

Original to:

____ NOVA
____ Valley Transportation Authority
____ City Clerk

AGREEMENT BETWEEN
CITY OF SUNNYVALE AND THE SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY
FOR WORKFORCE DEVELOPMENT SERVICES

This Agreement is made as of the __ day of July, 2017 between the City of Sunnyvale, a California municipal corporation (hereinafter referred to as "City"), on behalf of the NOVA Workforce Development ("NOVA"), on the one hand, and the Santa Clara Valley Transportation Authority, a California special district (hereinafter referred to as "VTA"), on the other. City and VTA may be referred to herein collectively as the "parties" or each individually as a "party."

Whereas, City has applied for and been granted Assembly Bill 118 discretionary funds from the State of California to develop and deploy innovative technologies that transform California's fuel and vehicle types to help attain the state's climate change policies; and

Whereas, under this Agreement, VTA participates in providing apprenticeship programs to train incumbent public transportation workers; and

Whereas, City and VTA are required to execute an Agreement wherein they agree to adhere to and comply with the conditions and requirements established for use of the funds of this grant;

Now, therefore, it is agreed:

1. **Terms and Conditions**: VTA agrees to provide services to meet the goals and deliverables of the project and to comply with other requirements in accordance with the following:

- (a) Program Design and Standards – Exhibit A;
- (b) Special Provisions – Exhibit B;
- (c) Assurances and Certifications – Exhibit C;

- (d) Budget and Method of Payment – Exhibit D;
- (e) Request for Payment – Exhibit E; and
- (f) State of California and Department of Labor guidelines, as they now exist are or hereinafter amended and to the extent they apply to VTA.

The above-referenced Attachments and Exhibits are incorporated by reference as though fully set forth herein.

- 2. Term of Agreement: July 12, 2017 through June 30, 2018
- 3. Funding Limit: \$125,000
- 4. City Agreement Number: 001-RICOG-18
- 5. VTA Agreement Number: S17139
- 6. State of California Contract No.: M7105135

City and VTA, by and through their authorized representatives as indicated below, hereby acknowledge and agree to the terms and conditions of this **Agreement**.

CITY OF SUNNYVALE**SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY**

BY: _____

BY: _____

NAME: **Deanna J. Santana**NAME: **Nuria I. Fernandez**TITLE: **City Manager**TITLE: **General Manager & CEO**

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Robert Boco
Senior Assistant City Attorney

J. Carlos Orellana
Senior Assistant Counsel

Date _____

Date _____

PROGRAM DESIGN AND STANDARDS

I. PROGRAM DESIGN

A. PROJECT OVERVIEW

This Agreement is pursuant to an Alternative and Renewable Fuel and Vehicle Technology (ARFVT) grant under the auspices of the California Workforce Development Board (CWDB). The grant program provides AB 118 discretionary funds to support job training initiatives that support the State of California's alternative fuel and clean energy goals.

In response to a request from CWDB, NOVA Workforce Development (NOVA) has launched an initiative to research and support an ongoing apprenticeship program created by the Santa Clara Valley Transportation Authority (VTA), the Amalgamated Transit Union Local 265 (ATU), Mission College, and the California Labor Federation. The goal of this Transit Apprenticeships for Professional Career Advancement (TAPCA) initiative is to develop transit workforce infrastructure through a unique system of four stackable apprenticeships.

The TAPCA apprenticeships are Coach Operator Apprentice, Track Worker Apprentice, Overhead Line Worker Apprentice, and Service Mechanic Apprentice. These apprenticeships have clear linkages from entry-level employment to higher-level potential supervisor positions in VTA's transportation (bus), maintenance (way/power/signal) and maintenance (bus) divisions.

NOVA's roles in this grant are to develop working relationships with the above-named apprenticeship stakeholders, research TAPCA activities, discern its value as a workforce development board in enhancing transit apprenticeships, and seek opportunities to replicate the VTA apprenticeship program at the San Mateo County Transit District (SamTrans).

B. SCOPE OF SERVICES

Under the direction of City, VTA is responsible for providing the following services:

- Selecting a dedicated apprenticeship staff person to coordinate ongoing TAPCA activities and to develop internal apprenticeship infrastructure within VTA to sustain and possibly enhance apprenticeship activities.
- Providing monthly written status reports of grant-related activities to NOVA.
- Providing NOVA reasonable access to TAPCA program elements as well as key VTA personnel and contractors related to the apprenticeship effort.
- Sharing documents reasonably necessary to NOVA's understanding of TAPCA details and experiences to date.*

C. PROJECT RESULTS:

As a result of the above-cited activities:

- VTA expects to solidify and sustain apprenticeship systems and operations in compliance with the Division of Apprenticeship Standards (DAS) of the California Department of Industrial Relations.

II. PROGRAM COORDINATION

1. NOVA's Program Manager, or his/her designee, shall be the Program Manager for the City and shall render overall supervision of the progress and performance of this Agreement by City. All services agreed to be performed by City shall be under the overall direction of the Program Manager.
2. VTA's selected coordinator shall have overall responsibility for the progress and execution of this Agreement. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Coordinator, VTA shall notify City immediately of such occurrence. VTA Coordinator and staff will fully cooperate with City relating to this Agreement.

III. NOTICES

All notices or correspondence required or contemplated by this Agreement shall be sent to the respective parties at the following addresses:

City: Luther Jackson, Program Manager
NOVA
505 West Olive Ave., Suite 550
Sunnyvale, CA 94086
Telephone: (408) 730-7832
Email: ljackson@novaworks.org

VTA: Inez Evans, Chief Operating Officer
3331 North First Street,
San Jose, CA 95134

Nothing contained herein shall be construed to prohibit the parties from communicating by the most expedient method available, whether by commercial courier, facsimile, or by electronic means. However, and notwithstanding the preceding sentence, for purposes of providing official notification and/or documentation as required in this Agreement, the sending party assumes full responsibility and the burden of proof for the completed transmission if the documents or notification are sent by means other than certified, first class mail through the United States Postal Service.

SPECIAL PROVISIONS

S1 INSUFFICIENT FUNDING

In the event that the U.S. Department of Labor or the State of California fails to provide sufficient funding for implementation of the entire services as set forth herein, the amount set forth in this Agreement shall be reduced and the program shall be reduced proportionately. City shall provide a minimum of thirty (30) days' notice in the event of reduced funding.

S2 ENTIRE AGREEMENT

This Agreement, its attachments and references cited herein fully express all understandings of the parties concerning the matters covered herein. No addition to or alteration of the terms of this Agreement, and no other Agreements of the parties or their officers, agents, or employees, shall be valid unless made in the form of a written amendment to this Agreement duly approved and executed by the parties' authorized representative(s).

S3 PROCEDURE TO MODIFY THE AGREEMENT

The party wishing to modify this Agreement shall submit its request for changes in writing to the other party's contact as identified in Exhibit A. Any modification requests must include a summary of the proposed revisions and justification for each.

S4 INDEMNIFICATION

(a) VTA Indemnification of City. Neither City nor any of its council members, officers employees, or agents will be responsible for any damage or liability by reason of anything done or omitted by VTA in connection with any work, authority or jurisdiction delegated to VTA under this Agreement. Pursuant to Government Code Section 895.4, VTA will fully indemnify and hold City harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted by VTA in connection with any work, authority or jurisdiction delegated to VTA under this Agreement. This hold harmless applies to any activities, errors or omissions of the VTA and/or VTA's officers, employees, agents, consultants or contractors or any persons or entities acting or omitting to act for or on behalf of VTA where such persons or entities are specifically authorized and empowered by VTA to act for VTA.

(b) City Indemnification of VTA. Neither VTA nor any of its board members, officers employees, or agents will be responsible for any damage or liability by reason of anything done or omitted by the City in connection with any work, authority or jurisdiction delegated to City under this Agreement. Pursuant to Government Code Section 895.4, City will fully indemnify and hold VTA harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by

reason of anything done or omitted by the City in connection with any work, authority or jurisdiction delegated to City under this Agreement. This hold harmless applies to any activities, errors or omissions of the City and/or its officers, employees, agents, consultants or contractors or any persons or entities acting or omitting to act for or on behalf of the City where such persons or entities are specifically authorized and empowered by City to act for City.

- (c) VTA Contractors. VTA shall ensure that in all contracts entered into by VTA with respect to this program that each contractor, subcontractor, consultant, and subconsultant shall indemnify and hold City harmless to the same extent that VTA is indemnified and held harmless. Further, VTA shall require that City and its officers and employees be named as an additional insured on any liability insurance policy that VTA requires from its contractor, subcontractors, consultants, and subconsultants.
- (d) City Contractors. City shall ensure that in all contracts entered into by City with respect to this program that each contractor, subcontractor, consultant, and subconsultant shall indemnify and hold VTA harmless to the same extent that City is indemnified and held harmless. Further, City shall require that VTA and its officers and employees be named as an additional insured on any liability insurance policy that City requires from its contractor, subcontractors, consultants, and subconsultants.
- (e) Survival of Indemnity Provisions. The indemnity provisions in this Section S4 will survive the expiration or termination of this Agreement.

S5 LEGAL RELATIONSHIP

- 5.1 It is understood and agreed that VTA and City are independent of each other and that no relationship of employer-employee exists between them; that employees of VTA shall not be entitled to any benefits available to employees of City and that employees City shall not be entitled to any benefits available to employees of VTA; that City is not required to make any deductions from the compensation payable to VTA under the provisions of this Agreement; that as independent actors, VTA holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement and City holds VTA harmless from any and all claims that may be made against VTA based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed that VTA has no authority to act for or on behalf of City other than in carrying out and performing the terms of this Agreement and that City has no authority to act for or on behalf of VTA other than in carrying out and performing the terms of this Agreement. .
- 5.2 The Federal Government and the State of California are not parties hereto and no legal liability on the part of the federal or state government is implied under the terms and

conditions of this Agreement; any liabilities, legal actions or disputes as may arise under this Agreement are between the City and VTA.

- 5.3 All City powers not explicitly vested in the VTA by this Agreement remain with City and all VTA powers not explicitly vested in City by this Agreement remain with VTA.
- 5.4 Each party, without additional expense to the other, shall be responsible for obtaining any licenses and permits it requires, and for its own compliance with any applicable federal, (including OSHA) state and municipal laws, codes and regulations. Each party shall be similarly responsible for all damages to persons or property that occur as a result of its own fault or negligence. Each party shall take reasonable precautions to protect any work performed by workers covered by this Agreement, the workers, the public, and the property of others. Either party's failure to do so shall place that party in default of the terms of this Agreement.
- 5.5 If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the terms and requirements of applicable law.
- 5.6 In no event shall any payment by City hereunder constitute or be construed to be a waiver by City of any breach of covenants or conditions of this Agreement or any default which may then exist on the part of the VTA. The making of any such payment shall not prejudice any right or remedy available to City with respect to such breach or default.
- 5.7 In no event shall a waiver by either party of any of the provisions herein invalidate the remainder of the Agreement.
- 5.8 Notwithstanding any language in this Agreement to the contrary, nothing in this Agreement is intended to limit, abridge, supersede, violate, or otherwise affect any existing or future agreement between VTA or City on the one hand and their respective contractors, consultants, or labor unions on the other.

S6 CONFLICT OF INTEREST

VTA and City will insure that no actual or apparent conflict of interest shall occur relative to the performance of this Agreement.

S7 PERSONNEL

- 7.1 Each party represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or be deemed thereby to have any contractual relationship with the other party.
- 7.2 All of the services hereunder will be performed by City or VTA or under their respective supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.

S8 NOT USED

S9 SUBCONTRACTING/ASSIGNMENT

9.1 Neither party's duties under this Agreement may be delegated, nor shall any of the work or services to be performed hereunder be subcontracted out to third parties without the prior, written consent of the other party. Third-party subcontractors identified in this Agreement shall be deemed to have been approved by the other party. Each party shall perform oversight of its third-party subcontractors to ensure compliance with State of California regulations, including requirements related to confidentiality, records retention, allowable costs, and other requirements applicable to this program.

S10 NOT USED

Each party will follow its own policies and procedures for resolving any complaints and/or grievances arising in connection with an alleged violation of the grant, or other Agreements.

S11 PUBLIC ACCESS TO RECORDS

As a condition of receiving State of California funds, the independent auditor or monitor of the City, the State of California Employment Development Department auditors, investigators, and monitors, or their duly authorized representatives shall at all times during the Agreement term and for a period of three years thereafter have the right of access to any books, documents, papers, financial statements and records (including computer records) of the VTA which are directly pertinent to charges under this Agreement to assure compliance with the terms of the Agreement and the State of California statutes, regulations, and directives, and to make excerpts, transcripts, and photocopies. This right also includes timely and reasonable access to VTA's personnel with knowledge of the records and financial statements for the purpose of interviews and discussions related to documents and services provided under this Agreement.

S12 INSURANCE AND BONDS

During the term of this Agreement, VTA shall have and maintain the minimum insurance requirements (as set forth immediately below). In the event VTA is a self-insured entity, such insurance may be met by a self-insurance program in VTA's sole discretion.

12.1 Minimum Scope and Limits of Insurance

VTA shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage and \$2,000,000 aggregate. ISO Occurrence Form CG 0001 is required.

2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required.
3. Workers' Compensation Statutory Limits and Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

12.2 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The vendor shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

12.3 Other Insurance Provisions

The general liability and automobile insurance policies shall contain, or be endorsed to contain, the following provisions:

The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the VTA; products and completed operations of the VTA; premises owned, occupied or used by the VTA; or automobiles owned, leased, hired or borrowed by the VTA. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.

12.5 Verification of Coverage

VTA shall furnish the City of Sunnyvale with an original Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work. The City will accept evidence of self-insurance from the VTA that meets the above requirements.

12.6 Fidelity Bonds

If cash advances are part of the contract, a fidelity bond is required in an amount of \$100,000 or the highest estimated monthly expenditure, whichever is lower, covering any and all of City's officers and employees involved in the performance of the contract.

S13 FISCAL AND RECORDKEEPING RESPONSIBILITIES

- 13.1 VTA shall comply with OMB CFR Chapter II, Part 200, et al., *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: Final Rule* and the Department of Labor's (DOL) exceptions at 2 CFR Chapter II, Part 2900 et al. and as hereafter amended relating to the utilization of funds, the operation of programs, and maintenance of records, books, accounts, and other documents under the Act.

- 13.2 VTA shall maintain adequate administrative and accounting controls, personnel standards, evaluation procedures and other policies to promote the safe and effective use of funds provided by this Agreement.
- 13.3 VTA shall submit reports of fiscal data in accordance with City's policies and procedures. For cost reimbursement Agreements, fiscal accounts shall be maintained in a manner sufficient to permit preparation of expense reports on an accrual basis as required by City and DOL. Such financial information reported must be taken directly or linked by worksheet to books of original entry and traceable to source documents. VTA shall maintain a cost allocation plan for distribution of shared costs. Fiscal records must provide a clear audit trail.
- 13.4 VTA shall separately account for WIOA funds on deposit. All funding under this agreement will be made by check or wire transfer for deposit in VTA's bank account.
- 13.5 Under this Agreement VTA shall use funds allocated exclusively for costs related to employment and training services as defined in Exhibit A, Program Design and Standards.
- 13.6 VTA shall not be allowed to recover costs incurred before and after the term of this Agreement.
- 13.7 All records pertaining to this Agreement shall be retained for five (5) years from the date of City's final expenditure report except when audit has not been completed or audit findings have not been resolved. In such cases, the pertinent records must be maintained until audit is completed and audit findings resolved. Records for nonexpendable property acquired with federal funds shall be retained for three (3) years after its final disposition.
- 13.8 For any Agreement in which unexpended funds resulting from cash advances remain upon completion or termination of this Agreement, VTA shall return such funds to the City within sixty (60) days of the termination of Agreement.
- 13.9 VTA shall account for any income received deemed as Program Income and utilize said income in accordance with that same section. For public or private non-profit agencies, this shall include any revenues in excess of costs. These funds may be retained by the VTA to underwrite additional training or training related services pursuant to the Agreement and/or grant that generated them as approved by City; or the funds shall be returned to City. Fiscal records must provide a clear audit trail for expenditures incurred and costs relative to additional training or services to be provided by appropriate cost category.
- S14 NOT USED

S15 RIGHT TO REALLOCATE FUNDS

- 15.1 City will monitor VTA's expenditures of funds provided under this Agreement on a monthly basis and may reallocate funds in the event VTA is not making adequate progress toward budget goals, per Exhibit D of this Agreement.
- 15.2 City will provide VTA with no less than thirty (30) days written notification of its intent to reallocate funds. VTA will have opportunity to respond and offer any views and recommendations within the 30-day notification period. City is not bound to accept VTA's views and/or recommendations with respect to the intended reallocation.

S16 REPORTS

- 16.1 VTA shall prepare and submit all required documents and reports as reasonably specified by the City. In addition, special reports necessary for program operation and evaluation may be required.
- 16.2 VTA shall submit a monthly performance report, within 10 days of the end of a month, to City. This report shall reflect current performance to plan information, note any areas of concern or problems, and include any other information as reasonably appropriate to the performance of the services under this Agreement.

S17 TERMINATION OF AGREEMENT

This Agreement may be terminated in whole or in part under the following circumstances:

17.1 Termination for Convenience

In the event that either VTA or the City determines that continuation of this Contract would not be in its best interests, this Agreement may be terminated in whole or in part by either party. Termination shall be effected by delivery to the VTA or City of a written Notice of Termination. Such notice shall be delivered a minimum of 30 days prior to the effective date of termination, which shall be specified in the notice. VTA shall be compensated pursuant to the terms of this Agreement for all funds earned up to the point of termination.

17.2 Termination for Cause

City or VTA may terminate this Agreement when it has determined that VTA has substantially and materially failed to provide any of the services specified or to comply with any of the substantial and material provisions contained in this Agreement. The party claiming such a substantial and material failure will notify the other party of such unsatisfactory performance in writing. The party receiving notice must correct the deficiencies within the timeframe provided in the notice or the Agreement terminates. In the event of such termination, City shall be liable for payment only for such services as were satisfactorily rendered prior to the effective date of the termination.

17.3 Insufficient Funding

Under conditions of reduced funding, the City reserves the right to immediately terminate this Agreement.

S18 SUSPENSION OF FUNDS

City may suspend payments to VTA under the following circumstances:

- 18.1 Failure to comply in any material respect with either the terms and/or conditions of this Agreement.
- 18.2 Submittal by VTA of reports that are incorrect or incomplete in any substantial and material respect.
- 18.3 Failure of VTA to accept any additional conditions that may be required by law, by executive order, by regulation, or by other policy announced by DOL or the State at any time.

S19 WITHHOLDING OF PAYMENTS/REIMBURSEMENTS

Notwithstanding any other provision of this Agreement, City may elect not to make a particular payment under this Agreement if:

- 19.1 VTA, with or without knowledge, shall have made any misrepresentation of a substantial and material nature with respect to any information furnished to City;
- 19.2 There is pending litigation with respect to the performance by VTA of any of its duties or obligations hereunder which may jeopardize or adversely affect carrying out the project, including any court action or proceeding involving the Federal Bankruptcy Act or assignment for benefit of creditors;
- 19.3 VTA is in default under any substantial and material provision of this Agreement.

S20 DISPUTES

The parties agree to use best efforts to resolve disputes arising from this Agreement by administrative processes and negotiations in lieu of litigation. The parties agree to continue performance unless one party declares an impasse in good faith. If one party declares an impasse then, within 30 days, both parties will meet and confer in good faith to attempt to resolve the impasse. If the parties cannot resolve an impasse, then within a subsequent 30 days, senior management of the parties will meet and confer in good faith to attempt to resolve the dispute. If the parties then remain unable to resolve the dispute then either party may demand mediation before a neutral third party agreeable to both parties.

S21 DISALLOWED COSTS

Except to the extent that the City determines it will assume liability, VTA will be liable for and will repay to City, or deduct from a future Request for Payment, any amounts expended under this Agreement found not to be in accordance with WIOA including, but not limited to, disallowed costs. Such repayment will be from funds (non-federal) other than those received under WIOA. Any such sum shall be deemed delinquent which remains unpaid thirty (30) days following written demand by City for payment.

S22 NOT USED

City will pay VTA for the performance of its services and duties as specified in the Agreement. Payment shall be for allowable costs actually incurred by VTA pursuant to the Agreement during its period of performance.

S23 PROGRAM AGENT POLICIES AND PROCEDURES

23.1 VTA shall comply with City's policies and procedures, and any directive or other bulletin issued which clarify or modify City policies and procedures, except to the extent any such policies, procedures, directives, or other bulletins conflict with VTA's policies and procedures or other legal or contractual obligations, unless VTA's policies are in conflict with State of California requirements pursuant to AB 118.

23.2 If the VTA conducts eligibility determinations for participants in the program, VTA shall assure that only eligible participants are enrolled in the program funded under this Agreement. Failure of this condition shall entitle City to recovery of disallowed costs incurred by any ineligible participant.

S24 AUDIT REQUIREMENTS

City and VTA agree that the CWDB, California Employment Development Department, the California Energy Commission, the Department of General Services (DGS), the California State Auditor, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. City and VTA agree to maintain such records for possible audit for a minimum of three (3) years after final payment. Further, City and VTA agree to include a similar right of the State to audit records and interview staff in any subcontract related to the performance of this Agreement.

S25 RECEIPT OF ADDITIONAL FUNDS

VTA shall report any additional or unexpected funds received in conjunction with the services provided under the terms of this Agreement to the City upon receipt of such funds or notification of award of such funds.

S26 NOT USED

S27 INCIDENT REPORTING

VTA shall be alert for instances of fraud, abuse, and other criminal activity relative to WIOA-funded activities and services. Any such instances detected shall immediately be reported to City's Program Manager, or in his or her absence, City's Manager of Job Seeker Services.

S28 NOT USED

ASSURANCES AND CERTIFICATIONS

1. NONDISCRIMINATION

VTA assures and certifies it will comply with the nondiscrimination and equal opportunity provisions of the following laws:

- Section 188 of the Workforce Innovation and Opportunity Act of 2014 (WIOA), which states that no individual in the United States may, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIOA Title I—financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIOA Title I—funded program or activity.
- Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin.
- Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities.
- The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.
- VTA shall also comply with *Uniform Guidance* 2 CFR Part 200 and Part 2900 and all other regulations implementing the laws listed above.

VTA agrees to comply with the Americans with Disabilities Act (ADA) of 1990, as well as all applicable regulations and guidelines issued pursuant to ADA (42 USC 12101 et seq).

VTA shall include the nondiscrimination and compliance provisions of this section in all subcontracts to perform work under this Agreement.

2. CONFIDENTIALITY

The City, the State of California, and VTA will exchange various kinds of information pursuant to this Agreement. That information will include data, applications, program files, and databases. These data and information are confidential when they define an individual or an employing unit. Confidential information requires special precautions to protect it from unauthorized use, access, disclosure, modification, and destruction. The sources of information may include, but are not limited to, the Employment Development Department, the California Department of Social Services, the California Department of Education, the California Department of Corrections and Rehabilitation, the County Welfare Department(s), the County IV-D Directors Office of Child Support, the Office of

the District Attorney, the California Department of Mental Health, the California Office of Community Colleges, and the Department of Alcohol and Drug Programs.

City and VTA agree that:

- a. Each party shall keep all information that is exchanged between them in the strictest confidence and make such information available to their own employees only on a "need-to-know" basis.
- b. Each party shall provide security sufficient to ensure protection of confidential information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect this information from reasonable unanticipated threats to the security or confidentiality of the information.
- c. The VTA agrees that information obtained under this Agreement will not be reproduced, published, sold or released in original or in any other form for any purpose other than those specifically identified in this Agreement without the permission of City, which permission City may not unreasonably withhold.
 - 1) Aggregate Summaries: All reports and/or publications developed by the VTA based on data obtained under this Agreement shall contain confidential data in aggregated or statistical summary form only. "Aggregated" refers to a data output that does not allow identification of an individual or employer unit.
 - 2) Publication: Prior to publication, VTA shall carefully analyze aggregated data outputs to ensure the identity of individuals and/or employer units cannot be inferred pursuant to Unemployment Insurance Code Section 1094(c). Personal identifiers must be removed. Geographic identifiers should be specified only in large areas and as needed, and variable should be recorded in order to protect confidentiality.
 - 3) Minimum Data Cell Size: The minimum data cell size or derivation thereof shall be three participants for any data table released to outside parties or to the public.
- d. Each party agrees that no disaggregate data, identifying individuals or employers, shall be released to outside parties or the public except as required by law or court order.
- e. The VTA shall notify City's designated data security representative (see below) by telephone of any actual or attempted information security incidents within 24 hours of initial detection. Information security incidents include but are not limited to any event (intentional or unintentional) that causes the loss, damage, or destruction, or unauthorized access, use, modification, or disclosure of information assets. VTA shall reasonably cooperate with City in any investigation of security incidents. The system or device affected by an incident and containing confidential data obtained in the administration of this program shall be immediately removed from operation upon confidential data exposure or a known security breach. It shall remain removed from operation until correction and mitigation measures are applied. If VTA learns of a breach in the security of the system which contains confidential data obtained under this Agreement, then VTA must provide notification to individuals pursuant to Civil Code Section 1798.82, if applicable.
- f. VTA shall provide for the management and control of physical access to information assets (including personal computer systems, computer terminals, mobile computing devices, and various electronic storage media) used in performance of this Agreement. This shall include but is not limited to security measures to physically protect data, systems, and workstations from unauthorized access and malicious activity; the

- prevention, detection, and suppression of files; and the prevention, detection, and minimization of water damage.
- g. Each party shall provide its employees with access to confidential information with written instructions fully disclosing and explaining the penalties for unauthorized use or disclosure found in section 1798.55 of the Civil Code, section 502 of the Penal Code, section 2111 of the Unemployment Insurance Code, section 10850 of the Welfare and Institutions Code and other applicable local, state and federal laws.
 - h. Each party shall (where appropriate) store and process information in electronic format in such a way that unauthorized persons cannot reasonably retrieve the information by means of a computer.
 - i. Each party shall promptly return to the other party confidential information when its use ends or destroy the confidential information utilizing an approved method of destroying confidential information by shredding, burning, or certified or witnessed destruction. Magnetic media are to be degaussed or returned to the other party.
 - j. If VTA enters into an agreement with a third party to provide services that VTA is obligated to provide under this Agreement, VTA agrees to include these data and security and confidentiality requirements in the agreement with the third party. In no event shall said information be disclosed to any individual outside of that third party's authorized staff, subcontractor(s), service providers, or employees.
 - k. Each party shall designate an employee who shall be responsible for overall security and confidentiality of its data and information systems and each party shall notify the other of any changes in that designation. As of this date, the following are those individuals:

For the City:

Luther Jackson, Program Manager, (408) 730-7832

For the VTA:

Steve Jovel, Assistant Superintendent, Apprenticeship Coordination, (408) 321-5972

3. VTA makes the following further assurances and certifications:

- a. VTA certifies, by executing this Agreement, that neither it nor its principals are listed on the government-wide Excluded Parties List System in the System for Award Management (SAM). The list in SAM contains the names of persons or entities debarred, suspended, or otherwise excluded by agencies, as well as persons or entities declared ineligible under statutory or regulatory authority.
- b. VTA, by signing this Agreement, does swear under penalty of perjury that it has not failed to satisfy any major condition in a current or previous agreement with the Department of Labor, State of California, or City and has not failed to satisfy conditions relating to the resolution of a final finding and determination, including repayment of debts.

- c. VTA certifies that it has in place a policy compliant with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8355) and will provide a drug-free workplace.
- d. To the extent applicable to this program, VTA will comply with the requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646), which provides for fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs.
- e. It will comply with the provisions of the Hatch Act, which limits the political activity of certain State and local government employees as appropriate.
- f. VTA will comply with the requirements that no program under the Act involve political activities.
- g. VTA certifies that it has established safeguards to prohibit employees from using their positions for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- h. VTA certifies that this Agreement does not provide for the advancement or aid to any religious sect, church or creed, or sectarian purpose nor to any institution controlled by same. Participants in the program will not be employed on the construction, operation, or maintenance of that part of any facility that is used for religious instruction or worship. In addition, the employment or training of participants in sectarian activities is prohibited.
- i. Funds provided through this Agreement shall only be used for activities that are in addition to those which would otherwise be available in the area in the absence of such funds.
- j. If the amount of the Agreement exceeds \$100,000, the VTA hereby assures and certifies to the lobbying restrictions at *Uniform Guidance* 2 CFR Part 200 and 2 CFR Part 2900:

No Federal appropriated funds have been paid or will be paid, by or on behalf of VTA, 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 over \$100,000.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, VTA will complete and

submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance is placed when entering into this Agreement and is a prerequisite for entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- k. VTA shall comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).
- l. If the amount of the Agreement exceeds \$150,000, VTA agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7471q), and the Federal Water Pollution Control Act as amended (33 USC 1251-1387).
- m. If VTA is a corporation, certifies it is registered with the Secretary of State of the State of California.
- n. It shall take appropriate steps to provide for increased participation of qualified special disabled and Vietnam-era veterans with special emphasis on qualified veterans who served in the Indo-China theatre on or after August 5, 1964, and on or before May 7, 1975, assuring adequate training and employment opportunities for such veterans in its programs.
- o. It shall to the maximum extent feasible coordinate services with the appropriate Veterans Administration Facilities in utilizing the apprenticeship and other on-the-job training activities available under Section 1787 of Title 38 U.S. Code, and it shall consult with the appropriate apprenticeship agency concerning any training activities in apprenticeship occupations.
- p. It possesses legal authority to apply for the sub-award. Documentary proof of the action authorizing VTA to apply for the sub-award shall be provided to the City upon demand.
- q. Appropriate standards for health and safety in work and training situations will be maintained.
- r. It will provide workers' compensation protection to participants in on-the-job training or work experience, including medical, accident and income maintenance insurance, at the same level and to the same extent as others similarly employed who are covered by a workers' compensation statute or system. Where coverage of similarly employed, employees is provided through a self-insurance system, coverage of any participants shall also be provided through that system. Where participants are employed or engaged in any program where others are similarly employed and not covered by an

applicable workers' compensation statute, participants shall be provided with medical and accident insurance coverage provided under the applicable State workers' compensation statute.

- s. Institutional skill training and training on-the-job shall only be for occupations in which the City has determined there is reasonable expectation for employment.
- t. NOT USED
- u. No program shall impair existing contracts for services or collective bargaining Agreements, unless the employer and the labor organization concur in writing with respect to any elements of the proposed activities which affect such Agreement. In addition, no funds awarded under this Agreement shall be used to assist, promote, or deter union organizing.
- v. No participant who is engaged in this program may be charged a fee for placement or referral services.
- w. No funds awarded under this Agreement shall be used to encourage or induce the relocation of an establishment or part thereof, which results in a loss of employment for any employee at the original location.
- x. VTA shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

BUDGET

VTA will be reimbursed for project-related program costs and activities. The budget under this Agreement shall not exceed a total of \$125,000 for the term of this Agreement, in accordance with the following:

Category	Description	Total
A. Program Costs	Salary and benefits costs of a dedicated apprenticeship staff person to develop and possibly enhance current apprenticeship programming and structures. *Salary estimate is \$59.66 per hour plus 57% benefits rate	\$125,000.00
Total		\$125,000.00

Any changes requested for the budget shall be submitted by written request to the City and are subject to City's written approval.

Accrued expenditures (not yet paid) must be reported monthly on the Request for Payment.

METHOD OF PAYMENT

This Agreement is a cost reimbursement Agreement. Reimbursement for 100% of program costs and activities can be invoiced as completed on a monthly basis using the Request for Payment form enclosed with this Agreement. Requests shall be submitted by the 10th of the month following the month for which reimbursement is being requested.

VTA shall provide a monthly fiscal report with each Request for Payment consisting of general ledger documentation and source documentation to support amounts claimed on the Request for Payment form.

Description of work performed should relate to broad tasks described in the project overview of Exhibit A.

Failure to submit required documentation and forms may cause a delay in payment.

CITY OF SUNNYVALE – NOVA WORKFORCE SERVICES DEPARTMENT
REQUEST FOR PAYMENT

1. Name: Valley Transportation Authority
2. Mailing Address: 3331 North First Street
San Jose, CA 95134
3. Request Period: From _____ to _____
4. Payment is requested for the following budget items (attach backup documentation):
 - a. Program costs \$_____ (attach documentation)
5. **Current Request** \$
6. Cumulative Requests \$_____ (NOVA to calculate)
7. Accrued Expenditures (not yet paid): \$_____

CERTIFICATION:

I CERTIFY that to the best of my knowledge and belief this report is true in all aspects and that all disbursements have been made for the purpose and conditions of this grant.

Authorized Signature	Title	Date
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SEND TO:

NOVA Workforce Board, Attn: Fiscal, 505 W. Olive Ave., Suite 550, Sunnyvale, CA 94086
Or email pdf to: **ljackson@novaworks.org**

NOVA WORKFORCE SERVICES USE ONLY

Cash reimbursement for the period _____ is recommended in the amount of \$_____.

By: _____ Date: _____

Approved By: _____ Date: _____

Budget Reference No.: **510451-5242**