



**VICTOR VALLEY TRANSIT AUTHORITY**

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

**REQUEST FOR PROPOSAL  
(RFP) 2020-16**

**ASPHALT STAMPING**

**April 1, 2020**

## NOTICE INVITING PROPOSALS

### 1. Purpose of the Procurement and Period of Performance

Victor Valley Transit Authority (VVTA) is seeking to contract for the Stamping of the asphalt Administrative Parking Lot at its Hesperia location, in accordance with Attachment A – Scope of Work. The Period of Performance is estimated not to exceed 90 (ninety) days.

### 2. Obtaining Proposal Documents

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

### 3. Proposal Due Date and Submittal Requirements

Proposals must be received by **3:00 PM (PDT) on Thursday, May 28, 2020**.

3.1 Sealed Proposals shall be delivered to the following address:

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

3.2 Envelopes or boxes containing proposals shall be sealed and clearly labeled with VVTA's RFP number and the solicitation title: "VVTA RFP 2020-16 ASPHALT STAMPING." **The Pricing Forms shall be in a separate sealed envelope clearly marked "Pricing Forms"**

3.3 Proposers are requested to submit to VVTA one (1) hard copy of the proposals marked "Original" and one (1) electronic copy via DVD/CD or thumb/flash drive. A Proposal is deemed to be late if it is received by VVTA after the deadline stated above. Late proposals shall be returned, unopened to the Proposer. It is the Proposer's sole responsibility to ensure that the Proposals are received by the Procurement Manager by the date and time stated above.

### 4. Bonds

4.1 **UPON AWARD OF CONTRACT** – Contractor will provide to VVTA a Performance Bond and a Payment Bond each not less than 100% the value of the contract.

### 5. Prevailing Wage

Minimum wage rates for this project have been predetermined by the Secretary of Labor. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the prevailing wage rates as determined by the State for similar classifications of labor, the Contractor and his/her subcontractors shall pay not less than the higher wage rate. In accordance with provisions of Section 1773.2 (amended 1977) of the California Labor Code copies of the prevailing rate of per diem wages as determined by the State Director of Industrial Relations and are available at the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>. Future effective general prevailing wage rates, which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed. Copies of the prevailing wage rates are on file with VVTA and available upon request.

### 6. Vendor Registration with the California Department of Industrial Relations

California SB 854 Compliance -VVTA will not accept a Bid from or enter the Contract with a Bidder, without proof that the Bidder and its Subcontractors are registered with the California Department of Industrial Relations (DIR) to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions. The Bid shall enter DIR Registration Number on the Bid.

### 7. Validity of Bids.

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

### **8. Pre-Proposal Meeting**

There will be a Pre-Proposal meeting on Tuesday, April 28, 2020, at 11:00 AM (PDT) located at its Hesperia Facility – 17150 Smoke Tree Street, Hesperia, CA. The job walk will occur concurrently with RFP 2020-15 Repair and Resurface Parking Lot. The deadline for questions is Friday, May 8, 2020, at 5:00 PM (PDT). Prospective proposers are requested to submit questions, in writing, to the Procurement Manager at [cplasting@vvtta.org](mailto:cplasting@vvtta.org). Responses shall be shared with all known prospective proposers by written addenda only.

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

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# 1. INSTRUCTIONS TO PROPOSERS

## A. PROPOSAL TIMELINE

Date of RFP:	April 1, 2020
Agency:	VICTOR VALLEY TRANSIT AUTHORITY
Address of Agency:	17150 SMOKE TREE ST., HESPERIA, CA 92345-8305
Contracting Officer:	Christine Plasting, Procurement Manager
Telephone No:	(760) 948-4021, Ext. 152
FAX No:	(760) 948-1380
Email Address:	cplasting@vvta.org
Pre-proposal Conference (Non-Mandatory)	11:00 a.m., PDT, Tuesday, April 28, 2020
Last Day for Questions	5:00 p.m. PDT, Friday, May 15, 2020
Addenda and Answers to questions	2:00 p.m. PDT, Thursday, May 21, 2020
Proposals Due Date	3:00 p.m. PDT. Thursday, May 28, 2020
Anticipated Award Date	June 2020

## B. PURPOSE

Victor Valley Transit Authority (VVTA) is seeking to contract for the Asphalt Stamping of its Administrative lot. A description and video are included in Attachment A – Scope of Work.

## C. BACKGROUND

Victor Valley Transit Authority (VVTA) is a public transit agency and Consolidated Transportation Services Agency (CTSA), providing bus, ADA paratransit, and vanpool service to California's High Desert. VVTA's service area spans nearly 1,000 square miles, featuring service to Adelanto, Apple Valley, Barstow, Hesperia, Needles, Victorville and unincorporated San Bernardino County, including Daggett, Helendale, Hinkley, Lucerne Valley, Newberry Springs, Oak Hills, Oro Grande, Phelan, Pinon Hills, Wrightwood, and Yermo. Commuter service to Fort Irwin National Training Center (NTC) and connecting service from the High Desert to the Inland Empire is also provided. Additional information and service alerts are available at [VVTA.org](http://VVTA.org) and [Twitter.com/VVTransit](https://twitter.com/VVTransit).

#### **D. PERIOD OF PERFORMANCE**

VVTA intends to award a Fixed Price contract for a period of not to exceed (90) Ninety calendar days. VVTA may award the contract at a time other than stated in the proposed schedule

#### **E. EXAMINATION OF DOCUMENTS**

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

#### **F. REQUEST FOR CLARIFICATION / APPROVED EQUALS**

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

## **G. VENDOR CONTACT**

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

## **H. ADDENDA TO RFP**

VVTA reserves the right to amend the RFP at any time. Any amendments to or interpretations of the RFP shall be described in written addendum. VVTA shall provide copies of Addendum to all prospective Proposers officially known to have received the RFP. Prospective Proposers, or their agents, shall be responsible to collect the addendum at the address provided in "Contracting Officer" (Section A. above) or receive the same otherwise. Notification of the addendum will also be mailed or delivered to all such prospective Proposers officially known to have received the RFP and to the address provided by each prospective Proposer. Failure of any prospective Proposer to receive the notification or addendum shall not relieve the Proposer from any obligation under its proposal as submitted or under the RFP, as clarified, interpreted or modified. All addendum issued shall become part of the RFP. Prospective Proposers shall acknowledge the receipt of each individual addendum and all prior addenda in their proposals. Failure to acknowledge in their proposals receipt of addendum may, at VVTA's sole option, disqualify the proposal.

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

## I. FORMAT OF PROPOSALS

1. Proposals must be submitted and organized in the order listed below. The proposal shall include, at a minimum, the following:
  - a. Cover letter – Proposer must include a letter of introduction.
  - b. Title Page
  - c. Table of Contents
  - d. Profile of Firm (History, Experience, Changes) – This section should include details regarding the proposer’s ability and experience to operate the project as specified in the RFP. The following information should be included:
    - I. Corporate hierarchy – i.e. President, Vice President, Corporate Officers, etc...
    - II. Corporate overview of services or activities performed.
      - History of firm – Include a brief history of the firm
      - Founding Date (month and year)
      - Firm size – staff and client base
      - Firm’s vision and mission statement
    - III. Employment practices – policies and procedures, training, including safety training and affiliation/accreditation.
    - IV. Location of the office from which the work will be provided and the staff allocation at that office.
  - e. Identify Project team including, but not limited to:
    - I. Size of Project Team
    - II. Education, qualifications, and specific experiences in performing the work that is being solicited in this RFP.
    - III. Project Organization Chart.
  - f. Resumes of Key Personnel (if applicable)
  - g. Commitment that key personnel will be available throughout contract and will not be removed without prior approval of VVTA (if applicable)
  - h. Proposer’s approach to accomplish the Scope of Work Requirements.



- I. Description of proposer's approach to performing services. Proposals must include a description of the services to be rendered per the scope of work including a detailed proposal.
  - II. Provide a work plan or description of how the work will be performed by the contractor. (e.g. – outline a proposed work plan and methodologies that will be employed to accomplish the work)
  - III. The name of the Project Manager / Liaison and a list of personnel to be assigned to the project and the roles and qualifications.
  - IV. Indicate whether or not your firm will be subcontracting portion(s) of the work. If so, indicate the name of the subcontractor, the portion of the work to be subcontracted, and their State of CA Contractor's License Number (if applicable).
  - V. Describe your firm's approach to resolving problems that may be encountered in the field.
- i. Summary of Contracted Services
    - I. Proposer must identify all areas that will be subcontracted and name of the firms performing such work. List their key personnel and their qualifications.
    - II. Proposer must list all services, equipment and facilities that the proposer has provided and/or operated under contract during the past five (5) years. Include company name, address, phone number, and contact.
    - III. VVTA reserves the right to interview any organization and visit any of the facilities as listed as subcontractors.
  - j. Required Forms (See Attachment F)
  - k. Any other information required by this RFP or its addenda which may not be listed above.
    - I. Cost/Price Proposal – Proposers shall submit proposed pricing to provide the products/services for the work described in Attachment A – Scope of Work.
2. Firms may include additional information, however, do NOT attach terms and conditions that conflict with the RFP, as your firms' proposal may be deemed non-responsive.

## J. PROPOSAL PACKAGING REQUIREMENTS

1. Please note that **all addenda** must be acknowledged. Proposer is instructed to use Attachment E – Acknowledgement of Addenda – to acknowledge all addenda released during this solicitation.
2. **Sealed original proposal plus one (1) electronic copy**, must be received at the address shown in “Proposal Schedule” (Section A) not later than **3:00 PM (PDT) on Thursday, May 28, 2020**. All labor and materials shall be furnished in strict accordance with the delivery schedule and the Contract terms and conditions. All Proposals shall be valid for a period of ninety (90) days.
3. Proposer shall submit the Cost/Price Proposal (Attachment F) with the proposal. Prices are to be quoted exclusive of California State and Local Sales Tax. Proposer shall pay all taxes which are legally enacted at the time bid is submitted and shall secure and pay for all permits and government fees, licenses and inspections necessary for the proper execution and completion of the Contract. All invoices submitted by awarded contractor, shall itemize applicable California State and Local Sales tax, or state “sales tax included”.
4. Proposals including all submittal documents and including price elements shall be submitted by the due date specified, in two sealed packages identified as **“VVTA RFP 2020-16 ASPHALT STAMPING – TECHNICAL PROPOSAL”** and **“VVTA RFP 2020-16 – COST/PRICE PROPOSAL”**

## K. PRE-CONTRACTUAL EXPENSES

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

## L. JOINT PROPOSALS

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

## **M. TAXES**

Proposals are subject to State and Local sales taxes. However, VVTA is exempt from the payment of Federal Excise and Transportation Taxes. Firm is responsible for payment of all taxes for any goods, services, processes, and operations incidental to or involved in the contract.

## **N. MODIFICATION OR WITHDRAWAL OR PROPOSALS**

1. A modification of a proposal already received will be accepted by VVTA only if the modification is received prior to the Proposal Due Date or is specifically requested by VVTA. All modifications shall be made in writing and executed and submitted in the same form and manner as the original proposal.
2. A Proposer may withdraw a proposal already received prior to the Proposal Due Date by submitting, in the same manner as the original proposal, to VVTA a written request for withdrawal executed by the Proposer's authorized representative. After the proposal Due Date, a proposal may be withdrawn only if VVTA fails to award the contract within the proposal validity period prescribed in "Due Date" or any agreed upon extension thereof. The withdrawal of a proposal does not prejudice the right of a Proposer to submit another proposal within the time set for receipt of proposals.
3. This provision for modification and withdrawal of proposals may not be used by a Proposer to submit a late proposal and, as such, will not alter VVTA's right to reject a proposal.

## **O. LICENSING REQUIREMENTS**

Contractors who are submitting proposals for this project are required to have a current Class A, Class B, or C12 Earthwork and Paving Contractor License. Proof of current license(s) must be included in the Proposal Response package.

## **P. SUBCONTRACTORS AND ASSIGNMENTS**

1. Pursuant to the provisions of the California Public Contract Code Section 4104 every proposer shall in the proposal set forth:
  - a. The name and location of the place of business (address) of each subcontractor who will perform work or labor or render service to the proposer in or about the work in an amount in excess of one-half of one percent of the proposer's total proposal; and

- b. The portion of the work that will be done by each subcontractor. The proposer shall list only one subcontractor for each portion of work as defined by the proposer in its proposal.
  - c. The dollar amount of the work which will be done by each such subcontractor
2. Proposer shall complete form entitled "List of Subcontractors (Attachment G)" with the above requested information, including the subcontractor's CSLB Contractor License, DIR registration number, and DBE Certification (if applicable.)
  3. If the proposer fails to specify a subcontractor for any portion of the work to be performed under the contract in excess of one-half of one percent of the proposer's total Proposal, or if the proposer specified more than one subcontractor for the same portion of the work to be performed under the contract in excess of one-half of one percent of the proposer's total proposal, the proposer agrees to perform that portion.
  4. The successful proposer shall not, without the express written consent of VVTA, either:
    - a. Substitute any person, firm, or corporation as subcontractor in place of the subcontractor designated in the original Proposal; or
    - b. Permit any subcontract to be assigned or transferred; or
    - c. Allow it to be performed by anyone other than the original subcontractor listed in the Proposal.
  5. Each proposer shall set forth in its proposal the name and location of the place of business (address) of each subcontractor certified as a disadvantaged business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract.
  6. Proposer shall not assign any interest it may have in any Agreement/Contract with VVTA, nor shall proposer assign any portion of the work under any such Agreement with a value in excess of one-half of one percent of Agreement price to be sub-contracted to anyone other than these subcontractors listed in the "List of Subcontracts," except by prior written consent of VVTA. VVTA's consent to any assignment shall not be deemed to relieve proposer of its obligations to fully comply with its obligations under its Agreement with VVTA. Proposer with its own forces shall perform a minimum of ten percent (10%) (Calculated as a percentage of the total cost of the project) of the work under this Agreement. Proposer shall also include in its subcontract agreements the provisions of its Agreement with VVTA including the stipulation that each subcontractor shall

maintain adequate insurance coverage compatible to the insurance coverage required of the proposer.

## **Q. CONFIDENTIALITY AND PUBLIC RECORDS ACT**

All Proposals and other material submitted become the property of VVTA and are subject to release according to the California Public Records Act (Government Code § 6250.) Except as otherwise required by state law, VVTA will exempt from disclosure proprietary information, trade secrets and confidential commercial and financial information submitted in the proposal. Any such proprietary information, trade secrets or confidential commercial and financial information, which a Proposer believes should be exempted from disclosure, shall be specifically identified and marked as such. VVTA will use reasonable means to ensure that such information is safeguarded but will not be held liable for inadvertent disclosure of the information. Proposals marked "Confidential" in their entirety will not be honored; blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not assure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

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

### **1. Exclusive Property**

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

### **2. Disclosure of Records**

- a. Upon a request for records from a third party regarding this proposal VVTA will notify in writing the party involved. The party involved must respond within twenty (20) calendar days with the identification of any and all "proprietary, trade secret, or confidential commercial or financial" information and the party involved shall agree to indemnify VVTA for its defense costs, (Including reasonable attorney fees) associated with its refusal to produce such identified information; otherwise, the requested information may be released and VVTA shall not be held liable for complying with the records

request.

- b. If disclosure is deemed to be required by law or by an order of the court, VVTA shall not, in any way, be liable or responsible for the disclosure of any such records including without limitation those so marked.
- c. Any documents that are not marked "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY," will be made available.

### 3. Exemption from Disclosure May Be Deemed Unresponsive

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

### 4. Indemnification of VVTA by Proposer

- a. The Proposer agrees to indemnify, hold harmless and defend VVTA and each of its board members, officers, officials, employees and agents from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of a Public Records Act request for any of the contents of a Proposal labeled as protected information and identified as, among other things, "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY." This obligation shall survive the RFP process, including the awarding of the Contract
- b. Proposer agrees to absorb all costs and expenses, including attorneys' fees, in any action or liability arising under the California Public Records Act pertaining to protected information contained and labeled as such in the proposer's proposal.

### 5. Public Interest

- a. The public interest exemption of the California Public Records Act provides that an agency may withhold the disclosure of a record by showing that the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.
- b. To protect the integrity of the proposal process, in most instances, price proposals and information regarding the contents of a Proposal, will not be released or made available to other Proposers or the public until contract award is made by VVTA's Board of Directors and after the conclusion of any protest.

- c. VVTA shall employ sound business practices no less diligent than those used for VVTA's own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data and other information and material provided by Proposers and the Contractor pursuant to the Contract which contain confidential commercial or financial information, trade secrets or proprietary information as defined in or pursuant to the state law against disclosure of such information and material to third parties except as permitted by the Contract. The Contractor shall be responsible for ensuring that confidential commercial or financial information, trade secrets or proprietary information, with such determinations to be made by VVTA in its sole discretion, bears appropriate notices relating to its confidential character.

## **R. ACCEPTANCE / REJECTION OF PROPOSALS**

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

## **S. SINGLE PROPOSAL RESPONSE**

If only one proposal is received in response to this RFP and it is found by VVTA to be acceptable, a detailed price/cost proposal may be requested of the single Proposer. A price or cost analysis, or both, possibly including an audit, may be performed by or for VVTA of the detailed price/cost proposal in order to determine if the price is fair and reasonable. The Proposer has agreed to such analysis by submitting a proposal in response to this RFP. A price analysis is an evaluation of a proposed price that does not involve an in-depth evaluation of all the separate cost elements and the profit factors that comprise a Proposer's price proposal. It should

be recognized that a price analysis through comparison to other similar procurements must be based on an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity, involving similar specifications and in a similar time frame. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto. Where it is impossible to obtain a valid price analysis, it may be necessary to conduct a cost analysis of the proposed price. A cost analysis is a more detailed evaluation of the cost elements in the Proposer's Offer to perform. It is conducted to form an opinion as to the degree to which the proposed costs represent what the Proposer's performance should cost. A cost analysis is generally conducted to determine whether the Proposer is applying sound management in proposing the application of resources to the contracted effort and whether costs are allowable, allocable and reasonable. Any such analyses and the results therefrom shall not obligate VVTA to accept such a single proposal; and VVTA may reject such proposal at its sole discretion.

## **T. CANCELLATION OF PROCUREMENT**

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

## **U. AVAILABILITY OF FUNDS**

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

## **V. VVTA'S RIGHTS**

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



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

## **W. CONFLICT OF INTEREST AND CODE OF CONDUCT**

Proposer agrees to avoid organizational conflict of interest. An organizational conflict of interest means that due to other activities, relationships or contracts, the Firm is unable, or potentially unable to render impartial assistance or advise VVTA; Firm's objectivity in performing the work identified in the specifications is or might be otherwise impaired; or the Firm has an unfair competitive advantage. Firm is obligated to fully disclose to VVTA in writing any Conflict of Interest issues as soon as they are known to the Firm. All disclosures must be disclosed at the time of Proposal submittal.

Proposer agrees to comply with VVTA's Code of Conduct as it relates to Third-Party contracts which is hereby referenced and is incorporated herein. Firm agrees to include these requirements in all its subcontracts. A copy of all Procurement Policies is posted on the [VVTA.com/procurement](http://VVTA.com/procurement) page.

## **X. EVALUATION, NEGOTIATION AND SELECTION**

The basis of award of the resulting contract shall be to the responsible and responsive Proposer whose proposal scores the highest based on the criteria listed below.

### **1. OPENING OF PROPOSALS**

Proposal will be reviewed and evaluated in accordance with the criteria and procedures described in this document. Proposers determined to be within a competitive range and that have a reasonable chance of receiving a contract may be contacted to schedule a meeting with VVTA to carry out further negotiations and discussions. VVTA reserves the right to award to a proposer without further discussions, negotiations, or it may determine that no proposer meets the needs of VVTA.

## 2. EVALUATION TEAM

An evaluation team will be assembled by the VVTA Executive Director or designee. The team will be made up of staff of VVTA and may include representatives of other nearby government agencies affected by this procurement.

## 3. PROPOSAL SELECTION PROCESS

- a. The following describes the process by which proposals will be evaluated and a selection made for a potential award. Upon receipt of the proposals, copies will be distributed to the evaluation team members, together with scoring sheets, which include the evaluation criteria, and the points assigned to each category.
- b. Each team member will review the Proposers' submittals and in conjunction with the criteria contained in Section X.5., below. All Proposals shall be evaluated and ranked for the purpose of determining the competitive range and to select a proposal determined to be the most advantageous to VVTA.
- c. Proposals that do not comply with the instructions contained in these RFP documents and do not include the required information shall be rejected as non-responsive and shall not be considered for the competitive range. VVTA reserves the right to waive technical defects, discrepancies and minor irregularities in an RFP and/or submitted proposal(s). VVTA reserves the right to award any alternatives set forth in the solicitation documents in its sole discretion. Submitted proposals may be rejected if there is any alteration of the RFP forms, additions not called for, conditional proposals, incomplete proposals, or irregularities of any kind. VVTA reserves the right to reject any proposal not in compliance with the solicitation documents or prescribed public contracting procedures and requirements. Written notice of rejection of all submitted proposals shall be sent to all Proposers. **ALL UNSIGNED PROPOSALS SHALL BE REJECTED.**
- d. Submittal of a proposal shall mean that the Proposer has accepted the VVTA Contract Documents in their entirety without exception.
- e. When the individual members of the evaluation teams have completed their evaluations, the entire team will meet to discuss and review the proposals. Once the discussions have been completed, members will have an opportunity to revise their scores independently. A final consensus meeting shall be held to confirm the most technically qualified

and best value proposal submitted for award. The VVTA Contracting Officer, or designee, shall serve as Chairman of the Evaluation Committee.

- f. Proposals that have been determined not to be in the competitive range and cannot be reasonably made to be within the competitive range, will be notified in writing, that they are no longer under consideration.

#### **4. QUALIFICATION REQUIREMENTS**

- a. The Proposers, whose proposals have been determined by the evaluation process to be in the competitive range, will be notified and scheduled to meet with VVTA for further discussions, clarifications and negotiations. Any Proposal deviations submitted by the Proposer will be discussed as part of the negotiations process. However, VVTA at its discretion may in its best interest, reject any and all such conditions, exceptions and deviations. Any proposal which fails to comply with the VVTA instructions and requirements listed in the solicitation documents shall be deemed non-responsive and their proposal shall be rejected.
- b. As part of the negotiation process, VVTA reserves the right to conduct factory visits to inspect the Proposer's facilities. VVTA shall also have the right to contact other party with whom the Proposer has experience with this type of request, and other relevant references which the Proposer has listed.
- c. At the conclusion of the discussion and negotiation processes, each of the Proposers still determined by VVTA to be within the competitive range will be afforded the opportunity to submit a revised proposal with a clear understanding that VVTA will then choose that proposal, which it finds to be most advantageous based upon the evaluation criteria and final scoring. The results of the evaluations and the selection of a proposal for any award will be documented in a report to the final acquisition approval authority within VVTA.

#### **5. PROPOSAL EVALUATION CRITERIA AND SCORING**

- a. Listed below is the point scale system by which proposals from responsible Proposers will be evaluated and ranked for the purpose of determining any competitive range and to make any selection of a proposal for a potential award.

<b><u>EVALUATION CRITERIA</u></b>	<b><u>MAXIMUM POINTS</u></b>
<b>RESPONSIVENESS</b> – All documents have been received as requested, prior to the due date.	PASS/FAIL
<b>RESPONSIBILITY</b> – All requested documents include the required signatures and, if needed, required notary review, signature and stamp. All financial documents received represent that the Proposer has the financial capacity to perform this project.	PASS/FAIL
<b><u>1. EXPERIENCE AND QUALIFICATIONS:</u></b> Proposer’s experience with similar projects as explained in Attachment A – SCOPE OF WORK	20
Quality of Proposed Staff	15
Demonstrated Technical Ability and Resources	15
<b><u>2. PROPOSAL:</u></b> Demonstrates understanding of the work to be done.	20
<b><u>3. DISADVANTAGED BUSINESS ENTERPRISE (DBE):</u></b> Proposer and/or Subcontractor(s) are certified DBE’s. (Must provide proof of certification)	5
<b><u>4. REFERENCES</u></b> – Attachment F contains the document to be used for references (to be scored by the Evaluation Facilitator)	15
<b><u>5. PRICE PROPOSAL</u></b>	10

**TOTAL POSSIBLE POINTS**

**100**

- b. The cost factor will be made up of two components, Technical scores up to ninety (90) base Technical points; and Price ten (10) Base Price points. The maximum 100 base points available will be awarded to the Proposer with the highest Technical score and the lowest Price. Price points will be calculated by dividing the lowest price offered by the proposal price being scored and multiplying the quotient of the calculation by (10); (Low offer divided by next highest offer) times 10 points.

- c. The balance of the evaluation criteria will be scored on the evaluator's assessment in the areas described in the Table above, based on the following system:

**Exceptional:** Fully compliant with the solicitation requirements and with desirable strengths or betterments; no errors, omissions, discrepancies, weakness or potential risks. Proposals judged to fall within these parameters will receive 90 to 100% of the points available for the category.

**Good to Superior:** Compliant with requirements of the solicitation; some minor errors, omissions, discrepancies, weakness or risks. Proposals in this range will receive 80 to 89% of the points available for the category.

**Adequate:** Minimally compliant with solicitation requirement; with errors, omissions, discrepancies, weakness or risks; which may be possible to correct and make acceptable. Proposals in this range will receive 70 to 79% of the points available for the category.

**Poor to Deficient:** Non-compliant with solicitation requirements; contains errors, omissions, discrepancies, weaknesses or risks which would be difficult to correct or make acceptable. Proposals in this range will receive 60 to 69% of the points available for the category.

**Unacceptable:** Totally deficient and non-compliant with requirements; contains major non-correctable errors, omissions, discrepancies, weaknesses or risks. Proposals in this range will receive 0 to 59% of the points available for the category.

## 6. EVALUATION PROCEDURES

- a. All aspects of the evaluations of the proposals and any discussions and/or negotiations, including documentation, correspondence and meetings, will be kept confidential during the evaluation and negotiation process.
- b. Proposals will be analyzed for conformance with the instructions and requirements of the RFP and Contract documents. Any proposal which fails to comply with the VVTA instructions and requirements listed in the solicitation documents shall be deemed non-responsive and their proposal shall be rejected. Proposers are advised that the detailed evaluation forms and procedures will follow the same proposal format and organization specified in Section I. Therefore, Proposer shall pay close attention to and strictly follow all instructions and requirements. Submittal of a proposal means that the Proposer has accepted all of the Contract documents, except such conditions, exceptions, reservations or

understandings explicitly, fully and separately stated on the forms and according to the instructions of “Form for Proposal Deviation” (Attachment D). Any such conditions, exceptions, reservations or understanding which do not result in the rejection of the proposal are subject to evaluation under the criteria of “Proposal Evaluation Criteria” (Section X.5.)

- c. Evaluations will be made in strict accordance with all of the evaluation criteria and procedures specified in “Proposal Selection Process” (Section X.3.) above. VVTA shall select for any award the highest ranked proposal from a responsible Proposer, qualified under “Qualification Requirements” (Section X.4.), which does not render this procurement financially infeasible and is judged to be most advantageous to VVTA based on consideration of the evaluation “Proposal Evaluation Criteria” (X.5.).

## **7. QUALIFICATION OF RESPONSIBLE PROPOSERS**

Proposals will be evaluated in accordance with requirements of “Qualification Requirements” (Section X.4.) to determine the responsibility of Proposers. Any proposals from Proposers whom VVTA finds not to be responsible and finds cannot be made to be responsible may **not** be considered for the competitive range. Final determination of a Proposer’s responsibility will be made upon the basis of initial information submitted in the proposal, any information submitted upon request by VVTA, and information resulting from Agency inquiry of Proposer’s references, and its own knowledge of the Proposer.

## **8. DETAILED EVALUATION OF PROPOSALS AND DETERMINATION OF COMPETITIVE RANGE**

- a. Each proposal will be evaluated in accordance with the requirements and criteria specified in “Proposal Selection Process” (Section X.3.)
- b. The following are the minimum requirements that must be met for a proposal to be considered responsive for inclusion in the competitive range. All of these requirements must be met; therefore, they are not listed in any particular order of importance. Any proposal that VVTA finds not to meet these requirements and that cannot be remedied as part of the negotiation process will be determined to be non-responsive and will not be included in the competitive range. The minimum requirements are as follows:
  - i. Proposer is initially evaluated as responsible in accordance with the requirements of “Qualification Requirements” (Section X.4.) Final

determination of responsibility will be made through the evaluation process.

- ii. Proposer has demonstrated its responsiveness by following the instructions of the RFP and included sufficient detail information, such that the proposal can be evaluated. Any informalities in regard shall be determined by VVTA to be either a defect and non-responsive or an informality that VVTA will waive in accordance with "Acceptance/Rejection of Proposals" (Section R)
  - iii. Proposal price would not render this procurement financially infeasible, or it is reasonable that such proposal price might be reduced to render the procurement financially feasible.
- c. VVTA will document its evaluations in accordance with the criteria and procedures of "Proposal Selection Process" (X.3.). Any proposal deficiencies which may render a proposal non-responsive and non-responsive will be documented. VVTA will make specific note of questions, issues, concerns and areas requiring clarification by Proposers and to be discussed through any contact with Proposers, which VVTA finds to be within the competitive range. Rankings and spreads of the proposals against the evaluation criteria will then be made by VVTA as a means of judging the overall relative spread between proposals and of determining which proposals are within the competitive range or may be reasonably made to be within the competitive range.

## **9. PROPOSALS NOT WITHIN THE COMPETITIVE RANGE**

Proposers of any proposals that have been determined by VVTA as not in the competitive range will be notified in writing, including the shortcomings of their proposals.

## **10. DISCUSSIONS WITH PROPOSERS IN THE COMPETITIVE RANGE**

- a. The Proposers, whose proposals are found by VVTA to be within the competitive range, will be notified and any questions and/or requests for clarifications provided to them in writing. Each such Proposer may be contacted with VVTA to discuss answers to written or oral questions, clarifications, and any facet of its proposal.
- b. In the event that a proposal, which has been included in the competitive range, contains conditions, exceptions, reservations or understandings to any Contract requirements as provided in "Form for Proposal Deviation" (Attachment D), said conditions, exceptions, reservations or

understandings may be negotiated during contract negotiations. However, VVTA shall have the right to reject any and all such conditions and/or exceptions, which fail to comply with the VVTA instructions and requirements listed in the solicitation documents may be deemed non-responsive and their proposal to be outside the competitive range and rejected.

- c. No information, financial or otherwise, will be provided to any Proposer about any of the proposals from other Proposers. Proposers will not be given a specific price or specific financial requirements they must meet to gain further consideration, except that proposed prices may be considered to be too high with respect to the marketplace or unacceptable. Proposers will not be told of their rankings among the other Proposers.
- d. **Factory and Site Visits.** At its sole discretion, VVTA reserves the right to conduct factory visits to inspect the Proposer's facilities and/or other transit systems which the Proposer has supplied, including representative examples of the equipment and installation provided similar to the scope of this RFP.
- e. **Best Offers.** VVTA expects that all responsible and responsive Proposers shall submit their Best Offer upon initial submission in response to this solicitation.
- f. **VVTA reserves the right to make an award to a Proposer whose proposal it judges to be most advantageous to VVTA based upon the evaluation criteria, without conducting any written or oral discussions with any Proposers or solicitation of any BAFO.**

\*\*\*\* End of Instructions to Proposers \*\*\*\*



# VVTA RFP 2020-16 PAVEMENT STAMPING AND RESEALING ATTACHMENT A – SCOPE OF WORK

## **INTRODUCTION**

Victor Valley Transit Authority's (VVTA) administration building includes an employee and guest parking lots that require resealing. The facility is located at 17150 Smoke Tree St., Hesperia, CA 92345.

## **SCOPE OF WORK**

VVTA's Administration and Maintenance parking lots will be undergoing a repair and resurface project just prior to this project. The job walks for both projects will happen concurrently.

In order to keep the original design and graphics, the area to be recoated is the stamped & painted areas along with the flat painted portions of the Administrative parking lot.

The stamped and painted portion of the parking lot is approximately 12,309 square feet and the flat painted only portion of the lot is approximately 10,722 square feet.

There are 4 pair of handicapped parking spaces with van access spaces between each pair on the stamped and painted port. Painted handicapped parking spaces must be repainted with the same graphics and test as they were prior to the re-sealing after the color sealer is re-sealed.

The VVTA Logo with lettering must be included in the re-sealing project. The logo paint will require the specialized asphalt paint equal to or superior to the original product that was used in the design. The Proposer must be a certified applicator of the product. A copy of the certification must be included with the proposal along with references from jobs performed by the proposer (see Attachment F for the References form.)

All cracks in the surface will have the weeds killed, filled with a flexible epoxy, the surfaced swept and steam cleaned as directed by the Proposer awarded this project.

All Graphics and text are to be repainted to match the condition of the parking lot prior to the resealing. Parking lot can be viewed using Google Earth and a flyover with a drone can be seen using this link: <https://www.youtube.com/watch?v=2-ALlqdOMHI&feature=youtu.be>. This is a private link and shall not be broadcast to others without prior permission from VVTA.

This parking lot can also be viewed in person 7 days per week between the hours of 8am to 6pm.

VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT B – SAMPLE CONTRACT

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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”) is seeking to contract for the Stamping of its Administrative parking lot at the VVTA Hesperia Operations and Maintenance Facility, in accordance with Attachment A – Scope of Work 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 for 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:

VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT B – SAMPLE CONTRACT

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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 1) hereto and is incorporated by reference into and made a part of this Agreement.
  
- B. This is a non-exclusive Agreement, whereby VVTA may, at its sole discretion, augment or supplant the Work with its own forces or forces of another contractor or entity. CONTRACTOR will cooperate fully with VVTA's staff or other contractor or entity that may be providing similar or the same Work for VVTA.

2. CONTRACT DOCUMENTS

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

This Agreement;

- A. Exhibit 1 – RFP 2020-16 ASPHALT STAMPING
- B. Exhibit 2 – RFP 2020-16 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.

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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 Work, including approved change orders. The cost breakdowns shall be in sufficient detail for

## VVTA RFP 2020-16 ASPHALT STAMPING ATTACHMENT B – SAMPLE CONTRACT

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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  
HESPERIA, CA 92345-8305

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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 from VVTA, CONTRACTOR shall immediately reimburse VVTA the entire overpayment or, at its sole discretion, VVTA may deduct such overpayment amount from monies due to CONTRACTOR under this Agreement or any other Agreement between VVTA and CONTRACTOR.

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## 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, is the authorized representative for this agreement and is empowered as set forth in 1-4. 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 has not been performed to VVTA's satisfaction.
3. Subject to the review and acceptance by VVTA, negotiate with CONTRACTOR all adjustments pertaining to this Agreement for revision.
4. In addition to the foregoing, the Executive Director shall have those rights and powers expressly set forth in other sections of this Agreement.

**B. Contractor's Key Personnel**

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

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



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

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

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

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

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

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

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- (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.
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

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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 fails to make progress so as to endanger performance of the Contract in accordance with its terms, and in either of these two 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 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 VVTA 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:

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- (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.
- (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

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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 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**

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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 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



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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").

### 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

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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:
  - \$2,000,000 per occurrence for bodily injury and property damage
  - \$2,000,000 per occurrence for personal and advertising injury
  - \$4,000,000 aggregate for products and completed operations
  - \$4,000,000 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 \$2,000,000 per accident for bodily injury and property damage.
- (iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.
- (iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$2,000,000 each accident, \$2,000,000 disease policy limit and \$2,000,000 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,

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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 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.

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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 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

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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  
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: \$2,000,000; per occurrence for bodily and property damage liability and \$4,000,000 aggregate; *VVTA named and endorsed as an Additional Insured.*
- 2) Automobile Liability: \$2,000,000; 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: \$2,000,000; per occurrence.
- 5) Professional Liability: \$2,000,000 per claim/occurrence

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6) Builder's Risk: at an account 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 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, 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), 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

# VVTA RFP 2020-16 ASPHALT STAMPING ATTACHMENT B – SAMPLE CONTRACT

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

## Price Adjustments:

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

## 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

## VVTA RFP 2020-16 ASPHALT STAMPING ATTACHMENT B – SAMPLE CONTRACT

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approval of VVTA. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

### 22. OWNERSHIP OF REPORTS AND DOCUMENTS

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

### 23. OWNERSHIP RIGHTS

- A. In the event VVTA rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or develop by CONTRACTOR, it's Third Party Software Contractors and its Suppliers as part of the Project, any derivative works and associated documentation created by and on behalf of VVTA 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 heron agrees that all rights to any work(s) created or produced are waived, and that



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ATTACHMENT B – SAMPLE CONTRACT

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.

At the time of submission of any claim, CONTRACTOR 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.

## VVTA RFP 2020-16 ASPHALT STAMPING ATTACHMENT B – SAMPLE CONTRACT

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.

(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.

## VVTA RFP 2020-16 ASPHALT STAMPING ATTACHMENT B – SAMPLE CONTRACT

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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.

### 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

## VVTA RFP 2020-16 ASPHALT STAMPING ATTACHMENT B – SAMPLE CONTRACT

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exercise due professional care and competence in this performance of the Work in accordance with the requirements of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that VVTA will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the “Standard of performance” for purposes of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.

- B. All workers shall have sufficient skill and experience to perform the Work assigned to them. VVTA shall have the right, at its sole discretion to require the immediate removal of CONTRACTOR’s personnel at any level assigned to the performance of the Work at no additional fee or cost to VVTA, if VVTA considers such removal in its best interests and requests such removal in writing and such request is not done for illegal reasons. Further, an employee who is removed from performing Work under the Agreement under this Article shall not be reassigned to perform Work in any other capacity under this Agreement without VVTA’s prior written approval.

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

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

### 29. DISQUALIFYING POLITICAL CONTRIBUTIONS

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

### 30. COMPLIANCE WITH LAW

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

### 31. COMPLIANCE WITH LOBBYING POLICIES

- 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.

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ATTACHMENT B – SAMPLE CONTRACT

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

32. WAIVER/INVALIDITY

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

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

33. FORCE MAJEURE

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

34. CONFIDENTIALITY

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

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

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

- 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

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ATTACHMENT B – SAMPLE CONTRACT

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CONTRACTOR's firm, service, and/or product.

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

36. CONFLICT OF INTEREST

A. Prohibited Interests

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

B. Covenant

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

VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT B – SAMPLE CONTRACT

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this Contract.

3. Violation of the above disclosure obligations is a material breach of this Contract.

37. COVENANT AGAINST GRATUITIES

A. Prohibited Conduct

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

B. Covenant

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

38. WARRANTY OF AUTHORITY

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

VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT B – SAMPLE CONTRACT

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be construed against any party to this Contract.

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

**VICTOR VALLEY TRANSIT AUTHORITY**

By: \_\_\_\_\_

Kevin Kane, VVTA Executive Director

APPROVED AS TO FORM

\_\_\_\_\_  
VVTA Legal Counsel

**CONTRACTOR**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

SAMPLE



# VVTA RFP 2020-ASPHALT STAMPING ATTACHMENT C – PROTEST PROCEDURES

## 1. PURPOSE

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

## 2. DEFINITIONS

The following definitions apply to this policy.

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

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

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

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

## 3. REFERENCES

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

## 4. BASIS OF PROTEST

### A. Requests for Proposal

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

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

# VVTA RFP 2020-ASPHALT STAMPING ATTACHMENT C – PROTEST PROCEDURES

## **B. Invitations for Bid**

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

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

## **5. FILING OF PROTEST**

### **A. Filing Written Protest with the VVTA Procurement Manager**

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

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

### **B. Failure to Comply**

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

### **C. Withdrawal of Protest**

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

## **6. SUMITTAL OF PROTEST**

All protests must be submitted in writing to

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

**VVTA RFP 2020-ASPHALT STAMPING  
ATTACHMENT C – PROTEST PROCEDURES**

**Hesperia, CA 92345**

**RE: Solicitation Protest – Solicitation/Contract Number**

**7. PROTEST SUBMITTAL DEADLINE**

**A. Requests for Proposal**

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

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

**B. Invitations for Bid**

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

**8. PROTEST REVIEW PROCESS**

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

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

**VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT D – PROPOSAL DEVIATION, PRE-OFFER  
CHANGE OR APPROVED EQUALS**

This form shall be completed for each condition, exception, reservation or understanding (i.e., deviation) in the proposal according to “Condition, Exceptions Reservations and Understanding.” This form must also be used for requested clarifications, changes, substitutes or approval of items equal to items specified with a brand name, and must be submitted as far in advance of the Due Date as specified in “Proposal Timeline”

Deviation Number: \_\_\_\_\_

Proposer: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Page Number: \_\_\_\_\_

Section: \_\_\_\_\_

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**Detailed Description of Requested Deviation:**

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**Rationale (Pros and Cons):**

**RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT E – ACKNOWLEDGEMENT OF ADDENDA**

The following form shall be completed and included in the price proposal.

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

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

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

\_\_\_\_\_  
Signature of the Proposer's Authorized Official

\_\_\_\_\_  
Name and Title of the Proposer's Authorized Official

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

\_\_\_\_\_  
Date

## VVTA RFP 2020-16 ASPHALT STAMPING ATTACHMENT F – SUBMISSION OF FORMS

1. If a qualifier, i.e. (Required >\$100,000) follows the title of the form, then submit that form only if the BID meets that requirement.
2. Duplicate forms as necessary.
3. **Submit ONLY those forms that are checked, unless required elsewhere in the IFB/RFP/RFQ.**
4. Submit the following checked items AT THE TIME OF BID SUBMISSION:
  - Proposal Pricing Form (Sealed Separate Envelope)
  - Buy America Certification (Required >\$150,000)
  - Current Client References
  - Not on Excluded Parties List System (SAM.com) (Provide page from website)
  - Affidavit of Non-Collusion
  - Debarment, Suspension, & Other Responsibility Matters
  - List of Subcontractors and DBE's (Required >1/2 of 1% Share of Bid)
  - Proposed Disadvantaged Business Enterprise (DBE) Participation; if you or a subcontractor are a DBE, please submit certification with bid.
  - Restriction on Lobbying (Prime) One (1) form required of each prime bidder and any proposed subcontractor having greater than a \$100,000 share of the bid.
  - CSLB Contractor's License(s). Provide copies in your Proposal Package.
  - DIR Registration – Provide a screen shot from the DIR website showing registration number.
  - Certification for the product proposed for the stamping and painting of the parking lot
  - Warranty Procedures Form (Required)
  - Audited Financials or Tax Returns, for the most recent two-year period.
5. Submit the following **Required** forms **AT THE TIME OF CONTRACT AWARD:**
  - a. **Proof of Licenses.** As required by law, in addition to contract requirements. Must be California approved, valid, showing expiration dates and license numbers. These include, but are not limited to (**Only those items checked**):
    - i.  Sales or Services; if applicable
    - ii.  Business: authorized by the city wherein business is to be conducted (if applicable.)

VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT F – SUBMISSION OF FORMS

- iii.  Driver's: within classification, required, valid, etc...
- iv.  Others: any not mentioned herein, but required by industry standard, required by law, by requirements of Contract.
  
- b.  **Proof of Permits:** as required by law, in addition to contract requirements. Must be California approved, valid, showing expiration dates and license numbers.
  
- c.  **Insurance Certificate (Proof)** must meet the requirements in the RFP. If the Insurance Certificate with the additional insured endorsement is submitted with the bid, the Notice to Proceed can be issued sooner. Failure to submit the Proof of Insurance as requested may result in contract award annulment.
  
- d.  **Performance Bond:** One Hundred percent (100%) of the contract price
- e.  **Payment Bond:** One Hundred percent (100%) of the contract price.

VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT F – SUBMISSION OF FORMS

**VVTA - RFP 2020-16 PRICE PROPOSAL**

Proposer shall complete the following form and include same in the Price Proposal package separate from the Technical Proposal submitted in response to this solicitation.

By execution below Proposer hereby agrees to furnish the related equipment, and services as specified in Victor Valley Transit Authority's Request for Proposals No. 2020-16 at the prices submitted in response to this solicitation.

PROPOSER COMPANY NAME: _____
CA CONTRACTOR STATE LICENSE NUMBER: _____ LICENSE CLASS: _____
DIR REGISTRATION NUMBER: _____
STREET ADDRESS: _____
CITY, STATE, ZIP CODE: _____
AUTHORIZED OFFICER: _____
COMPANY OFFICER TITLE: _____
SIGNATURE OF AUTHORIZED OFFICER: _____
CONTACT INFORMATION: _____
OFFICE PHONE NUMBER: _____
EMAIL ADDRESS: _____



VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT F – SUBMISSION OF FORMS

Work Item	Total \$
1. SITE CONDITIONS/ SITE PREPARATION	\$
2. MATERIALS	\$
3. LABOR	\$
4. PROFIT	\$
TOTAL PRICE	\$

Listing of Holidays CONTRACTOR does not provide regular service: \_\_\_\_\_

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VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT F – SUBMISSION OF FORMS

CURRENT CLIENT REFERENCES

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

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

\_\_\_\_\_  
Signature of the Proposer's Authorized Official

\_\_\_\_\_  
Name and Title of the Proposer's Authorized Official

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

\_\_\_\_\_  
Date

VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT F – SUBMISSION OF FORMS

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

State of California )  
 ) ss.  
County of \_\_\_\_\_)

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

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

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

\_\_\_\_\_  
Printed Name Title

SUBSCRIBED AND SWORN TO BEFORE ME

This \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Seal)

Notary Public

VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT F – SUBMISSION OF FORMS

PERFORMANCE BOND

Bond No.  
Premium:

**KNOW ALL PERSONS BY THESE PRESENTS THAT:**

WHEREAS, on \_\_\_\_\_, 20\_\_, the VICTOR VALLEY TRANSIT AUTHORITY (“VVTA”) awarded to (“PRINCIPAL”) a contract for performance of the work described as **VVTA ASPHALT STAMPING - RFP No. 2020-16** (“CONTRACT”), the terms and conditions of which are incorporated herein by reference; and

WHEREAS, the CONTRACT requires PRINCIPAL to furnish this Performance Bond (“BOND”) to guarantee PRINCIPAL’s faithful performance of all provisions of the CONTRACT; and

WHEREAS, \_\_\_\_\_ (“SURETY”), a corporation legally authorized to execute and furnish performance bonds as sole surety in the State of California, is willing to act as PRINCIPAL’s SURETY in the making and giving of this BOND.

NOW, THEREFORE, we PRINCIPAL and SURETY hereby hold and firmly bind ourselves to pay to CITY in lawful United States currency the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for which payment well and truly to be made to CITY or CITY’s successors or assigns we hereby bind ourselves and our heirs, legal representatives, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS BOND IS THAT IF PRINCIPAL or PRINCIPAL’s heirs, legal representatives, successors or assigns shall in all things stand to, abide by, and well and truly keep and faithfully perform all of the covenants, conditions and promises in the CONTRACT, including its work Guaranty, and all alterations thereof made as therein provided on PRINCIPAL’s part to be kept and performed at the time and in the manner specified therein, and in all respects according to their true intent and meaning, and shall indemnify and save harmless CITY and CITY’s officers, employees and agents as therein specified, then this obligation shall become null and void; otherwise, it shall be and remain in full force and binding effect.

SURETY hereby agrees that no change in the terms of the CONTRACT or the work to be performed thereunder, or any extension of time for completion thereof, shall in any way relieve it of its obligations under this BOND, and hereby waives notice of any change or extension thereof, and further waives the provisions of California Civil Code sections 2819 and 2845.

If lawsuit is brought by CITY on this BOND, PRINCIPAL and SURETY shall pay to CITY, over and above the principal sum hereof, reasonable costs and attorney’s fees which the court is hereby authorized to award.

IN WITNESS WHEREOF, we sign and seal this BOND on \_\_\_\_\_.

Correspondence or claims relating to this BOND should be sent to SURETY at the following address:

\_\_\_\_\_  
(Seal)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Principal

By: \_\_\_\_\_

\_\_\_\_\_  
Typed Name and Title

\_\_\_\_\_  
Surety

(Seal)  
Telephone Number \_\_\_\_\_

\_\_\_\_\_  
Attorney-In-Fact

Note: Signatures of those executing for SURETY must be acknowledged, and a Power of Attorney attached.

\_\_\_\_\_  
Typed Name and Title

VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT F – SUBMISSION OF FORMS

PAYMENT BOND

Bond No.

Premium:

KNOW ALL PERSONS BY THESE PRESENTS THAT:

WHEREAS, on \_\_\_\_\_, 2018, the VICTOR VALLEY TRANSIT AUTHORITY (“VVTA”) awarded to (“PRINCIPAL”) a contract for performance of work described as **VVTA ASPHALT STAMPING - RFP No. 2020-16** (“CONTRACT”), the terms and conditions of which are incorporated herein by reference; and

WHEREAS, the CONTRACT requires PRINCIPAL to furnish this Payment Bond (“BOND”) to secure payment of the claims of persons described in California Civil Code section 3248(b); and

WHEREAS, \_\_\_\_\_ (“SURETY”), a corporation legally authorized to execute and furnish payment bonds as sole surety in the State of California, is willing to act as PRINCIPAL’s SURETY in the giving of this BOND.

NOW, THEREFORE, we PRINCIPAL and SURETY hold and firmly bind ourselves unto CITY and all persons and entities described in California Civil Code section 3248(b) whose claims are not paid by PRINCIPAL in the total sum of Dollars (\$\_\_\_\_\_), for which payment well and truly to be made we bind ourselves and our heirs, legal representatives, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS BOND IS THAT IF PRINCIPAL or PRINCIPAL’s successors, assigns, or subcontractors fail to pay any of the persons described in California Civil Code section 3181, any amounts due under the California Unemployment Insurance Code with respect to work or labor performed under the CONTRACT or any amounts required to be deducted, withheld and paid over to the California Employment Development Department from the wages of employees of PRINCIPAL and PRINCIPAL’s subcontractors pursuant to California Unemployment Insurance Code section 13020 with respect to such work and labor, SURETY will pay for the same in an amount not exceeding the sum stated above, plus all costs and reasonable attorney’s fees awarded by any court of competent jurisdiction in any lawsuit brought upon this BOND.

THIS BOND SHALL INURE TO the benefit of all persons and entities described in California Civil Code section 3248(b) so as to give them or their assigns a right of action in any lawsuit brought upon this BOND, and is executed and filed to comply with the Public Works Payment Bond provisions of Chapter 7, Title 15, Part 4, Division 3 of the California Civil Code (commencing at Section 3247) and all amendments thereto, which provisions are incorporated herein by this reference.

IN WITNESS WHEREOF, we sign and seal this BOND on \_\_\_\_\_.

Correspondence or claims relating to this BOND should be sent to SURETY at the following address:

\_\_\_\_\_  
(Seal)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Principal

By: \_\_\_\_\_

\_\_\_\_\_  
Typed Name and Title

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Attorney-In-Fact

\_\_\_\_\_  
Typed Name and Title

(Seal)  
Telephone Number \_\_\_\_\_  
Note: Signatures of those executing for SURETY must be acknowledged, and a Power of Attorney attached.

VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT F – SUBMISSION OF FORMS

\*\*\*\*\* END OF REQUIRED FORMS \*\*\*\*\*



VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT H - PREVAILING WAGE REQUIREMENTS

**A. All or a portion of the Scope of Work in the Contract or Purchase Order (as applicable) requires the payment of prevailing wages and compliance with the following requirements.**

**1. Determination of Prevailing Rates:**

Pursuant to Labor Code sections 1770, et seq., VVTA has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Scope of Work is to be performed. Copies of said rates are on file with the VVTA, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Scope of Work, and are also available online at [www.dir.ca.gov](http://www.dir.ca.gov). The wage rate for any classification not listed, but which may be required to execute the Scope of Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the jobsite, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

**2. Payment of Prevailing Rates**

Each worker of the Contractor, or any subcontractor, engaged in the Scope of Work, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

**3. Prevailing Rate Penalty**

The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to VVTA for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Scope of Work. Pursuant to California Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

**4. Ineligible Contractors:**

Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall



VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT H - PREVAILING WAGE REQUIREMENTS

be returned to VVTA. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Scope of Work.

**5. Payroll Records:**

Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Scope of Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Scope of Work performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
- (2) A certified copy of all payroll records shall be made available for inspection or furnished upon request to VVTA, or the Division of Labor Standards Enforcement of the DIR;
- (3) A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either VVTA or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to VVTA or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;
- (4) The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
- (5) Copies provided to the public, by VVTA or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Scope of Work shall not be marked or obliterated. The Contractor shall inform VVTA of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.

## VVTA RFP 2020-16 ASPHALT STAMPING ATTACHMENT H - PREVAILING WAGE REQUIREMENTS

The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to VVTA, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

### **6. Limits on Hours of Work:**

Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Scope of Work or upon any part of the Scope of Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

### **7. Penalty for Excess Hours:**

The Contractor shall pay to VVTA a penalty of twenty-five dollars (\$25.00) for each worker employed on the Scope of Work by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

### **8. Senate Bill 854 (Chapter 28, Statutes of 2014) Requirements:**

(1) Contractor shall comply with Senate Bill 854 (signed into law on June 20, 2014).

The requirements include, but are not limited to, the following:

- a. No contractor or subcontractor may be listed on a bid proposal (submitted on or after March 1, 2015) for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
- b. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5.
- c. This project is subject to compliance monitoring and enforcement by the DIR.

## VVTA RFP 2020-16 ASPHALT STAMPING ATTACHMENT H - PREVAILING WAGE REQUIREMENTS

- d. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
  - e. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all new public works projects issued on or after April 1, 2015, and for all public works projects, new or ongoing, on or after January 1, 2016.
  - f. The certified payroll must be submitted at least monthly to the Labor Commissioner.
  - g. VVTA reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
  - h. The certified payroll records must be in a format prescribed by the Labor Commissioner.
- (2) As required by Labor Code 1771.1(a) “A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

### **B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS**

#### **1. State Public Works Apprenticeship Requirements:**

The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.

Any apprentices employed to perform any of the Scope of Work shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such

## VVTA RFP 2020-16 ASPHALT STAMPING ATTACHMENT H - PREVAILING WAGE REQUIREMENTS

apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code sections 3070 et seq. are eligible to be employed for the Scope of Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

### **2. Compliance with California Labor Code section 1777.5 requires all public works contractors to:**

#### **(1) Submit Contract Award Information (DAS-140)**

- a.** Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project. **b.** The DAS-140 is a notification “announcement” of the Contractor’s participation on a public works project—*it is not a request for the dispatch of an apprentice.*
- c.** Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
- d.** Contractors who are already approved to train apprentices (i.e. check “Box 1” on the DAS-140) shall only be required to submit the form to their approved program.
- e.** Contractors who are NOT approved to train apprentices (i.e. those that check either “Box 2” or “Box 3” on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see <http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.

#### **(2) Employ Registered Apprentices**

- a.** Labor Code section 1777.5 requires that a contractor performing work in an “apprenticeable” craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor’s completion of work on the project. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
- b.** All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
- c.** Contractors may use the “DAS-142” form for making a request for the dispatch of an apprentice.

VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT H - PREVAILING WAGE REQUIREMENTS

- d. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
- e. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
- f. Only “registered” apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).

**(3) Make Training Fund Contributions**

- a. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
- b. Contractors may use the “CAC-2” form for submittal of their training fund contributions.
- c. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
- d. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
- e. The “training” contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

**3. Exemptions to Apprenticeship Requirements:**

The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices.

- a. When the Contractor holds a sole proprietor license (“Owner-Operator”) and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.

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ATTACHMENT H - PREVAILING WAGE REQUIREMENTS

- b. Contractors performing in non-apprenticeable crafts. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
- c. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
- d. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
- e. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

**4. Exemption from Apprenticeship Ratios:**

The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:

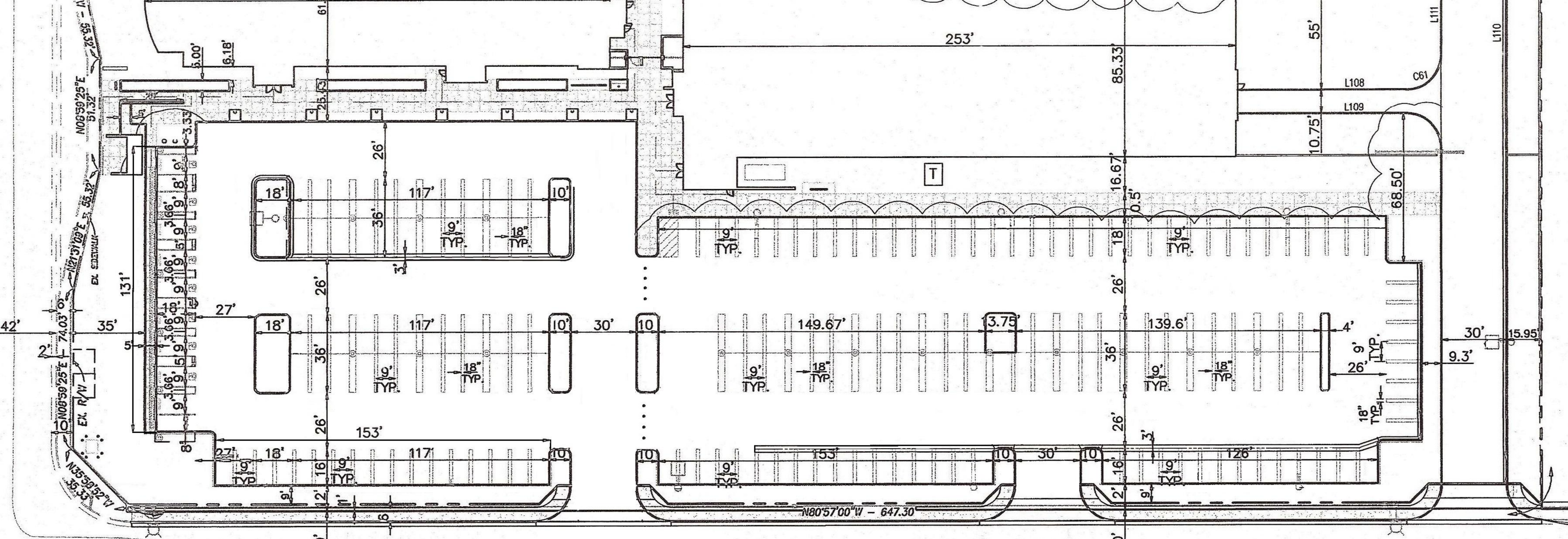
- a. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
- b. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or
- c. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
- d. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

**5. Contractor's Compliance:**

VVTA RFP 2020-16 ASPHALT STAMPING  
ATTACHMENT H - PREVAILING WAGE REQUIREMENTS

The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner.



N80°58'49"W - 1444.59'

SMOKE TREE STREET

N08°59'25"E  
51.32'

N21°31'09"E  
55.32'

N08°59'25"E  
74.03'

N35°58'52"W  
35.35'

253'

85.33'

55'

L108

L109

10.75'

T

68.50'

18'

26'

36'

9' TYP.

18' TYP.

117'

10'

16.67'

18'

9' TYP.

131'

27'

18'

26'

36'

9' TYP.

18' TYP.

117'

10'

30'

10'

149.67'

3.75'

139.6'

4'

9' TYP.

26' TYP.

30'

15.95'

26'

153'

9'

18' TYP.

117'

10'

30'

10'

153'

3.75'

139.6'

4'

9' TYP.

26' TYP.

30'

15.95'

N80°57'00"W - 647.30'

30'

30'