



Minnesota Valley Transit Authority
100 East Highway 13
Burnsville, MN 55337

REQUEST FOR PROPOSALS

Request for Proposals (RFP) for Marketing and Graphic Design Services

Proposal Schedule:

- Issue Date: Friday, February 5, 2016
- Submit Questions: Friday, February 12, 2016 by 4 pm
 - Submit Via Email To: HSolheid@mvta.com
- Post Addendum (if applicable): Tuesday, February 16, 2016
- Proposal Submittal Date: Tuesday, March 8, 2016 by 11 am, local time
 - Proposal Submittal – must include one (1) electronic copy (HSolheid@mvta.com) and four (4) hard copies to: Minnesota Valley Transit Authority, Attn. Heidi Solheid, 100 East Highway 13, Burnsville, MN 55337
- Review of Proposals: March 8 – 11, 2016
- Shortlist of Firms to Be Interviewed Released: Friday, March 11, 2016
- Interview Schedule: March 14 – 16, 2016
- Recommendation of Selection Committee: Friday, March 18, 2016
- Approval of Consultant by MVTA Board: Wednesday, March 30, 2016
- Contract Start Date: Friday, April 1, 2016

All inquiries about this RFP should be directed only to, in writing:

Procurement and Contract Manager: Heidi Solheid
Email: HSolheid@mvta.com
Address: 100 East Highway 13
Burnsville, MN 55337

Important Notices:

1. MVTA reserves the right to accept or reject any part of any proposal.
2. Only submit documents that are required (as noted on the Proposal Form).
3. Do not attach vendor terms and conditions, brochures, or any other qualification of your proposal.

1. Background

The Minnesota Valley Transit Authority (MVTA) is the public transportation agency for seven suburbs located approximately 15 miles south of Minneapolis and St. Paul: Apple Valley, Burnsville, Eagan, and Rosemount in Dakota County, Savage, Prior Lake and Shakopee in Scott County. The MVTA is one of several independent bus transportation agencies formed in the late 1980s under state legislation that allowed outer-ring suburbs to "opt-out" of centrally provided transportation services.

The MVTA Governing Body - A nine-member board consisting of elected officials or their designees governs the MVTA. Each of the seven cities appoints one member to the MVTA Board and one city staff person as an alternate board member. The remaining two seats are filled by a Scott County and a Dakota County commissioner. Another County Commissioner serves as the alternate County representative, while County staff assist the MVTA as members of the Technical Work Group.

MVTA Funding:

- a. The MVTA is funded with a portion of the Motor Vehicle Sales Tax (MVST) - the sales tax paid when new cars are purchased.
- b. Through grant applications, the MVTA has received federal funding and regional bond moneys for various capital improvement projects as well.
- c. Passenger fares account for about 30 percent of the cost of operating the MVTA system.
- d. See sidebar for additional Information about MVTA Partnerships and Cooperative activities.

2. Taxes

The Contractor shall be responsible for payment of all federal, state, and local taxes including, without limitation, federal and state income tax, social security tax, unemployment insurance tax, worker's compensation insurance and other taxes, license fees and insurance, as required.

The MVTA is subject to Minnesota state sales and use taxes but not local sales taxes; such as the transit tax. The MVTA is exempt from federal excise and federal transportation taxes. Proposals should include all applicable taxes, unless otherwise noted.

3. Data Practice Act

The Minnesota Government Data Practices Act provides that the names of contractors and the dollar amount of the proposal are public once the proposals are opened. With the exception of trade secret information as defined in Minnesota Statutes, section 13.37, all other information submitted by a contractor in response to this RFP becomes public at the times specified in the act and is then available to any person upon request. Trade secret information is defined in section 13.37 as data, including a formula, pattern, compilation, program, device, method, technique, or process, (1) that was supplied by the Proposal; (2) that is the subject of efforts by the Contractor that are reasonable under the circumstances to maintain its secrecy; and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

Any information in its response to this RFP for which the Contractor claims protection as trade secret information in accordance with the above provisions must be limited and set apart in the response on separate pages, with a heading that identifies the information as trade secret information. The MVTA will make the ultimate determination whether the information meets the applicable definition. Any information submitted in response to this RFP which does not meet the legal definition will be considered public information, regardless of the Contractor's identification of it as trade secret information. Contractors are advised that blanket-type identification by designating whole pages or sections as containing trade secret information will not assure protection, the specific information for

which the Contractor claims trade secret protection must be clearly identified as such: ‘Submitted proposals shall not be copyrighted. A statement by the Contractor that submitted information is copyrighted or otherwise protected does not prevent public access to the information contained in the response’.

4. Form of Contract

A copy of the standard MVTA contract is attached to this RFP as: *Appendix DC: Sample Contract*. The standard contract outlines various legal and administrative duties and responsibilities assumed by persons or organizations contracting with the MVTA. It contains many terms and conditions affecting the successful performance of the contract work including, without limitation: indemnification and insurance requirements; performance and payment bonds; accounting, record-keeping, and audit requirements; change order and adjustment processes; and non-discrimination requirements. Contractors are strongly advised to review the standard contract carefully and are responsible for taking the requirements into account when preparing their proposals.

As part of their proposal, Contractors shall certify that, if their proposal is accepted, the Contractor agrees to comply with these contractual conditions. For the purposes of this document, the term “contract” includes a contract or purchase order.

5. Insurance

The Contractor shall procure and maintain the following insurance for the applicable claim periods under Minnesota law from an insurance company or companies lawfully authorized and licensed to do business in the State of Minnesota. The coverage will insure against injuries to persons or damage to property, which may in any manner arise out of or result from acts or omissions in performing work under this Contract, by the Contractor or its employees, . Any subcontractors or suppliers used shall obtain and maintain the same insurance coverage as required herein. It is the Contractor’s responsibility to ensure that any and all subcontractors have provided the necessary insurance coverage documentation. Any deductibles or self-insured retentions are the sole responsibility of the Contractor. The policies must be evidenced through ACORD form Certificates of Insurance and such Certificates of Insurance approved by MVTA. This insurance shall be written for not less than the limits of liability specified below or as required by law, whichever coverage is greater.

- a. Commercial General Liability occurrence form coverage including liability arising from premises, operations, independent contractors, products-completed operations (if applicable), personal injury and advertising injury, and contractual liability assumed under this Contract. The Contractor shall maintain the following limits:
 - \$1,000,000 per occurrence
 - \$2,000,000 general aggregate
 - \$1,000,000 products completed/completed operations aggregateIn addition, the Contractor shall maintain such products completed operations insurance for applicable claims periods under Minnesota law after final payment.
- b. Business Automobile coverage for liability arising out of the operation, maintenance or use of any automobile, whether owned, non-owned, rented or leased. The Contractor shall maintain the following limits: Automobile Liability with a limit not less than \$1,000,000 Combined Single Limit. The limit shall apply to any auto whether it is owned, hired or non-owned. The MVTA shall be listed as an Additional Insured.
- c. The Contractor certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to Workers’ Compensation Insurance coverage. The Contractor will, at all times, keep fully insured at its own expense all persons employed by it in connection with this Contract as required by the laws of the state of Minnesota relating to Workers’ Compensation Insurance. The Contractor’s employees and agents will not be considered MVTA employees. Any claims that may arise under the Minnesota Workers’ Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the MVTA’s obligation or responsibility.

- d. Employers' Liability coverage with a limit not less than \$500,000 each per person per accident, \$500,000 each employee by disease, and \$500,000 all employees by disease.
- e. The Contractor shall indemnify, defend, and hold the MVTA harmless from any liability, damages, claims, costs and expenses of any nature arising from any allegation of violations of personnel practices or from any allegation of injury to an employee of the Contractor performing work or labor necessary to carry out the provisions of this Contract.
- f. The MVTA does not represent in any way that the insurance specified in this Contract, whether in scope of coverage or limits, is adequate or sufficient to protect the Contractor's business or interests. It is the sole responsibility of the Contractor to determine the need for and to procure additional coverage which may be needed in connection with this Contract. Furthermore, the procuring of such required policy or policies of insurance shall not be construed to limit the Contractor's liability under this Contract or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding any policy or policies of insurance, the Contractor shall be obligated for the full and total amount of any damage, injury, or loss arising out of or resulting from its acts or omission in performing work under this Contract.
- g. Nothing in this Contract shall be construed to waive MVTA's municipal immunities or liability limits provided in the Minnesota Municipal Tort Claims Act or other applicable state or federal law.
- h. The Contractor, and its insurer(s) through policy endorsement or policy provision, shall waive all rights of recovery, contribution, or subrogation against the MVTA.

6. Certificates of Insurance

- a. The certificates of insurance for insurance required under Section 9 shall be filed with the MVTA prior to the commencement of Work.
- b. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 30 days' prior written notice has been given to the MVTA.
- c. Renewal certificates of insurance shall be filed with the MVTA prior to the expiration of current policies. All renewed "claims-made" insurance policies shall have a retroactive date on or prior to the actual commencement of the Contractor's services.
- d. The MVTA is not obligated to review certificates or other evidence of insurance, or to advise the Contractor of any deficiencies in such documents, and receipt thereof will not relieve the Contractor from, nor be deemed a waiver of the MVTA's right to enforce, the terms of the Contractor's obligations hereunder. The MVTA will have the right to examine any policy required by this Contract in the event of a claim occurring.

7. Item Substitute

Unless qualified by the provision "NO SUBSTITUTE," the use of the name of a manufacturer brand and/or catalog description in specifying any item does not restrict Contractors to that manufacturer, brand or catalog description identification. This is used simply to indicate the character, quality, and/or performance equivalence of the commodity desired, but the commodity on which proposals are submitted must be of such character, quality, and/or equivalence that it will serve the purpose for which it is to be used equally well as that specified, and be acceptable to the using department.

In submitting a proposal on a commodity other than specified, Contractors shall furnish complete data and identification with respect to the commodity he proposes to furnish. Consideration will be given to proposal submitted on commodities to the extent that such action is deemed to serve the best interest of MVTA.

If a Contractor does not indicate that the commodity proposed to furnish is other than specified, it will be construed to mean that the Contractor proposes to furnish the exact commodity as described.

8. Shipment

Shipment is F.O.B.: Destination, Freight Prepaid and Allowed (vendor pays freight, bears risk of lost in transit, included in price).

9. Invoices

Invoices must be submitted by email or mail:

Email - AP@mvta.com

Mailing Address:

Minnesota Valley Transit Authority (MVTA)

Attn. Accounts Payable (AP)

100 East Highway 13

Burnsville, MN 55337

RFP FOR MARKETING AND GRAPHIC DESIGN SERVICES

In this Request for Proposal (RFP), the Minnesota Valley Transit Authority (MVTA) solicits proposals from interested firms for Marketing and Graphic Design Services. The intent of this Request is to establish contracts with one or more qualified vendors for marketing and graphic design services.

I. Contract Terms

- a. April 1, 2016 through March 31, 2019
- b. Extension Option: option to extend through March 31, 2020 and March 31, 2021.

II. MVTA Rights

- a. The MVTA reserves the right to cancel this RFP in writing or postpone the date and time for submitting proposals at any time prior to the proposal due date. No Proposer shall have a right to make a claim against the MVTA in the event the MVTA accepts a proposal or does not accept any or all proposals. The MVTA by this RFP does not promise to accept the lowest cost or any other proposal and specifically reserves the right to reject any or all proposals, to waive any or all informalities or irregularities in the proposals received, to investigate the qualifications and experience of any Proposer, to reject any provisions in any proposal, to modify RFP contents, to obtain new proposals, to negotiate the requested services and contract terms with any Proposer, or to proceed to do the work otherwise.

III. Proposal Questions and Addendum Postings

- a. All questions regarding this RFP are to be directed only to the Procurement and Contract Manager. Proposers may be disqualified if any unsolicited contact related to this RFP is made with an employee or representative of the MVTA other than the Procurement and Contract Manager during the proposal process.
- b. If any person contemplating submitting a proposal is in doubt as to the true meaning of any part of the Scope of Work, or other RFP documents, or finds discrepancies in or omissions from the specifications, the person may submit to the Procurement and Contract Manager a written request for an interpretation or correction by 4 p.m. on Feb. 12, 2016. Only written requests will be accepted. The person submitting the request will be responsible for its prompt delivery. The Procurement and Contract Manager will post an addendum, if necessary, addressing any questions. An addendum, if necessary, will be posted by Feb. 17, 2016.
- c. Any corrections or changes to this RFP will be made by written addendum only and will be distributed to all known recipients of the RFP document at the address provided by the recipient and via initial RFP advertisement locations (online).
- d. Procurement and Contract Manager – Heidi Solheid
 - i. Email: hsolheid@mvta.com
 - ii. Address: 100 East Highway 13
Burnsville, MN 55337

IV. Proposal Format

- a. One (1) original(s) and three (3) photocopies of the proposal are required, plus one electronic copy (PDF on CD/DVD or via e-mail). The MVTA encourages the use of recycled paper for proposals.
- b. All proposals must be clearly marked “Marketing and Graphic Design Services” as well as include the name and address of the Proposer.

- c. Acknowledgment of receipt, by number, of each RFP addendum, if any, must be included with the proposal.

V. Submission of Proposals

- a. All proposals must be addressed as follows:
Minnesota Valley Transit Authority
Attn. Heidi Solheid – Procurement and Contract Manager
Proposal for Marketing and Graphic Design Services
100 East Highway 13
Burnsville, MN 55337
- b. The electronic copy can be emailed to: HSolheid@mvta.com or delivered to the above address via PDF on CD/DVD (including the above delivery information).
- c. Proposals must be physically delivered to the offices of the MVTA, at the above address by the date and time indicated on the cover page. Proposals received after the specified time and date may not be considered.
- d. If proposals are sent by U.S. mail or other courier service, it is wholly the responsibility of the Proposer to ensure that the proposal package is properly addressed and physically delivered on time.
- e. The submission of a proposal shall constitute an acknowledgment upon which the MVTA may rely that the Proposer has thoroughly examined and is familiar with the RFP, the attachments (including the Scope of Work and the Sample Contract), the addenda (if any), and work sites as applicable, and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions dealing with or related to the services to be provided. The failure or neglect of a Proposer to do so shall in no way relieve the Proposer from any obligations with respect to the proposal or the contract issued as a result of this RFP. No claim for additional compensation will be allowed which is based upon a lack of knowledge of any aspect of the RFP, attachments (including the Scope of Work), addenda (if any), work sites, statutes, regulations, ordinances or resolutions.

VI. Items Required to be Submitted with the Proposal

Items listed in this section must accompany your proposal. If any required item is omitted, the proposal may be rejected and returned without further consideration. See the referenced sections for additional details on some requirements.

- a. General Information
 - i. List office location(s), history of firm, size of firm, marketing and graphic design experience, operating officers and principals.
- b. Specialties
 - i. Briefly describe any specialties of the firm. Give a brief description of projects which may be relevant to MVTA with which the firm has been involved. If appropriate, list the specialty area(s) that the firm has an interest in providing to the MVTA based on the scope of work. Firms may be proficient in Marketing Services, Graphic Design Services or both.
- c. Key Personnel
 - i. Project Manager - Provide resumes of a project manager or key contact person that MVTA will be working with on projects. If it is possible that more than one project manager will be assigned to various specialty areas, please provide multiple resumes.
 - ii. Other Personnel - Provide resumes of other key personnel that may assigned to MVTA projects. Include the specialty equipment that the personnel are capable of operating that may be used on MVTA projects.

- iii. Organizational Chart - Provide an organizational chart relating how a project may be administered for the MVTA and how the MVTA staff would best fit into your typical project management approach.
 - iv. All required resumes plus the Organizational Chart shall be grouped together as Attachment 1.
- d. Previous Project Experience
 - i. Describe previous projects that the Project Manager has been involved with. Give a brief description of the approach that the Project Manager wishes to follow in administering projects. Also include the size and scope of the project (\$10,000 vs. \$1 million).
- e. Availability
 - i. Describe the current assignments that each Project Manager or key contact person is administering. If selected for projects for the MVTA, describe how this Project Manager will be available.
- f. Computer/Software Usage
 - i. Provide a brief description of the firm's software capabilities. Include the current software packages being used, system support information and other relevant information.
- g. Challenging Projects
 - i. Describe in one page or less, a transit and/or transportation related project that the firm has been involved with that did not go well. What breakdowns occurred? What steps were taken by the firm to correct problems that occurred? What steps were taken to correct the problems from occurring again? What was the client's involvement? *[Please avoid specific project or client names, but provide adequate information to understand the situation.]*
- h. Governmental and/or Transit Agency References
 - i. Indicate key references that may be willing to participate in a confidential survey of your firm's experience at future stages of this process review.
- i. Billing Rates
 - i. The proposal should include a schedule showing major employee classifications and their respective hourly salary/billing rate. Hourly rates shall remain firm for year 1 through year 3; year 4 can increase by no more than 3%, and year 5 can increase by no more than 2.5%.
- j. Other Information
 - i. Other information that the firm believes may be valuable in reviewing the qualification of your firm.

VII. Withdrawal or Modification of Proposal

- a. Proposals which have been submitted to the MVTA may be withdrawn by the Proposer only if a written withdrawal request is physically received by the Procurement and Contract Manager in person or by mail. Proposals which are timely withdrawn shall be returned to the Proposer unopened.
- b. A Proposer may submit a modified proposal prior to the time proposals are due. A modified proposal must be physically received by the Procurement and Contract Manager prior to the time proposals are due. If a modified proposal is timely submitted, the MVTA shall deem a previous proposal submitted by the Proposer to have been withdrawn and the previous proposal shall be returned to the Proposer unopened.

VIII. Proposal Evaluation Criteria – Contract Award

- a. Proposals will be evaluated by an Evaluation Panel to assess the Proposer's likelihood of successfully accomplishing the prospective project.

- b. The Evaluation Panel will consider all the material submitted by the Proposer and other information the Evaluation Panel may obtain to determine whether the Proposer is capable of and has a history of successfully completing projects of this type. Additional information may include, but is not limited to, data requested by the Evaluation Panel, reference checks, interviews or oral presentations.
- c. Proposals will be evaluated on the basis of the criteria listed in Appendix C.
- d. The MVTA will use a qualifications-based process to meet the objective of assembling the most qualified team. The Evaluation Panel will review, analyze, and evaluate all proposals based on the Evaluation Criteria including price.
- e. The Evaluation Panel will determine and recommend to the MVTA Board which proposal(s), in its opinion, represents the most advantageous set of offers to the MVTA Board. The MVTA Board may make its own findings and determinations in taking action on this recommendation.
- f. A determination will be made as to what set of proposal(s), if any, is most advantageous to the MVTA, by considering the evaluations of the proposals, the best value to the MVTA, and the best interests of the MVTA.
- g. For each proposal that is accepted and award is authorized, in accordance with the MVTA's policies and procedures, a contract for the work will be executed. Until authorization of the award and execution of the contract, the MVTA has no obligation for the cost associated with any work performed.

IX. Data Practice Act

- a. The Minnesota Government Data Practices Act provides that the names of Proposers are public once the proposals are opened. With the exception of trade secret information as defined in Minnesota Statutes, section 13.37, all other information submitted by a Proposer in response to this RFP becomes public at the times specified in the act and is then available to any person upon request. Trade secret information is defined in section 13.37 as data, including a formula, pattern, compilation, program, device, method, technique, or process, (1) that was supplied by the Proposer; (2) that is the subject of efforts by the Proposer that are reasonable under the circumstances to maintain its secrecy; and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- b. Any information in its response to this RFP for which the Proposer claims protection as trade secret information in accordance with the above provisions must be limited and set apart in the RFP response on separate pages, with a heading that identifies the information as trade secret information. The MVTA will make the ultimate determination whether the information meets the applicable definition. Any information submitted in response to this RFP which does not meet the legal definition will be considered public information, regardless of the Proposer's identification of it as trade secret information. Proposers are advised that blanket-type identification by designating whole pages or sections as containing trade secret information will not assure protection --- the specific information for which the Proposer claims trade secret protection must be clearly identified as such.
- c. Submitted proposals shall not be copyrighted. A statement by the Proposer that submitted information is copyrighted or otherwise protected does not prevent public access to the information contained in the RFP response.

X. Form of Contract

- a. A copy of the standard MVTA contract for consulting services is attached to this RFP as Appendix D. The standard contract outlines various legal and administrative duties and responsibilities assumed by persons or organizations contracting with the MVTA. The successful Proposer will be expected to

execute this contract. Significant questions or concerns as to the language of this sample contract must be presented during the period available for requests for written interpretation.

- XI. Failure to follow these instructions and requirements may result in the rejection or de-rating of your proposal. The MVTA is not responsible for any costs incurred by prospective Proposers in the preparation and presentation of their proposals.

RFP FOR MARKETING AND GRAPHIC DESIGN SERVICES

APPENDIX A – SCOPE OF WORK

The MVTA expects to retain one or more firms for Marketing and Graphic Design Services, including the following components:

1. Approximately quarterly update of pocket schedules for printing; preparation of any new route schedules, as needed by MVTA.
2. Quarterly update of System Map for publishing on www.mvta.com.
3. Annual or Semi-annual preparation of System Map for printing.
4. Creation of advertisements for State Fair service or other projects, as needed by MVTA.
5. Creative services as needed for marketing programs including direct-mail campaigns, brochures, interior bus panels, exterior bus wraps, and other components, as needed by MVTA.

Schedule data is posted on the MVTA Wiki site (wiki.mvta.com) at least six weeks prior to the pick. Documents include change of service forms, working timetables, driver maps, connections, stop listings and more.

The Consultant agrees to provide and use his/her own hardware and software for this project, and such software and hardware must be compatible with that of the MVTA's in order to pass files between such hardware and software. Please specify hardware and software proposed for use. Currently, schedules are produced using InDesign (MVTA owns CS5, but is not very proficient in using this software); MVTA also operates Quark Xpress 10. Maps are created using the current version of Illustrator. Schedules are sent to/from MVTA in PDF form for proofing. AFPI is MVTA's designated printer through 2016. Files will need to be provided to them in an appropriate form.

More detailed Scopes of Work will be issued with Notice to Proceed on individual projects.

RFP FOR MARKETING AND GRAPHIC DESIGN SERVICES

APPENDIX B – HOURLY RATES SCHEDULE

Please insert a single proposed rate for ALL EMPLOYEES who will be performing work in the various classifications. Please refer to the attached brief descriptors for clarification on where your various employees will fit in.

If there are additional classifications that the proposer believes are useful, they must be submitted during the questions/interpretations period of the proposal timeline.

Job Classification	Proposed Hourly Rate
	Year 1 – Year 3: 4/1/16-3/31/19
Graphic Design Services	\$ /hour
Marketing Services	\$ /hour
Schedule Updates	\$ /hour
Other (please describe):	\$ /hour
	\$ /hour
	\$ /hour
	\$ /hour
	\$ /hour

RFP FOR MARKETING AND GRAPHIC DESIGN SERVICES
APPENDIX C – EVALUATION CRITERIA

Weight	Criterion
20%	Experience <ul style="list-style-type: none"> • General experience of Proposer • Specialized experience in the areas of services being offered, with the MVTA and/or with other transit organizations • Specific proposer experience within MVTA service area (member cities, city/county subdivisions) • Comments from references
30%	Qualifications <ul style="list-style-type: none"> • General qualifications of the Proposer • Specialized qualifications and competence in areas of services offered • Quality of local presence • Additional services available
30%	Key Personnel <ul style="list-style-type: none"> • Related experiences and qualifications (including resumes) of personnel proposed to be used • Summary of current workload commitments of key personnel
20%	Value of Proposal <ul style="list-style-type: none"> • Completeness of the proposal package • Proposed Billing Rates

**RFP FOR MARKETING AND GRAPHIC DESIGN SERVICES
APPENDIX D – SAMPLE CONTRACT**



CONTRACT NO. C-XXXXX

BY AND BETWEEN
MINNESOTA VALLEY TRANSIT AUTHORITY
AND
CONSULTANT

This contract is entered into this DATE day of MONTH, YEAR, by and between the Minnesota Valley Transit Authority (“MVTA”), a joint powers organization providing public transit services in the Twin Cities Metropolitan Area, and CONSULTANT (“Consultant”), for marketing and graphic design services.

1. Scope of Work

- 1.1. The Consultant agrees to provide professional services for marketing and graphic design. Specifically, the Consultant shall provide the services described in Exhibit A to this Contract, the Consultant’s Proposal, which is attached and made part of this Contract. If there is any conflict between the terms and conditions of Sections 1-30 of this Contract and the Services specified in Exhibit A, Sections 1-30 of this Contract shall govern.
- 1.2. The Consultant represents that it is experienced in matters relating to the services described in this Contract, that it is capable of performing them within the work deadlines required, and that the officer or officers executing this Contract are authorized to do so. Consultant further acknowledges that it is the leader of the design team and is responsible for the Services provided. The MVTA shall be entitled to rely on the Services, documents, and information furnished by the Consultant.
- 1.3. Definitions – For the purposes of this Contract, the terms defined in this section shall have the following meaning unless otherwise provided:
 - 1.3.1. “Work” shall mean all authorized services to be provided by the Consultant under this Contract.
 - 1.3.2. “Deliverables” shall mean the marketing, graphic design services, and other tangible documents identified in the attached exhibits to be provided by the Consultant, and as identified in a written notice relating to the Work.

2. MVTA’s Responsibilities

- 2.1. In addition to other responsibilities of the MVTA set forth in this Contract, the MVTA shall:
 - 2.1.1. Provide the Consultant full information as to the requirements for the Work. The Consultant may rely on the accuracy and completeness of this information unless MVTA qualifies or disclaims its accuracy or completeness in writing.

- 2.1.2. Examine all Deliverables presented by the Consultant and render, in writing, decisions pertaining thereto within a reasonable time.
- 2.1.3. Provide such legal and accounting information in connection with the Work as may be required for the completion of the Deliverables.
- 2.1.4. Designate, in writing, an Authorized Representative to represent the MVTA with respect to the Work. Such person shall have authority to transmit instructions, receive information, and interpret the MVTA's policies with respect to elements pertinent to the Work; provided, however, that the Authorized Representative shall have no authority to approve increases in the Contract price unless expressly authorized to do so in writing by the MVTA Board.
- 2.1.5. Give written notice to the Consultant whenever the MVTA observes or otherwise becomes aware of any development that affects the scope or timing of the Consultant's services, or of any defect in the Work.

3. Consultant's Responsibilities

- 3.1. In addition to other responsibilities of the Consultant as set forth in this Contract, the Consultant shall:
 - 3.1.1. Provide the personnel and facilities necessary to accomplish the Work. All personnel shall be qualified to perform the Work. Assignment of other key personnel to, or removal of key personnel identified from, the Work shall be subject to the written approval of the MVTA. At its sole discretion, the MVTA may require the removal of any person from the Work.
 - 3.1.2. Designate, in writing, an Authorized Representative in charge of the Work. Such person shall have authority to transmit instructions, receive information, and render decisions relative to Work on behalf of the Consultant.
 - 3.1.3. Supervise and direct its personnel and those of its subcontractors in the performance of the Work, using the Consultant's professional skill and attention. In performing its services, the Consultant shall use that degree of accuracy and skill ordinarily exercised under similar circumstances by respected members of its profession practicing in the Twin Cities Metropolitan Area.
 - 3.1.4. Be solely responsible for and have control over the means, methods, techniques, and procedures for coordinating all portions of the Work unless specified otherwise in this Contract or in a written notice relating to the Work.
 - 3.1.5. Be responsible for the performance and adequate insurance coverage of its subcontractors, if applicable.
 - 3.1.6. Prepare and submit Deliverables consistent with the provisions of the attached exhibits or as identified in a written notice relating to the Work.
 - 3.1.7. The Consultant, or his Project representative, as a representative of MVTA shall conduct meetings from commencement of the Project through Final Completion that will be initiated by the Consultant, based on the schedule contained in the Consultant's proposal. Attendees will include the MVTA, the Consultant's Project representative, and others as necessary.
 - 3.1.8. The Consultant shall promptly respond to notices from the MVTA in accordance with Section 27, and shall, if requested, promptly meet with the MVTA to discuss same. Time is of the essence in the performance of this Contract.

4. Terms of Termination

- 4.1. The Effective date of this Contract shall be **DATE**. The Consultant must not begin work until this Contract is fully executed and the Consultant has been notified by the MVTA's Authorized Representative to begin the Work.
- 4.2. Termination date shall be **DATE**, or the date MVTA determines that all Consultant obligations have been satisfactorily fulfilled, whichever is later.
- 4.3. The MVTA shall have the right to terminate this Contract at any time and for any reason by submitting written notice of termination to the Consultant at least thirty (30) calendar prior to the specified effective date of termination. In such event, all finished and unfinished Deliverables prepared by the Consultant and its subcontractors shall become the property of the MVTA. The MVTA shall pay for Work satisfactorily completed under this Contract prior to the date of termination. MVTA reserves the right to object to charges that are unreasonable. The parties agree to attempt to negotiate the charges that MVTA objects to, but in the event the parties cannot agree, nothing herein shall prevent the parties from pursuing remedies available under Minnesota law.
- 4.4. Notwithstanding the above, the Consultant shall not be relieved of liability to the MVTA for damages sustained by the MVTA by virtue of any breach of this Contract by the Consultant or its subcontractors. The MVTA may withhold any payment to the Consultant until such time as the exact amount of damages due the MVTA from the Consultant is determined.
- 4.5. Default by MVTA - The Consultant shall have the right to stop performing Services during any period when the MVTA is in default, but only after giving thirty calendar days written notice to the MVTA, specifying the default and stating the Consultant's intention to stop performing services if the default event is not cured after a stated and reasonable time.
- 4.6. Default by Consultant - The MVTA may terminate the Contract seven (7) business days after Consultant receives notice of default event from MVTA and fails to cure within the seven days. Events of default are:
 - 4.6.1. Violation applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
 - 4.6.2. A material breach of this contract.
- 4.7. When the MVTA terminates the Contract under Section 4.6, the Consultant shall be paid for Work satisfactorily performed through the date of termination; provided, however, the MVTA may withhold payment in the amount it reasonably determines equals the damage to MVTA from Consultant's default.

5. Compensation and Pay

- 5.1. Total Obligation - The total obligation of the MVTA for all compensation to the Consultant under this Contract, including all reimbursement of costs, will not exceed **\$XX,XXXX**. Reimbursement of costs to the Consultant shall be based on verified cost submittals or other method as set forth in Exhibit A, attached to the Contract and made a part hereof. Contract payment to the Consultant shall not exceed the total obligation without a written Contract amendment.

- 5.2. The Consultant will prepare and present a monthly itemized invoice for the services actually performed. Upon acceptance of the invoiced services, the MVTA will make monthly payments to the Consultant thirty (30) days after receipt of the invoice.
- 5.3. Conditions of Payment – All services provided by the Consultant under this Contract must be performed to the MVTA's satisfaction and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Consultant will not receive payment for work found by the MVTA to be unsatisfactory or performed in violation of federal, state, or local law.
- 5.4. Deferral of Payments - In the event that the Consultant is delinquent in conveyance of Deliverables in accordance with the schedule set forth in this Contract, the MVTA may defer payments due until such time as it receives the Deliverables.
- 5.5. If, after commencement of the Work, the Cost of the Work is exceeded due to the negligent errors or omissions of the Consultant, then the Consultant shall bear financial responsibility to the MVTA for the increases in the Cost of the Work, except for all materials, labor, and overhead related to the betterment obtained by the MVTA. By way of example, the Consultant shall bear responsibility for the difference between what would have been the original cost of that portion of the Work, but for Consultant's negligent error or omission, and the actual cost of that portion of the Work performed to remedy the negligent error or omission. Further, Consultant shall not be entitled to Consultant's fee for the excess Cost of the Work.

6. Independent Contractor

- 6.1. The Consultant is an independent contractor in performing services under the Contract. All persons performing work under this Contract remain employees of Consultant or its subcontractor(s) and not MVTA. The Consultant shall be responsible for the satisfactory work performance of all its employees or subcontractors in performing the Work.
- 6.2. The Consultant shall be responsible for payment of all federal, state and local taxes including without limitation federal and state income tax, social security tax, unemployment insurance tax, workers' compensation insurance and other taxes, license fees and insurance as required.
- 6.3. The Consultant shall have in effect personnel policies that conform to all applicable federal, state and local laws.
- 6.4. The Consultant shall maintain at all times a current list of personnel assigned to perform work with corresponding documentation of any current licenses or certifications each employee must legally have to carry out the employee's assigned duties.

7. Authorized Representatives

- 7.1. The MVTA's Authorized Representative is Robin Selvig, or her successors, who has the responsibility to monitor the Consultant's performance and has such authority on the Project as granted in writing by the MVTA Board. If the Contract services are satisfactory, the Authorized Representative will certify acceptance on each invoice submitted for payment. If the services involve any change to the Contract and the Authorized Representative has not been given written authority from the Board to accept or approve services or other request, any decision by the Authorized Representative is subject to approval by the MVTA Board.

- 7.2. The Consultant's Project Representative is Consultant's Project Manager, or his/her successor. If the Consultant's Project Representative changes at any time during this Contract, the Consultant must immediately notify the MVTA.

8. Licenses and Taxes

- 8.1. The Consultant and any subcontractors shall obtain and maintain in effect any and all licenses, permits, or certificates that are or may be required for the performance of the services as specified under this contract. The Consultant shall pay all taxes assessed upon the equipment or other property owned by the Consultant used in connection with the furnishing of contracted services.

9. Payment to Subcontractors

- 9.1. As required by Minn. Stat. §471.425 subd. 4a, the Consultant must pay all subcontractors, less any retainage, within 10 calendar days of the Consultant's receipt of payment from the MVTA for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s), and otherwise comply with Section 471.425 subd. 4a.

10. Insurance

- 10.1. Errors and Omissions Insurance - The Consultant shall procure and maintain an errors and omissions insurance policy, from an insurance company or companies authorized to do business in the State of Minnesota, acceptable to the MVTA, and carrying a rating from Best's or Best's International of A- or higher, or as otherwise approved by the MVTA during the term of this Contract. This policy or an equivalent policy agreed to by MVTA will be maintained by Consultant for the period following Final Completion of the Work in which claims or causes of action may be brought arising out of Consultant Services, insuring payment of damages for legal liability caused by negligent act, error, or omission of the Consultant or of any person or organization for whom the insured is legally liable. This insurance shall be written for not less than the limits of liability specified below and shall provide an extended reporting period.

- \$1,000,000 each claim/occurrence
- \$2,000,000 annual aggregate

This policy will state that such insurance cannot be canceled until 30 days after the MVTA has received written notice of the insurer's intention to cancel the insurance. Any policy deductible of self-insured retention shall be the responsibility of the Consultant and not the MVTA. The Consultant shall provide the MVTA with a true and correct copy of the form of such insurance policy, including cover notes thereto and including all endorsements attached thereto. All renewal and replacement policies must meet the requirements of this section 10.1, and a true and correct copy of such policies must be submitted promptly upon issuance.

- 10.2. Other Insurance - The Consultant shall procure and maintain the following insurance for the applicable claim periods under Minnesota law from an insurance company or companies lawfully authorized and licensed to do business in the State of Minnesota. The coverage will insure against injuries to persons or damage to property, which may in any manner arise out of or result from acts or omissions in performing work under this Contract, by the Consultant or its employees, or for any person or entity for whom Consultant is legally liable. Any deductibles or self-insured retentions are the sole responsibility

of the Consultant. The policies must be declared to and approved by the MVTA. This insurance shall be written for not less than the limits of liability specified below or as required by law, whichever coverage is greater.

- 10.3. Commercial General Liability occurrence form coverage including liability arising from premises, operations, independent contractors, products-completed operations (if applicable), personal injury and advertising injury, and contractual liability. The property damage liability shall provide coverage for claims arising out of explosion, collapse and underground damages. The Consultant shall maintain the following limits:
 - \$1,000,000 per occurrence
 - \$2,000,000 general aggregate
 - \$1,000,000 products completed/completed operations aggregate
 - The general aggregate limit shall apply separately to this Contract. The MVTA will be listed as an additional insured, on a primary and non-contributory basis.
- 10.4. Business Automobile coverage for liability arising out of the operation, maintenance or use of any automobile, whether owned, non-owned, rented or leased. The Consultant shall maintain the following limits: Automobile Liability with a limit not less than \$1,000,000 Combined Single Limit. The limit shall apply to any auto whether it is owned, hired or non-owned. The MVTA shall be listed as an Additional Insured.
- 10.5. The Consultant certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to Workers' Compensation Insurance coverage. The Consultant will, at all times, keep fully insured at its own expense all persons employed in connection with this Contract as required by the laws of the state of Minnesota relating to Workers' Compensation Insurance. The Consultant's employees and agents will not be considered MVTA employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the MVTA's obligation or responsibility.
- 10.6. Employer's Liability coverage with a limit not less than \$500,000 each per person per accident, \$500,000 each employee by disease, and \$500,000 all employees by disease.
- 10.7. The Consultant shall indemnify, defend, and hold the MVTA harmless from any liability, damages, claims, costs and expenses of any nature arising from any allegation of violations of personnel practices or from any allegation of injury to an employee of the Consultant performing work or labor necessary to carry out the provisions of this Contract.
- 10.8. The MVTA does not represent in any way that the insurance specified in this Contract, whether in scope of coverage or limits, is adequate or sufficient to protect the Consultant's business or interests. It is the sole responsibility of the Consultant to determine the need for and to procure additional coverage which may be needed in connection with this Contract. Furthermore, the procuring of such required policy or policies of insurance shall not be construed to limit the Consultant's liability under this Contract or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding any policy or policies of insurance, the Consultant shall be obligated for the full and total amount of any damage, injury, or loss arising out of or resulting from acts or omission in performing work under this Contract.

- 10.9. Nothing in this Contract shall be construed to waive MVTA's municipal immunities or liability limits provided in the Minnesota Municipal Tort Claims Act or other applicable state or federal law.
- 10.10. The Consultant, and its insurer(s) through policy endorsement or policy provision, shall waive all rights of subrogation against the MVTA.

11. Certificates of Insurance

- 11.1. The certificates of insurance for insurance required under Section 10 shall be filed with the MVTA prior to the commencement of Work. Each certificate shall contain the following: MVTA project name, the name and address of the insured, and the name(s) of additional insured.
- 11.2. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled, until at least 30 days' prior written notice has been given to the MVTA by certified mail.
- 11.3. Renewal certificates of insurance shall be filed with the MVTA prior to the expiration of current policies. All renewed "claims-made" insurance policies shall have a retroactive date on or prior to the actual commencement of the Consultant's services.
- 11.4. The MVTA is not obligated to review certificates or other evidence of insurance, or to advise the Consultant of any deficiencies in such documents, and receipt thereof will not relieve the Consultant from, nor be deemed a waiver of the MVTA's right to enforce, the terms of the Consultant's obligations hereunder. The MVTA will have the right to examine any policy required by this Contract.

12. Subcontractor's Insurance

- 12.1. The Consultant shall require all subcontractors engaged by the Consultant in connection with the performance of Services to carry and maintain insurance against the risks set forth above, and in amounts and under terms as determined to be appropriate by the Consultant to fulfill its obligations of this Contract.

13. Indemnification

- 13.1. The Consultant agrees to defend, indemnify, and hold harmless MVTA, its officers, agents and employees from and against all claims, losses, and expenses including but not limited to reasonable attorney's fees and costs of litigation, damage and liability, from death or injury to any persons, including the Consultant's employees and agents, or damage to or destruction of any property of either party hereto or of third parties, arising in the performance of this Contract to the extent caused by the negligent or otherwise wrongful acts or omission, including, breach of contract or violation of intellectual property right of any third party, of Consultant, its officers, directors, employees, or its subcontractors, or of any other person or entity for whose conduct Consultant is legally responsible in the performance of this Contract. Notwithstanding the foregoing, Consultant shall not be obligated to defend, indemnify, and hold harmless MVTA, its officers, agents and employees from and against any claims, costs, losses, or damages resulting from the negligence or willful misconduct of MVTA, or of any person or entity for whose conduct MVTA is legally responsible under this Contract. Consultant's obligations under the provision shall survive termination of this Contract.

14. Assignment, Amendments, Waiver, and Contract Complete

- 14.1. Assignment – The Consultant may neither assign nor transfer any rights or obligations under this Contract without the prior consent of the MVTA and a fully executed Assignment Contract, executed and approved by the same parties who executed and approved this Contract, or their successors in office.
- 14.2. Amendments – Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors in office.
- 14.3. Wavier – If the MVTA fails to enforce any provision of this Contract, that failure does not waive the provision or the MVTA's right to enforce it.
- 14.4. Contract Complete - This Contract contains all negotiations and contracts between the MVTA and the Consultant. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. The validity in whole or in part of any term or condition of the Contract shall not affect the validity of other terms or conditions.

15. Subcontractors

- 15.1. The Consultant shall furnish, in writing, the names of all subcontractors, and their proposed scope of work to be used to complete the Work. The MVTA will, in writing within two weeks of receipt of subcontractor information, advise the Consultant of the MVTA's acceptance or objection to the proposed subcontractor(s). The Consultant's submission shall contain the Consultant's express representation that none of the listed subcontractors have been suspended or debarred from award of contracts or subcontracts under federal, state, or local law. The Consultant shall not contract with any subcontractor to whom the MVTA has made objection.
- 15.2. The Consultant shall not make awards to subcontractors who have been suspended or debarred by the State of Minnesota.
- 15.3. All contracts between the Consultant and its subcontractors shall expressly state that incorporation by reference of specific terms and conditions of this Contract shall not be deemed to create any contractual relationship between the MVTA and any subcontractor, and that subcontractors are not third-party beneficiaries of this Contract.
- 15.4. All contracts between Consultant and its subcontractors shall state that the subcontractor agrees that it will not enter into agreements of any type with construction contracting firms, or their subcontractors, for any construction project resulting from the preparation or issuance of construction documents from the Work of this Contract.

16. Deliverables

- 16.1. All Deliverables along with such working papers, calculations, notes, and other information used to produce the Deliverables shall be kept as confidential and shall not be made available to any individual or organization by the Consultant, its subcontractors, or their agents or employees without the prior written approval of the MVTA.
- 16.2. All documents and records created and paid for as part of the Consultant's services directly relating to the Work shall become the property of the MVTA. The Consultant is not, however, required to provide the MVTA with the Consultant's correspondence file and original working papers,

calculations, and notes developed, or previously belonging to and used as a result of the Work (“Work Papers”). The Consultant shall preserve all Work Papers and make available to the MVTA copies of the Work Papers upon request of the MVTA.

- 16.3. Deliverables shall be prepared in Standard English (US) units and language. Upon completion or termination of this Contract, the Consultant shall provide the MVTA with a copy, in electronic form, of all Deliverables, reports, studies, and other documents developed by the Consultant in connection with the matters which are the subject of this Contract. Such materials shall be provided in an electronic format compatible with of the following, as appropriate:

- 16.3.1. No Deliverables produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Consultant, its subcontractors, their agents or employees.

- 16.3.2. Deliverables provided to the MVTA pursuant to this Contract are not intended or represented by the Consultant to be suitable for use or reuse by the MVTA or others on extensions of the Work or on any other project, without written verification or adaptation by Consultant, except for those Deliverables prepared as MVTA standards. This provision does not prohibit the MVTA from utilizing the documents in any manner which the MVTA deems appropriate. Any use or reuse without written verification or adaptation by Consultant not to be unreasonably withheld will be at the MVTA or other’s sole risk and without liability to Consultant.

17. Audits, Accounting, and Record-Keeping

- 17.1. Under Minn. Stat. § 16C.05, subd. 5, the Consultant’s and its subcontractor’s books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the MVTA and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the termination of this Contract. The Consultant and any subcontractor shall permit the MVTA or its designee to inspect, copy, and audit its accounts, records, and business documents at any time during regular business hours, as they may relate to the performance under this Contract.
- 17.2. Accounting and Record-keeping – The Consultant shall maintain books, records, documents and other evidence directly pertinent to performance of the Work in accordance with generally accepted accounting principles and practices, including payrolls, time records, invoices, receipts, and vouchers. The Consultant shall also maintain the financial information and data used in preparation or support of the cost submission for any negotiated Contract amendment or change order and provide printed or copied documentation to the MVTA as requested. These books, records, documents, and data shall be retained for at least six (6) years after the termination of the Contract, except in the event of litigation or settlement of claims arising out of the performance of this Contract, in which case the Consultant agrees to maintain them until the MVTA and any of its duly authorized representatives have disposed of the litigation or claims.

18. Publicity and Endorsement

- 18.1. Publicity - Any publicity regarding the subject matter of this Contract must identify the MVTA as the sponsoring agency and must not be released without prior written approval from the MVTA’s Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the

Consultant individually or jointly with others, or any subcontractors, with respect to the program, publications, or Services provided under this Contract.

- 18.2. Endorsement - The Consultant must not claim that the MVTa endorses Consultant's products or services.

19. Governing Law and Jurisdiction

- 19.1. Minnesota Law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings arising out of this Contract must be in the appropriate state or federal court with competent jurisdiction in and for Dakota County, Minnesota.

20. Non-Discrimination and Equal Employment Opportunity Plan

- 20.1. The Consultant will take equal employment opportunity plan to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age.
- 20.2. Equal Employment Opportunity Plan - The provisions of this Section 20.2 apply only if the amount of this Contract (including the value of any amendments thereto) exceeds \$100,000.
- 20.3. General Requirements - The requirements of Minnesota Statutes, section 363A.36, and Minnesota Rules, parts 5000.3400 to 5000.3600, regarding equal employment opportunity plans, are incorporated in this contract by reference.
- 20.4. Equal Employment Opportunity Plan for Disabled Workers - The Consultant must not discriminate against any employee or applicant for employment because of a physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Consultant agrees to take equal employment opportunity plan to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 20.5. The Consultant agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- 20.6. In the event of the Consultant's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes, section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights.
- 20.7. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form prescribed by the Commissioner of the Minnesota Department of Human Rights. Such notices must state the Consultant's obligation under law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

- 20.8. The Consultant must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Consultant is bound by the terms of Minnesota Statutes, section 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- 20.9. Freedom from Sexual Harassment – The MVTA has a policy that establishes a work environment for MVTA employees free of sexual harassment of any form, whether mental or physical. The Consultant shall require its employees, subcontractors, and all other persons providing materials and services for the Work to conform to this policy as their actions may relate to MVTA employees.
- 20.10. Drug Free/Graffiti Free Environment – The Consultant shall not permit the possession or use of intoxicating liquors or illegal drugs by the Consultant, its subcontractors, or their agents or employees upon any MVTA facility or property. The MVTA prohibits the display of all graffiti of any kind, plus pictures and other materials of any kind, containing racial or ethnic slurs, sexually explicit material, or general foul language on all MVTA property and facilities. The Consultant shall require its employees, subcontractors, and all other persons providing materials and services for the Work, to conform with this prohibition of display of graffiti, pictures, and other materials on or within Consultant's, subcontractors', and other persons' equipment, facilities, and vehicles which are located upon, brought onto, or used on MVTA property and facilities.

21. Government Data Practices

- 21.1. The Consultant and the MVTA must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the MVTA under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Consultant under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Consultant or the MVTA.
- 21.2. If the Consultant receives a request to release data, the Consultant must immediately notify the MVTA. The MVTA will give the Consultant instructions concerning the release of the data to the requesting party before the data is released.

22. Dispute Resolution

- 22.1. Consultant shall submit in writing to the Authorized Representative all Claims by the Consultant arising out of this Contract ("Claim") within twenty-one (21) days of Consultant's discovery of the event giving rise to the Claim. Consultant waives all rights and remedies under the Contract if it fails to provide written notice of the Claim to the Authorized Representative within the twenty-one days. The Authorized Representative shall respond to the Consultant in writing with a decision within ten (10) calendar days following the Representative's receipt of the Claim. The Claim process applies only to Claims by the Consultant and nothing herein is intended to limit the time, as otherwise provided by law, within which the MVTA may pursue disputes arising out of the Contract.
- 22.2. If the Consultant disagrees with any decision of the Authorized Representative, or the Authorized Representative fails to issue a decision within the time established, the Consultant shall, within fifteen (15) calendar days of the date of such decision or expiration of response time in Section 22.1, deliver a written request to mediate to the Authorized Representative. Failure of the Consultant to request mediation within the fifteen (15) calendar day period will constitute a waiver of the Consultant's right to pursue the Claim in any legal or administrative proceeding.

- 22.3. Pending final decision of a Claim under this article, the Consultant shall proceed diligently with the performance of the Contract. Failure by the Consultant to comply with the time deadlines under this paragraph as to any Claim shall operate as a waiver and release of that Claim.
- 22.4. The MVTA and Consultant agree to use mediation for any Claim, or other dispute initiated by MVTA arising out of the Contract, that cannot be resolved by the parties. If the parties are unable to agree on the selection of a mediator, they shall use the services of the American Arbitration Association to select a mediator. The parties shall share the costs of a mediator equally and shall bear their own costs of litigation, regardless of the prevailing party.

23. Intellectual Property Rights

- 23.1. The MVTA owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this Contract. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Consultant, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this contract. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Consultant, its employees, agents, or subcontractors, in the performance of this contract. The Documents will be the exclusive property of the MVTA and all such Documents must be immediately returned to the MVTA by the Consultant upon completion or cancellation of this contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Consultant assigns all right, title, and interest it may have in the Works and the Documents to the MVTA. The Consultant must, at the request of the MVTA, execute all papers and perform all other acts necessary to transfer or record the MVTA's interest in the Works and Documents.
- 23.2. Notification - Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Consultant, including its employees and subcontractors, in the performance of this Contract, the Consultant will immediately give the MVTA's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.
- 23.3. Representation - The Consultant must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the MVTA, and that neither the Consultant nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Consultant represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Section 11 of this Contract, the Consultant will indemnify; defend (to the extent permitted by law), and hold harmless the MVTA, at the Consultant's expense, from any action or claim brought against the MVTA to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Consultant will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Consultant's or the MVTA's opinion is likely to arise, the Consultant must, at the MVTA's discretion, either procure for the MVTA the right or license to use

the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the MVTA will be in addition to and not exclusive of other remedies provided by law.

24. Personal Conflicts of Interest

- 24.1. The Consultant certifies that to the best of its knowledge, no MVTA employee or employee or officer of any agency interested in the Contract has any financial interest in the business of the Consultant or with the Contract and that no person associated with the Consultant has any interest that would conflict in any manner or degree with the performance of the Contract.
- 24.2. The Consultant agrees that it is a breach of contracting ethics for the Consultant or any subcontractor to offer, give, or agree to give any MVTA member, employee, or agent any gratuity, gift, favor, entertainment, or offer of employment in connection with any decision or action in regard to this Contract.
- 24.3. The Consultant, by entering into a contract with the MVTA further covenants: 1) that no person or selling agency except bona fide employees or designated agents or representatives of the Consultant has been employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and 2) that no gratuities were offered or given by the Consultant or any of its agents, employees or representatives, to any official, member, or employee of the MVTA, or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making or any determination with respect to the performance of this service.

25. Organizational Conflicts of Interest

- 25.1. An “organizational conflict of interest” exists when, because of existing or planned activities or because of relationships with other persons, the Consultant is unable or potentially unable to render impartial assistance or advice to the MVTA, or the Consultant’s objectivity in performing the contract work is or might be otherwise impaired, or the Consultant has an unfair competitive advantage.
- 25.2. The Consultant agrees that if, after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the MVTA, which must include a description of the action which the Consultant has taken or proposes to take to avoid or mitigate such conflict. If an organization conflict of interest is determined to exist, the MVTA may, at its discretion, cancel the Contract. In the event the Consultant was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the MVTA, the MVTA may terminate the Contract for default under Section 4.6. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the Consultant, with the terms “Contract,” “Consultant” and “MVTA” modified appropriately to preserve the MVTA's rights.

26. Consultant Representations

- 26.1. In accordance with Minnesota Statutes, section 176.182, the Consultant represents that it is in compliance with the workers' compensation coverage requirements of Minnesota Statutes, section 176.181, subdivision 2.

26.2. In accordance with Minnesota Statutes, section 270C.66, the Consultant represents that it and all its subcontractors under this Contract, if any, are in compliance with the tax withholding on wages requirements of Minnesota Statutes, section 290.92

27. Notices

27.1. Required notice shall be in writing and shall be hand delivered or mailed to the parties at the addresses below:

27.1.1. Notice to the Consultant shall be sent to:

CONSULTANT
CONSULTANT SIGNATORY
ADDRESS
CITY, STATE, ZIP
EMAIL
PHONE

27.1.2. Notices to MVTA shall be sent to:

Minnesota Valley Transit Authority
Executive Director
100 East Highway 13
Burnsville, MN 55337

28. Board of Approval

28.1. All Contract amendments are subject to approval of the MVTA Board of Commissioners, unless otherwise provided by the Board in writing.

29. Continuing Obligations

29.1. The Consultant acknowledges that the provisions of this Contract impose continuing obligations on the Consultant which extend and are effective notwithstanding the conclusion of the term or early termination of this Contract.

30. Contracts Supersedes

30.1. This Contract supersedes any other related or similar contracts or terms by and between the MVTA and the Consultant.

Clint Hooppaw, Chair
MINNESOTA VALLEY TRANSIT AUTHORITY

Date

Beverley Miller, Executive Director
MINNESOTA VALLEY TRANSIT AUTHORITY

Date

CONSULTANT SIGNATORY
CONSULTANT

Date

SAMPLE