

## **APPENDIX 13 FEDERAL REQUIREMENTS**

In addition to the requirements set forth below, the Developer is encouraged to review the following FTA guidance:

- Circular 7050.1A, “Federal Transit Administration Guidance on Joint Development,” December 29, 2016, as updated.
- FTA Master Agreement, October 1, 2017, as updated.
- Circular 4702.1B, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” October 1, 2012, as updated.
- Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients,” August 15, 2012, as updated.
- Circular 4704.1A, “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Grant Recipients,” April 20, 2017, as updated.

### **1. Nondiscrimination**

The Developer agrees to comply with the following Equal Employment Opportunity (EEO) provisions of Federal law, to the extent applicable, including Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e et. seq.); Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d) et. seq.); Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. § 621 et seq.); Title II of the Genetic Information Nondiscrimination Act of 2008, as amended (42 U.S.C. § 2000ff); 49 U.S.C. § 5332(b) of the Federal Transit Act; Section 504 of the Rehabilitation Act of 1973; U.S. Department of Transportation (DOT) EEO implementing regulations (49 CFR Part 21), and the FTA Master Agreement.

The Developer shall include the following assurance in each contract and subcontract and agrees to obtain the agreement of each of its contractors and subcontractors to include the following assurance in every lower-tier subcontract it signs:

- A. The Developer and each subcontractor shall not discriminate on the basis of race, color, national origin, sex (including gender identity, sexual orientation, and pregnancy), age, genetic information, disability, veteran status, or other protected class in the award and performance of any subcontract<sup>1</sup>

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<sup>1</sup> This section shows only Federal requirements related to nondiscrimination. The JDA will contain, however, VTA’s standard nondiscrimination language which encompasses federal, state and local requirements as well as VTA’s nondiscrimination policies and procedures.

- B. The Developer and each subcontractor must take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of subcontracts;
- C. Failure by the Developer or any of its subcontractors to carry out the requirements of this Paragraph (1) is a material breach of this Joint Development Agreement (“JDA”); and
- D. The following remedies or such other remedy as VTA deems appropriate, include, but are not limited to, withholding monthly progress payments, assessing sanctions, assessing liquidated damages, and/or disqualifying the Developer or subcontractor from future bidding as non-responsible.

## **2. Nondiscrimination on the Basis of Disability**

The Developer agrees to comply with the following federal prohibitions against discrimination on the basis of disability:

- A. Federal laws, including: (i) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally assisted programs, projects, or activities; (ii) The Americans with Disabilities Act of 1990 (“ADA”), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; (iii) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; (iv) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and (v) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities; and
- B. Federal regulations, including: (i) United States Department of Transportation (“U.S. DOT”) regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37; (ii) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27; and (iii) Other applicable federal civil rights and nondiscrimination guidance.

## **3. Conflicts of Interest**

### **A. Personal Conflicts of Interest**

As provided in the Federal Transit Administration (“FTA”) Master Agreement and the Third Party Contracting Guidance Circular, no employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals may participate in the selection, award, or administration of a contract or subcontract supported with FTA assistance if a conflict of interest, real or apparent, would be

involved. Such a conflict would arise when any of those individuals previously listed has a financial or other interest in the firm selected for award.

#### B. Organizational Conflict of Interest

The Developer is prohibited from engaging in practices that result in organizational conflicts of interest as prohibited by the Third Party Contracting Guidance Circular . An organizational conflict of interest occurs when any of the following circumstances arise:

1. Lack of Impartiality or Impaired Objectivity. When the Developer or a subcontractor is unable, or potentially unable, to provide impartial and objective assistance or advice to VTA due to other activities, relationships, contracts, or circumstances.
2. Unequal Access to Information. The Developer or a subcontractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
3. Biased Ground Rules. During the conduct of an earlier procurement, the Developer or a subcontractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

VTA shall analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

#### 4. Debarment and Suspension

The JDA is a covered transaction for purposes of 2 C.F.R. Parts 180 and 1200. As such, the Developer is required to verify that neither of the Developer nor its principals (as defined in 2 C.F.R. § 180.995) or affiliates (as defined at 2 C.F.R. § 180.905) are excluded or disqualified as defined at 2 C.F.R. §§ 180.940 and 180.935.

The Developer is required to comply with 2 C.F.R. Part 180, Subpart C, and must include the requirement to comply with 2 C.F.R. Part 180, Subpart C, in any lower tier covered transaction it enters into.

By signing and submitting its proposal, the Developer proposer certified as follows:

The certification in this clause is a material representation of fact relied upon by VTA. If it is later determined that the Developer knowingly rendered an erroneous certification, in addition to remedies available to VTA, the federal government may pursue available remedies, including, but not limited to, suspension and/or debarment. The Developer agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C, while its offer is valid and

throughout the period of any contract that may arise from the offer. The Developer further agrees to include a provision requiring such compliance in its lower tier covered transactions.