PM

Updated Sep 10, 2018 at 3:42 PM

Bus turnout project, potential update to municipal code regarding claims and aquatic center agreement with AVUSD highlight Tuesday's meeting.

APPLE VALLEY — The Town Council will meet at 6:30 p.m. Tuesday for its regular meeting. Here are the key issues that will be presented or discussed:

Consent Agenda

- Commercial warrants totaling \$4,709,552.16 and wire transfers of \$1,539,773.07 for August are expected to be received, ratified and filed by a Council vote.
- Payroll/benefits warrants totaling \$528,033.17 for August are expected to be received, ratified and filed by a Council vote.
- Staff has recommended approval of bid documents for the Bear Valley Road Bus Stop Improvements project. Assuming an affirmative Council vote, the project would bring bid solicitation for construction of a new Victor Valley Transit Authority (VVTA) bus turnout on Bear Valley Road between the easterly intersection of Outer Bear Valley Road and Snapping Turtle Road, according to agenda documents. A 10-foot-wide sidewalk and Americans with Disabilities Act-accessible ramps will be constructed, as well. A project map shows the location as just west of the Food 4 Less shopping center. Local Transportation Funds (LTF) will pay for the project.

- The Council will vote on approval of a contract change order to VSS International, Inc. that will add to the scope of roadway work approved earlier this month. Staff has recommended approval for adding segments along VVTA's Route 41, which would receive cape seal and microsurfacing. The additions would add \$195,466.79 in LTF money to the total contract price of more than \$1.6 million.

Public Hearings

- The Council will introduce an ordinance that would amend Apple Valley's municipal code as it relates to claims for money or damages. According to agenda documents, certain types of claims are not generally covered by the California Government Claims Act. Those claims include local tax, assessment or fee refunds; claims by public employees for fees, salaries, wages or expenses; and claims for money sought from the town by the state or another local public entity. When these types of claims are not governed by another statute or regulation, the Act allows cities to address them by local ordinance, provided that the ordinance does not set a shorter time to file a claim than provided in the Act and does not give the town more time to act on a claim than provided in the Act. A copy of the ordinance is available in agenda documents.

Business of the Council

- Staff has recommended approval of an updated agreement between the town and Apple Valley Unified School District (AVUSD) for use of the Civic Center Park Aquatic Center. If approved, the 5-year agreement will cover the district's use of the swimming pool through May 2023. AVUSD will pay \$75,000 for use of the center in 2018 to help offset the town's operational costs, agenda documents show. Overall, the yearly cost paid by AVUSD represents a 50 percent initial increase, as well as a yearly escalation clause town staff says will allow for a more effective offsetting of the non-seasonal pool operational costs. AVUSD has used the aquatic center for sports programming since the 2006-2007 school year. A copy of the proposed agreement is available in agenda documents.

The Council is expected to close Tuesday's meeting in remembrance of the 17th anniversary of 9/11, town spokesperson Orlando Acevedo said.

These and other items will be up for discussion during the 6:30 p.m. meeting held inside Council chambers. Town Hall is located at 14955 Dale Evans Parkway. The meeting's agenda, as well as archived meetings, can be found at www.AppleValley.org.

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