



# valleyregionaltransit

700 NE 2<sup>nd</sup> Street, Suite 100 • Meridian, Idaho 83642

<b>RFP Number</b>	RFP 2021-04-20
<b>RFP Title</b>	<b>Demand Response Scheduling Software</b>
<b>Item Description</b>	Valley Regional Transit (VRT) is seeking proposals from qualified and experienced respondents (individuals or firms) to establish a "Professional Services Agreement." This service will provide scheduling software to design, implement and maintain an Intelligent Transportation Systems (ITS) to meet the needs of our public transportation system.
<b>Term</b>	Contractor shall provide professional services on an as-needed basis as described herein for an initial term of three (3) years commencing on approximately November 15, 2021 and expiring on November 14, 2024 with an option to renew upon mutual agreement of both parties under the same terms and conditions for two (2) additional one year terms.
<b>Deadline for Submittal</b>	Proposals Due: October 13, 2021 4:00 p.m. Mountain Time
<b>Direct Inquiries and Send Submittals to</b>	Kevin Womack, Procurement/Contract Specialist, procurement@valleyregionaltransit.org 208.258.2737
<b>Format of Submittals</b>	<ol style="list-style-type: none"> <li>Electronic submittals in PDF format must be received by VRT by the date and time in the "Deadline for Submittals" section above. No exceptions. <ul style="list-style-type: none"> <li>Total page limit is 7 single sided pages. The Introductory letter, resumes, and samples of work products will not count toward the 7 page limit.</li> <li>Front and back cover pages are acceptable and do NOT count in the submittal. Cover pages shall only identify the consultant, sub-consultant(s) and project.</li> </ul> </li> <li>Send electronic submittals to Kevin Womack, Procurement/Contract Specialist: procurement@valleyregionaltransit.org</li> <li>Respondents are responsible for verifying receipt by VRT of the submittals.</li> </ol>
<b>Clarification of Submittals</b>	<p>During the evaluation of submittals, VRT reserves the right to the following:</p> <ul style="list-style-type: none"> <li>Contact any or all proposers for additional information for clarification purposes,</li> <li>Discard submittals which contain errors, or</li> <li>At its sole discretion, waive disqualifying errors or gain clarification of error or information.</li> </ul>
<b>RFP Calendar</b>	These dates are for planning purposes and represent the agency's desired timeline for this project. Any revision to the "Deadline for Submittals" will be made by addendum. All other dates may be adjusted without notice as needs or circumstances dictate.

**OFFERORS NAME:** \_\_\_\_\_

**REQUEST FOR PROPOSAL**  
**RFP 2021-04-20**  
**Demand Response Scheduling Software**

Activity	Timeline
<b>RFP Issue Date</b>	September 2, 2021
<b>Pre-Proposal Meeting</b>	September 15, 2021, 2:00 p.m. Mountain Time By Phone: <a href="tel:+13234848960">+1 323-484-8960</a> <a href="#">Phone Conference ID: 335864524#</a>
<b>Questions Due</b>	September 29, 2021, 4:00 p.m. Mountain Time
<b>Proposals Due</b>	<b>October 13, 2021, 4:00 p.m. Mountain Time</b>
<b>Submittal Review and Selection</b>	<b>October 14 – October 29, 2021</b>
<b>Notification of Intent to Award</b>	October 29, 2021
<b>Notice to Proceed</b>	November 8, 2021

**1. BACKGROUND AND PROJECT DESCRIPTION**

Valley Regional Transit (VRT) is a Regional Public Transportation Authority in southwest Idaho with a 29 member Board, made up of local and government representatives, in Ada and Canyon counties in southwestern Idaho. VRT was created as a single authority to be responsible for providing, aiding, and assisting public transportation within its two-county jurisdiction. VRT supports the fixed-route bus system, City Go, a transportation demand management association, a passenger information call center, and works with a variety of populations to provide specialized transportation to targeted populations. VRT may contract for services with public and private entities to carry out the purposes of Chapter 21 (40-2109(4)).

**2. STATEMENT OF OBJECTIVE**

Valley Regional Transit is seeking an Intelligent Transportation System (ITS) solution for demand response public transportation systems in rural, small urban and large urban areas of southwest Idaho. The solution needs to demonstrate innovative ways to meet the broader transit ITS goals as defined by the Federal Transit Administration in the areas of safety, mobility, efficiency, economic growth and trade, environmental stewardship, security, and organizational excellence. In addition VRT is looking for ITS designed to improve the efficiency of public transportation services, improve the customer experience, demonstrate the opportunity to scale to the size and needs of various systems, generate robust, customizable, and usable data and reports, and be agile to integrate and adapt to the changing landscape and advancements in technology over time.

At a minimum, the solution should meet the following general objectives:

- Open architecture, and ensuring provider generated data is accessible to the provider
- HIPAA compliant secure access to hosted information, ensuring data transmission security with advanced encryption meeting current industry accepted specifications
- Easy to learn/use with robust training and on-going customer support

- Routine maintenance and software updates, including timely security patches, bug fixes and feature upgrades, with 99% up-time
- Capacity to report passenger crowding data in real-time or historical by route and time period, peak times, and day of the week
- Ensure compliance with all Americans with Disabilities Act and Title VI requirements and reporting
- Ease of generating meaningful and accurate reports in usable and multiple file formats, including database, excel, .csv, and .pdf
- Supports data collection needs to comply with National Transit Database reporting requirements
- Ease of customer engagement and meeting needs of future customers
- Agility to innovate and adapt to future technology advancements
- Focused on effective dissemination of traveler information enhancing the mobility of all populations
- Ability to integrate with other data gathering systems and other business management data/systems (financial, maintenance, automated passenger counters, real-time traveler information)
- Support the federal principles related to ITS development including safety, mobility, efficiency, economic growth and trade, environmental stewardship, security, and organizational excellence

The respondent's responsibilities during the installation shall include, but are not limited to, the following:

- Initialization using existing data shall be done in a way that does not compromise the integrity of the data.
- VRT reserve the right not to import historic data and begin new with this ITS install.
- The respondent shall supply all equipment needed to successfully implement a functioning ITS and documentation for all Respondent-supplied hardware and software.
- With future vehicle procurements, the respondent will work with vehicle manufacturers to ensure OEM integration of ITS equipment.

Vendors should fully describe the software scheduling system being offered as part of this submission, along with any other ITS technologies the vendor may be proposing. Vendors should clearly state that the capabilities of each product and its suitability to the task of addressing scheduling software needs.

Vendors must list all software components or modules necessary to fully implement the project, including third party software necessary to complete the total installation (e.g., report generation software, SQL, back-up software, remote access software, etc.) required for a centralized solution. The technology must be 100% web based, not a web-based user interface attached to a local client.

**Demand Response Computer Aided Dispatching (CAD) system including:**

- A cloud-hosted platform with an intuitive, web-based user interface
- Back-end administrative tools that can be accessed securely from a web browser

- The ability for staff to easily correct errors in the data, without having to contact the respondent
- Simple account creation and deletion
- Unlimited accounts with different access levels i.e. administrator, dispatcher, and viewer at no extra cost
- The ability for drivers to log in to any vehicle, at any time
- Live bus tracking that updates no more than every sixty seconds while the vehicle is in operation
- On-board hardware that is reliable, low-maintenance, and easy to update. Hardware that can be updated remotely is preferred. Hardware that can withstand very hot and very cold operating environments required.
- Accurate, real-time arrival predictions with automated passenger notifications
- Two-way text communication through operator's Mobile Data Terminal (MDT) that include common, pre-defined phrases, quick yes/no driver responses, and priority level options (critical or standard). Messaging function should be disabled while the bus is in motion

**Demand Response that feature:**

- GIS-based system to ensure ADA service area can be pre-set from fixed-route
- Ability to have multiple client and transportation provider profiles to achieve appropriate allocations of costs

**Scheduling System that include the following features:**

- Fully automated scheduling, either in batch mode or in the scheduling of individual trips
- Scheduling process shall continuously look to improve schedules based on real time operating factors such as cancellations, no- shows, vehicles positions, driver performance
- Tools to proactively manage on time performance, no-shows, cancellations, subscriptions and late trips
- Optimize same day trip orders with advance trip orders and automatically send updates to the mobile data terminals
- System shall permit the establishment of base runs or subscription templates based on existing standing orders
- System shall permit trips to be placed in the system schedule but remain unassigned
- System shall have internal validation controls to ensure that schedules do not violate schedule and work rules

**Mobile Data Terminals (MDTs) that include the following features:**

- An option that will allow Automatic Vehicle Location information to be passed to the server and stored in the database based on automatic refresh rates every 5 seconds or less, sufficient to provide real-time location data
- Seamless functionality with CAD software and hardware
- Unique driver login
- An intuitive customizable display that includes upcoming stops
- Operator-optioned turn-by-turn route navigation
- Covert emergency alerting with the ability to turn notify dispatch

- Durable design that is shock-proof, waterproof, and resists extreme temperatures, sunlight, vibration, and impact
- Respondent-supplied docks that mount easily to the bus

**Web and Mobile Apps that feature:**

- Mobile app for tracking, using Apple iOS and Android on current supported versions offered free to the customer
- Currently supported modern web browsers
- Apps must provide real-time bus locations and estimated time of arrival on a familiar web map i.e. Google Maps, Map-box, Apple Maps, etc.
- Geolocation functionality – allow users to view their current location on a map
- Web Content Accessibility Guidelines (WCAG) compliant
- Quick and easy data management and updates
- Option for SMS bus arrival messaging service
- Ability to schedule trips using mobile or web based application

**Administrative reporting tools including:**

- Standard reports capable of generating a range of management and service reports necessary to permit sufficient oversight of the paratransit service
- Standard reports must meet NTD reporting requirements
- Standard reports shall support real time web based operational supervision and on time performance reporting
- Customizable reports System shall be capable of permitting the user to create, format, and print user- defined reports based on any data element contained in the database
- Ability to export reports in Excel, PDF, CSV, and GIS data formats

**3. Restriction of Control**

From the issue date of this RFP until the VRT Board approves the awarding of the contract, Kevin Womack will be the sole point of contact concerning this RFP. Any violation of this condition may be cause for VRT to reject the offending Offeror’s proposal. If VRT later discovers that the Offeror has engaged in any violations of this condition, VRT may reject the offending Offeror’s proposal or rescind its award. Offerors must agree not to distribute any part of their proposals beyond the allowed contact individual. An Offeror who shares information contained in its proposal with other VRT personnel and/or competing Offeror personnel may be disqualified.

**4. Procurement Questions**

Prospective Offerors are encouraged to submit questions concerning the RFP in writing no later than 4:00 p.m. September 29, 2021. Questions concerning this RFP are to be submitted via email to Kevin Womack at [procurement@valleyregionaltransit.org](mailto:procurement@valleyregionaltransit.org) with “RFP 2021-04-20” listed in the subject line.

VRT will answer all questions in writing to all qualified Offerors via addenda posted with the original RFP on VRT’s website. VRT shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally

issued as an addendum by VRT. VRT does not consider questions to be a protest of the requirements or of the solicitation.

## 5. Proposal Conditions

Proposals must be received via email by 4:00 p.m. on October 13, 2021. Each Offeror shall submit to VRT the information and forms required, which forms and information shall become the property of VRT and will not be returned to Offerors, unless a written request to withdraw is received prior to the opening of proposals.

Data contained in the submittal and all documentation provided therein becomes property of VRT and the data becomes public information. If a Proposer wishes to have any confidential or proprietary information withheld from the public, such information must fall within the definition of "trade secret" contained within the Idaho Public Records Act, Idaho Code § 74-101 et seq. All "trade secret" information a Proposer wishes VRT to withhold must be clearly marked "Trade Secret," with each page of such information being clearly marked. Failure to mark such information as "Trade Secret" shall deem such information open to public inspection. Should VRT be challenged in court by a third party for a decision to withhold or redact information so identified by Proposer, Proposer agrees, by submitting its proposal or bid, to indemnify, defend, and hold harmless VRT for any judgments, attorney fees, and/or court costs associated with asserting the documents contain "trade secret" information. VRT reserves the right to make an independent discretionary decision whether or not the documents marked as "Trade Secret" qualify as such pursuant to the Idaho Public Records Act. All documents not marked as "Trade Secret" are subject to release in compliance with the Idaho Public Records Act.

## 6. Signatures Required

The proposals *must* be signed where signatures are required. In cases of a corporation, the signature must be that of a duly authorized officer of the corporation and officer's title must be stated. In cases of partnerships, the signature of a general partner must follow the firm name, using the term "A Member of Firm." In cases of an individual use the term "dba" (Company Name) or as sole owner. Signatures submitted will be taken as evidence of authority to sign. Signatures by an individual not authorized to sign will be grounds for proposal rejection.

## 7. General Expectations

Proposer must be registered to do business in the State of Idaho.  
Proposer will provide documentation of work relevant to transit authority.

## 8. SUBMITTAL REQUIREMENTS

In submitting responses, Proposers are to be aware that VRT strongly considers the completeness of the submittal to be the most important. Clear and effective presentations are preferred. The cover letter shall clearly contain the RFP title and the respondent's name.

Submitted electronic RFP response must include the following information:

- A. **Coversheet** of this RFP, See Page # 1, above, with Offeror's name at bottom of summary page.
- B. **Cover Letter** addressed to Procurement Administrator, should serve as both

an introduction of the Proposer and an overview of the proposal. Introduction should:

- i. Identify the project manager.
- ii. Provide contact information (physical address, telephone number, and email) and a statement confirming the commitment of key personnel identified in the submittal to meet VRT's quality and schedule expectations.
- iii. No information shall be included in the cover letter.
- iv. Include a statement to the effect that the proposal shall remain valid for a period of not less than ninety (90) days from the due date for proposal.

**C. Written Responses** should include information below. Attach additional sheets in order to respond. Each response is to be appropriately headed with the corresponding item number. See written response format on page 1.

- i. **Project Manager**: Identify the Project Manager who will be responsible for the execution of work and ensuring adequate personnel and other resources are made available and who is responsible for quality and timeliness of the Proposer's performance.
- ii. **Key Personnel**: Identify key personnel for this project and each person's role and duties, their experience and qualifications as it pertains to providing these services.
- iii. **Firm Qualifications and Relevant Experience**: Discuss the firm's qualifications, experience and history in working on on-call marketing contracts. Sample work products must be provided. Please address the firm's project management systems including reporting, billing, and quality assurance (QA) quality control (QC) processes.

**D. Sub-consultants**: List all sub-consultants that will be directly involved in this project.

- I. Identify the role of the sub-consultant(s)
- II. Include the sub-consultant(s) qualifications, and relevant experience as described in items III-C above. References and resumes are not required for sub-consultants.

**E.** Provide a resume summarizing qualifications and experience of the project manager and a brief resume of the key staff that will be directly involved in the project. Include a brief description of the role of individuals in the referenced projects.

**F. Offeror's Information and Certification**: Complete Section 13 with official signature(s) and date(s).

**G. Price Proposal**: In a separate .pdf included with and as a part of your solicitation response, the Proposer shall complete Section 14 – Price Proposal. Only one signed copy is necessary.

**H. References**: Complete Section 15 with references for three directly applicable projects with current contact information. Include references for sub-consultants, if applicable.

- I. **Debarment and Suspension Certification**: Complete Section 16 with official signature(s) and date(s) if applicable.
- J. **Conflict of Interest Affidavit**: Complete Section 17 with official signature(s) and date(s).
- K. **Lobbying Certificate**: Complete Section 18 with official signature(s) and date(s) if applicable.
- L. Offers submitted in response to this **solicitation shall be in the English language**. Offers received in other than English shall be rejected.

## 9. EVALUATION CRITERIA AND AWARD OF CONTRACT

The award of the contract will be made to most responsive and responsible proposer that is demonstrated to be the most advantageous to VRT. Award may be made without negotiation or discussion of proposals received; proposals should be submitted initially on the most favorable terms possible.

- A. Selection of the successful proposer will be based on information provided in response to the RFP including evaluation of proposals according to Valley Regional Transit specified criteria including cost, consideration of any exceptions taken to Valley Regional Transit proposed contract terms and conditions, and may include qualifications and experience of the proposer and information provided by any required references for whom work of a similar nature has been done.
- B. If a single proposal is received in response to this RFP; Valley Regional Transit will be required to perform a detailed cost/price analysis in order to award the contract. A Proposal Evaluation/Negotiation Committee will perform the overall evaluation process
- C. Valley Regional Transit may, following receipt and evaluation of proposals and any allowed Best and Final Offer procedures, negotiate with any or all of the responsive and responsible Proposers until VRT determines which proposal provides the best value/most advantageous for VRT. In addition to any other negotiation criteria described herein, Valley Regional Transit may negotiate to ensure the submitting Proposers have a clear understanding of the objectives required, requirements, qualifications, and support that must be met, ensure that the Proposers will make available the required personnel and facilities to satisfactorily perform the contract, or agree to any clarifications regarding scope of objective or other contract terms.

## 10. PROPOSAL EVALUATION REQUIREMENTS

### A. Proposal Criterial Evaluation (Listed In Relative Order of Importance)

- 1. Qualifications and technical capability of the Respondent
  - a. Overall quality of proposed system
- 2. Alignment with Statement of Objectives
  - a. System features
  - b. Scheduling
  - c. Approach
- 3. Experience base of the Respondent
  - a. Past performance on similar projects



- b. Depth of similar project experience
  - c. Results of customer references related to similar projects
4. Pricing

## **B. Proposed Price**

In a separate document included with and as a part of your sealed solicitation response, the Proposer shall complete **Section 14 - Key Personnel Rates, Service Rates and Budget**. Only one signed copy is necessary.

## **C. General**

### **1. Shortlist:**

The Authority reserves the right to shortlist the proposers on the stated criteria. However, the Authority may determine that shortlisting is not necessary.

### **2. Interviews:**

The Authority reserves the right to conduct interviews with some or all of the proposers at any point during the evaluation process. However, the Authority may determine that interviews are not necessary. In the event interviews are conducted, information provided during the interview process shall be taken into consideration when evaluating the stated criteria. The Authority shall not reimburse the proposer for the costs associated with the interview process.

### **3. Additional Investigations:**

The Authority reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any proposer submitting a proposal.

## **11. DEFINITIONS**

The following terms, whenever set forth in initial capitals in this Agreement, shall have the meanings set forth in this Part 11, Definition, except as otherwise expressly provided in this Agreement:

**Agreement:** The complete RFP and all addendums and final negotiations.

**Agreement Term:** The time commencing with the award of the contract and ending on the expiration of the contract - including any extensions or renewals that may be or have been agreed upon by both parties after award to the contract.

**Offeror or Prime-Offeror:** The Offeror or Prime-Offeror is the primary contact with Valley Regional Transit and is responsible for all services for which it is submitting an RFP. The Prime-Offeror is responsible for all Sub-Offerors and their compliance to all standards of this RFP.

**Required Coverage:** All insurance necessary to protect and save harmless Valley Regional Transit, the Vehicles, the Equipment, and the Real Property and Facilities, including, without limitation, the insurance coverage specified in this Agreement.

**Sub-Offeror:** Is the subcontractor for which the Prime-Offeror is directly responsible.

**Termination for Default:** Termination caused by diminished service or scheduling; requirement compliance, plan implementation or failure to perform in a timely manner.

**Termination for Impossibility:** Termination in the event that funding source fails in any fiscal year to appropriate or otherwise makes available sufficient funds.

**Valley Regional Transit:** Regional Public Transportation Authority.

**Valley Regional Transit Board:** The duly appointed Board of Directors of Valley Regional Transit

## 12. SPECIAL CONTRACT TERMS AND CONDITIONS

- A. **DELIVERY:** Delivery of items/services initially shall be to Valley Regional Transit 700 NE 2<sup>nd</sup> St., Suite 100, Meridian, ID 83642.
- B. **SILENCE OF SPECIFICATION:** The apparent silence of this specification and supplemental specifications as to any detail, or the apparent omission from it of a detailed description concerning any point shall be regarded as meaning that only best commercial practice is to be used. Any exception to this specification shall be cause for rejection. Valley Regional Transit reserves the right to verify specification compliance and other information with published sources as deemed necessary.
- C. **FAILURE TO DELIVER:** Contractor shall deliver the items/services and complete any required training in accordance with all of the terms and conditions herein. Failure to do so may be cause for the termination of the Contract. Contractor shall complete delivery within the time specified in Contractor's bid. Contractor shall notify Valley Regional Transit within one (1) day of receipt of order if delivery cannot be completed as required. Upon receipt of such notice, Valley Regional Transit reserves the right to cancel the order and make the purchase elsewhere. Failure to meet specified delivery requirements may result in Contract termination.
- D. **SUBCONTRACTING:** The requirement for Prime-Officer responsibility does not prohibit Sub-Officer or joint ventures provided that the successful Prime-Officer assumes the following responsibilities: The requirement for Prime-Officer responsibility does not prohibit Sub-Officer or joint ventures provided that the prime successful Prime-Officer assumes the following responsibilities: (1) serves as the sole general Prime-Officer with Valley Regional Transit; (2) assumes full responsibility for the performance of all its Sub-Officers, joint ventures, and other agents; (3) provides the sole point of contact for all activities through a single individual designated as project manager; (4) submits information with its proposal documenting the financial standing and business history of each Sub-Officer or joint venture; and (5) submits copies of all subcontracts and other agreements proposed to document such arrangement. Without limiting the foregoing, any such legal documents submitted under item "(5)" must (a) make Valley Regional Transit a third-party beneficiary thereunder; (b) grant to Valley Regional Transit the right to receive notice of and cure any default by the successful Prime-Officer under the document; and (c) pass through to Valley Regional Transit any and all warranties and indemnities provided or offered by the Sub-Officer or similar party.
- E. **TAXES:** Valley Regional Transit is exempt from Federal and State taxes and will execute the required exemption certificates.
- F. **INDEMNIFICATION:** Prime-Officer agrees to assume liability for and to indemnify and hold harmless Valley Regional Transit, its board members, officers, employees, agents, and attorneys from and against any and all liabilities, losses, damages, costs, payments, and expenses of every kind and nature (including attorney's fees and disbursements)

("Liabilities") as a result of claims, demands, actions, suits, proceedings, judgments, or settlements ("Claims") arising out of, or alleged to have arisen out of, or in any way relating to, or alleged to be relating to, the negligence of Prime-Offeree, or the execution, performance, nonperformance, or enforcement of the Agreement.

- G. **INDEPENDENT CONTRACTOR:** Prime-Offeree and any consultants or sub-contractors retained by Prime-Offeree shall at all times and for all purposes under this Agreement be considered independent contractors. Prime-Offeree and any consultants or sub-contractors retained by Prime-Offeree are not employees of Valley Regional Transit. They are not entitled employee benefits nor do they operate under the direct supervision and control of Valley Regional Transit, but are required to utilize independent judgment and professional skills under the parameters of this agreement.
- H. **INSURANCE, Required Coverage:** Prime-Offeree shall procure, maintain, and keep in force, at Prime-Offeree's expense, the Insurance Coverage as required below and shall cause Valley Regional Transit to be a named insured on all policies (except professional liability). Prime-Offeree shall provide Proof of Insurance to VALLEY REGIONAL TRANSIT prior to award. Proof of Insurance shall include an additional insured endorsement. For the duration of the Agreement and until all work under the Agreement is completed, Prime-Offeree shall have and maintain, at Prime-Offeree's expense, the following types of insurance and shall comply with all limits, terms and conditions of such insurance.

**Commercial General and Umbrella Liability Insurance:** Commercial General Liability (CGL) Insurance and, if necessary, Commercial Umbrella covering bodily injury and property damage. This insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. Combined single limit shall not be less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate.

**Workers' Compensation:** Where required by law, the Contractor and its subcontractors, if any, shall maintain all statutorily required Workers Compensation coverage. Coverage shall include Employer's Liability, at minimum limits of \$500,000 per Accident, \$500,000 Disease, \$1,000,000 Policy Limit. The Contractor must maintain coverage issued by a surety licensed to write workers' compensation insurance in the state of Idaho or from a surety issued an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Idaho Industrial Commission.

**Automobile Liability:** Automobile Liability Insurance covering owned or non-owned vehicles. Combined single limit per occurrence shall not be less than \$1,000,000.

- I. **INVOICING:** The awarded Prime-Offeree will submit all invoices, with supporting documentation to: Valley Regional Transit, Attn: Accounts Payable, 700 NE 2nd Street, Suite 100, Meridian, ID 83642, or email to: [generalaccounting@valleyregionaltransit.org](mailto:generalaccounting@valleyregionaltransit.org). All Invoices through Valley Regional Transit are processed bi-weekly. The awarded Prime-Offeree can expect Valley Regional Transit to issue and mail payment within 45 days after receipt of invoice with regards to the terms set forth within this RFP.
- J. **GUARANTEE:** The successful Prime-Offeree will guarantee that the items, services and/or equipment being provided will meet or exceed the minimum specification requirements set forth herein. If Valley Regional Transit finds that the items, services or equipment supplied does not conform to these specifications or subsequently falls out of compliance during the term of the Agreement, the Prime-Offeree will be required, at their expense, to

make all corrections necessary to bring the items, services and/or equipment into compliance.

- K. CURRENCY: All payments are payable in US currency.
- L. STOP WORK ORDER: Any "Stop Work Order" given to Awarded Offeror will cause all physical work to stop and a complete cessation of all expenditures, ordering of materials, etc., on the part of the Awarded Offeror and/or their assigns.
- M. *FORCE MAJEURE*: Except as otherwise provided herein, neither the vendor nor Valley Regional Transit shall be liable to the other for any delay or failure of performance of any provisions herein, nor shall any such delay or failure or performance constitute default hereunder, to the extent that such delay or failure is caused by force *majeure*. The term force *majeure*, as used herein shall mean without limitation: acts of God, such as epidemics; lightning; earthquakes; fire, storms; hurricanes; tornadoes; floods; washouts; droughts, or other severe weather disturbances; explosions; arrests; restraint of government and people; and other such events or any other cause which could not be reasonably foreseen in the exercise of ordinary care, and which is beyond the reasonable control of the party affected and said party is unable to prevent.

PROPOSER will be required to demonstrate their proposed solutions "proof of concept." The "proof of concept" must be demonstrated to a satisfactory level as determined by VRT whereby all features and functions of the Contractors proposed solution is demonstrated prior to contract award.

- N. PROTEST OF CONTRACTOR SELECTION OR CONTRACT AWARD: If any participating proposer objects to such award, such bidder shall respond in writing to the notice from the political subdivision within seven (7) calendar days of the date of transmittal of the notice, setting forth in such response the express reason or reasons that the award decision of the governing board is in error. Thereafter, staying performance of any procurement until after addressing the contentions raised by the objecting bidder, the governing board shall review its decision and determine whether to affirm its prior award, modify the award, or choose to re-bid, setting forth the reason or reasons therefore. After completion of the review process, the political subdivision may proceed as it deems to be in the public interest. (Idaho code, 67-2806 (2)(j)).
- O. VALLEY REGIONAL TRANSIT PREROGATIVE: Valley Regional Transit reserves the right to contract with any single firm or joint venture responding to this RFP (without performing interviews), based solely upon its evaluation and judgment of the firm or joint venture in accordance with the evaluation criteria. This RFP does not commit Valley Regional Transit to negotiate a contract, nor does it obligate Valley Regional Transit to pay for any costs incurred in preparation and submission of bids or proposals or in submission of a contract. Valley Regional Transit reserves and holds at its discretion the following rights and options in addition to any others provided by Valley Regional Transit: (1) to reject any or all of the bids or proposals; (2) to issue subsequent requests for bids or proposals; (3) to elect to cancel the solicitation; (4) to waive minor informalities and irregularities in bids or proposals received; (5) to enter into a contract with any combination of one or more prime contractors, subcontractors, or service providers; (6) to approve or disapprove the use of proposed subcontractors and substitute subcontractors; and (7) to negotiate with any, all, or none of the respondents to the RFP.
- P. NONDISCRIMINATION: Valley Regional Transit will not discriminate with regard to race, color, creed, national origin, sex, age, or disability in the consideration for award of contract.
- Q. ALTERATION OF PROPOSAL DOCUMENT: Offeror must not alter this document so as

to change any portion except as required in order to submit their pricing and their acknowledgement of acceptance of the terms and conditions included herein. Any changes other than those allowed will be grounds for non-acceptance and rejection of your proposal.

R. OFFEROR RESPONSE, No Additional Terms and Conditions: Valley Regional Transit objects to and shall not consider any additional terms or conditions submitted by an Offeror, including any appearing in documents

S. EXECUTION OF CONTRACT: All required bonds and insurance certificates (see Part II, § 8, Insurance, below) must be received at Valley Regional Transit’s Administrative Office no later than ten (10) calendar days after the date of notification of intent to award by Valley Regional Transit. In the event the apparently successful Bidder does not submit any or all of the aforementioned documents on or before the required deadline, Valley Regional Transit may award the contract to another Bidder; in such event, Valley Regional Transit shall have no liability and said party shall have no remedy of any kind against Valley Regional Transit.

T. CONTRACT ADMINISTRATION: Kevin Womack at Valley Regional Transit shall assist in the central administration for this contract: 700 NE 2nd St. Suite 100 Meridian, ID 83642 (208) 258-2737.

**13. OFFEROR ACKNOWLEDGES RECEIPT OF THE FOLLOWING ADDENDA**

ADDENDA	DATE
1.	
2.	
3.	
4.	

**Prime-Offeror (General Information)**

<p><b>Acknowledgement:</b> I have read the Professional Services Agreement and agree to the terms of the agreement.</p>	
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Name of Company: \_\_\_\_\_

The undersigned certifies as follows:

1. That he/she has read and understands all requirements and specifications of the request for proposal; and
2. That he/she agrees to all requirements, specifications, terms, and conditions of the request for proposal referenced above; and
3. That he/she will furnish the designated item(s) and /or service(s) as quoted in the request for proposal; and
4. That he/she certifies under penalty of perjury that the Prime-Offeror is, to the best of his/her knowledge, not in violation of any Idaho tax law; and
5. That his/her company has been certified as one of the following registered business classifications:

DBE  Corporation  Other, identify: \_\_\_\_\_  
Idaho Resident Bidder?  Yes  No

Federal Tax I.D. Number: \_\_\_\_\_

DUNS Number: \_\_\_\_\_

Firm's Address: \_\_\_\_\_

Firms Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Project Manager and Title if different from Contact Person: \_\_\_\_\_

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

Contact Phone: \_\_\_\_\_ Contact e-mail: \_\_\_\_\_

Address where correspondence should be sent:

Listing Sub-Offerors proposed (if applicable), their phone numbers, and areas of responsibility (indicate which firms are DBE's):

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Prime-Offeror understands and agrees that, by his/her signature, if awarded the contract for the project, he/she is entering into a contract with Valley Regional Transit that incorporates the terms and conditions of the entire Request for Proposals package, including the General Conditions section of the Request for Proposals.

Prime-Offeror understands that this proposal constitutes a firm offer to Valley Regional Transit that cannot be withdrawn for ninety (90) calendar days from the date of the deadline for receipt of proposals. If awarded the contract, Prime-Offeror agrees to deliver to Valley Regional Transit the required insurance certificates and performance bond if applicable within ten (10) calendar days of the notice of award.

Prime Offeror:

---

Prime-Offeror's Signature

---

Date

## 14. PRICE PROPOSAL

The Price Proposal shall include all labor, materials, tools, equipment, transportation, training and other costs necessary to fully complete the procurement pursuant to the proposal terms, conditions and specifications.

Implementation	
Equipment	\$
Software	\$
Training	\$
Installation	\$
Total Implementation Cost	\$
Annual Costs	
Recurring Fees	\$
Licensing	\$
Maintenance	\$
Warranty	\$
Annual Cost (After First Year)	\$
Additional Costs	\$

Please list any additional costs and explain:

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**15. REQUIRED REFERENCES**

**THIS PAGE MUST BE COMPLETED AND RETURNED AS PART OF YOUR PROPOSAL RESPONSE**

**Responses received without the required references cannot be considered and will be rejected.** Proposer is to provide a list of three (3) firms currently using your services and other services similar to those being required herein for Valley Regional Transit. For each reference provide a contact name and contact information sufficient to allow Valley Regional Transit to contact the firm and receive a reference.

**PROPOSERS (Company) Name:** \_\_\_\_\_

**REQUIRED REFERENCES**

**1. Company Name:** \_\_\_\_\_  
*Address:* \_\_\_\_\_  
\_\_\_\_\_  
*Contact Name:* \_\_\_\_\_  
*Contact Phone:* \_\_\_\_\_  
*Email:* \_\_\_\_\_

**2. Company Name:** \_\_\_\_\_  
*Address:* \_\_\_\_\_  
\_\_\_\_\_  
*Contact Name:* \_\_\_\_\_  
*Contact Phone:* \_\_\_\_\_  
*Email:* \_\_\_\_\_

**3. Company Name:** \_\_\_\_\_  
*Address:* \_\_\_\_\_  
\_\_\_\_\_  
*Contact Name:* \_\_\_\_\_  
*Contact Phone:* \_\_\_\_\_  
*Email:* \_\_\_\_\_



**16. CERTIFICATIONS & AFFIDAVIT** Proposer to complete as indicated below

**DEBARMENT AND SUSPENSION CERTIFICATION (LOWER TIER COVERED TRANSACTION)**

(To be submitted with a bid or Offer exceeding the small purchase threshold for Federal assistance programs, currently \$100,000.)

The prospective lower tier participant (Offeror) certifies, by submission of this Offer, 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.

If the prospective lower tier participant (Offeror) is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so, by placing an "X" in the following space \_\_\_\_\_.

THE OFFEROR, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND EXPLANATION, IF ANY. IN ADDITION, THE BIDDER OR OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND EXPLANATION, IF ANY.

## 17. CONFLICT OF INTEREST AFFIDAVIT

The undersigned, being first duly sworn on oath states on behalf of the Contractor:

**Conflict of Interest** - That the Contractor, by entering into this contract with Valley Regional Transit is to perform or provide work, services or materials to Valley Regional Transit, has thereby covenanted, and by this affidavit does again covenant any such interest, which conflicts in any manner or degree with the services required to be performed under this contract and that it shall not employ any person or agent having any such an interest. In the event that the Contractor, its agents, employees, or representatives, hereafter acquire such a conflict of interest, it shall immediately disclose such interest to Valley Regional Transit and take action immediately to eliminate the conflict or to withdraw from this contract, as Valley Regional Transit may require.

**Contingent Fees and Gratuities** - That the Contractor, by entering into this contract with Valley Regional Transit to perform or provide services or materials for Valley Regional Transit has thereby covenanted, and by this affidavit does again covenant and assure:

1. That no person or selling agency except employees or designated, agents or representatives of the Contractor has been employed or trained to solicit or secure this contract with an agreement or understand that a commission, percentage, brokerage, or contingent fee would be paid; and
2. That no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of Valley Regional Transit or other governmental agency with a view toward securing this contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this contract.

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

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

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

## 18. LOBBYING CERTIFICATION

### LOBBYING CERTIFICATION

(To be submitted with a bid or offer exceeding \$100,000)

The Bidder or Offeror certifies, to the best its knowledge and belief, that:

(1) No Federal 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 a Federal department or agency, a Member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a Member of the U.S. Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification thereof.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction, as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

THE OFFEROR, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE BIDDER OR OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Signature of the Bidder or Offerors Authorized Official \_\_\_\_\_

Name, Title of the Bidder or Offerors Authorized Official \_\_\_\_\_

Date \_\_\_\_\_

## PROFESSIONAL SERVICES AGREEMENT

Professional Services Agreement Sample

### PSA Number, Project Name

This Professional Services Agreement ("Agreement") is made effective as of \_\_\_\_\_, 202\_ by and between **Valley Regional Transit** ("VRT") and \_\_\_\_\_, a [state] [corporation / limited liability company] ("Contractor"). VRT and Contractor are each a "Party" and are collectively the "Parties."

### WITNESSETH:

WHEREAS, Contractor has the capability and capacity to provide certain services as described in RFP 2021-04-20 (the "RFP"); and

WHEREAS, VRT desires to retain Contractor to provide such services under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the Parties agree to the following:

### ARTICLE 1 - STATEMENT OF WORK

**1.1 Services.** Contractor shall provide to VRT the services (the "Services") set out in the RFP, as supplemented by one or more mutually agreeable statements of work (each, a "Statement of Work"). Each Statement of Work will (1) identify the Services to be performed; (2) identify and establish the deliverables (including without limitation any licenses or ownership interests) that VRT will receive from Contractor as a result of the Services (collectively referred to as "Deliverables"); (3) establish the schedule, fees, and expenses related to the Services; and (4) set forth any additional terms and conditions. The initial accepted Statement of Work is attached hereto as Exhibit A. Additional Statements of Work, substantially in the same form as the Statement of Work attached hereto, shall be deemed accepted and incorporated into this Agreement only if duly signed by the Parties. Nothing in this Agreement shall be construed to prevent VRT from acquiring services from other providers (or itself performing services) that are similar to or identical to the Services.

**1.2 Requirements.** Contractor shall provide the Services (a) in accordance with the terms and subject to the conditions set forth in the respective Statement of Work and this Agreement; (b) using personnel of required skill, experience, and qualifications; (c) in a timely, workmanlike, and professional manner; (d) in accordance with the highest recognized standards of Contractor's industry, and (e) to the satisfaction of VRT. Time is of the essence in Contractor's performance of this Agreement. Contractor shall comply with all applicable Federal, state, and local laws, rules, and regulations, as well as VRT's rules, regulations, and policies, in the performance of its obligations under this Agreement (collectively, "Applicable Law"). Contractor has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

**1.3 Project Manager.** Contractor's project manager shall be \_\_\_\_\_ ("Project Manager"), who is responsible for carrying out the provisions of this Agreement and coordinating with subcontractors, where appropriate. Contractor shall make no changes in Project Manager

except: (a) with the prior consent of VRT, which consent shall not be unreasonably withheld, (b) at the request of VRT, in which case Contractor shall use its best efforts to promptly appoint a replacement, or (c) upon the resignation, termination, death, or disability of the existing Project Manager. During the term of this Agreement, no less frequently than [WEEKLY/MONTHLY/QUARTERLY], representatives of Contractor will meet with representatives of VRT at times and places mutually agreed upon to discuss the progress and results, as well as ongoing plans, or changes therein, to any Statements of Work then in effect.

## ARTICLE 2– COST

**2.1 Fee.** In consideration of the Services to be performed under this Agreement, VRT shall pay to Contractor a fee (“Fee”) as determined in accordance with the RFP and/or applicable Statement of Work. Subject to any mutually agreed modifications, the Fee, together with any allowable costs and reimbursements, shall not exceed the sum of \$\_\_\_\_\_.00. Further, the cost principals of 2 C.F.R. Part 200, Subpart E shall apply to the calculation and determination of allowable costs to be paid to Contractor or reimbursed to Contractor. All Contractor expenses not pre-approved by VRT or not otherwise meeting the requirements of this Agreement or the applicable Statement of Work shall be the sole responsibility of Contractor.

**2.2 Invoice.** Unless otherwise provided in the Statement of Work, the Fee will be payable in US Dollars within 45 days of receipt by VRT of an invoice from Contractor accompanied by documentation reasonably requested by VRT evidencing all charges.

**2.3 Taxes.** VRT shall have no responsibility or liability with respect to any sales and use taxes, duties, and charges of any kind imposed by any federal, state, or local governmental authority on amounts payable by VRT under this Agreement, and in no event shall VRT be required to pay any additional amount to Contractor in connection with such taxes, duties, and charges, or any taxes imposed on, or regarding, Contractor’s income, revenues, gross receipts, personnel, or real or personal property or other assets. Contractor shall indemnify and hold VRT harmless from any such taxes, duties, and charges.

**2.4 Disputes.** VRT may dispute or withhold payment of any payable amount by notice to Contractor orally or in writing, which claim of dispute may concern not only the accuracy of the charge itself, but also any claim of deficient Services or performance, or any other claim of breach of this Agreement that relates to the specific charges in the invoice. Any partial payment of an invoice will be deemed notice by VRT of the disputed amount, and any failure by VRT to dispute any invoiced amount will not be deemed a waiver of any claims. VRT shall have the right to set off against amounts owed to Contractor. The Parties shall promptly meet in an effort to resolve issues relating to any disputed payments. If such issue remains unresolved for ten (10) days, then the Parties shall treat the issue as a dispute and submit it to the dispute resolution procedures set forth in Section 11.21.

## ARTICLE 3- TERM AND TERMINATION

**3.1 Term.** This Agreement shall continue from the “base” year of November 15, 2021 – November 14, 2024): A three (3) year period of time commencing on the above date, with the option to renew upon mutual agreement of both parties an additional two (2) one year terms.

**3.2 Termination for Insolvency.** VRT, in its sole discretion, may immediately terminate this Agreement, the RFP, or any Statement of Work, in whole or in part, if Contractor: (a) becomes insolvent or is unable to meet its debts or obligations; (b) files a voluntary petition in bankruptcy; (c) has an involuntary petition in bankruptcy filed against it that is not challenged within fifteen (15) days and dismissed within thirty (30) days; (d) is adjudicated a bankrupt; (e) has a receiver or trustee appointed for its assets; (f) makes a general assignment for the benefit of creditors; (g) has any significant portion of its assets attached.

**3.3 Effect of Termination.** Upon expiration or termination of this Agreement for any reason, Contractor shall promptly: (a) deliver the Deliverables to VRT, whether or not complete, for which VRT has paid, (b) return all VRT-owned property, equipment, or materials in its possession or control, (c) remove any Contractor-owned property, equipment, or materials located at VRT's locations, (d) deliver to VRT, all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on VRT's Confidential Information, (e) provide reasonable cooperation and assistance to VRT in transitioning the Services to an alternate service provider, (f) on a pro rata basis, repay all fees and expenses paid in advance for any Services which have not been provided, (g) permanently erase all of VRT's Confidential Information from its computer systems, (h) certify in writing to VRT that it has complied with the requirements of this Section 3.3.

## **ARTICLE 4- INDEPENDENT CONTRACTOR**

**4.1 Generally.** This Agreement does not create an employer-employee relationship between VRT and Contractor, and this Agreement is not a contract for future employment or future engagement. Contractor shall be deemed to be and shall act as an independent contractor and shall assume and pay all liabilities and perform all obligations imposed with respect to the performance of this Agreement. VRT is not responsible for withholding, and shall not withhold FICA or other employment taxes of any kind from any payments which it owes Contractor. VRT shall issue Contractor a 1099 rather than a W-2 form. Contractor is not entitled to receive any benefit which employees of VRT are entitled to receive, if any, and Contractor shall not be entitled to workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing, or Social Security on account of Contractor's work for VRT. Contractor shall maintain Contractor's own occupational licenses in any and all cities and counties, as may be required by applicable law.

**4.2 Prohibitions.** Neither Party is authorized or empowered to act as agent for the other party for any purpose. Neither Party shall bind nor enter into any contract, warranty, or representation as to any matter on behalf of the other Party. Neither Party shall be bound by the acts or conduct of the other Party. Contractor shall be responsible for the acts and omissions of its agents, employees, and subcontractors ("Agents").

## **ARTICLE 5 - INSURANCE**

**5.1** Contractor, at its sole expense, shall procure and maintain during the term of this Agreement, all insurance coverage as set forth in this Article 5. All insurance carried by Contractor shall be written by an insurance company with A.M. Best Rating(s) of A or better. All insurance companies must be authorized to do business in the applicable state where the Services are performed. By requiring insurance hereunder, VRT does not represent that coverage and limits will necessarily be adequate to protect Contractor and such coverage limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to VRT in this Agreement.

**5.2** Written certificates of insurance evidencing the coverages required herein shall be provided to VRT within seven (7) days of the Effective Date. All certificates must be signed by an authorized representative of Contractor's insurance carrier and must state that the issuing company, its agents, or representatives will endeavor to provide VRT ten (10) days written notice prior to any policies being canceled. Renewal certificates must be provided to VRT within ten (10) days after the effective date of the renewal.

**5.3** All certificates of insurance shall be mailed to the following:

Valley Regional Transit  
Attention: Procurement Department  
700 NE 2nd Street, Suite 100

**5.4** Certificates must, individually or when considered together, evidence the following minimum insurance coverages:

- (a) Workers’ Compensation insurance meeting the statutory requirements of all states in which work is to be performed.
- (b) Employers’ Liability insurance providing limits of liability in the following amounts:

Bodily Injury by Accident:	\$1,000,000 each accident
Bodily Injury by Disease:	\$1,000,000 policy limit
Bodily Injury by Disease:	\$1,000,000 each employee

- (c) Commercial General Liability insurance and, if necessary, Commercial Umbrella Liability Insurance providing limits of liability in the following amounts, with aggregates applying separately on a “per location” basis:

General Aggregate:	\$2,000,000
Product/Completed Operations Aggregate:	\$2,000,000
Personal & Advertising Injury Limit:	\$1,000,000
Per Occurrence:	\$1,000,000
Fire Legal Liability:	\$ 50,000

The Commercial General Liability (“CGL”) insurance policy shall be written on an “Occurrence” form and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). VRT and its respective directors, officers, agents, employees, successors and assigns shall be included as Additional Insureds under the CGL and under the Commercial Umbrella insurance, if any.

- (d) Business Automobile Liability insurance and, if necessary, Commercial Umbrella Liability Insurance, providing bodily injury and property damage liability coverage for not less than \$1,000,000 each accident limit. Business Automobile Liability insurance shall be written on a standard ISO policy form, or an equivalent form, providing coverage for liability arising out of owned, hired, or non-owned vehicles in connection with the Services under this Agreement. Contractor further agrees to waive all rights against VRT and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business automobile liability and umbrella liability insurance obtained by Contractor pursuant to this Agreement, or under any applicable auto physical damage coverage.

- (e) Equivalent insurance coverage to the above must be obtained by each of Contractor’s subcontractors or suppliers and certificates evidencing the same must be presented to VRT before subcontractors or suppliers are permitted on the site of the project or where the Services will be rendered.

- (f) If subcontractors do not have the required insurance, Contractor’s policies must provide coverage for them and their work. Certificates evidencing coverage under Contractor’s policy must be provided to VRT before subcontractors or suppliers are permitted on the site of the project. Contractor shall be responsible for ensuring that established coverages are maintained by all subcontractors performing work for Contractor under this Agreement.

(g) Contractor also shall maintain Replacement Cost Property Insurance for all property of VRT's which Contractor uses outside of VRT's premises.

## ARTICLE 6 - INTELLECTUAL PROPERTY

**6.1** VRT is, and shall be, the sole and exclusive owner of all right, title, and interest in and to the Deliverables, including all Intellectual Property Rights therein. Contractor agrees, and will cause its Agents to agree, that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a "work made for hire" for VRT. To the extent that any of the Deliverables do not constitute a "work made for hire", Contractor hereby irrevocably assigns, and shall cause its Agents to irrevocably assign to VRT, in each case without additional consideration, all right, title, and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. Contractor shall cause its Agents to irrevocably waive, to the extent permitted by applicable Law, any and all claims such Contractor Personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Deliverables.

**6.2** Upon VRT's request, Contractor shall, and shall cause its Agents to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist VRT to prosecute, register, perfect, or record its rights in or to any Deliverables.

**6.3** VRT is, and shall remain, the sole and exclusive owner of all right, title, and interest in and to any materials provided by VRT pursuant to this Agreement, including all Intellectual Property Rights therein. Contractor shall have no right or license to use any VRT Materials except solely during the Term to the extent necessary to provide the Services to VRT. All other rights in and to such materials are expressly reserved by VRT.

**6.4** "Intellectual Property Rights" means all (a) patents, patent disclosures, and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how, and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

## ARTICLE 7- INDEMNIFICATION

**7.1** Contractor shall indemnify, defend, and hold harmless VRT, its members, directors, officers, employees, and agents (collectively, "Indemnified Party"), from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers, incurred by Indemnified Party, arising out of or resulting from a breach of this Agreement by Contractor or any negligent or willful errors or omissions of Contractor, or any Contractor's Agents, in the performance of this Agreement. Contractor shall not enter into any settlement without VRT's and Indemnified Party's prior written consent.

**7.2** If either Party files an action to enforce this Agreement, or which arises out of this Agreement, the prevailing Party shall be entitled to an award of reasonable attorney fees and costs of suit including attorney's fees and costs of litigation, arbitration, and including appeals.



## ARTICLE 8 - PROPRIETARY INFORMATION

**8.1** Contractor agrees it will keep confidential and not use any material or information furnished by or on behalf of VRT ("Confidential Information"), whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," for any purpose whatsoever other than as herein specified without prior written consent of VRT. VRT shall be entitled to injunctive relief for any violation of this Section.

**8.2** Contractor shall not disclose Confidential Information to any third party, unless such disclosure is necessary for Contractor's performance of the Agreement. No news release, public announcement, denial or confirmation of any part of the subject matter of this Agreement or any phase of any program hereunder shall be made without prior written consent of VRT. The restrictions of this paragraph shall continue in effect until completion or termination of this Agreement for such period of time as may be mutually agreed upon in writing by the parties. In the absence of a written established period, no disclosure is authorized. Failure to comply with the provisions of this paragraph may be cause for termination of this Agreement. This provision applies to periods during and after the Term.

## ARTICLE 9 - MISCELLANEOUS

**9.1 Governing Law.** This Agreement shall be governed and construed in accordance with the federal law, the laws of the state of Idaho, and any applicable local ordinances of governmental entities located within the VRT service area. The Parties agree that the counties of either Ada or Canyon, State of Idaho, are the proper venue for any action arising out of this Agreement.

**9.2 Assignment.** This Agreement shall not be assigned by either party without the prior written consent of the other Party. Any assignment in violation of this Agreement shall be void.

**9.3 Amendment.** Any agreement to change the terms of this Agreement in any way shall be valid only if the change is made in writing and approved by mutual agreement of authorized representatives of each Party. Any written amendment modifying this Agreement shall each Statement of Work requirement set forth in Section 1.1.

**9.4 Non-Waiver of Rights.** The failure of VRT to insist upon strict performance of any of the terms and conditions in this Agreement, or to exercise any rights or remedies, shall not be construed as a waiver of its right to assert any of the same or to rely on any such terms or conditions at any time thereafter. The invalidity in whole or in part of any term or condition of this Agreement shall not affect the validity of other parts hereof.

**9.5 Entire Agreement.** Upon acceptance of this Agreement, Contractor agrees that the provisions under this Agreement, including all documents incorporated herein by reference, shall constitute the entire Agreement between the Parties, and supersede all prior agreements relating to the subject matter hereof. This Agreement may not be modified or terminated orally, and no modification or waiver shall be binding unless in writing and signed by the Party against whom such modification or waiver is sought to be enforced.

## ARTICLE 10- DISADVANTAGED BUSINESS ENTERPRISES (DBE) STATUS

**10.1** It is the policy of VRT and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of VRT to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts; and
- Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts; and
- Ensure that the DBE program is narrowly tailored in accordance with applicable law; and
- Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's; and
- Help remove barriers to the participation of DBEs in DOT assisted contracts;
- To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
- Assist in the development of firms that can compete successfully in the marketplace outside the DBE program

**10.2** This Agreement is subject to 49 C.F.R. part 26 and 2 C.F.R. § 200.321. Therefore, Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Agreement. VRT shall make all determinations with regard to whether or not Contractor is in compliance with the requirements stated herein. In assessing compliance, VRT may consider during its review of Contractor's submission package and Contractor's documented history of non-compliance with DBE requirements on previous contracts with VRT.

**10.3** Contractor shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include the following:

**10.3.1** Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

**10.3.2** Assuring the small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

**10.3.3** Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

**10.3.4** Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

**10.3.5** Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

**10.3.6** Requiring all subcontractors to take the affirmative steps above. (2 C.F.R § 200.321)

**10.4** Contractor and its subrecipients and subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as VRT deems appropriate.

**10.5** Should DBE status, as defined under Federal regulations, be claimed by Contractor, Contractor agrees to furnish written evidence of DBE certification from a governmental

entity. Subsequent failure to furnish such proof may be considered by VRT as grounds for termination of this agreement.

**10.6** When sub-agreements with other parties are required to fulfill the Work Program described in Exhibit A, Contractor agrees to notify VRT of these contract opportunities and to seek qualified DBE firms from the published Idaho Transportation Department list (available from VRT) to perform the work. Contractor will notify VRT of the dollar value of the sub-agreement and the DBE status of any subcontractor or service provider. When DBE status is claimed for these subcontractors or service providers, Contractor shall provide VRT of written proof of DBE certification.

**10.7** Contractor must promptly notify VRT, whenever a DBE sub-consultant performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE sub-consultants to perform at least the same amount of work. Contractor may not terminate any DBE sub-consultants and perform that work through its own forces or those of an affiliate without prior written consent of VRT.

**10.8** Contractor shall include this clause in each subcontract financing in whole or in part with Federal assistance provided by FTA and also a clause requiring the subcontractors to include this clause in any lower tier subcontract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the clause.

**10.9** The provisions of this Section 10 are applicable if this Agreement is expected to exceed \$250,000. In the event that this Agreement is not expected to exceed \$250,000, the provisions of this Section 16 are inapplicable.

## **ARTICLE 11 - FEDERAL CONTRACTING REQUIREMENTS**

**11.1 Incorporation of Federal Transit Administration (“FTA”) Terms.** The provisions of this Agreement include, in part, certain standard terms and conditions required by the United States Department of Transportation (“DOT”), whether or not expressly set forth in this Agreement. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, as revised, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request by VRT which would cause VRT to be in violation of the FTA terms and conditions.

**11.2 Subcontractors.** Except for Section 11.6, Contractor shall require each of its subcontracts that is financed in whole or in part with Federal assistance provided by FTA to include obligations as set forth in this Article 11. Such obligations shall be transcribed as set forth in this Article 11 and without modification except as necessary to identify the Contractor and subcontractor. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with this this Article 11.

**11.3 Federal Changes.** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement (Form FTA MA (28) dated February 19, 2021, as amended from time to time) between VRT and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor’s failure to so comply shall constitute a material breach of this Agreement.

**11.4 Access to Records and Reports.** Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to this Agreement, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and

supporting materials related to those records. Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Agreement for a period of at not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. Contractor agrees to provide VRT, FTA, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of Contractor which are related to this Agreement as may be reasonably required. Contractor also agrees to provide FTA or its authorized representatives, including any PMO Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. Contractor agrees to permit VRT, FTA and their contractors' access to the sites of performance under this Agreement as reasonably may be required.

**11.5 Buy America.** Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds 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. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11. Contractor agrees to submit a certification to VRT of its compliance with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 with respect to any bids or offers made in connection with this Agreement. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

**11.6 Cargo Preference.** Contractor agrees to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels. Contractor agrees to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading).

**11.7 Clean Air Act.** Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. In addition, Contractor will not use any facilities placed on (or likely to be placed on) the EPA "List of Violating Facilities." Contractor agrees to report each violation of this Section to VRT. Contractor understands and acknowledges that VRT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

**11.8 Civil Rights.** Contractor shall at all times comply with the following requirements and comply with any implementing requirements FTA may issue:

**11.8.1 Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age.

**11.8.2 Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**11.8.3 Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.

**11.8.4 Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability.

## **11.9 Employee Protections.**

**11.9.1** Contractor represents and warrants that a copy of the current prevailing wage determination issued by the DOL has been provided to VRT in connection with the RFP.

**11.9.2** Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5. Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.

**11.9.3** If this Agreement meets the definition of a prime construction, alteration or repair contract in excess of \$2,000 awarded by FTA, then Contractor agrees to comply with the terms of this Section 11.9.3. Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and

mechanics employed on FTA assisted construction, alteration, or repair projects. Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor agrees to pay wages not less than once a week. Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

**11.9.4** If Contractor's performance of this Agreement involves the employment of mechanics or laborers and the value of this Agreement is in excess of \$100,000, then Contractor agrees to comply with the terms of this Section 11.9.4. Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence. In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

**11.10 Energy Conservation.** Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**11.11 Fly America.** When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services. If available, Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property. In the event that Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, Contractor shall include a statement on vouchers involving such transportation essentially as follows: "International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [state reasons]: \_\_\_\_\_."

**11.12 Debarment and Non-procurement.** Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- Debarred from participation in any federally assisted Award;
- Suspended from participation in any federally assisted Award;
- Proposed for debarment from participation in any federally assisted Award;
- Declared ineligible to participate in any federally assisted Award;
- Voluntarily excluded from participation in any federally assisted Award; or
- Disqualified from participation in any federally assisted Award.

The certification in Section 11.12 is a material representation of fact relied upon by VRT. If it is later determined by VRT that Contractor knowingly rendered an erroneous certification, in addition to remedies available to VRT, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, during the term of this Agreement.

**11.13 Lobbying Limitations and Certification.** By executing this Agreement, Contractor certifies that, to the best of Contractor's knowledge and belief:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Contractor shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions (as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413).
- This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying

Disclosure Act of 1995). 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.

**11.14 No Obligation by the Federal Government.** VRT and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to VRT, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from this Agreement.

### **11.15 Intellectual Property Rights.**

**11.15.1** Contractor shall grant VRT intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

**11.15.2** For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by this Agreement. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

**11.15.3** The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data developed under this Agreement, whether or not a copyright has been obtained and any rights of copyright purchased by Contractor using Federal assistance in whole or in part by the FTA. "Federal Government Purposes" means use only for the direct purposes of the Federal Government.

**11.15.4** Unless FTA determines otherwise, Contractor performing experimental, developmental, or research work required as part of this Contractor agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Agreement shall become subject data as defined herein and shall be delivered as the Federal Government may direct. This subsection, however, does not apply to adaptations of automatic data processing equipment or programs for VRT or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

**11.15.5** Unless prohibited by state law, upon request by the Federal Government, Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any



liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

**11.15.6** Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

**11.15.7** Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements in this Section [ ], provided that Contractor identifies those data in writing at the time of delivery of the Deliverables.

**11.16** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, VRT and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

#### **11.17 Program Fraud and False or Fraudulent Statements or Related Acts.**

**11.17.1** Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the services to be provided under this Agreement. Upon execution of this Agreement, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Agreement or the FTA assisted project for which the work under this Agreement is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

**11.17.2** Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.

**11.18 Recovered Materials.** Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency ("EPA"), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

**11.19 Safe Operation of Motor Vehicles.** Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by Contractor or VRT. Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an

electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

**11.20 Substance Abuse Requirements.** Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the applicable oversight agency of Idaho, or VRT, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. Contractor agrees further to certify annually its compliance with parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date] to [insert title and address of person responsible for receiving information]. To certify compliance, Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

### **11.21 Termination.**

**11.21.1 For Convenience.** VRT, in its sole discretion, may terminate this Agreement or any Statement of Work, in whole or in part, at any time, with or without cause, and without liability except for required payment for services rendered, and reimbursement for authorized expenses incurred, prior to the termination date, by providing at least sixty (60) days' prior written notice to Contractor, which notice will specify the nature, extent, and effective date of the termination. If the termination is for the convenience of VRT, VRT may, in its sole direction, make an equitable adjustment in the Fee (without allowance for anticipated profit on unperformed services). If the termination is for failure of Contractor to fulfill this Agreement obligations, as set forth below, VRT may complete the work itself or through another contractor, and Contractor shall be liable for any additional cost incurred by VRT. If, after termination for cause, it is determined that Contractor was not in default, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of VRT.

**11.21.2 For Lack of Funds.** If sufficient funds are not provided from applicable Federal, state, local or other sources to permit VRT in the exercise of its reasonable administrative discretion to continue this Agreement, or if VRT or the program for which this Agreement was executed is abolished, VRT may terminate this Agreement without further liability by giving Contractor not less than thirty (30) days written notice. Contractor shall include the immediately preceding clause in each subcontract in excess of \$10,000 that is financed in whole or in part with Federal assistance provided by FTA.

**11.21.3 For Cause.** VRT, in its sole discretion, may terminate this Agreement or any Statement of Work, in whole or in part, at any time, by providing written notice of default to Contractor in any one of the following circumstances: (a) if Contractor fails to perform the services within the time specified in any Statement of Work; or (b) if Contractor fails to perform any of the other provisions of this Agreement in accordance with its terms, and in either of these two circumstances not cure such default or commence curing the same within a period of ten (10) days (or such longer period as VRT may authorize in writing) after receipt of notice from VRT specifying such failure. If it is later determined by VRT that Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of Contractor, VRT, may allow Contractor to continue work (after setting up a new performance schedule), or treat the termination as a termination for convenience.

**11.21.4 Partial Termination.** Contractor shall continue performance of this Agreement to the extent not terminated. VRT shall have no obligations to Contractor with respect to the terminated part of this Agreement except as provided in this Agreement. In case of

Contractor's default, VRT's rights as set forth herein shall be in addition to VRT' other rights in law or equity.

**11.21.5 Survival.** The rights and obligations of the Parties set forth in Article 7, Article 8, Section 11.21, and Section 11.22, and any right or obligation in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

**11.21.6 Remedies.** Termination of this Agreement by VRT shall not in any way operate to preclude VRT from pursuing all available remedies against Contractor and its sureties for any breach or default. In the event that VRT elects to waive its remedies for Contractor's breach or default, such waiver shall not limit VRT's remedies for any succeeding breach or default. Termination of this Agreement by either Party for any reason shall not affect the rights and obligations of the Parties accrued prior to the effective date of termination.

## **11.22 Breaches and Dispute Resolution.**

**11.22.1 Disputes.** VRT and Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the Parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the Parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within VRT and Contractor's organization. In the event that a resolution of the dispute is not mutually agreed upon, the Parties can agree to mediate the dispute or proceed with litigation.

**11.22.2 Performance during Dispute.** Unless otherwise directed by VRT, Contractor shall continue performance under this Agreement while matters in dispute are being resolved and Contractor shall continue to be paid undisputed amounts.

**11.22.3 Claims for Damages.** Should either party to this Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

**11.22.4 Remedies.** Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between VRT and Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the Parties mutually agree, or in a court of competent jurisdiction within the State in which VRT is located

**11.22.5 Rights and Remedies.** The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by VRT or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**11.23 Federal Privacy Act Requirements.** Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that

the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement.

**11.24 ADA Access.** Accessibility. Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.*; DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37; and Joint ATBCBDOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference into Appendix A of its regulations at 49 CFR Part 37 the ATBCB’s “Americans with Disabilities Act Accessibility Guidelines” (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities. DOT also added specific provisions to Appendix A of 49 CFR Part 37 modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and the DOT amendments.

## **ARTICLE 12 MODIFICATION TO SPECIAL TERMS AND CONDITIONS**

**12.1 Special Terms and Conditions.** The Special Terms and Conditions set forth in the RFP are hereby expressly incorporated into this Agreement, except certain Special Terms and Conditions are modified as follows:

[INSERT MODIFIED TERMS FROM RFP]

IN WITNESS WHEREOF, the Parties have caused these presents to be executed in duplicate as of the day and year first above written.

**VRT:**

**Valley Regional Transit**

By: \_\_\_\_\_  
Kelli Badesheim, Executive Director

**CONTRACTOR:**

[ ], a [state] [corporation / LLC]:

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

Federal Employer #: \_\_\_\_\_

DUNS #: \_\_\_\_\_

Notice Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SAMPLE

**EXHIBIT A  
STATEMENT OF WORK**

SAMPLE