

VICTOR VALLEY TRANSIT AUTHORITY

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

REQUEST FOR PROPOSAL
RFP 2020-10

DESIGN BUILD HYDROGEN FUELING STATION

JANUARY 30, 2023

NOTICE INVITING PROPOSALS 2020-10

1. Purpose of the Procurement and Period of Performance

VVTA is requesting proposals from qualified contractors for the design and construction (Design-Build Contract) of a Hydrogen Fueling Station according to the content and format requirements set forth in this request for proposal (RFP). The period of performance for construction will not exceed 18 months. Fuel delivery will be for 2 years with 3 one-year options to extend. The maintenance contract will be for 1 year with 2 one-year options to extend.

2. Obtaining the Request for Proposal (RFP) Document

RFP documents may be obtained from VVTA, in person at 17150 Smoke Tree Street, Hesperia, CA 92345-8305, electronically at www.vvta.org/Procurement or via www.publicpurchase.com. Documents are also available via email request to cplasting@vvta.org. RFPs 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 before **3:00 PM (PST), Thursday, March 9, 2023**

3.1. Sealed Proposal packages will be accepted at the following address:

Victor Valley Transit Authority
Attn: Christine Plasting, Procurement Manager
17150 Smoke Tree Street
Hesperia, CA 92345-8305
(760) 995-3583

3.2. Envelopes, boxes, or electronic submissions via publicpurchase.com containing proposals shall be sealed and clearly labeled with VVTA's RFP number and the solicitation title: "VVTA RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION"

3.3. Proposers are to submit to VVTA either one (1) hard copy of the proposal and one (1) electronic copy via thumb/flash drive **OR** via www.publicpurchase.com. A Proposal is deemed to be late if VVTA receives it after the deadline stated above. Proposals received after the submission deadline shall be returned, unopened to the Proposer. It is the Proposer's sole responsibility to ensure that the Proposals are received by the date and time stated above.

4. Bonds

A Bid Bond of 10% of the total price proposal is required at the time the proposal is submitted. The awarded contractor may be required to provide a Performance Bond and Payment Bond after the notice of intent to award.

5. Prevailing Wage

The Secretary of Labor has predetermined minimum wage rates for this project. 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.

This work falls under the Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) and that contractor shall supply VVTA with certified payroll documentation. The Davis-Bacon and Related Acts will apply to contractors and subcontractors performing construction, alteration, or repair with federally funded or assisted contracts \$2,000 or more. Under this Act, contractors shall be required to pay wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. A current copy of the Davis Bacon Wage Determinations is available upon request. Contractor shall attach a copy of the prevailing wage to bid proposal. The award of contract shall be conditioned upon the acceptance of the wage determination.

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

6. Vendor Registration with the California Department of Industrial Relations

California SB 854 Compliance -VVTA will not accept a Proposal from or enter the contract with a Proposer, without proof that the Proposer 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 Proposer shall enter DIR Registration Number on its proposal.

- 7. Validity of Proposals.** Proposals 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 RFP at any time without prior notice and VVTA makes no representation that any contract will be awarded to a Proposer responding to this RFP.

8. Job Walk

There will be a non-mandatory Job Walk on Thursday, February 9, 2023, at 9:00 AM (PST). The deadline for questions is at 5:00 PM (PST), Friday, February 24, 2023. Prospective Proposers are requested to submit questions, in writing, to the Procurement Manager at cplasting@vvtta.org. Responses shall be shared with all known prospective proposers by written addenda only.

The successful Proposer shall be required to comply with all applicable Equal Opportunity Laws and Regulations.

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INSTRUCTIONS TO PROPOSERS

A. TIMELINE

Date of Request for Proposal (RFP):	January 30, 2023
Agency:	VICTOR VALLEY TRANSIT AUTHORITY
Address of Agency:	17150 SMOKETREE ST., HESPERIA, CA 92345-8305
Contracting Officer:	Christine Plasting, CPPB, Procurement Manager
Telephone No:	(760) 995-3583
FAX No:	(760) 948-1380
Email Address:	cplasting@vvta.org
Pre-Proposal Conference (Non-Mandatory)	9:00 AM PST, Thursday, February 22, 2023 at 17150 Smoke Tree Street, Hesperia, CA Room A104
Last Day for Questions	5:00 PM PST, Friday, March 3, 2023
Addenda and Answers to questions	2:00 PM PST, Thursday, March 9, 2023
Proposal Due Date	3:00 PM PDT, Thursday, March 16, 2023
Anticipated Award Date	May 2023

B. PURPOSE

The purpose of this project is to provide a design build, turnkey Hydrogen fueling solution for Victor Valley Transit Authority. The project will consist of one station located in Hesperia CA. Station will be equipped with two (2) 350 BAR (H35) dispensers and one (1) 700/350 BAR (H70/H35) dispenser for light duty and heavy-duty applications. The station will be designed with the ability to fuel 2000+ kg per day and be accessible for both public and private use. Liquid hydrogen will be delivered on an as needed basis, up to daily. Hydrogen production will not be utilized for this project. The design-build project will include the design and construction of the station and its equipment, all fencing, walls, concrete, and path of travel. It will also include a maintenance contract and liquid hydrogen deliveries.

The facility is to be constructed on the southern portion of VVTA's property located at the corners of E Avenue and Live Oak Street, just north of the VVTA Hesperia Maintenance and Operations Facility located at 17150 Smoke Tree St. Hesperia, CA 92345.

The Project will be a start to finish design-build project. It will be the responsibility of the selected

Design Build Team to produce and present a complete design of the facility during the RFP process.

VVTA has completed the evaluation of the solicited Statements of Qualifications (SOQs) to Interested Parties – these parties were part of an evaluation process in order to short list those qualified Proposers. However, because this is a Federally Funded project, VVTA must allow for an “open playing field” and not prohibit competition, VVTA will accept additional SOQs from other proposers.

For those proposers who submitted SOQ’s and have been deemed qualified, VVTA will provide those Proposers with a 5% preference. See Attachment E – Required Forms – the end of the Price Proposal page.

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 and [Twitter.com/VVTransit](https://twitter.com/VVTransit).

D. PERIOD OF PERFORMANCE

VVTA intends to award a Lump Sum contract for a period of 18 months for the Design/Build of the facility unless extended by mutual agreement. For Fuel Deliver the term of the contract will be for 2 years with 3 one-year options to extend. For the Maintenance contract, the term will be for 1 year with 2 one-year options to extend. VVTA reserves the right to 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. At any time during this procurement up to the time specified in the “Proposal Schedule” (Section A), Proposers may request, in writing, 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 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 in “Request for Pre-Offer Change or Approved Equal” (Attachment E.) **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 a substantial increase in cost or time requirements. Any responses to such written requests 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.

2. 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 Proposers 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. PRE-PROPOSAL CONFERENCE AND JOB WALK

Each Proposer may attend the Pre-proposal Conference and Job Walk at 17150 Smoke Tree Street, Room A104 (Board Room), Hesperia, CA 92345, on Thursday, February 9, 2023 at 9:00 AM (PST). Failure to attend this meeting will NOT disqualify a Proposal.

One of the objectives to this Job Walk is to invite local trades to attend and meet with the pre-qualified Design Build Teams to encourage local involvement with this project.

I. 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 addenda to all prospective Proposers officially known to have received the RFP. Prospective Proposers, or their agents, shall be responsible for collecting the addenda at the address provided in “Contracting Officer” (Section A. above) or receive the same

otherwise. Notification of the addenda will also be emailed to all such prospective Proposers officially known to have received the RFP and to the email 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 addenda issued shall become part of the RFP. Prospective Proposers shall acknowledge the receipt of each individual addendum and all prior addenda in their Proposer (See Attachment E). 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 sufficient time to revise their Proposals. Any new Due Date shall be included in the addendum.

J. EXCEPTIONS / DEVIATIONS

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

K. 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 Proposer will performed the work. (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 listed as subcontractors.

- j. Required Forms (See Attachment E)
 - k. The proposed design of the facility – approved and stamped by the Firm’s Architect/Engineer.
 - l. Any other information required by this RFP or its addenda which may not be listed above.
 - m. Cost/Price Proposal – Proposers shall submit proposed pricing to provide the products/services for the work described in Attachment A – Scope of Work. Proposer is required to use the Pricing Form included in Attachment E.
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.

L. PROPOSAL PACKAGING REQUIREMENTS

- 1. Please note that **all official addenda** must be acknowledged. Proposers are instructed to use Attachment E – Acknowledgement of Addenda – to acknowledge all official addenda released during this solicitation.
- 2. **Sealed original proposal plus one (1) electronic copy OR via publicpurchase.com**, must be received at the address shown in “Proposal Schedule” (Section A) before **3:00 PM (PST) on Thursday, March 9, 2023**. 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 E) 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 Proposal 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 the awarded Contractor, shall itemize applicable California State and Local Sales tax or state “sales tax included”.

Proposals including all submittal documents and price elements shall be submitted by the due date specified, in two sealed packages identified as **“VVTA RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION – TECHNICAL PROPOSAL”** and **“VVTA RFP 2020-10 – COST/PRICE PROPOSAL.”** If submitting proposals through publicpurchase.com, **COST/PRICE PROPOSAL MUST BE SUBMITTED AS A SEPARATE DOCUMENT.**

If a Proposer is submitting their proposal electronically through publicpurchase.com, a copy of any required originals (notarized documents, bonds, etc.) must be included. The original documents must be received by VVTA not later than 5 business days after the Proposal Due Date.

M. PREFERENCE – GEOGRAPHIC, ECONOMIC, OR OTHER HIRING PREFERENCES

On May 21, 2021, the FTA and FHWA have announced pilot programs to permit grant recipients to include geographic, economic, or other hiring preferences in contract specification for construction projects.

Because the award of this RFP is based on the Responsive and Responsible Proposer whose prices is the lowest, VVTA will be applying preferences to the final cost of a Proposer's price, for evaluation purposes only. . **The reduction in cost is only for the evaluation of bids and is not the final Bid Amount.**

5% Geographic Preference: VVTA will implement this ruling by calculating a reduction in the bid amount for proposers who are deemed to be within the geographic area. VVTA is defining its geographic area to be locations within the Cities of Victorville, Hesperia, Barstow, Adelanto, the Town of Apple Valley, and unincorporated areas of San Bernardino County – where fixed route service is provided and is represented by VVTA's Board of Directors.

5% Prequalified Preference – For those firms who were deemed qualified during the previous RFQ process.

5% DBE Preference – For those Primes and subcontractors who are certified Disadvantaged Business Enterprises.

Please indicate the Claimed Preference on Attachment E – Required Forms on the pricing form.

N. 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 its proposal; and
 - d. Any other expenses incurred by Proposer prior to date of award, if any, of the Agreement.

O. 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.

P. 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.

Q. MODIFICATION OR WITHDRAWAL OF 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.

R. 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 more than 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 E)" with the above requested information.
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.
- d. 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 about the performance of the contract.
- e. 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 subcontracted 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.

S. PROPOSER'S LICENSING REQUIREMENTS

1. Required Contractor's Licenses: The Design Build Team shall hold the following valid California Contractor's State Licensing Board (CSLB) including:
 - a. Class "A" — General Engineering Contractor The principal business is in connection with fixed works requiring specialized engineering knowledge and skill. **Or**
 - b. Class "B" — General Building Contractor The principal business is in connection with any structure built, being built, or to be built, requiring in its construction the use of at least two unrelated building trades or crafts. **AND**
 - c. Class "C" — "C" Specialty contractors perform their trade using the art, experience, science, and skill necessary to satisfactorily organize, administer, construct, and complete projects under their classification, in accordance with the standards of their trade. A specialty contractor may use subcontractors to complete the incidental and supplemental work, or may use his/her own employees to do so. (Also see BPC §7058):
 - i. For this project, the specialized licenses shall include all applicable trades listed with the CSLB at:
http://www.cslb.ca.gov/About_Us/Library/Licensing_Classifications/

2. No contractor or subcontractor may be listed on a bid proposal for a public works project unless currently registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code Section 1771.1(a)]. Contractors and subcontractors must be registered for the current fiscal year.
3. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). Registration can be accomplished through the DIR website by using this link: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.
4. All design consultants (“Design Consultants”) shall hold an appropriate license for their design discipline on the Proposal Date.
5. Failure of a single-entity Proposer to possess the required license on the Proposal date shall render the Proposal non-responsive. Failure of Design Consultant to possess the required license on the Proposal deadline shall require Proposer to substitute licensed design professionals prior to award of the contract without additional cost to VVTA.

T. PREVAILING WAGE REQUIREMENTS AND EMPLOYMENT OF APPRENTICES

This Project is subject to the provisions of Labor Code §1720, *et seq.* and regulations set forth in Title 8 §§ 16000 *et seq.* of the California Code of Regulations, which govern the payment of prevailing wages on public works projects. All Proposers shall be governed by and are required to comply with these statutes and regulations in connection with the Project. Pursuant to Labor Code § 1771, the Design-Build Team receiving award of the contract, its Design Consultants and subcontractors of any tier shall pay not less than prevailing wage rates to all workers employed in the execution of the contract. The Director of the Department of Industrial Relations, State of California pursuant to the California Labor Code and VVTA, have determined the general prevailing rates of wages in the locality in which the work is to be performed. Copies of said rates are on file with the Procurement Manager of VVTA, will be made available for inspection during regular business hours and are also available online at <https://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>.

No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code Section 1771.1(a)].

This work falls under the Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) and that contractor shall supply VVTA with certified payroll documentation. The Davis-Bacon and Related Acts will apply to contractors and subcontractors performing construction, alteration, or repair with federally funded or assisted contracts \$2,000 or more. Under this Act, contractors shall be required to pay wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. A current copy of the Davis Bacon Wage Determinations is available upon request. Contractor shall attach a copy of the prevailing wage to bid proposal. The award of contract shall be conditioned upon the acceptance of the wage determination.

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

U. DISADVANTAGED BUSINESS ENTERPRISE

This project is subject to Title 49, Code of Federal Regulations (CFR), Part 26, entitled "Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs ("Regulations")." The Regulations in their entirety are incorporated herein by this reference. There is **no DBE goal** on this project, however DBE participation by Proposers is encouraged. It is the policy of VVTA to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts.

Proposers who provide the documentation to ensure DBE participation are also eligible to receive 5 points to its Score during the evaluation process.

V. PERFORMANCE AND PAYMENT BOND

The **awarded** Design-Build Team will be required to furnish VVTA: (1) a performance bond; and (2) a payment bond on forms furnished by California Department of Insurance (CDI) approved Surety. The penal amount of each bond shall remain equal to one hundred percent (100 %) of the contract sum. Said bonds must be satisfactory to VVTA and must be executed by a California admitted surety insurer with a policy-holder's rating of **A** or higher and a financial class of **VII** or larger.

W. SUBSTITUTION OF SECURITIES

Pursuant to Public Contract Code 2230, the Design-Build Team who received award of the contract may, at its sole cost and expense, substitute approved securities equivalent to any retained funds withheld by VVTA to ensure performance of the work, or, in alternative, request that VVTA make payment of retention to an escrow agent. Notwithstanding the foregoing, the Design-Build Team shall have **thirty (30) calendar days** following VVTA's Notice to Proceed to submit a written request to VVTA for substitution of securities or payment of retention to an escrow account; failure to do so shall be deemed a waiver of such right.

X. 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 et. seq.) 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 carefully checked 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 RFP 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 RFP, 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.

Y. 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 proposals.
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.

Z. 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 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.

AA. 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.

BB. 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.

CC. VVTA'S RIGHTS

1. Each proposal will be received with the understanding 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, and/or require additional evidence or qualifications to perform the work.

DD. CONFLICT OF INTEREST AND CODE OF CONDUCT

1. POLICY OVERVIEW

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

2. GUIDELINES FOR CONTRACTOR RELATIONSHIPS

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

No Contract Management personnel or support staff shall:

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

EE. AWARD OF CONTRACT

In accordance with FTA Circular 4220.1F (Rev 4, March 18, 2013) Chapter VI, Section 3.e, and FTA's Best Practices Procurement, 3.4.3 – VVTA chose to follow the Two-Step Procurement Process. The first step included the Request for Qualifications in which a Request for Letters of Interest was solicited, the Request for Qualification package was sent to the teams who expressed interest, Statements of Qualification (SOQ) were received, and then the SOQ's were evaluated, scored and then deemed adequate to proceed to step 2 – The Request for Proposal.

Step 2 requires the submission of Sealed Bids (Price/Cost Proposal). The proposer whose Cost/Price is the lowest will be awarded the resulting contract. To be considered for award, Cost/price must comply in all material respects with the RFP. Such compliance enables Proposers to stand on an equal footing and maintain the integrity of the sealed bidding system.

The Cost/Price Proposal should be filled out, executed, and submitted in accordance with the instructions in the invitation. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if—

- The bidder accepts all the terms and conditions of the invitation; and
- Award on the bid would result in a binding contract with terms and conditions that do not vary from the terms and conditions of the invitation.

1. Failure to execute the Contract and furnish the required insurance within the required time period shall be just cause for the recession of the award. If the successful Proposer refuses or fails to execute the Contract and/or provide the required insurance, VVTA may award the Project to the next qualified Proposer. The successful Proposer will also be required to obtain and pay for all licenses necessitated by Proposer's operations.
2. Due to the nature of the proposals, VVTA reserves the right to request additional information prior to awarding a Contract. Additionally, VVTA also reserves the right to clarify any statement or information provide to VVTA in document submitted by any participant.

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 ****

RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATIONS ATTACHMENT A – SCOPE OF WORK

Scope of Work

The purpose of this project is to provide a design build, turnkey Hydrogen fueling solution for Victor Valley Transit Authority (VVTA). The project will consist of one station located in Hesperia CA. Station will be equipped with two (2) 350 BAR (H35) dispensers and one (1) 700/350 BAR (H70/H35) dispenser for light duty and heavy-duty applications. The station will be designed with the ability to fuel 2000+ kg per day and be accessible for both public and private use. Liquid hydrogen will be delivered on an as needed basis, up to daily. Hydrogen production will not be utilized for this project. The design-build project will include the design and construction of the station and its equipment, all fencing, walls, concrete, and path of travel. It will also include a maintenance contract and liquid hydrogen deliveries.

General

The proposer shall be responsible for planning, design, permitting, equipment, construction, commissioning, and closeout of project.

Quality:

All material and workmanship shall be of the highest grade, in accordance with the best modern practice. All materials and parts comprising the product shall be new. The project and materials shall comply with the Buy America, Build America Act.

Project Term

The station construction, installation, and commissioning represent the first phase of the project and must be fully completed no later than December 31, 2024. The Maintenance agreement will have a one-year term with two one-year options, and fuel supply agreement will have a two-year term with three one-year options to extend. The option years will be exercised at the sole discretion of VVTA and will not figure into the overall scoring of the proposal.

Proposal Requirements

- Provide the “color” and Carbon Intensity of the liquid H₂ to be delivered and the cost per kg. including delivery.
- Provide the amount of fuel the proposed system is able to deliver in a 6-hour period in kgs.
- Provide initial drawings for hydrogen equipment placement.
- Provide a proposed project schedule.
- Provide and discuss change order process.
- Describe sequence programming and control components proposed.
- Include a project organization chart, which clearly delineates communication/reporting relationships and responsibilities among the project staff.
- Include a statement that key personnel will be available to the extent proposed for the duration of the project acknowledging that no person designated as "key" to the project shall be removed or replaced without the prior written concurrence of the VVTA.
- Provide a project approach and work plan.

Project Site and Description

The station will be located at VVTA's maintenance and operations facility in Hesperia California located at:

17150 Smoke Tree St.
Hesperia CA, 92345

RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATIONS ATTACHMENT A – SCOPE OF WORK

VVTA has purchased approximately 5 acres just north of its facility on the west end which is where the fuel station will be built. The design-build project shall include the design and construction of the station and its equipment, fencing around the hydrogen equipment, provision of power to hydrogen equipment, bollards, walls to extend and secure the VVTA facility around the station and vehicle path of travel, concrete work, and all other construction required for building the station.

Liquid hydrogen deliveries are to be done within VVTA's facility by gaining access from its southeast entrance gate and not done off E avenue. The station will need to be designed as such.

Entrance for buses needing fuel will need to be from the current parking lot and return without having to go onto the public streets.

A conceptual drawing utilizing as small of footprint as possible and maintaining flow of traffic for the VVTA buses is attached, please see Exhibit 1

Project Approach and Work Plan

Contractor should provide a narrative, which fully addresses this Scope of Work, and shows Contractor's understanding of VVTA's needs and requirements. The Contractor should include references for each section in the Scope of Work that refers to VVTA's requirements.

The Work Plan shall provide a list of tasks and responsibilities, and a proposed schedule, to commission the station upon completion of station construction. The commissioning plan shall address safety requirements to safely startup the system. A third-party fuel purity test will be required prior to filling VVTA's buses supplied by the awarded contractor.

The Work Plan shall address the Contractor's maintenance plan, including tasks, responsibilities, and schedules. The plan must address both preventive and corrective maintenance activities and responsibilities, access to spare parts inventories stored on site and at the Contractor's facilities, response times to restart the station if there is a disruption in station operations due to loss of grid power or other system faults. The plan shall describe how the contractor will monitor the station remotely and respond to developing problems or disruptions in station operations. The contractor shall also supply a plan to provide VVTA with a means of remotely monitoring the station as well. The plan should also identify response times to repair equipment, and from where repair technicians will be dispatched, with the goal of providing near 100% uptime during VVTA's refueling window between 7pm to 3am.

Contractor:

- Describe the approach to completing the tasks specified in this Scope of Work. The approach to the work plan shall be of such detail to demonstrate the Contractor's ability to accomplish the project objectives and overall schedule.
- Outline sequentially the activities that would be undertaken in completing the tasks and specify who would perform them.
- Furnish a project schedule for completing the tasks in terms of elapsed weeks.
- Identify methods that Contractor will use to ensure quality and safety control as well as budget and schedule control for the project.
- Identify any special issues or problems that are likely to be encountered in this project and how the Contractor would propose to address them.
- Contractors are encouraged to propose enhancements or procedural or technical innovations to the Scope of Work that do not materially deviate from the objectives or required content of the project.

RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATIONS ATTACHMENT A – SCOPE OF WORK

- Proposers should discuss their process/procedures for collecting operational and financial data and demonstrate their understanding of various data collection activities and reporting requirements to reduce GHG emissions.
- Identify and provide all sample agreements that VVTA will be required to execute.

Planning:

Proposer shall be responsible for planning to include at a minimum:

- Project schedule (to be updated at least every other month).
- Site evaluation.
- Planning and obtaining easement access with Southern California Edison.
 - VVTA will provide drawings submitted as Exhibit 2 for easement locations.
- Obtain all permits from all authorities having jurisdiction (AHJ).
- Coordination with all utilities for electrical, power, gas, etc.
- Hydrogen Safety Plan:
 - Contractor shall commit to developing a Hydrogen Safety Plan for the proposed project that addresses the Hydrogen fueling infrastructure that will support VVTA's transit "fuel cell" buses. The safety plan shall describe the Contractor's work and activities to ensure safety, the technologies being demonstrated, and the evaluation results of any hazard analysis performed. The Contractor shall also include the following in the Hydrogen Safety Plan:
 - A detailed description about how the Contractor will conform to the current National Fire Protection Association (NFPA) 2, Hydrogen Technologies Code. The current edition of NFPA 2 must be used. If the AHJ is using an older edition, the Contractor is recommended to work with the AHJ to consider using the latest edition as it has been updated to better address fueling infrastructure safety.
 - A detailed description about how the Contractor will provide safety training for the hydrogen fueling infrastructure's initial operation and safety training for all operators, fuelers, and maintenance staff. The Contractor will forward their Hydrogen Safety Plan to VVTA for consideration.
- **Backup Fuel Supply:**
 - Awarded fuel supply shall develop a plan to provide a backup supply of hydrogen to reduce the risk of not being able to fuel VVTA's buses due to disruptions in fuel supply.
- **Maintenance downtime:**
 - The awarded maintenance contractor shall be responsible for the maintenance of the station. The contractor shall provide a plan to reduce the risk of not being able to fuel VVTA's buses due to extended downtime due to equipment failures.

Design:

- **Proposer shall be responsible for the design of the station which will include at minimum:**
 - Civil drawings.
 - Electrical drawings.
 - Mechanical drawings.
 - Equipment layout to identify permitting criteria for area classification and separation distances.

RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATIONS

ATTACHMENT A – SCOPE OF WORK

- Provide 90% drawing set to customer for review prior to permit submission.
- All concrete for vehicle path of travel shall be at least 10 inches and successfully support a two-axle vehicle weighing at least 50,000lbs.
- All walls, CMU, and structures must match existing VVTA walls, structures, and design and meet the requirements of the AHJ's.

Equipment:

350 Bar Fueling Station Equipment:

- All equipment necessary for the operation of a 350-bar hydrogen fueling station to include, but not limited to:
 - Cryogenic Liquid Hydrogen Storage Tank.
 - 18,000 to 25,000 Gallon capacity.
 - Cryogenic Liquid Hydrogen Pumps and/or gaseous hydrogen compression equipment.
 - 2000+ kg/day capacity for compression.
 - Additional 450 BAR gaseous hydrogen storage cylinders.
 - To allow for faster, and back-to-back fills of 350 BAR systems.
 - 350 BAR gaseous hydrogen dispensers w/ POS system.
 - All relevant safety equipment, including but not limited to:
 - Flame & gas detection devices;
 - Emergency stop buttons & system; and
 - In-process leak detection.
- Station must be designed to be able to fuel all current Fuel Cell Electric Bus (FCEB) models (El Dorado and New Flyer) and next generation models without the need for additional, or special, sensors or equipment installed on the buses.
- Station must be designed to fuel 60 buses within 7 hours.

700 Bar Fueling Additional Equipment:

- All equipment necessary for the operation of a 700-bar hydrogen fueling station to include, but not limited to:
 - 450 BAR & 900 BAR gaseous hydrogen storage cylinders.
 - To allow for multi-stage filling to minimize demand on 700 BAR compression.
 - Hydrogen distribution valving & manifold assembly.
 - Hydrogen controls & monitoring equipment.
 - Hydrogen chilling equipment.
 - 700 BAR & 350 BAR gaseous hydrogen dispenser w/ point-of-sale (POS) system.
 - All relevant safety equipment, including but not limited to:
 - Flame & gas detection devices;
 - Emergency stop buttons & system; and
 - In-process leak detection.

Construction:

The proposer shall be responsible for construction to include, but not limited to:

- All excavation, forms, foundations, trenches, fencing, bollards, grounding of all equipment and grounding grid, lighting protection (if existing), provide and install emergency stops per NFPA/local code, Provide Class 1 Division 2 lighting at the pad, equipment installation (crane, rigging, anchoring), hydrogen tubing interconnection between all pieces of equipment and

RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATIONS ATTACHMENT A – SCOPE OF WORK

dispensers, roof penetration, roof supports for piping, vent stack installation, mount control panels, pulling/running electrical supply to control panels from source within 100', erect cable supports, tie in dispensers, terminate instrumentation, provide and install emergency stops, place, anchors and install dispensers with their crash protection, route instrument air from equipment pad, install dewatering line to drain within 100'.

- Provide site specific safety training for on-site personnel and contractors.
- Provide construction supervision for installation of the equipment within the scope.
- Hold recurring conference calls and in person meetings to inform all parties about construction activities and update project schedule.
- Construction work is expected to be performed Monday through Friday, 7:00 am – 7:00 pm. Hours outside this time would need to be approved by the VVTA project manager and Director of Fleet and Facilities

Commissioning:

The proposer shall be responsible for commissioning, providing VVTA a detailed station commissioning plan, identifying the steps, tasks, responsibilities, and schedule to start and complete commissioning of the station. The plan shall be provided no less than sixty (60) days in advance of the start of the commissioning process and is to include at a minimum:

- Electrical
 - Perform electrical termination for all instrumentation.
 - Function test all safeties and controls, etc.
- Mechanical Pressure testing.
- Assign single point of contact (site transition manager).
- Set up maintenance areas.
- Provide adequate training on hydrogen refueling.
- Provide operator, parts, and maintenance manuals.
- Provide all warranty documentation for equipment.
- Operation and Maintenance Plan.
 - Contractor shall provide VVTA with an Operating and Maintenance Plan prior to the start of station commissioning.

Closeout:

The Proposer shall be responsible for closeout to include at a minimum:

- Provide as-built drawings at job completion.
- Remove all shipping materials.
- Remove construction materials, debris, and equipment.

Fuel System Integration:

VVTA uses an industry standard system (Fuel Force) to collect fueling data on each vehicle in its fleet as the vehicles are fueled and serviced. The fuel provider will be required to integrate the Hydrogen fueling dispenser and control systems with the Fuel Force system and Broadlux technology solutions. In addition to this data requirement, the fuel provider will need to maintain a log of fueling activity to compare with the Fuel Force system and another log to track station incidents and status.

Station Access:

RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATIONS

ATTACHMENT A – SCOPE OF WORK

The hydrogen supply, compression, and storage system will be fenced-in on VVTA's property, restricting access to authorized personnel only. The hydrogen dispensers will also be located within VVTA's controlled area with restricted public access, aside from the H70/35 dispenser which will be accessible for public fueling. Furthermore, the Hydrogen dispensers shall be linked to the Fuel Force management system at VVTA. This system identifies the bus by a unique number. This data link is required in order to initiate the fueling process, preventing unauthorized vehicle access to the dispenser. On newer systems, IRDA communication, including a storage volume character, is confirmed by the station. Either form of communication is required to initiate the fueling process (Note: the IRDA communication link associated with Fuel Force is different from the required Infrared communication link between the dispenser nozzle and the bus hydrogen receptacle).

Maintenance of the station may be performed at any time; however, if maintenance requires the station to be off-line for more than 30 minutes, the maintenance work may not be performed between the hours of 7:00 pm – 3:30 am. Delivery of liquid supply may be delivered seven days a week between the hours of 5:00 am – 6:00 pm. Deliveries of gaseous or liquid supply must be fulfilled within 24 hours of the specified delivery date.

Hydrogen Quality:

The commissioning process shall include a third-party purity test for particulates, CO, humidification, and any other contaminants that might damage the fuel cells. The results of the purity test shall be presented to VVTA staff for their review and approval to begin fueling buses. As part of the contractor provided station maintenance plan, which shall be automated to trigger the various preventative maintenance tasks required to for the entire system, a further trigger shall be programmed to schedule the bi-annual purity testing requirement. Contractor shall meet SAE J2719 fuel quality standard for hydrogen.

Renewable Hydrogen:

Contractor will be required to meet the requirements for renewable hydrogen as specified by SB 1505, which requires that no less than 33% of the hydrogen dispensed be renewable. Contractor will be required to report renewable fuel dispensed through CARB's Low Carbon Fuel Standard program (<https://ww2.arb.ca.gov/our-work/programs/low-carbon-fuel-standard>).

Contractor shall provide the estimated percentage of LCFS credits provided to VVTA. LCFS credits are to be provided to VVTA on a quarterly (monthly?) basis

Fueling Protocols:

The station will fuel buses according to J2601/2. This protocol guideline establishes key safety and performance standards. The fueling will be a communication fill using the IrDA system.

Safety and Health:

The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

Fire and Safety Awareness, Prioritization, and Adherence:

The Contractor's station will comply with all major recognized Fire Protection Codes and Standards, namely, current NFPA 2, NFPA 55, NFPA 70, CFC, and CBC. The dispensing system and hazardous area electrical will be third party-approved and field labeled.

RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATIONS ATTACHMENT A – SCOPE OF WORK

Process Safety Management (PSM) Requirements of Cal/OSHA:

Contractor is responsible for ensuring compliance with the Cal/OSHA §5189, Process Safety Management of Acutely Hazardous Materials standards. All compliance activities shall be documented as required by the regulations. The Process Safety Information, Process Hazard Analysis, Pre-startup Safety Review, Safe Operating Procedures, and the Mechanical Integrity procedures shall be provided to VVTA via hard copy and electronically in advance of the system being fully commissioned and made ready for fueling buses. Contractor is to serve as the system expert and through the system turn-over process, shall provide training and certification to VVTA staff in compliance with §5189(g) <https://www.dir.ca.gov/title8/5189.html>.

Contractor is responsible for providing gas and fire detection safety devices for the dispenser(s) and the station equipment, including any upgrades to ventilation, electrical, heating, and fire control panels and systems that serve the immediate area where the station and dispenser(s) will be placed.

Other Applicable Codes, Laws, and Regulations:

The contractor shall comply with all regulations in the California Title 24 Building Energy Efficiency Standards such as: California Building code – Part 2, California Electrical Code – Part 3, California Energy Code – Part 6, and California Fire Code – Part 9 and all other Title 24 governing codes that are applicable this project. The contractor shall also comply with all local, county, state, or national laws, codes and regulations that are applicable to this project.

RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION ATTACHMENT B – FEDERAL REGULATORY REQUIREMENTS

THE RESULTING CONTRACT FROM THIS RFP SHALL BE FINANCED WITH FEDERAL FUNDS

The links below are attached to this RFP and are herein incorporated. By submitting a proposal, the PROPOSER agrees to compliance with all reference Federal Regulatory Requirements.

It is the responsibility of the Proposer to ensure compliance with all of the regulations that are applicable to this solicitation and resulting contract.

The federal regulations Check List – a listing by Contract Dollar amount showing the applicable regulations for any Federally Funded contract: http://vvta.org/wp-content/uploads/2022/04/VVTA_PROCUREMENT_FEDERAL-CLAUSE-CHECKLIST_20220418.pdf

The following is “Appendix A” of the Federal Procurement Best Practices Manual and includes the full text for all of the clauses included in the above checklist: http://vvta.org/wp-content/uploads/2022/04/FTA_Required_Clauses_22.04.18.pdf

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION ATTACHMENT C – SAMPLE CONTRACT

THIS CONTRACT is made and entered into this ___ day of ____, 20__, by and between the **VICTOR VALLEY TRANSIT AUTHORITY**, a Joint Powers authority, created pursuant to the laws of the State of California (“VVTA” OR “Agency”) and

_____ (“CONTRACTOR”).

RECITALS

WHEREAS, VVTA circulated and distributed a Request for Proposal (“RFP”) to the firms who submitted Statements of Qualifications per RFQ 2020-10 and were deemed adequate to proceed to step two of the procurement process. The RFP is for the Design/Build of the Hydrogen Fueling Station, a copy which is attached herein as Exhibit 1 (RFP); 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 manufacturing capacity and staff competency to provide the services, goods and materials that are described in this Contract, 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 Contract.

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

1. SCOPE OF WORK

- A. CONTRACTOR will perform the Work and related tasks as described in Attachment A, Scope of Work (Exhibit 2) hereto and is incorporated by reference into and made a part of this Contract.
- B. This is a non-exclusive Contract, 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

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same Work for VVTA.

2. CONTRACT DOCUMENTS

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

This Contract;

- A. Exhibit 1 – RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION including Addenda and all Attachments;
- B. Exhibit 2 – RFP 2020-10 SCOPE OF WORK
- C. Exhibit 3 – CONTRACTOR's PROPOSAL Submission dated _____
- D. Exhibit 4 – CONTRACTOR's Proof of Insurance dated _____
- E. Exhibit 5 – CONTRACTOR's Price Proposal dated _____
- F. Exhibit 6 – Completed, signed, and notarized (if applicable) forms as required by the Solicitation.

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

In the event of any conflict between the final contract and the provisions included in the attachments, the negotiated terms of the final contract shall prevail.

3. PERIOD OF PERFORMANCE

This Contract shall commence on _____ and shall continue in full force and effect through _____, with three one-year options to extend, unless earlier terminated or extended as provided in this Contract.

4. TOTAL CONSIDERATION

- A. In accordance with the terms and conditions of this Contract, VVTA shall pay CONTRACTOR for its obligations under this Contract. 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.

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RATES

- B. VVTA's maximum cumulative payment obligation under this Contract 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 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

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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 Contract 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: PROCUREMENT MANAGER/CONTRACT ADMINISTRATOR
17150 SMOKE TREE STREET
HESPERIA, CA 92345-8305

- C. VVTA shall remit payment within thirty (30) calendar days of approval of the invoices by VVTA Senior Staff. VVTA does encourage the CONTRACTOR to accept discount terms of 2% 10, net 30, 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

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and at the preconstruction conference. CONTRACTOR shall be responsible to communicate this information to all subcontractors.

E. Final Payment

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

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

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

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

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

6. AUDIT AND INSPECTION OF RECORDS

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

A. In the event of a **sole source Contract, or single Offer, single responsive Offer,**

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or competitive negotiated procurement, the Contractor shall maintain and VVTA, the U.S. Department of Transportation (*if applicable*), or the representatives thereof, shall have the right to examine all books, records, documents, and other cost and pricing data related to the Contract price, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, or combinations thereof. Data related to the negotiation or performance of Contract shall be made available for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary for adequate evaluation of the cost or pricing data, along with the computations and projections used therein, including review of accounting principles and practices that reflect properly all direct and indirect costs anticipated for the performance of the Contract.

- B. **For Contract Amendments**, the VVTA, 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 VVTA 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.

7. NOTIFICATION

All notices hereunder concerning this Contract 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: Procurement Manager
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 has been delegated the authority to execute contracts on behalf

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of VVTA. Except as expressly specified in this Contract, the Executive Director may exercise any powers, rights and /or privileges that have been lawfully delegated by VVTA. Nothing in this Contract 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 Contract, including the power to enforce compliance with this Contract.
2. Reserve the right to remove any portion of the Work from CONTRACTOR which have not been performed to VVTA's satisfaction.
3. Subject to the review and acceptance by VVTA, negotiate with CONTRACTOR all adjustments pertaining to this Contract 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 Contract.

B. Contractor's Key Personnel

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

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

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

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

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9. TERMINATION OF CONTRACT

A. TERMINATION FOR CONVENIENCE

1. The performance of Work under this Contract may be terminated for in whole, or from time to time in part, by VVTA for the convenience of VVTA whenever VVTA determines that such termination for convenience is in the best interest of VVTA and the other procuring agencies. Any such termination for convenience 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 for Convenience, and except as otherwise directed by VVTA, the Contractor must:
 - (a) Stop the Work under the Contract on the date and to the extent specified in the Notice of Termination for Convenience.
 - (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 for convenience.
 - (d) Assign to VVTA in the manner, at the times, and to the extent directed by VVTA, 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 VVTA, 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 VVTA the fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to VVTA.
 - (g) Complete performance of such part of the Work as shall not have been

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terminated by the Notice of Termination for Convenience; and

- (h) Take such action as may be necessary, or as VVTA 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 for Convenience, 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 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

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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 number 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
 - (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 for convenience 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

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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 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 for Cause to the Contractor, VVTA and the other procuring agencies may cancel the whole or any part of the Contract in any one of the following circumstances:
 - (a) If the Contractor fails to perform the Work within the time specified or any extension thereof.
 - (b) If the Contractor fails to perform any of the provisions of the Contract, or so

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fails to make progress so as to endanger performance of the Contract in accordance with its terms, and in either of these two later circumstances, does not cure such failure within a period of the 10) calendar days (or such additional time as may be specified in the notice) after VVTA gives notice to Contractor of the failure.

- (c) The Contractor or Subcontractor or Supplier has violated an authorized order or requirement of VVTA;
 - (d) Abandonment of the Contract;
 - (e) Assignment of subcontracting of the Contract or any Work under the Contract without approval by VVTA;
 - (f) Bankruptcy or appointment of a receiver for the Contractor's property;
 - (g) Performance by the Contractor in bad faith;
 - (h) Contractor allowing any final judgment to stand (unsatisfied) for a period of 48 hours (excluding weekends and legal holiday(s));
 - (i) Material failure to comply with the law, ordinance, rule, regulation, or order of a legal authority applicable to the Contract, the Work, the Contractor, or the 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 VVTA, VVTA will send the Contractor a written notice of failure to cure the breach. Upon receipt of such written notice from VVTA, Contractor shall:
- (a) Stop Work on the date of, and to the extent specified in, the Notice of Termination for Cause;
 - (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 for Cause;
 - (c) Cancel all orders or subcontracts to the extent that they relate to the performance of Work cancelled under the Notice of Termination; and

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- (d) Comply with all other requirements of VVTA specified in the Notice of Termination for Cause.
- (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 for Cause from VVTA and shall require the Subcontractors and Suppliers to insert the same provision in any of their subcontracts.
- (8) The Contractor shall immediately upon receipt communicate any Notice of Termination for Cause 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.

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- (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 Contract, 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 Contract 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 Contract.

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 Bid. CONTRACTOR shall include in each subcontract Contract the stipulation that CONTRACT, not VVTA, is solely responsible for payment to the subcontractor for all amounts owing and that the subcontractor shall have no claim, and shall take no action against VVTA, Member Agencies or officers, directors, employees, or sureties thereof for nonpayment by CONTRACTOR.

Subcontractors’ Names and Addresses

Work to be Performed

12. SUCCESSORS AND ASSIGNS

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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 Contract shall be repaired, replaced, or corrected by the CONTRACTOR hereunder without additional cost to VVTA, unless such damage is the result of VVTA's gross negligence or willful misconduct.
- D. CONTRACTOR shall pay for all taxes, except for sales, use, transaction, and excise taxes that were legally enacted at the time CONTRACTOR's offer submitted. CONTRACTOR shall secure and pay for all permits and governmental fees, licenses, and inspections necessary

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for the proper execution and completion of this Contract.

- E. CONTRACTOR 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. INDEMNIFICATION

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

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

This section shall survive termination or expiration of this Contract.

- B. If CONTRACTOR has retained legal counsel reasonably acceptable to VVTA, 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 counsel of its own selection at its own expense.

19. INSURANCE

A. General Requirements for Contractor

- 1) Without limiting or diminishing the Contractor's obligation to indemnify or hold VVTA harmless, Contractor shall procure, prior to commencement of the services required under this contract and maintain for the duration of the contract at its own expense, insurance of the kinds and in the amounts as indicated below.
- 2) Provide VVTA with valid original certificates of insurance and (except with regard to Professional Liability and Workers' Compensation) showing VVTA as an additional insured.

B. Deductibles or Self-Insured Retention (SIR)

SIR must be declared to and approved by VVTA. At the option of VVTA, either: the insurer shall

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reduce or eliminate such deductibles or SIR or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. Other Insurance Provisions

1) Commercial General Liability and Automobile Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of Contractor's performance of its obligations hereunder and if Contractor's vehicles or mobile equipment are used in the performance of the obligations under this Contract, then Contractor shall maintain liability insurance for all owned, non-owned or hired vehicles so used. Policy shall name VVTA, its officers, officials, employees, agents, and volunteers as insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied, or used by Contractor; or automobiles owned, leased, hired, or borrowed by Contractor. The coverage shall contain no special limitations of the scope of protection afforded VVTA, its officers, officials, employees, agents, and volunteers.

- a) For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects VVTA, its officers, officials, employees, agents, and volunteers. Any insurance and/or deductibles and/or self-insured retentions or self-insured programs maintained by VVTA, its officers, officials, employees, agents, and volunteers shall be excess of Contractor's insurance and shall not be construed as contributory.
- b) Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- c) Contractor shall notify VVTA of any suspension, void, cancellation, or reduction in coverage or in limits, as required by contract, within (30) days of change.
- d) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:
 - \$10,000,000 per occurrence for bodily injury and property damage;
 - \$10,000,000 per occurrence for personal and advertising injury;
 - \$20,000,000 aggregate for products and completed operations;
 - \$20,000,000 general aggregate applying separately to the work performed under the Contract.

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- (e) **COMMERCIAL AUTOMOBILE LIABILITY** insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$10,000,000 per accident for bodily injury and property damage.

2) Workers' Compensation

If the Contractor has employees as defined by the State of California, the Contractor shall maintain statutory Workers' compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of VVTA and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

3) Care, Custody, and Control

Contractor shall insure any VVTA property while under its Care, Custody, and Control according to the requirements listed in the insurance coverage required.

- 4) EMPLOYERS' LIABILITY** insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

- 5) PROFESSIONAL LIABILITY** (Errors and Omissions) insurance appropriate to Consultant's profession, with limits of liability of \$2,000,000 per claim/occurrence and \$4,000,000 policy aggregate.

- 6) BUILDERS RISK** (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions.

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

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

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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 VVTA.

7) 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 Contract 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 Contract, 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 Contract, 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 Contract, 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 Contract.

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Contractor shall furnish VVTA with all certificates 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 Contract and before work commences.** Upon request of VVTA, Contractor shall immediately furnish VVTA with a complete copy of any insurance policy required under this Contract, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Contract.

If at any time during the life of the Contract or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Contract 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 Contract. No action taken by VVTA hereunder shall in any way relieve Contractor of its responsibilities under this Contract.

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 Contract. 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 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 Contract, 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.

D. Acceptability of Insurers

Insurance companies shall be State of California admitted or approved and have a current **A.M. Best's** rating of no less than **A: VIII**.

E. Verification of Coverage

- 1) Contractor shall furnish VVTA with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance certificates and endorsements are to be received and approved by VVTA before work commences.
- 2) As an alternative, Contractor's insurer may provide complete, certified copies of all

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required insurance policies, including endorsements affecting the coverage required by these specifications.

- 3) In lieu of purchasing insurance and providing original endorsements and or certificates of insurance, the Contractor may provide proof of self-insurance; such proof must be to the satisfaction of VVTA.

F. Subcontractors

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

G. Notification of Terminated Insurance

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

H. Endorsements

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

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

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

I. Proof of Coverage

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

Victor Valley Transit Authority
ATTN: Procurement Manager
17150 Smoke Tree Street
Hesperia, CA 92345

G. 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 quality 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.

MINIMUM INSURANCE COVERAGE

1. Commercial General Liability including Products/Completed Operations: \$10,000,000; per occurrence for bodily and property damage liability and \$20,000,000 aggregate; VVTA named and endorsed as an Additional Insured.
2. Automobile Liability: \$10,000,000; per occurrence for bodily and property damage liability and aggregate; VVTA named and endorsed as an Additional Insured.
3. Workers' Compensation: statutory limits
4. Employer's Liability: \$1,000,000; per occurrence.
5. Professional Liability (Errors and Omission): \$2,000,000 per claim/occurrence
6. Builder's Risk: at an account equal to the completed value of the project.

20. REVISIONS

By written notice or order, VVTA may, from time to time, order work suspension or make changes to this Contract. Changes in the Work shall be mutually agreed to and incorporated into an amendment to this Contract. 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.

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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 Contract, this Contract may only be modified by written mutual consent evidenced by signature of representative authorized to enter into and modify the Contract. 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 Contract 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 Contract shall become the property of VVTA without restriction or limitation on their use and shall be made available upon request to VVTA at any time. Original copies of such shall be delivered to VVTA upon completion of the Work or termination of the Work. CONTRACTOR shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the prior written approval of VVTA. The provisions of this paragraph shall survive termination or expiration of this Contract and/or final payment thereunder.

22. OWNERSHIP OF REPORTS AND DOCUMENTS

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The originals of all letters, documents, reports and other products and data produced under this Contract 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 developed by CONTRACTOR, its 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 Contract that may be defined under Section 101, Title 17, USC will be considered "work for hire" as it pertains to ownership rights. CONTRACTOR, by his/her endorsement hereon agrees that all rights to any work(s) created or produced are waived, and that ownership rests with VVTA. CONTRACTOR further agrees to ensure transfer of all rights to such work(s), as defined under federal copyright law that may be created or produced under this Contract by its suppliers, contractors, or subcontractors.

25. SUBMITTAL OF CLAIMS BY CONTRACTOR

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

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

26. EQUAL OPPORTUNITY

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

27. STANDARD OF PERFORMANCE

- A. CONTRACTOR shall perform and exercise and require its subcontractors to perform and exercise due professional care and competence in this performance of the Work in accordance with the requirements of this Contract. 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 Contract. The provisions of this paragraph shall survive termination or expiration of this Contract 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 Contract under this Article shall not be reassigned to perform Work in any other capacity under this Contract 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 Contract.

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29. DISQUALIFYING POLITICAL CONTRIBUTIONS

In the event of a proposed amendment to this Contract, 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 Contract 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 Contract. CONTRACTOR shall also comply with all Federal, State, and local laws and ordinances.

31. COMPLIANCE WITH LOBBYING POLICIES

- A. CONTRACTOR agrees that if it is a Lobbyist Employer or if it has retained a Lobbying Firm or Lobbyist, as such terms are defined by VVTA in its Ethics Policy, it shall comply or ensure that its Lobbying Firm and Lobbyist complies with VVTA's Ethics Policy.
- B. If CONTRACTOR (Lobbyist Employer) or its Lobbying Firm or Lobbyist fails to comply, in whole or in part, with VVTA's Ethics Policy, such failure shall be considered a material breach of this Contract and VVTA shall have the right to immediately terminate or suspend this Contract.

32. WAIVER/INVALIDITY

No waiver of a breach of any provision of this Contract by either party shall constitute a waiver of any other breach of the provision, or of any other breach of the provision of the Contract. Failure of either party to enforce any provision of this Contract 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 Contract 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

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CONTRACTOR agrees that for and during the entire term of this Contract, any information, data, figures, records, findings, and the like received or generated by CONTRACTOR in the performance of this Contract, 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 Contract for any reason, CONTRACTOR agrees that it will continue to treat as private and privileged any information, data, figures, records, findings, and the like, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct prior written authority of VVTA.

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

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

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

- B. CONTRACTOR shall refer all inquiries from the news media to VVTA and shall comply with the procedures VVTA's Public Affairs staff regarding statements to the media relating to this Contract 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 Contract.

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

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION ATTACHMENT C – SAMPLE CONTRACT

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 Contract it makes with its subcontractors.

B. Covenant

1. Contractor covenants that prior to award of this Contract, Contractor has disclosed any present interest and any interest existing within twelve (12) months prior to award of this Contract including, without limitation, any business or personal relationship that creates an appearance of a conflict of interest. Disclosable interests and relationships are those that may reasonably be viewed as creating a potential or actual conflict of interest. Disclosable interests and relationships are those that may reasonably be viewed as creating a potential or actual conflict of interest. Any existing or prospective interest acquired or occurring after submission of the initial Certification shall be provided in an amended Certification with the executed Contract and shall be incorporated into the Contract by this reference. Violation of this covenant is a material breach of this Contract.
2. In addition, Contractor shall immediately disclose in writing to VVTA and or to the other procuring agencies General Manager and Chief Legal Counsel any interest or relationship described in subparagraph B(1) acquired or occurring during the term of this Contract.
3. Violation of the above disclosure obligations is a material breach of this Contract.

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 Contract it makes with its subcontractors.

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION ATTACHMENT C – SAMPLE CONTRACT

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 CONTRACT

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

40. ELECTRONIC SIGNATURES

This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same agreement. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

Signatures on following page.

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

VICTOR VALLEY TRANSIT AUTHORITY

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION
ATTACHMENT C – SAMPLE CONTRACT

By: _____
Kevin Kane, VVTA Executive Director

APPROVED AS TO FORM

By: via email by County Counsel on 05/12/2022
VVTA Legal Counsel

CONTRACTOR

By: _____

Name: _____ Title: _____

By: _____

Name: _____ Title: _____

SAMPLE

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION ATTACHMENT D – PROTEST PROCEDURES

1. PURPOSE

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

2. DEFINITIONS

The following definitions apply to this policy.

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

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

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

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

3. REFERENCES

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

4. BASIS OF PROTEST

A. Requests for Proposal

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

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

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION ATTACHMENT D – 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 2020-10 DESIGN BUILD HYDROGEN FUELING STATION ATTACHMENT D – PROTEST PROCEDURES

Hesperia, CA 92345

RE: Solicitation Protest – Solicitation/Contract Number

7. PROTEST SUBMITTAL DEADLINE

A. Requests for Proposal

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

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

B. Invitations for Bid

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

8. PROTEST REVIEW PROCESS

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

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

VVTA RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION ATTACHMENT E – REQUIRED FORMS

1. If a qualifier, i.e. (Required >\$100,000) follows the title of the form, then submit that form only if the solicitation 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
 - 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.
 - Proposed Disadvantaged Business Enterprise (DBE) Participation; if you or a subcontractor are a DBE, please submit certification with proposal.
 - List of Subcontractors and DBE's
 - CSLB Contractor's License(s). (Provide Copy (ies) in your Bid Package)
 - DIR Registration (Provide a screen shot from the DIR Page.) Required for subcontractors, as well.
 - Bid Bond - a certified or cashier's check, or by a corporate surety bond on the form furnished by VVTA. Said check or bidder's bond shall be in an amount not less than 10% (ten percent) of the amount of the bid.
 - Audited Financials or Tax Returns prepared by a Certified Public Accountant, for the most recent two-year period. (Required)
5. Submit the following **Required** forms
 - 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 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION
ATTACHMENT E – REQUIRED FORMS

- b. **Insurance Certificate (Proof)** must meet the requirements in the RFP. If the Insurance Certificate with the additional insured endorsement is submitted with the proposal, the Notice to Proceed can be issued sooner. Failure to submit the Proof of Insurance as requested may result in the proposal being deemed non-responsive.

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

- a. **Performance Bond:** One Hundred percent (100%) of the contract price
- b. **Payment Bond:** One Hundred percent (100%) of the contract price.

**VVTA RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION
ATTACHMENT E – REQUIRED FORMS**

NOTES AND INSTRUCTIONS

1. The Proposer agrees that all costs of work required by the RFP, including Work reasonable inferable therefrom and necessary thereto required for a project delivery or turnkey contract basis are included in the prices below.
2. The Cost of all Work required in the RFP for which a specific line item is not provided in the attached schedules shall be allocated proportionately among the other prices most closely associated with such costs and included in the proposal price.

Line Item	Work Item	Total \$
1	GENERAL REQUIREMENTS	\$
2	SITE CONDITIONS/ SITE PREPARATION	\$
3	CONCRETE	\$
4.	MASONRY	\$
5.	METALS	\$
6.	WOOD AND PLASTICS	\$
7.	THERMAL AND MOISTURE PROTECTION	\$
8.	DOORS AND WINDOWS	\$
9	FINISHES	\$
10.	SPECIALTIES	\$
11.	EQUIPMENT	\$

**VVTA RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION
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13	SPECIAL CONSTRUCTION	\$
14	CONVEING SYSTEMS	\$
15.	HVAC/MECHANICAL	\$
16.	ELECTRICAL	\$
17.	INSTRUMENTATION AND CONTROL	\$
21.	FIRE PROTECTION	\$
22.	PLUMBING	\$
27.	COMMUNICATIONS	\$
32.	EXTERIOR AND STREET IMPROVEMENTS	\$
	SUBTOTAL – 01	\$
	GENERAL CONDITIONS	\$
	OVERHEAD AND PROFIT	\$
	ALLOWANCE ITEMS AND VALUE \$150,000.00	
	SUBTOTAL - 02	\$
	TOTAL COST OF CONSTRUCTION (01+02)	\$
	<i>DESIGN FEES</i>	
	50% Construction Document	\$
	100% Construction Document	\$

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ATTACHMENT E – REQUIRED FORMS**

	Final % Construction Document		\$
SUBTOTAL – 03			\$
	MOBILIZATION AND TEMPORARY UTILITIES		\$
	DEMOBILIZATION		\$
	FINAL BUILDING TESTING AND COMMISSIONING		\$
	TRAINING AND MATERIAL OVERSTOCK		\$
	AS BUILT DRAWINGS		\$
	OPERATIONS AND MAINTENANCE MANUALS		\$
SUBTOTAL – 04			\$
FACILITY MAINTENANCE	Year 1	Optional Year 2	Optional Year 3
Estimated Cost for Maintenance per year	\$	\$	\$
Estimated Cost for parts per year	\$	\$	\$
SUBTOTAL – 05	\$	\$	\$

**VVTA RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION
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Fuel Charges - Maximum Not to Exceed Price	Year 1	Year 2	Optional Year 3	Optional Year 4	Optional Year 5
Price/KG (including taxes)	\$	\$	\$	\$	\$
Estimated Kgs dispense in one year	90,000 kg	120,000 kg	150,000 kg	200,000 kg	300,000 kg
Total Fuel Charge (Including taxes)	\$	\$	\$	\$	\$
Delivery Charges					
Cost per delivery	\$	\$	\$	\$	\$
Other Charges (Must define and list the other charges)	\$	\$	\$	\$	\$
SUBTOTAL -06	\$	\$	\$	\$	\$

	TOTAL COST OF CONSTRUCTION + DESIGN FEES + OTHERS (01 + 02 + 03 + 04 + 05 + 06): BASE PRICE	\$
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VVTA RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION ATTACHMENT E – REQUIRED FORMS

PREFERENCE CLAIMED:

- 1. Local Bidder – 5% Preference – On May 21, 2021, the FTA and FHWA have announced pilot programs to permit grant recipients to include geographic, economic, or other hiring preferences in contract specification for construction projects. VVTA will implement this ruling by calculating a reduction in the bid amount for proposers who are deemed to be within the geographic area. **The reduction in cost is only for the evaluation of bids and is not the final Bid Amount.** VVTA is defining its geographic area to be locations within the Cities of Victorville, Hesperia, Barstow, Adelanto, the Town of Apple Valley, and unincorporated areas of San Bernardino County – where fixed route service is provided and is represented by VVTA’s Board of Directors.
- 2. Certified Disadvantaged Business Enterprise Firms and/or Subcontractors – 5% Preference. Provide Certification for all firms and subcontractors who are certified DBE’s
- 3. Deemed to be qualified in the RFQ process – 5% Preference.

VVTA RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION ATTACHMENT E – REQUIRED FORMS

FTA CERTIFICATION REGARDING DEBARMENT,

DEBARRED BIDDERS CERTIFICATION SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

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

Instructions for Certification

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

VVTA RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION
ATTACHMENT E – REQUIRED FORMS

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

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

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

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

Signature of the Proposer’s Authorized Official

Name and Title of the Proposer’s Authorized Official

Company Name

Date

VVTA RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION
ATTACHMENT E – REQUIRED FORMS

FTA CERTIFICATION OF RESTRICTIONS ON LOBBYING
(For Bids Over \$100,000)

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

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

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by § 13 52, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, _____

Signature of the Proposer’s Authorized Official

Name and Title of the Proposer’s Authorized Official

Company Name

Date

VVTA RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION ATTACHMENT E – REQUIRED FORMS

Build America / Buy America

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal fund may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7

Effective May 14, 2022, the office of Management and Budget requires recipients (VVTA) include the following Build America, Buy America (BABA) Buy America Preference terms and conditions to all contracts that will use Federal Funds:

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- (1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project. Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

Waivers

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

(a) When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:

- (1) applying the domestic content procurement preference would be inconsistent with the public interest;

VVTA RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION
ATTACHMENT E – REQUIRED FORMS

(2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or

(3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described.

Certificate of Compliance with Build America / Buy America Requirements
The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

Certificate of Non-Compliance with Build America / Buy America Requirements
The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

VVTA RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION
ATTACHMENT E – REQUIRED FORMS

PROPOSAL DEVIATION, PRE-OFFER CHANGE OR APPROVED EQUAL

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: _____

Detailed

Description of Requested Deviation:

Rationale

(Pros and Cons):

**VVTA RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION
ATTACHMENT E – REQUIRED FORMS**

ACKNOWLEDGEMENT OF ADDENDA

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

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:

Signature of the Proposer's Authorized Official

Name and Title of the Proposer's Authorized Official

Company Name

Date

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ATTACHMENT E – REQUIRED FORMS

SUBCONTRACTOR'S LIST

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

COMPANY NAME: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

EMAIL ADDRESS: _____

CONTRACTOR'S LICENSE NUMBER: _____ DIR Registration #: _____

CERTIFIED DBE? _____ CERTIFICATE # _____
 YES NO

If yes, please provide certification

COMPANY NAME: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

EMAIL ADDRESS: _____

CONTRACTOR'S LICENSE NUMBER: _____ DIR Registration #: _____

CERTIFIED DBE? _____ CERTIFICATE # _____
 YES NO

If yes, please provide certification

COMPANY NAME: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

EMAIL ADDRESS: _____

CONTRACTOR'S LICENSE NUMBER: _____ DIR Registration #: _____

CERTIFIED DBE? _____ CERTIFICATE # _____
 YES NO

If yes, please provide certification

VVTA RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION
ATTACHMENT E – REQUIRED FORMS

SAMPLE PERFORMANCE 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 the work described as Design-Build Hesperia Transfer Hub RFP 2021-17 (“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:

Principal

By _____ (Seal)

Typed Name and Title

Surety

(Seal)

Attorney-In-Fact

Typed Name and Title

Telephone Number _____

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

VVTA RFP 2020-10 DESIGN/BUILD HYDROGEN FUELING STATION
ATTACHMENT E – REQUIRED FORMS

SAMPLE 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 **Design-Build Hesperia Transfer Hub, RFP No. 2021-17** (“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:

Telephone Number _____

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

Principal

By _____ (Seal)

Typed Name and Title

Surety

Attorney-In-Fact (Seal)

Typed Name and Title

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION
ATTACHMENT E – SUBMISSION OF FORMS

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

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION ATTACHMENT F - 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. Davis Bacon Act

This project is being funded in part by Federal FTA Grant Funding.

The Davis-Bacon and Related Acts, apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act directs the Department of Labor to determine such locally prevailing wage rates. The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts. The Davis-Bacon Act prevailing wage provisions apply to the "Related Acts," under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance.

For prime contracts in excess of \$100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The overtime provisions of the Fair Labor Standards Act may also apply to DBA-covered contracts.

Davis Bacon Wage Determinations are located here: <https://sam.gov/content/wage-determinations>

2. 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. 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.

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION ATTACHMENT F - PREVAILING WAGE REQUIREMENTS

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.

If the Davis Bacon Wage determination for the same position as listed in the DIR Wage Determination and the DIR wage is higher, the higher wage is to be paid.

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 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, and the Davis Bacon Act, 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

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION ATTACHMENT F - PREVAILING WAGE REQUIREMENTS

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.

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.

VVTA requires all Certified Payrolls to be included with each invoice submitted for payment. Each certified payroll must include the employee information forms for each position each employee and subcontractor employee performed, matching the information on the Certified Payroll. Each of the Employee information forms must be signed by each employee. Sample employee information forms will be supplied to the awarded contractor with the Notice to Proceed.

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION ATTACHMENT F - PREVAILING WAGE REQUIREMENTS

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.
- 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.

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION ATTACHMENT F - PREVAILING WAGE REQUIREMENTS

- 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 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.

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION
ATTACHMENT F - PREVAILING WAGE REQUIREMENTS

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 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 2020-10 DESIGN BUILD HYDROGEN FUELING STATION ATTACHMENT F - 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.

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION ATTACHMENT F - PREVAILING WAGE REQUIREMENTS

- 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.
- 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.

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION ATTACHMENT F - PREVAILING WAGE REQUIREMENTS

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:

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.

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION
ATTACHMENT G – NOTICE TO POTENTIAL CLAIM FORM

NOTICE OF POTENTIAL CLAIM

NOPC # _____

TO	CONTRACT NUMBER	DATE
This is a Notice of Potential Claim for additional compensation pursuant to the terms and conditions of the Contract.		

This particular circumstance of this potential claim is described in detail as follows:

The reasons of which we believe additional compensation and/or time may be due are:

The nature of the costs involved, and the amount of the potential claim are described as follows:
(If accurate cost figures are not available, provide an estimate, or describe types of expenses involved.)

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements are made in full cognizance of the California False Claims Act, Government Code sections 12650-12655. The undersigned further understands and agrees that this potential claim to be further considered unless resolved, must be restated as a claim in response to VVTA's proposed final estimate. This provision does not relieve Contractor of the requirement to present a statutory claim in accordance with California Government Code sections 905 and 910.

SUBCONTRACTOR or CONTRACTOR
(Circle One)

(Authorized Representative)

For subcontractor notice of potential claim

This notice of potential claim is acknowledged and forwarded by:

PRIME CONTRACTOR

(Authorized Representative)

VVTA RFP 2020-10 DESIGN BUILD HYDROGEN FUELING STATION
ATTACHMENT H – CONTRACT WORK GUARANTEE

CONTRACT WORK GUARANTEE

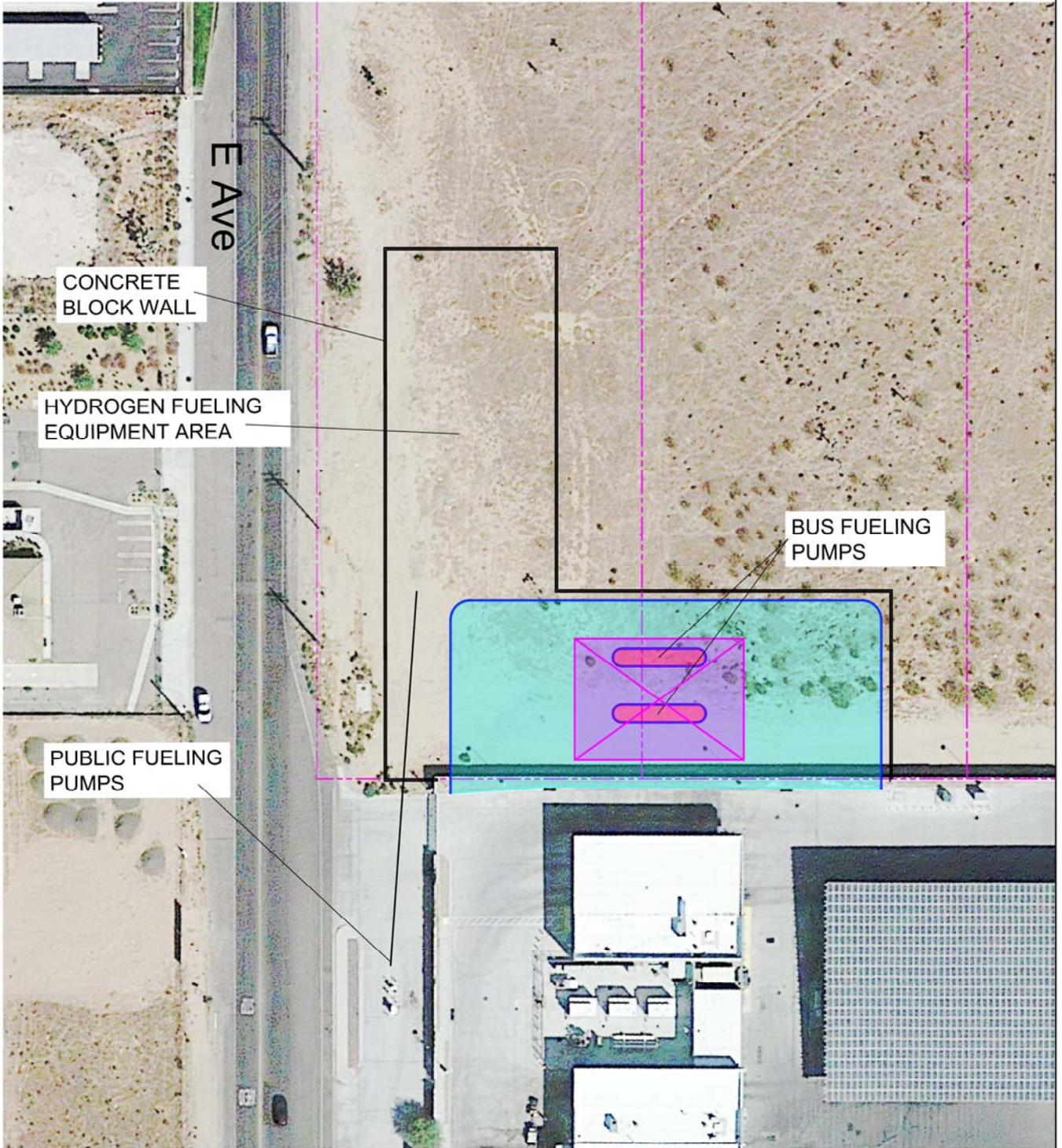
FOR RFP 2020-10

We hereby guarantee that the Work, including materials and equipment, which we have installed for the construction of the Hydrogen Fueling Station for Victor Valley Transit Authority is in accordance with the Project Plans and specifications and that the Work, materials, and equipment as installed will fulfill the requirements of the guarantee included in the Specifications. We agree to repair or replace any or all of our work, together with any other adjacent work which may be displaced by so doing that may prove to be defective in its workmanship or materials within a period of One Year, ordinary wear and tear and unusual abuse or neglect expected. This guarantee period shall commence on the date the Notice of Completion is filed with the San Bernardino County Recorder's Office for the above- named Project. The above guarantee is offered without limitation to the cost of such repairs or replacement.

When the immediate repair or replacement of the Work is necessary to ensure the public safety and welfare, which would be endangered by continued usage of the facility, such circumstance will be deemed an operational emergency. In the event of such an emergency, aft VVTA contacts our firm and after allowing 24 hours to initiate repairs, if we fail to initiate and diligently complete such repairs in a timely manner, the Project Manager may direct VVTA to contract forces to perform such functions as the Project Manager may deem necessary to correct the Work and immediately place the facility back in operations condition. If such procedure is implemented, we shall bear all expenses incurred by VVTA. In all cases, the judgment of the Director shall be final in determining whether an operational emergency exists.

In the event of our failure to comply with VVTA's request for repairs under the guarantee provisions (other than operational emergency conditions) within thirty (30) calendar days after being notified in writing by VVTA, we collectively and separately do hereby authorize VVTA to proceed to have said defects repaired and made good at our expense and we will honor and pay the costs and charges therefore upon demand.

SIGNED _____
(per duly appointed officer obligated to commit Contractor to a binding agreement)



CONCRETE
BLOCK WALL

HYDROGEN FUELING
EQUIPMENT AREA

PUBLIC FUELING
PUMPS

BUS FUELING
PUMPS



PUMP ISLAND
CANOPY



PCC ROADWAY/CURB

SIDEWALK

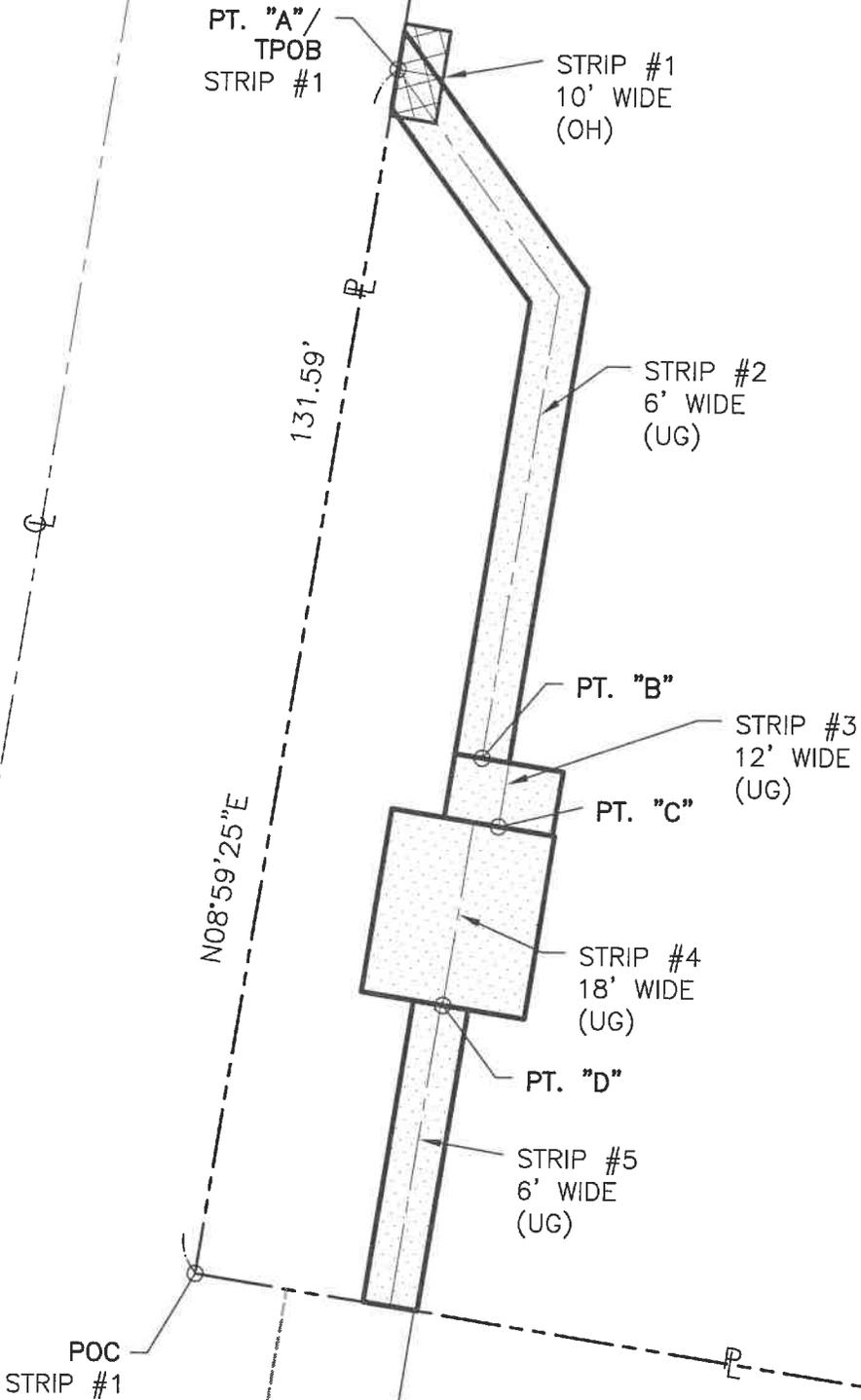
Hesperia Bus Fueling
Conceptual Layout
9-9-22 1" = 50'

AECOM

**POR. LOT A
IN BLOCK 158
TOWN OF HESPERIA
M.B. 12/21-27
SAN BERNARDINO CO.**



"E" AVENUE



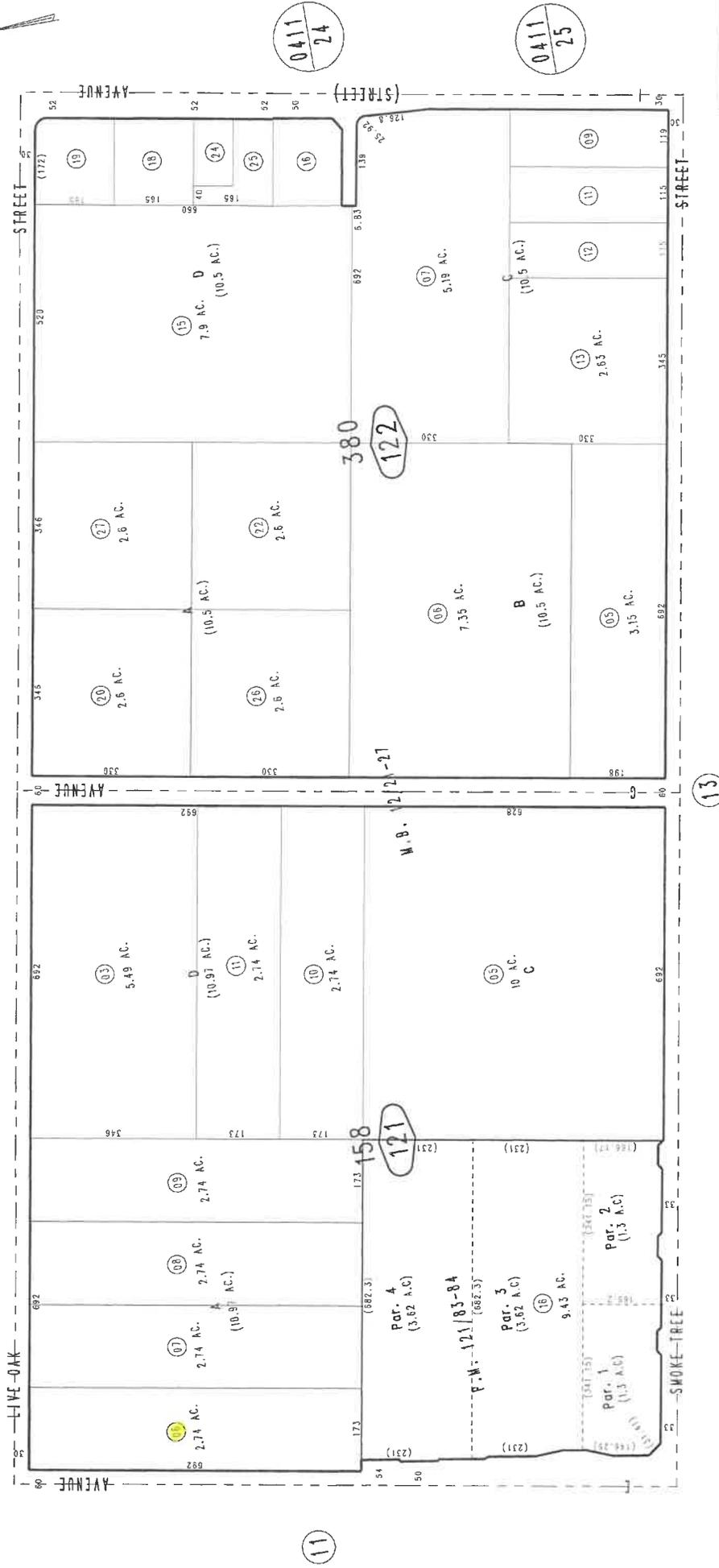
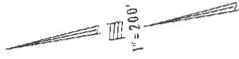
SCE EASEMENT	
DCR801814781	TD1482953
SLS/BT	03/01/19

THIS MAP IS FOR THE PURPOSE
OF AD VALOREM TAXATION ONLY.

Ptn. Map No. 1 of Hesperia
M.B. 12/21-27

City of Hesperia
Tax Rate Area
20090

0410 - 12



REVISED
10/17/08 TX
10/02/08 RU

Assessor's Map
Book 0410 Page 12
San Bernardino County

Ptn. N. 1/2, Sec. 22
T.4N., R.4W.

Parcel Map No. 10952, P.M. 121/83-84

April 2004