



## NAPA VALLEY TRANSPORTATION AUTHORITY COVER MEMO

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### **SUBJECT**

Purchase Order 24-P4028 to Purchase Electric Vehicle Charging Stations from Contractor's Electrical Distributors (CED) for Future Zero Emission Buses

### **STAFF RECOMMENDATION**

That the Napa Valley Transportation Authority (NVTA) Board authorize the Executive Director, or designee, to execute and make minor modifications to Purchase Order 24-P4028 (Attachment 1) to purchase four (4) ChargePoint Express Plus Power Link Electric Vehicle Charging Stations, in an amount not to exceed \$160,000.

### **EXECUTIVE SUMMARY**

NVTA received a Low and No Emissions grant award from the Federal Transit Administration to purchase six (6) 40 ft electric vehicles and charging stations. A contractor will install these Power Links and connect them to a centralized set of Power Blocks that were purchased in 2023 as part of the last electric vehicle charging station installation. The chargers will be installed in the second quarter of 2025 in time for vehicle delivery.

### **FISCAL IMPACT**

Is there a Fiscal Impact? Yes, up to \$160,000; \$29,000 will be funded by the Federal Transit Administration Lo-No Emission grant funds and \$131,000 by Transportation Development Act (TDA) funds. NVTA is expecting to receive a \$125,000 rebate from Pacific Gas and Electric (PG&E) once the chargers are installed which will help offset the TDA funds. This rebate is the result of NVTA's participation in the PG&E Fleet Ready Program.



## NAPA VALLEY TRANSPORTATION AUTHORITY Board Agenda Memo

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**TO:** Board of Directors  
**FROM:** Kate Miller, Executive Director  
**REPORT BY:** Rebecca Schenck, Program Manager – Public Transit  
(707) 259-8636 / Email: [rschenck@nvta.ca.gov](mailto:rschenck@nvta.ca.gov)  
**SUBJECT:** Purchase Order 24-P4028 to Purchase Electric Vehicle Charging Stations from Contractor's Electrical Distributors (CED) for Future Zero Emission Buses

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### **RECOMMENDATION**

That the Napa Valley Transportation Authority (NVRTA) Board authorize the Executive Director, or designee, to execute and make minor modifications to Purchase Order 24-P4028 (Attachment 1) to purchase four (4) ChargePoint Express Plus Power Link Electric Vehicle Charging Stations, in an amount not to exceed \$160,000.

### **COMMITTEE RECOMMENDATION**

None

### **BACKGROUND**

NVRTA received a Federal Transit Administration grant award from the Federal Transit Administration for purchasing six (6) 40 ft electric vehicles and charging stations. The Board approved the purchase of six (6) Gillig electric vehicles in May 2024 and now this action will allow for the purchase of the corresponding chargers. The Express Plus Power Links adhere to SAE J1772 standard and have been proven in other deployments to charge Gillig vehicles.

### **ALTERNATIVES**

The Board could decide not to approve Purchase Order 24-P4028 and wait to purchase the chargers. In that case, the chargers would not be installed when the six buses arrive. NVRTA would have to charge them in rotation using existing chargers, making it impossible to charge every vehicle every night.

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**STRATEGIC GOALS MET BY THIS PROPOSAL**

Goal 3: Use taxpayer dollars efficiently.

Acquiring the chargers now will allow for the new buses to be charged nightly utilizing off peak electrical rates efficiently.

**ATTACHMENT(S)**

(1) Purchase Order 24-P4028



**DRAFT**

# Purchase

Napa Valley  
Transportation  
Authority  
625 Burnell Street  
Napa, CA 94559

Phone: 707-259-8631  
Fax: 707-259-8638  
www.nvta.ca.gov

## VENDOR

CED-CONTRACTORS ELECTRICAL DISTRIBUTORS  
1103 MONTAGUE EXPRESSWAY  
MILPITAS CA 95035  
POC: KEVIN DONOHOE, EV Sales  
T: 415.385.0937  
E: kdonohoe@yourced.com

## Bill To:

**NVTA | Accounts Payable**  
**ap@nvta.ca.gov**  
625 Burnell Street  
Napa, CA 94559-2912

**Purchase Order #: 24-P4028**

**Date:** 09/30/24

**Vendor ID:**

## Ship To:

**NVTA - VINE BUS MAINTENANCE FACILITY**  
**101 SHEEHY COURT**  
**NAPA, CA 94558**  
POC: David Zenteno, Manager-Maintenance  
david.zenteno@transdev.com | 707.251.1098

| Requested By | Ship Date | Ship Via | FOB    | Buyer  | Terms  | Tax ID     |
|--------------|-----------|----------|--------|--------|--------|------------|
| SCHENCK      | TBD ARO   | -        | ORIGIN | KULICK | Net 30 | 68-0471080 |

| QTY | Item # | Unit | Description  | Unit Price | Total |
|-----|--------|------|--|------------|-------|
|     |        |      | <b>JOB NAME: NVTA-ADD STATIONS</b>                             |            |       |
|     |        |      | <b>NVTA PROJ: EV CHARGERS- E-BUS- BUS MAINTENANCE FACILITY</b> |            |       |
| 4   |        | EA   | <b>ChargePoint Express Plus 1000, EV-Charging Station,</b>     |            |       |
|     |        |      | to include engineering design services, review services,       |            |       |
|     |        |      | 2-year fleet software subscription services, activation,       |            |       |
|     |        |      | commissioning , and Assure Warrant, see details                |            |       |
|     |        |      | attached.  |            |       |
|     |        |      | As per Quote Q1179440 Rev #002 dated 09/20/24- DONOHOE         |            |       |
|     |        |      | <b>CONTINUED ON PAGE 2 OF 22</b>                               |            |       |

## NOTICE OF INCLUDED TERMS AND CONDITIONS

This purchase order may be a federally funded contract and as such, certain mandatory terms and conditions may apply to this purchase order. These provisions include, **but are not limited to** the provisions of Buy America 49 U.S.C. §5323(j), 49 C.F.R. Part 661; Cargo Preference 46 U.S.C. § 55305, 46 C.F.R. Part 381; Fly America 49 U.S.C. § 40118, 41 C.F.R. §§ 301-10.131 through 301-10.143; U.S. DOT Third Party Procurement Regulations 49 C.F.R. §18.36 or 40 C.F.R. §§19.40 through 19.48, FTA Circular 4220.1F (including all mandated terms and conditions contained in Appendix D-4) and FTA Master Agreement FTA MA(31).

|                  |                     |
|------------------|---------------------|
| <b>Subtotal</b>  | \$136,847.96        |
| <b>Tax 7.75%</b> | \$10,869.22         |
| <b>Ship</b>      | \$ 3,400.00         |
| <b>Other</b>     | -/-                 |
| <b>TOTAL</b>     | <b>\$151,117.18</b> |

**THIS ORDER WILL BECOME VALID UPON RECEIPT OF VENDOR ACCEPTANCE.**

## VENDOR ACCEPTANCE

Vendor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration herein.

## ORDER AWARDED AND ISSUED BY

Individual listed below is hereby authorized to award ordered material/services as specified, or incorporated by reference herein, on behalf of the Napa Valley Transportation Authority.

NAME AND TITLE

DATE

KATE MILLER, Executive Director

DATE

## FOR INTERNAL USE ONLY

FUND APPROPRIATION: 8309000-55400-224301



CONTINUATION SHEET

PAGE 2 OF

| ITEM  | QTY | UNIT | DESCRIPTION   | UNIT PRICE   | TOTAL        |
|---|-----|------|---|--------------|--------------|
| <b><u>CHARGEPOINT EXPRESS PLUS 1000</u></b> |     |      |   |              |              |
| 01  | 04  | EA   | <b>CHAPO EXPP-PL1021B-5A1S1-5A1S1-FTA BUY</b><br><b>Express Plus Power Link PL1000</b> , North America, 2x CCS1 200A 4.5m cable, includes 2 Holsters, 2.4m Cable Management Kit, Pedestal, 200mm (8") Touch Display, RFID Reader, Cellular/WiFi, UL listed, single input, 1-Year Warranty, FTA Buy America compliant.   | \$ 25,746.41 | \$102,985.64 |
| 02  | 04  | EA   | <b>CHAPO DC-UNIVERSAL-CMT-METRIC</b><br>Bracket for Power Link  | \$ 0.00      | \$ 0.00      |
| 03  | 09  | EA   | <b>CHAPS CPCLD-FLEETENT-DC-2</b><br><b>Fleet Enterprise Cloud Plan Subscription</b> , includes Advanced Station Management features such as: Automatic Software Updates, Fleet Management features including: Access Control and Pricing & Automatic Payment Collection, as well as advanced energy and power management features which include: Time of Use Power Sharing and Energy Management APIs. Real-time dashboards and reports provided for applicable features including 15 min meter data readings and associated advanced energy reports. | \$ 1,757.36  | \$ 14,058.88 |
| 04  | 09  | EA   | <b>CHAPS CPSUPPORT-ACTIVE</b><br><b>Initial Station Activation &amp; Configuration</b> , includes activation of cloud services and configuration of radio groups, custom groups, connections, access control, visibility control, pricing, reports and alerts. One time initial service per station.  | \$ 312.00    | \$ 1,248.00  |
| 05  | 04  | EA   | <b>CHAPS EXPP-PL1000- COMMISSIONING</b><br><b>Commissioning of Express Plus Power Link 1000</b> , includes on-site validation of electrical capacity, customer side transformers, panels, breakers, wiring, cellular coverage to meet all ChargePoint (CP) and local code requirements. Verifying and testing of installation, ensure station is connected to CP network, completing software updates and pairing configuration.  | \$ 760.53    | \$ 3,042.12  |

Configure station and apply policies according to NVTA's specifications. A final Commissioning Report will be provided to NVTA.

*Note: If commissioning cannot be performed due to site or installation deficiencies for which CP is not responsible, NVTA will incur a rescheduling fee to cover redeployment costs.*

|    |    |    |   |             |             |
|----|----|----|---|-------------|-------------|
| 06 | 04 | EA | <b>CHAPS EXPP-PL1000-DUAL-ASSURE-2</b><br><b>2-Year Assurance Warranty Plan for Express Plus Power Link 1000</b> , includes parts and Labor warranty, remote technical support services, on-site repairs as needed, unlimited configuration changes, and reporting. | \$ 2,671.58 | \$10,686.32 |
| 07 | 01 | EA | <b>MISC CPS - Engineering Design</b><br>Design drawing sets prepared by professional engineer contracted by customer to ensure compliance with ChargePoint stations for optimal make ready.   | \$ 2,345.00 | \$ 2,345.00 |
| 08 | 01 | EA | <b>MISC CPS - Engineering Review</b><br>Review of design drawing sets prepared by professional engineer contracted by customer to ensure compliance with ChargePoint stations for optimal make ready.   | \$ 2,482.00 | \$ 2,482.00 |
| 09 | 01 | EA | <b>FRT – Shipping and Handling</b>  | \$ 3,400.00 | \$ 3,400.00 |

**SUBTOTAL** **\$140,247.96**

TAX – Napa 7.75% \$ 10,869.22

**TOTAL** **\$151,117.18**

**INSTALLATION LOCATION:** Vine Bus Maintenance Facility  
101 Sheehy Court, Napa CA 94558

**WARRANTY:** See items 01 and 06

**NVTA Project Manager:** Rebecca Schenck, Manager – Public Transit  
[rschenck@nvta.ca.gov](mailto:rschenck@nvta.ca.gov) | 707.259.8636

# ChargePoint® Express Plus

A flexible DC fast charging platform that grows with you.



## Express Plus Specifications

### Express Plus Power Module

#### Express Plus Power Module Output

|                             |           |
|-----------------------------|-----------|
| Max Output Power            | 40 kW     |
| Max Output Current          | 100 A     |
| Power Conversion Efficiency | Up to 96% |

ChargePoint, Inc. reserves the right to alter product offerings and specifications at any time without notice, and is not responsible for typographical or graphical errors that may appear in this document

|              |                   |
|--------------|-------------------|
| Power Factor | 0.99 at full load |
|--------------|-------------------|

### Express Plus Power Module Specifications

|                         |   |
|-------------------------|---|
| Power Module Dimensions | 430 mm (H) x 130 mm (W) x 760 mm (L) (1'5" x 5" x 2'6") |
| Power Module Weight     | 45 kg (98.5 lb.)  |
| Power Module Cooling    | Liquid Cooled Technology                                |
| Harmonics               | iTHD < 5% (Complies with IEEE 519)                      |

## Express Plus Power Block

### Express Plus Power Block Input

|                              |   |
|------------------------------|---|
| Input Rating                 | 3-phase, 400-480Y VAC, 310-260 A 50/60 Hz (200 kW)<br>Optional: 3-phase, 400-480Y VAC, 255-210 A 50/60 Hz (160 kW),<br>3-phase, 400-480Y VAC, 220-188 A 50/60 Hz (120 kW) |
| Wiring                       | L1, L2, L3, Earth   |
| Short Circuit Current Rating | 65 kA   |

### Express Plus Power Block Output

|                                   |  |
|-----------------------------------|--|
| Max Output Power                  | 200 kW<br>Optional: 160 kW, 120 kW   |
| Output Voltage, Charging          | 200 V – 1000 V   |
| Max Current per Output            | 200 A, 250 A, 300 A, 350 A, 500 A*   |
| Number of Stations Served         | One Power Block can serve up to 2 Power Link stations. Additional Power Blocks can be added to serve more stations or increase power output. |
| Max Power Modules per Power Block | 5  |

\* Subject to site configuration and installed stations

### Express Plus Power Block Specifications

|                              |   |
|------------------------------|---|
| Power Block Dimensions       | 2191 mm (H) x 988 mm (W) x 1039 mm (L) (7'3" x 3'3" x 3'5") |
| Power Block Weight           | 455 kg (1000 lbs.) without Power Modules                    |
| Power Block Enclosure Rating | Type 3R, IP56   |

## Express Plus Power Link

### Express Plus Power Link Output

|                  |  |
|------------------|--|
| Max Output Power | 120 kW, 160 kW, 200 kW, 250 kW, 300 kW, 350 kW with Power Blocks |
|------------------|--|

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|                              |  |
|------------------------------|--|
| Output Voltage, Charging     | 200 V – 1000 V   |
| CCS1 Max Output Current**    | Option 1: 200 A continuous with Power Blocks<br>Option 2: 375 A peak, 350 A continuous with Power Blocks             |
| CCS2 Max Output Current**    | Option 1: 250 A continuous with Power Blocks<br>Option 2: 375 A peak, 300 A continuous with Power Blocks             |
| CHAdeMO Max Output Current** | Option 1: NA & EU: 200 A continuous with Power Blocks<br>Option 2: NA: 140 A, EU: 125 A continuous with Power Blocks |

\*\*Availability may vary

## Express Plus Power Link Specifications

|                           |   |
|---------------------------|---|
| Station Dimensions        | 2400mm (H) x 720mm (W) x 280mm (D) (7'11" x 2'5" x 11")   |
| Station Footprint         | 965mm (W) x 635mm (D) (3'2" x 2'1") with Cable Management Kit   |
| Station Weight            | 250 kg (550 lbs)  |
| Number of Connectors      | Up to 2 connectors per station  |
| Supported Connector Types | CHAdeMO, CCS1 (SAE J1772™ Combo), CCS2 (IEC 61851-23)   |
| Cable Length              | Standard 4.5 m (15') with Cable Management Kit (CMK). <sup>*</sup> Optional lengths of 7.6 m (25') and 10 m (33') also available. |
| Station Enclosure Rating  | Type 3R, IP56   |
| Locking Holster           | Optional  |
| Mounting Type             | Ground, Wall, Overhead  |

<sup>\*</sup>Horizontal reach to typical vehicle charging port is 3.6 m (12 ft)

## Functional Interfaces

|                |   |
|----------------|---|
| LCD Display    | Full-color 200 mm (8") LCD display (optional)   |
| Authentication | RFID: ISO 15693, ISO 14443, NEMA EVSE 1.2-2015 (UR)<br>Tap to Charge (NFC on Apple & Android)<br>15118-2 (EIM)<br>Remote: Mobile and in vehicle (if supported by vehicle) |

## Connectivity Features

|                                   |   |
|-----------------------------------|---|
| Local Area Network                | 2.4 GHz and 5 GHz WiFi (802.11 b/g/n)                           |
| Wide Area Network                 | 4G LTE  |
| Supported Communication Protocols | OCPP 2.0  |
| Service and Maintenance           | Remote system monitoring, diagnostic, and proactive maintenance |

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## Safety and Operational Ratings

|                              |  |
|------------------------------|--|
| Vehicle Safety Communication | CHAdMO – JEVS G104 over CAN, CCS1 – SAE J1772 over PLC and CCS2 — IEC 61851-23   |
| Plug-In Detection            | Power terminated per JEVS G104 (CHAdMO), SAE J2931 (CCS1) and IEC 61851-23 (CCS2)  |
| Safety Compliance            | Complies with UL 2202, UL 2231-1, UL 2231-2, CSA 107.1<br>Shipped product will be UL and cUL listed.<br>Complies with IEC 61851-1 and IEC 61851-23. Shipped product will be CE marked. |
| Surge Protection             | Tested to IEC 61000-4-5, Level 5 (6 kV @ 3,000A). In geographic areas subject to frequent thunderstorms, supplemental surge protection at the service panel is recommended.            |
| EMC Compliance               | U.S and Canada: FCC 15 subpart A Class A; EU: EN55011, EN55022 and IEC61000-6-3 Class B  |

## Generic Specifications

|                       |   |
|-----------------------|---|
| Operational Altitude  | <3,000 m (<9,800 ft)                    |
| Operating Temperature | -40°C to 50°C (-40°F to 122°F)          |
| Storage Temperature   | -40°C to 70°C (-40°F to 158°F)          |
| Operating Humidity    | Up to 95% @ 50°C (122°F) non-condensing |

## Energy Management Features

|                          |   |
|--------------------------|---|
| Dynamic Power Management | Allows a fixed maximum power output per station or lets the system dynamically manage the power distribution per station. |
| Remote Energy Management | Manage output power via the ChargePoint Admin Portal, API, and Open ADR 2.0b VEN.   |

## Hardware Ordering Information

The order codes below represent common product configurations. Other product options are available upon request. Please contact ChargePoint Sales for information and order codes. All SKU's displayed include standard cable management and mounting kit. Note, Power Link and Power Block current ratings must match. Eg. 250 A with 250A, 200 A with 200 A.

| Description       |  | Order Code                                 |
|-------------------|--|--|
| Commercial Models | Express Plus Power Block, 350 A or 300 A rated output  | EXPP-PB1000-350A-PD or EXPP-PB1000-300A-PD |
|                   | Express Plus Power Link, North America version, 1x CCS1 350 A cable, 1x CHAdMO 200 A cable, Pedestal, with display | EXPP-PL1021B-5A1S1-2A3S1                   |

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|              |   |  |
|--------------|---|--|
|              | Express Plus Power Link, Europe/UK version, 1x CCS2 300 A cable, 1x CHAdeMO 200 A cable, Pedestal, with display | EXPP-PL1121B-4A2S1-2A3S1                   |
| Fleet Models | Express Plus Power Block, 250 A or 200 A rated output   | EXPP-PB1000-250A-PD or EXPP-PB1000-200A-PD |
|              | Express Plus Power Link NA Version. 1x CCS1 200A 4.5m cable, Pedestal, No display.                              | EXPP-PL1011X-2A1S1                         |
|              | Express Plus Power Link NA Version. Same as above but with 2x CCS1 Connectors                                   | EXPP-PL1021X-2A1S1-2A1S1                   |
|              | Express Plus Power Link Europe/UK Version. 1x CCS2 250A 4.5m cable, Pedestal, No display.                       | EXPP-PL1111X-3A2S1                         |
|              | Express Plus Power Link Europe/UK Version. Same as above but with 2x CCS2                                       | EXPP-PL1121X-3A2S1-3A2S1                   |

## Hardware Ordering Information, Cont.

| Description                 |  | Order Code  |
|-----------------------------|--|---|
| Other Connector Options     | Cable connectors available include CCS1, CCS2, and/or CHAdeMO. Cables can be ordered with a single or a combination, as well as lengths and amperage depending on application. | Please contact ChargePoint Sales for assistance in ordering |
| Power Module                | EXPP Power Module  | EXPP-PM-40kW  |
| Mounting & Template Options | Mounting kits and templates for various mounting are available   | Please contact ChargePoint Sales for assistance in ordering |
| Buy America                 | Buy America (FTA & FHWA) options available upon request  | Add -FTA or -FHWA to part numbers above                     |

## Software & Services Ordering Information

| Description   |  | Order Code               |
|---|--|--------------------------|
| ChargePoint Enterprise Cloud Plan (Commercial) <i>Note: One token per vehicle. Station activation is included in this plan.</i> |  | CPCLD-ENTERPRISE-EXPP-n* |
| ChargePoint Enterprise Cloud Plan (Fleet) <i>Note: One token per vehicle. Station activation is included in this plan.</i>      |  | CPCLD-FLEETENT-EXPP-n*   |
| ChargePoint Assure® — Prepaid Assure Plan for an Express Plus Single Cable station.   |  | EXPP-PL1000-SC-ASSURE-n* |
| ChargePoint Assure® — Prepaid Assure Plan for an Express Plus Dual Cable station.   |  | EXPP-PL1000-DC-ASSURE-n* |
| ChargePoint Assure® — Prepaid Assure Plan for Express Plus Power Block.   |  | EXPP-BLOCK-ASSURE-n*     |

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|   |                           |
|---|---------------------------|
| Commissioning Service (Required per Power Block): includes on-site validation and inspection of electrical, mechanical, installation, wiring and civil parameters for the Express Plus Power Block. | EXPP-BLOCK-COMMISSIONING  |
| Commissioning Service (Required per Power Link): includes on-site validation and inspection of electrical, mechanical, installation, wiring and civil parameters for the Express Plus Power Link.   | EXPP-PL1000-COMMISSIONING |

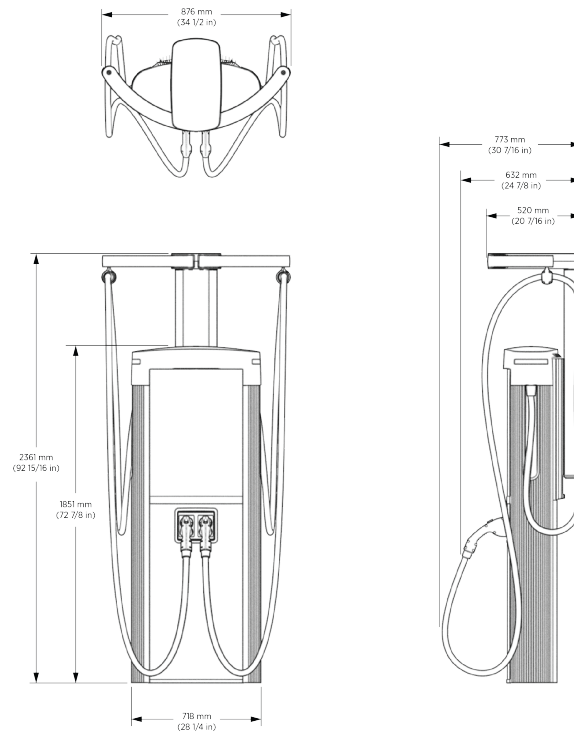
Note: All Express Plus Power Link stations require a cloud plan.

\*Substitute *n* for desired years of service (1, 2, 3, 4 or 5 years). Includes parts and labor warranty, remote technical support, on-site repairs when needed, unlimited configuration changes, and reporting.

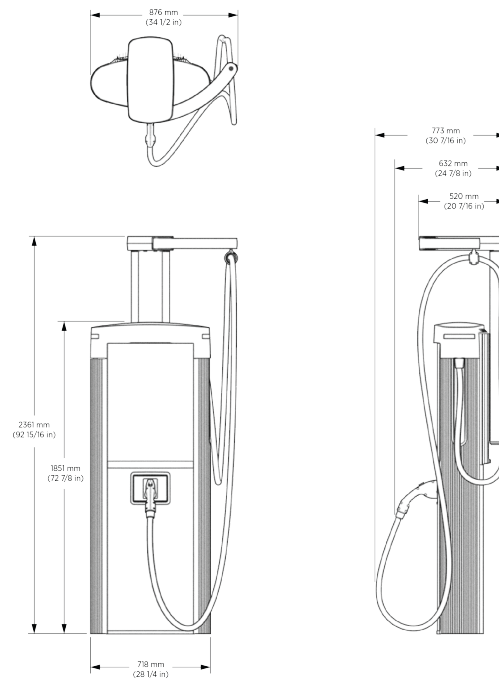


## Architectural Drawings

### Express Plus Power Link, No Display, Dual Connectors (Fleet Option Only)

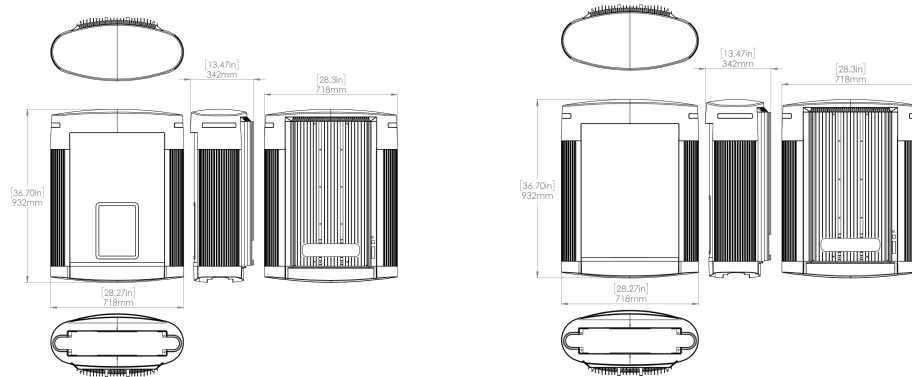


### Express Plus Power Link, No Display, Single Connector (Fleet Option Only)

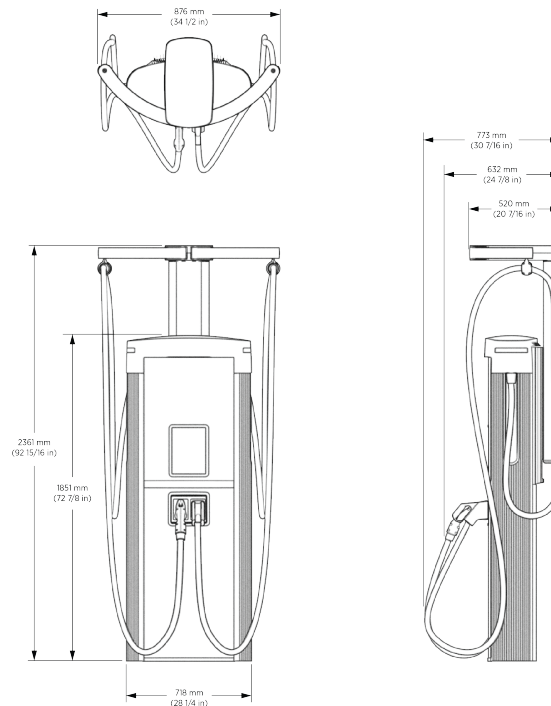


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## Express Plus Overhead Mounting Option with or without screen (Fleet Only)

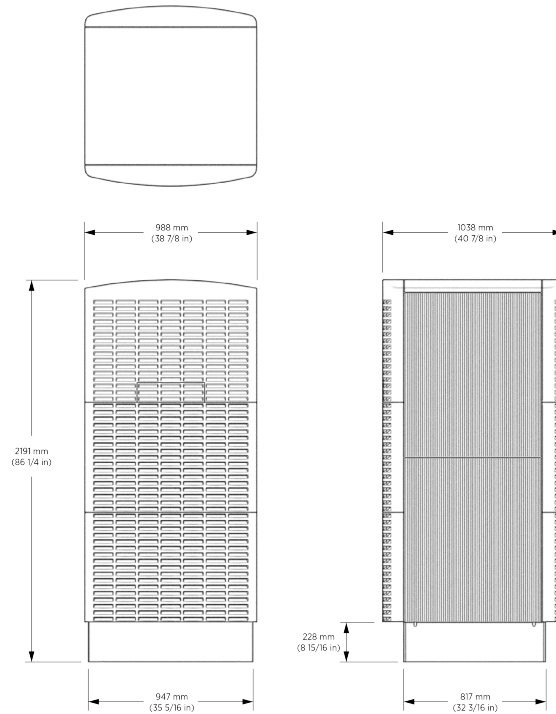


## Express Plus Power Link, Commercial Option with Screen

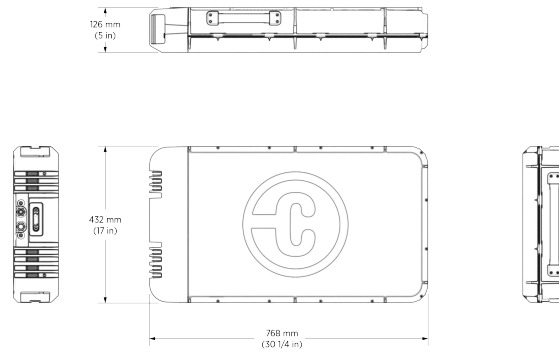


## Express Plus Power Block

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## Express Plus Power Module



ChargePoint, Inc.  
240 East Hacienda Avenue  
Campbell, CA 95008-6617 USA  
+1.408.841.4500 or  
+1.877.370.3802 US and Canada toll-free  
chargepoint.com

Contact Us  
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Call +1.408.705.1992  
Email [sales@chargepoint.com](mailto:sales@chargepoint.com)

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\* Listed by Underwriters Laboratories Inc. 

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## REQUIRED FEDERAL CONTRACT CLAUSES

### 1. AMENDMENTS

Any changes in the activities to be performed under this Agreement shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the NVT A Executive Director or a designated representative and CONTRACTOR. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed amendment.

### 2. TERMINATION

Contractor's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, acts of God, governmental restrictions, power failures, or damage or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement, and may be cause for termination of the Agreement. (49 USC 5323 Sec 11)

### 3. RETENTION OF RECORDS

Contractor agrees to keep, in accordance with generally accepted accounting principles, all records pertaining to the project for audit purposes for a minimum of three (3) years following final payment to Contractor or four (4) years following the fiscal year of the last expenditure under this Agreement, whichever is longer, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until NVT A, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. (49 USC 5323)

### 4. AUDITS

Contractor agrees to grant NVT A or any agency that provides NVT A with funds for the Project, including but not limited to, the U.S. Department of Transportation, FTA, the Comptroller General of the United States, the State, and their authorized representatives access to Contractor's books and records for the purpose of verifying that funds are properly accounted for and proceeds are expended in accordance with the terms of the Agreement. All documents shall be available for inspection during normal business hours at any time while the Project is underway, and for the retention period specified herein. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (49 USC 5323 (g))

Contractor further agrees to include in all its third-party contracts hereunder a provision to the effect that the contractor agrees that NVT A, the U.S. Department of Transportation, FTA, the Comptroller General of the United States, the State, or any of their duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, during normal business hours, for the term specified above. The term "contract" as used in this clause excludes agreements not exceeding \$25,000.

### 5. LICENSE TO WORK PRODUCTS (reserved)

### 6. EQUAL EMPLOYMENT OPPORTUNITY/ CIVIL RIGHTS

In accordance with Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132; and 49

U.S.C. § 5332 for federally funded projects, Contractor agrees that it will not, on the grounds of race, religious creed, color, national origin, age, physical disability, or sex, discriminate or permit discrimination against any employee or applicant for employment.

Further Contractor agrees to follow regulations as set forth under 41 CFR Part 60-1.4 (b) that

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in

## REQUIRED FEDERAL CONTRACT CLAUSES

Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

*Provided*, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

### 7. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Napa Valley Transportation Authority to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offers, including those who qualify as a DBE. A DBE project goal of 0 percent has been established for this project. NVTA has an overall established DBE goal of 2.6 percent. The bidder/offers shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offers will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offers's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 15 days from the receipt of each payment the prime contract receives from NVTA. The prime contractor agrees further to return retainage payments to each subcontractor within thirty days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the NVTA. This clause applies to both DBE and non-DBE subcontracts.

Failure to comply with the terms of this provision may result in any or all of the following actions including but not limited to:

1. A finding of material breach of contract

2. Suspension of payment of invoices

3. Bringing to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties result) provided in 26.109.

The obligation of the bidder/offers is to make good faith efforts. The bidder/offers can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26. Forms 1 and 2 should be provided as part of the solicitation documents.

### 8. VETERANS PREFERENCE

As required under 49 U.S.C. § 5325(k) Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

### 9. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

In the event that this project is funded by FTA in whole or in part, all contractual provisions required by DOT, as set forth in FTA Circular 4220.1F 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. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NVTA requests which would cause NVTA to be in violation of the FTA terms and conditions.

10. AMERICANS WITH DISABILITIES ACT REQUIREMENTS  
Contractor will comply with 49 CFR Parts 27, 37, and 38, implementing and Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, 29 USC 794, as amended.

### 11. ENERGY CONSERVATION PLAN

Contractor shall comply with all 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 6321) and Federal requirements under 49 CFR 662 Subpart C.

### 12. DEBARMENT

Contractor certifies that neither it nor any of its participants, principals, or subcontractors is or has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as they are defined in 49 CFR Part 29, by any Federal agency or department. Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by NVTA. If it is later determined that the bidder or proposer

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knowingly rendered an erroneous certification, in addition to remedies available to NVTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### 13. CLEAN AIR AND WATER POLLUTION ACTS

Contractor agrees to comply with the applicable requirements of all standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). The Contractor agrees to report each violation to NVTA and understands and agrees that NVTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.

### 14. LOBBYING

Contractor agrees to comply with the restrictions on the use of federal funds for lobbying activities set forth in 31 U.S.C. § 1352 and 49 CFR Part 20. In addition, in the event the Agreement exceeds \$100,000, Contractor agrees to comply with the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 and shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each proposal or offer exceeding \$100,000).

### 15. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify NVTA and the officers, agents, employees and volunteers of NVTA from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, from claims that to the extent they arise out of, pertain to, or relate to the negligent acts or omissions of Contractor or its officers, agents, employees, volunteers, contractors and subcontractors in rendering professional services under this Agreement which constitute negligence, recklessness, or willful misconduct, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence or willful acts of NVTA or its officers, agents, employees or volunteers or any third parties. Notwithstanding the foregoing, the parties agree that Contractor's obligation to defend the NVTA is solely limited to reimbursing NVTA for its reasonable costs for defending a claim including reasonable attorney's fee, incurred by NVTA which are

ultimately determined to be due to Contractor's negligence, recklessness or willful misconduct. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement.

### 16. COMPLIANCE WITH LAWS

Contractor shall comply with any and all laws, statutes, ordinances, rules, regulations, and requirements of the federal, state or local government, and any agency thereof, including, but not limited to NVTA, the U.S. DOT and FTA, which relate to or in any manner affect the performance of this Agreement. Those law, statutes, ordinances, rules, regulations, and procedural requirements that are imposed on NVTA as a Recipient of federal or state funds are hereby in turn imposed on Contractor (including, but not limited to, 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"), and are herein incorporated by this reference and made a part hereof.

### 17. BUY AMERICA REGULATIONS

Contractor agrees to comply with 49 U.S.C. 5323(j) and 49CFR Part 661 which provide that Federal funds may not be obligated unless 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. An Offeror must submit to the FTA recipient the appropriate Buy America certification with all proposals on FTA-funded contracts, except those subject to a general waiver. The Buy America Certification may be found on file in the offices of NVTA. Proposals or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

### 18. COMPLIANCE WITH FTA REGULATIONS

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 between NVTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### 19. DAVIS-BACON ACT

#### (a) Minimum wages

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are

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deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-Day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit

which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(iv) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

### (b) Withholding

The NVTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to



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pay laborers and mechanics, including apprentices, Trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the NVT A may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### (c) Payrolls and basic records

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or Trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and Trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the NVT A for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government printing office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part

3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

### (d) Apprentices and Trainees

(i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractors or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the

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U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, Trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of Trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every Trainee must be paid at not less than the rate specified in the approved program for the Trainee level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the Trainee program. If the Trainee program does not mention fringe benefits, Trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a Trainee rate who is not registered and participating in a Training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any Trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a Training program, the contractor will no longer be permitted to utilize Trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, Trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(e) Compliance with Copeland Act requirements: The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(f) Subcontracts: The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(g) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(h) Compliance with Davis-Bacon and Related Act requirements: All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(i) Disputes concerning labor standards: Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(j) Certification of eligibility:

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

### 20. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(a) Overtime requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages : In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States 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 the clause set forth in paragraph (1) of this section, 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 the clause set forth in paragraph (1) of this section.

(c) Withholding for unpaid wages and liquidated damages : The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(d) Subcontracts: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the

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subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section. (40 USC 3701-3708)

### 21. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(a) Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to NVTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### 22. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACT

(a) The 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 this Project. Upon execution of the underlying contract, the 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 the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the 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 the Contractor to the extent the Federal Government deems appropriate.

(b) The 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 the Contractor, to the extent the Federal Government deems appropriate. (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject

### 23. CARGO PREFERENCE-U.S.FLAG

(a) Agreement Clauses. "Use of United States-flag vessels:

(1) Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

(2) Within 20 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 paragraph (a)(1) of this section shall be furnished to the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading).

(b) Contractor and Subcontractor Clauses. "Use of United States-flag vessels: The contractor agrees-

(1) To utilize 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 this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

(2) To furnish within 20 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 paragraph (b) (1) of this section to the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading).

(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

### 24. SAFE OPERATION OF MOTOR VEHICLES

Contractor agrees to comply with the Seat Belt Use and Distracted Driving clauses under 23 U.S.C Section 402 as outlined in Executive Orders No. 13043 and 13513.

### 25. BUS TESTING

Each third party contract to acquire a new bus model or a bus with significant alterations to an existing model must include provisions to assure compliance with applicable requirements of 49 U.S.C. Section 5318, as amended by MAP-21, and FTA regulations, "Bus Testing," 49 CFR Part 665.

### 26. PREAWARD REVIEW AND POST DELIVERY REVIEW

Each third party contract to acquire rolling stock must include provisions for compliance with applicable requirements of 49 U.S.C. Section 5323(m) and those provisions of FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, that do not conflict with 49 U.S.C. Section 5323(m).

### 27. SEISMIC SAFETY

The Contractor agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 et seq., in accordance with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and comply with implementing U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117).

### 28. FEDERAL CHANGES

The 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 between NVTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to comply shall constitute a material breach of this contract in compliance with 49 CFR Part 18.

### 29. BONDING REQUIREMENTS

For those construction or facility improvement contracts or

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subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts. Bid Bond Requirements (Construction)

a) Bid Security: A Bid Bond must be issued by a fully qualified surety company acceptable to NVTA and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

b) Rights Reserved: In submitting this Bid, it is understood and agreed by bidder that the right is reserved by NVTA to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of NVTA. It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of NVTA, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of NVTA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor. It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by NVTA as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense NVTA for the damages occasioned by default, then the undersigned bidder agrees to indemnify NVTA and pay over to NVTA the difference between the bid security and NVTA's total damages, so as to make NVTA whole. The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction) - The Contractor shall be required to obtain performance and payment bonds as follows:

a) Performance bonds

i) The penal amount of performance bonds shall be 100 percent of the original contract price, unless NVTA determines that a lesser amount would be adequate for the protection of NVTA.

ii) NVTA may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. NVTA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

b) Payment bonds

i) The penal amount of the payment bonds shall equal:

(1) Fifty percent of the contract price if the contract price is not more than \$1 million; or

(2) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(3) Two and one half million if the contract price is more than \$5 million

ii) If the original contract price is \$5 million or less, NVTA may require additional protection as required by subparagraph 1 if the contract price is increased.

Advance Payment Bonding Requirements - The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. NVTA shall determine the amount of the advance

payment bond necessary to protect NVTA.

Patent Infringement Bonding Requirements (Patent Indemnity) - The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. NVTA shall determine the amount of the patent indemnity to protect NVTA.

Warranty of the Work and Maintenance Bonds

a) The Contractor warrants to NVTA, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by NVTA, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the NVTA, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

b) The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship. General Conditions a minimum period of one (1) year after Final Payment by NVTA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to NVTA. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to NVTA written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

### 30. RECYCLED PRODUCTS PREFERENCE

To the extent applicable, the Contractor agrees to comply with the U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the Contractor agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

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### 31. PRIVACY ACT

The 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, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The 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 the underlying contract.

### 32. BREACHES AND DISPUTE RESOLUTION

In compliance with 49 CFR Part 18/FTA Circular 4220.1F: *Disputes* - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of NVTA. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the NVTA. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the NVTA shall be binding upon the Contractor and the Contractor shall abide by the decision.

*Performance During Dispute* - Unless otherwise directed by NVTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

*Claims for Damages* - Should either party to the Contract 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 therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

*Remedies* - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the NVTA and the 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 the NVTA is located.

*Rights and Remedies* - The duties and obligations imposed by the Contract Documents 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 the NVTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, 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.

### 33. ADA ACCESS REQUIREMENTS

Contractor must comply with the requirements that are applicable to

A. Title I of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. Section 12101 et seq.;

B. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794;

C. Section 16 of the Federal Transit Act, as amended, 49 U.S.C. Section 5301 (d);

D. U.S. DOT regulations, "Transportation for Individuals with Disabilities," 49 C.F.R. Parts 27, 37 and 38 and 36 C.F.R. Part 1192;

E. U.S. Architectural and Transportation Barriers Compliance Board, "ADA Accessibility Guidelines for Buildings and Facilities," (ADAAG);

F. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

G. U.S. DOJ Regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

H. U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

I. U.S. Equal Employment Opportunity Commission (EEOC), "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630.

J. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F.