

Request for Proposals  
RFP S18088

BART Silicon Valley  
Phase II Extension Project

# **General Engineering Consulting (GEC) Services**

July 2, 2018

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*Solutions that move you*

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**INTRODUCTION** The Santa Clara Valley Transportation Authority, also known as VTA, is the result of a 1995 merger between two previously separate entities: the Santa Clara County Transit District and the Congestion Management Agency for Santa Clara County. VTA is an independent special district responsible for bus and light rail operations, congestion management, specific highway improvement projects and countywide transportation planning. As such, VTA is both an accessible transit provider and multi-modal transportation planning organization involved with transit, highways, roadways, bikeways, and pedestrian facilities. Working under the direction of a 12-member Board of Directors (“Board”), VTA’s annual operating budget is approximately \$400 million, and its currently approved capital program is approximately \$1 billion. VTA’s bus fleet of 505 buses serves a 346-square mile urbanized service area and operates approximately 18 million miles annually. The 42.2-mile light rail system is served by 99 rail cars and 5 historic trolley cars and operates approximately 2.2 million miles annually. VTA employs approximately 2,050 people, of whom approximately 650 are administrative, clerical and professional positions and 1,400 are operators and maintenance positions. There are four operating/maintenance facilities located within Santa Clara County. The administrative headquarters is located separately from these four facilities.

For more information about VTA, log on to [www.VTA.org](http://www.VTA.org).

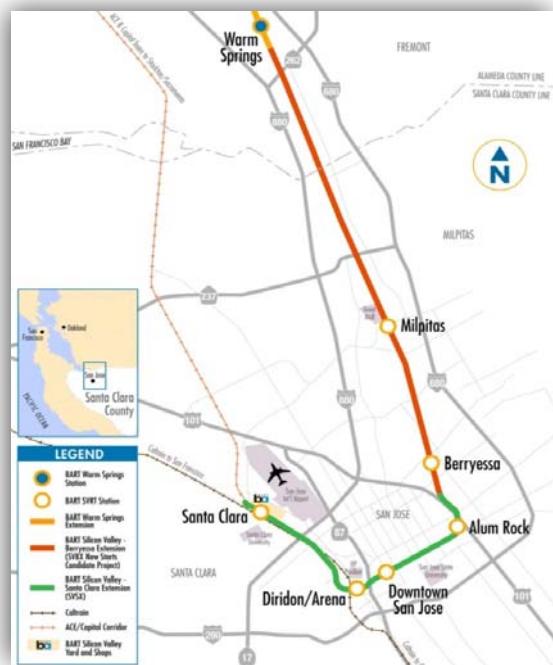
## **BART SILICON VALLEY PROGRAM**

VTA is responsible for design and implementation of highway and transit improvement projects including planning, design and implementation of the BART Silicon Valley (“BSV”) Program.

The BSV Program, earlier called the Silicon Valley Rapid Transit (“SVRT”) Program, will extend the San Francisco Bay Area Rapid Transit (“BART”) system from the City of Fremont in Alameda County through the cities of Milpitas, San Jose and Santa Clara, in Santa Clara County (Figure 1). The BART extension to Santa Clara County was selected as a preferred alternative from a study of all reasonable mode and alignment alternatives. This study, titled the “Major Investment Study”, was adopted by VTA’s Board in November 2001.

In 2001, the BART-VTA Comprehensive Agreement was executed establishing the roles and responsibilities of the two agencies in the implementation of the BSV Program.

In December 2002 and 2004, VTA and Union Pacific Railroad (UPRR) executed Purchase and Sale Agreements for: (i) the acquisition of the



Union Pacific Railroad (“UPRR”) corridor from south of BART’s Warm Springs Station through Milpitas to San Jose; and (ii) the Newhall Yard, a 40-acre property to be used as a maintenance and storage facility for the BART extension to Santa Clara County.

The 16-mile BART extension to Santa Clara County is being implemented in multiple phases. Phase I of the Program is a 10-mile, 2-station extension - the BART Silicon Valley Berryessa Extension (“SVBX”) project. The two stations are Milpitas, located in the City of Milpitas, and Berryessa, located in the City of San Jose. In March 2012, the Federal Transit Administration (“FTA”) and VTA executed a Full Funding Grant Agreement. Construction activities for SVBX are nearly complete and testing and commissioning is underway.

Phase II of the Program is a 6.5-mile, 4-station extension from the under-construction Berryessa Station to Santa Clara, including an approximately 5-mile-long tunnel through Downtown San Jose. For more details on the BART Silicon Valley Phase II Extension, please visit [www.vta.org/bart/environmentalphaseII](http://www.vta.org/bart/environmentalphaseII) to view the Draft Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report.

On April 5, 2018, the VTA Board of Directors approved the Phase II extension of the Program. The Board action included certification of the Phase II project’s Environmental Impact Report and adoption of a Mitigation Monitoring and Reporting Program. The approved project includes Transit-Oriented Joint Development. Subsequently, on April 26, 2018, the BART Board of Directors, accepted the Environmental Impact Report and approved the Phase II project.

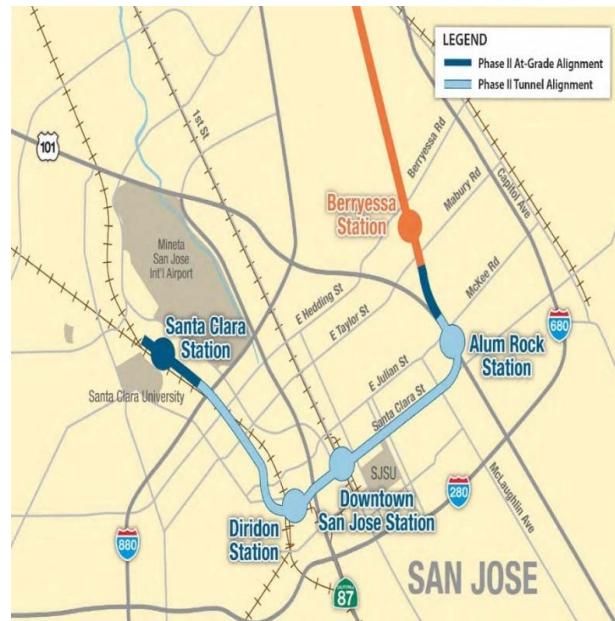


Figure 2

**ABOUT RFP S18088:** VTA seeks Proposals, as defined in Section I(F) below, from qualified firms to provide General Engineering Consulting (“GEC”) services for the BART Silicon Valley Phase II Extension (“Project”). The successful Proposer, as defined in Section I(A) below, (“Contractor”) will work with VTA to successfully implement the functional areas identified in the Scope of Services (“Services”) identified in Section VIII of this Request for Proposals (“RFP”). The contract is anticipated to be in effect beginning in late 2018 and continuing through completion of the construction, testing and commissioning phases, and closeout and turnover of the Project, an estimated eight (8) years. VTA reserves the right to extend the term of the contract.

Services include, but are not limited to, development of design criteria, preliminary and final design, engineering management, engineering reviews, quality management, design integration,



system integration, project controls, technical coordination with stakeholders, utilities coordination, value engineering, and development of technical documents for inclusion in the procurement documents, as further described in the Scope of Services.

GEC services to be performed during the preliminary engineering portion of the Project constitute the base scope of services. Other Services are options to be exercised at VTA's sole discretion and will be assigned via Task Orders ("Task Orders"), as defined in Section X Exhibit A1.

**VTA is seeking funding from the Federal government for the Project. VTA reserves the right to cancel or postpone this RFP at any time in its discretion, including for reasons related to denials of funding or delays in the funding process.**

**NOTICE TO PROPOSERS OF LIMITATION OF FUTURE CONTRACTING:** The Proposer(s) selected under this RFP will be precluded from submitting proposals or bids as a prime contractor or subcontractor for any future procurement with VTA if the specifications, requirements, scope of services, and/or RFPs for such work were developed or influenced by the work performed under the contract resulting from this RFP.

Contractors and subcontractors performing program management services under the HNTB + PB Joint Venture Contract S17017 as well as contractors and subcontractors performing planning program management services under the Kimley Horn and Associates, Inc. Contract S15025 are ineligible to participate in this RFP.



## I. INSTRUCTIONS TO PROPOSERS

**A. PROCUREMENT SCHEDULE:** VTA's procurement schedule dates are listed in Table 1 below. All dates set forth in this RFP are subject to change at VTA's sole discretion, and will be provided to firms submitting a Proposal under this RFP ("Proposers") as an addendum. All references in this RFP to "time" are Pacific Time.

**Table 1**

ACTIVITY	DATE/TIME
Issue RFP	June 29, 2018
Pre-Proposal Conference	July 13, 2018 at 10:00 a.m.
Deadline to Submit Questions	July 18, 2018 by 5:00 p.m.
Deadline to Submit Technical Proposal	August 13, 2018 by 5:00 p.m.
Deadline for Cost Proposal and DBE Forms	August 22, 2018 by 5:00 p.m.
Interviews	September 11-13, 2018

**B. DESIGNATED POINT OF CONTACT:** All communications with VTA regarding this RFP shall be in writing (US mail/email) to the Designated Point of Contact identified below. All emails must indicate in the subject line "RFP S18088 for GEC SERVICES." No telephone calls will be accepted. Except as otherwise provided herein, no contact will be entertained by the Procurement, Contracts, and Materials Management staff outside of the formal Q&A period, and/or by anyone other than the Designated Point of Contact regarding this RFP.

Any unauthorized contact related to this RFP is not permitted. Any breach of this provision may result in the Proposer's submittal being deemed non-responsive and may be cause for rejection.

The Designated Point of Contact for this procurement shall be as follows:

Ephraim Cadaing, Sr. Contracts Administrator  
Santa Clara Valley Transportation Authority  
3331 North First Street, Building A  
San Jose, California 95134  
Email: ephraim.cadaing@VTA.org

**C. PRE-PROPOSAL CONFERENCE:** All prospective Proposers are strongly encouraged to attend the pre-proposal conference scheduled at the date and time stated on Table 1. The pre-proposal conference will be held at:

Santa Clara Valley Transportation Authority  
3331 North First Street, Building A, Auditorium  
San Jose, California 95134



**D. EXAMINATION OF PROPOSAL DOCUMENTS:** By submitting a Proposal, the Proposer represents that it has thoroughly examined and become familiar with the work required under this RFP, and that it is capable of performing quality work to achieve VTA's objectives.

**E. ADDENDA/CLARIFICATIONS:** VTA reserves the right to make changes to these RFP documents as it may deem appropriate up until the date for submission of the Proposals (set forth in Table 1). Any and all changes to this RFP will be made by written addendum, which will be issued by VTA to all prospective Proposers who have registered and downloaded the Proposal documents at the VTA website. All addenda and other related materials will be posted to the VTA.org procurement site. Prospective Proposers will be notified by email when information has been posted to the VTA procurement site for this RFP. **NOTHING RELIEVES PROPOSER FROM BEING BOUND BY ADDITIONAL TERMS AND CONDITIONS IN ADDENDA.**

Questions or comments regarding this RFP must be submitted in writing and must be received by VTA no later than the date and time stated in Table 1. Email questions must be submitted to the Designated Point of Contact listed above, and shall include "RFP S18088 QUESTIONS" in the subject line.

Responses from VTA will be communicated in writing to all recipients of this RFP and published on the VTA online procurement website.

**F. SUBMISSION OF PROPOSALS:** All responses to this RFP ("Proposals") shall be submitted to the Designated Point of Contact no later than the date and time stated in Table 1.

The Proposer shall submit eight (8) printed copies and one (1) copy of the Technical Proposal (as defined in Section IV. B) in an electronic format in the form of a CD, DVD, or flash drive.

A sealed envelope containing one printed copy of the Cost Proposal (as defined in Section IV. B.) Form 5 and DBE Forms 6 and 7 will be required from the Proposers as provided in Table 1. The Cost Proposal will be for the first Task Order (i.e., the "Preliminary Engineering" phase) only.

If a Proposer fails to submit the sealed envelope containing the Cost Proposal and DBE Forms within this timeframe and an interview has been scheduled with the Proposer, VTA reserves the right to cancel the Proposer's scheduled interview.

The package must bear the Proposer's name and address, and be clearly labeled as follows:

"RFP S18088 GEC SERVICES"



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All responses, inquiries, and correspondence related to this RFP and all reports, charts, displays, schedules, exhibits, and other documentation produced by the Proposer submitted as part of the Proposal will become the property of VTA when received by VTA and may be considered public information under applicable law. Any proprietary information in the Proposal should be identified as such. VTA does not typically disclose proprietary information to the public, unless required by law; however, VTA cannot guarantee that such information will be held confidential.

**G. WITHDRAWAL OF PROPOSALS:** A Proposer may withdraw its Proposal at any time before the Technical Proposal submittal deadline, as stated in Section I Table 1, by delivering to the Designated Point of Contact a written request for withdrawal signed by, or on behalf of, the Proposer.

**H. RIGHTS OF VTA:** VTA may investigate the qualifications of any Proposer under consideration, require confirmation of information furnished by the Proposer, and require additional evidence or qualifications to perform the Services described in this RFP.

VTA reserves the right to:

- Cancel or postpone this RFP at its discretion.
- Reject any or all Proposals.
- Issue subsequent Requests for Proposal.
- Postpone opening of Proposals for its own convenience.
- Remedy technical errors in the Request for Proposal process.
- Approve or disapprove the use of particular subcontractors.
- Award a professional services contract to one or more Proposers.
- Waive informalities and irregularities in Proposals.
- Conduct interviews at its discretion.

**I. CONTRACT TYPE:** It is anticipated that VTA will award a professional services contract (“Contract”). If awarded, the Contract will be a Master Task Order Contract with a term extending through construction, testing, and commissioning, and with a contractual term of approximately eight (8) years. Assignment of the Services shall be authorized by issuance of Task Orders in the format set forth in Section X Exhibit A1.

Under the first Task Order, Contractor will develop the preliminary engineering for the entire scope of the Project. In addition, Contractor will also develop technical plans and specifications for the Tunnel & Heavy Civil (design/build) contract. (Reference Section VIII. C. CONTRACTING STRATEGY)



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This RFP does not commit VTA to enter into such Contract nor does it obligate VTA to pay for costs incurred in preparation or submission of Proposals or in anticipation of entry into a Contract.

**J. COLLUSION:** By submitting a Proposal, each Proposer represents and warrants that its Proposal is genuine and not a sham, collusive, or made in the interest of or on behalf of any person not named therein; that the Proposer has not, directly or indirectly, induced or solicited any other person to submit a sham Proposal or any other person to refrain from submitting a Proposal; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a Proposal.

**K. AUDIT REPORT/REQUIREMENTS:** Proposers must agree to abide by the requirements in Chapter III, paragraph 4 of FTA Circular 4220.1F. Every Proposer that has been the subject of any audit report by any government or public agency or qualified independent CPA must attach with its Proposal the latest such audit report, including direct labor, materials, fringe benefits and general overhead.

Proposers must also agree to submit cost or pricing data in accordance with 48 CFR Part 15.408 Table 15-2.

**L. ECONOMIC INTEREST FORM 700:** The Proposer's key personnel as well as other positions within his or her firm, determined by VTA, to be participating in the making of governmental decisions will each be required to file a Form 700, the financial disclosure form mandated by the Fair Political Practices Commissions (FPPC). The Form 700 will be required to be filed upon execution of the Contract in which the VTA retains the services of the Proposer, annually thereafter, and upon separation of services pursuant to FPPC rules and regulations.

**M. INCORPORATION OF EXHIBITS AND ATTACHMENTS:** All exhibits and attachments referenced in this RFP are incorporated herein by this reference.

## **II. PROPOSER'S MINIMUM QUALIFICATIONS**

**A. REQUIRED MINIMUM QUALIFICATIONS:** The following qualifications are the minimum required qualifications that a Proposer must have in order for a Proposal to be considered:

1. The Proposer shall demonstrate they have sufficient experience and qualifications in providing engineering and architectural services, from the planning phase through procurement and contractor selection, final design, construction and testing, and commissioning of large, complex, multi-discipline projects, particularly as they relate to the Services described herein.



2. The Proposer's experience shall include at least one transit or transportation infrastructure project including a tunnel with construction cost of at least \$500 million, successfully completed within the last ten (10) years, or with construction at least 75% complete at the time of submission of the Technical Proposal.
3. The Proposer, or Proposer's employees, shall have necessary professional licensing in all disciplines in the State of California relating to the design of an electrified (third rail) heavy rail transit system with a tunnel guideway and underground stations.
4. The Proposer shall demonstrate they possess knowledge and experience in supporting clients with FTA's New Starts Program preliminary engineering through successful completion of the project.

### **III. EVALUATION AND SELECTION**

**A. EVALUATION CRITERIA:** The following criteria will be used to evaluate Proposals:

<b>Qualification of the Proposer</b>	<b>10 Points</b>
<b>Staffing and Project Organization</b>	<b>25 Points</b>
<b>Work Plan</b>	<b>35 Points</b>
<b>Project Understanding</b>	<b>30 Points</b>

1. **QUALIFICATION OF THE PROPOSER:** Qualifications to be considered are defined in Section IV. B. Content and include: technical experience in performing work of a closely similar nature; experience working with transit agencies; record of completing work on schedule; strength and stability of the firm(s); technical experience and strength and stability of proposed subcontractors; and assessments by client references.
2. **STAFFING AND PROJECT ORGANIZATION:** Qualifications of project staff will be considered, especially the project manager and key personnel. Other factors to be considered include, but are not limited to key personnel's level of involvement in performing related work, logic of project organization; adequacy of labor commitment, and concurrence in the restrictions on changes in key personnel.
3. **WORK PLAN:** Proposer's work plan and project approach to deliver the design packages as required to support the Scope of Services outlined in Section VIII will be evaluated.
4. **PROJECT UNDERSTANDING:** Proposer's demonstrated understanding of the project requirements, potential problem areas, and quality assurance program will be evaluated.



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- B. EVALUATION PROCEDURE:** The review board will evaluate Proposals based on the pre-established criteria to determine the successful Proposer or establish a shortlist of firms to interview. VTA reserves the right to conduct interviews at its discretion.

Proposers are asked to keep the interview date stated in Section I. A Table 1 available in the event the review board conducts interviews. If invited to interview, VTA will notify Proposers regarding the schedule and other pertinent interview information. Proposers should budget at least 90 minutes for the interview. The interview requires the Proposer's project manager to be the lead participant.

The names of the review board members are not revealed prior to the interviews. The individual or composite rating and evaluation forms prepared by individual review board members are not retained by VTA and will not be revealed.

- C. BASIS OF AWARD:** When the review board has completed its work, negotiations will be conducted for the extent of services to be rendered.

Award may be made on the basis of initial Proposals submitted without any negotiations or discussions.

When VTA engages the highest-ranked Proposer in negotiations, a Notice of Intent to Award will be submitted as a courtesy to the shortlisted Proposers.

Upon completion of a successful negotiation, VTA will issue a Notice of Recommended Award, which will initiate the five (5) day pre-award protest period pursuant to VTA's protest policies.

In the event negotiations are unsuccessful and the parties have reached an impasse, negotiations are deemed concluded and cannot later be resumed with that Proposer. VTA may enter into negotiations with the next highest-ranked Proposer following the same process described above. If necessary, negotiations with successive Proposers in descending order of ranking may be conducted until contract award can be made to the Proposer based on agreed to terms and whose price is considered fair and reasonable by VTA.

#### **IV. PROPOSAL FORMAT AND CONTENT**

- A. FORMAT:** Proposals shall be typed, as concise as possible, and shall not include any unnecessary promotional material. The nature and form of response are at the discretion of the Proposer, but shall include the information listed below.



**B. CONTENT:** The Proposer shall include the information described below in the Technical Proposal:

- 1. PROFILE OF THE PROPOSER:** This section shall include a brief description of the size and the local organizational structure of the Proposer (includes joint venture partners); it shall also include a discussion of the Proposer's financial stability, capacity and resources. This section shall not exceed five (5) pages.

Additionally, to be included in this portion of the Proposal is a listing of (a) any lawsuit or litigation and the result of that action resulting from any public project undertaken by the Proposer or by its subcontractors where litigation is still pending or has occurred within the last five (5) years or (b) any type of project where claims or settlements were paid by the Proposer or its insurers within the last five (5) years.

- 2. QUALIFICATIONS OF THE PROPOSER:** This section shall include a description of the Proposer's and its subconsultants' qualifications and previous experience on similar or related projects that clearly demonstrate that the Proposer meets the minimum qualifications. Include previous project experience, including a summary of the work performed, the total project cost, the percentage of work the firm was responsible for, and the period over which the work was completed. Provide a brief statement of the firm's adherence to the schedule and budget for each project. Proposer must provide the name, title, email address, and phone number of three (3) clients to be contacted for references. This section shall not exceed twenty (20) pages.
- 3. PROJECT UNDERSTANDING:** The Proposer shall provide a clear and concise project understanding to demonstrate that the Proposer fully understands the Project's challenges, needs and objectives. Proposer should demonstrate their experience, i) working with multiple agencies on a large transit project; ii) the ability to lead the design effort to expand an existing rail transit system; iii) is technically competent and experienced with systems integration; and iv) competent with developing and implementing various contracting strategies.

The Proposer must also explain their understanding of (a) the design of a tunnel boring machine ("TBM") excavation in an urban environment with similar ground and groundwater conditions; (b) systems integration, testing and commissioning for a transit extension integrating with an existing, operating transit system; (c) efforts to address environmental mitigation efforts; and (d) coordination with transit oriented joint development ("TOJD"). The Proposer may also suggest technical or procedural innovations they have used successfully on other similar projects. Section 3 shall not exceed twenty (20) pages.



4. **WORK PLAN:** By presentation of a well-conceived work plan, this section of the Technical Proposal shall establish the Proposer's plan, work requirements, and their ability to successfully complete the technical scope of the Project. The work plan shall describe the work assigned to each member of the proposing team. The work plan shall also include the projected work-hours by discipline by year to complete all work specified in the SCOPE OF WORK and in accordance with the packaging and the timetable within the proposed CONTRACTING STRATEGY. The Proposer may also suggest technical or procedural innovations that have been used successfully on other similar projects. Include a chart and histogram of hours by calendar year. The Proposer needs to provide detail as to how the DBE goal will be met and stated in percentages (not dollar value) and how the Proposer will encourage SBE participation toward the SBE aspirational goal. This section shall not exceed thirty (30) pages.
5. **PROJECT STAFFING:** This section shall discuss how the Proposer would staff this Project. Proposer's Project team members shall be identified by name, location, specific responsibilities on the Project and the estimated person-hours of participation. An organizational chart for the Project team and resumes for key personnel shall be included. Key personnel will be an important factor considered by the review board. Once the Technical Proposal is submitted, there can be no change of key personnel without the prior written approval of VTA. This section, excluding resumes, shall not exceed ten (10) pages.
6. **ADMINISTRATIVE SUBMITTALS:** The Proposer must complete all the forms attached hereto and submit as follows:
  - a. **Proposal Submittal:** Forms 1 through 4 must be included with the Technical Proposal by the date stated in Section I. Table 1.
  - b. **Cost Proposal Submittal:** Forms No. 5 through 8 must be submitted in a sealed envelope by the date stated in Section I. Table 1.

Form 5, Cost Proposal shall include all labor, indirect direct, and direct costs for the anticipated work to be completed during the preliminary engineering task. The Cost Proposal shall be based on the proposed contracting strategy specified herein. Include all assumptions used to base the Cost Proposal on. Proposer shall also include Form 6 and 7 containing the DBE and SBE participation stated in dollar values and Form 8 Estimated Bid Credit Worksheet (located in Exhibit A3 Insurance Requirements) in the Cost Proposal Submittal.

## **V. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

- A. **DISADVANTAGED BUSINESS ENTERPRISE POLICY:** VTA has established a Disadvantaged Business Enterprise ("DBE") program in accordance with U.S. Department of Transportation ("DOT") regulations 49 CFR Part 26. VTA intends to utilize Federal



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financial assistance from the DOT, and as a condition of receiving this assistance, VTA will sign an assurance that it will comply with 49 CFR Part 26.

It is the policy of VTA to ensure that DBE firms, as defined in 49 CFR Part 26, have an equitable opportunity to receive and participate in DOT-assisted contracts. The Contractor 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 this DOT assisted contract. 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 VTA deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

- 1. DBE WITH GOAL REQUIREMENT:** In connection with performance of this Contract, Proposer shall fully comply with VTA DBE policy and procedures pertaining to utilization of DBE firms. A **15.45%** DBE contract specific participation goal has been established by the Office of Business Diversity Programs (“OBDP”). A Proposer must either achieve the DBE participation goal or provide documentation to demonstrate sufficient good faith efforts to meet such goal. A Proposer who does not achieve the goal or demonstrate sufficient good faith efforts shall be deemed “*non-responsive*” and therefore ineligible for award.
- 2. “GOOD-FAITH EFFORTS” GUIDELINES:** The Proposer is required to document sufficient DBE participation to meet the goal. If the participation goal for this Project is attained, the Proposer need not submit any documentation on the efforts made to achieve the goal. However, if the DBE goal is not attained, the Proposer must demonstrate that “Good Faith Efforts” were made to attain the goal. Proposer must document adequate efforts at the time of Cost Proposal submittal, as provided for in 49 CFR 26.53, and in accordance with the “Good Faith Efforts” provisions below:
  - a. Pre-Proposal Meeting:** Proposer attended the pre-proposal conference that was scheduled by VTA to inform Proposers of the DBE program requirements for this RFP.
  - b. Identification of DBE Participation Opportunities:** Proposer identified selected specific items of the work to be performed by DBE firms to provide genuine opportunities for participation by DBE firms. Proposer shall provide documentation showing the items that were identified and selected and shall describe how such items were utilized by Proposer to solicit DBE participation.

Where appropriate, Proposer allocated work to facilitate DBE participation, even when Proposer preferred to perform this work with its own forces.



- c. **Advertisements:** At least ten (10) calendar days before the Technical Proposal due date Proposer solicited sub-contracts from DBE firms for specified categories of work or materials or supplies for the contract through advertisements.
- d. **Written Notice:** At least ten (10) calendar days before the Technical Proposal's due date, Proposer provided written notice to a sufficient number of DBE certified firms in each subcontracting work category, and to such firms in each category of materials or supplies for the project. Written notice to a minimum of ten (10) firms shall constitute a sufficient number of firms to be notified if the approved CUCP databases contain at least ten (10) firms for that category.
- e. **Follow-up of Initial Solicitations:** Proposer followed-up initial solicitations of interest by contacting the DBE firms to determine with certainty whether the firms were interested in submitting Proposals on the work. Such follow-up activity shall be documented with telephone, fax logs, or other written documentation that shall be submitted to VTA and that shall set forth, at a minimum, the following information:
  - The type of contact; i.e., telephone, meeting, letter, fax, or e-mail;
  - The name of the DBE firm contacted;
  - The date and time the DBE firm was contacted;
  - The full name, title, telephone or fax number, and e-mail address of the person at the DBE firm contacted by Proposer;
  - The responses of each of the DBE firms contacted with regard to its interest in submitting a sub-contract; and
  - For each DBE firm contacted that declined to submit a Proposal, the reason(s) provided by the DBE firm for declining to submit a Proposal.
- f. **Information Regarding Contract Scope of Work:** Proposer shall describe the information provided to interested firms; report the name of the firms involved, and set forth the date and method of providing such information.
- g. **Request for Assistance in the Recruitment of DBE Firms:** Proposer requested assistance from federal, state, and local agencies for lists of DBE firms. Proposer provided information about selected subcontract work and requirement to DBE firms.



- h. Good-Faith Evaluation of and Negotiation with Interested DBE Firms:** Proposer evaluated the proposals of and negotiated in good faith with interested DBE firms, and did not unjustifiably reject DBE firm(s) as unsatisfactory or unqualified without sound reasons based on a thorough assessment of the capabilities of the firm(s) in question. Proposer shall list all DBE responses to the solicitation, and all DBE sub-contracts which were received but not used.

**NOTE: If no DBE Proposals are received, this fact must be stated. When applicable,** Proposer shall provide, at a minimum, the following information:

- Contacting bonding and/or insurance companies on behalf of a DBE firm;
  - Arranging with sureties phased or incremental bonding for the DBE firm;
  - Waiving bonds or insurance requirements;
- 3. Contractor Certification:** All DBE firms listed on Form 6, Listing of DBE Prime and Subcontractors, must be certified by the California Unified Certification Program (CUCP) at the time of Proposal submittal to be counted toward the contract DBE goal. Proposers must comply with VTA's DBE Program Policy and Requirements on utilization of DBE firms.
- a. Form 6, DBE Listing of Prime and Subcontractors, Form 7, Designation of Subcontractors and Suppliers, Good Faith Efforts, and other documentation in compliance with DBE Program Policy and Requirements, must be included in the Cost Proposal submittal.
- b. It is the Proposer's sole responsibility to verify and provide subcontractor's DBE certification to VTA.
- c. The list of certified CUCP DBE firms is available at:  
[http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).
- d. The CUCP DBE application is available at the OBDP website at:  
[www.vta.org/osdb](http://www.vta.org/osdb).
- 4. 49 CFR PART 26.39 – FOSTERING SMALL BUSINESS PARTICIPATION:**  
As part of the VTA's DBE Program, Small Business Enterprise (SBE) prime and subcontractors are encouraged to participate in VTA's contracting opportunities. VTA's SBE aspirational goal for this contract is 30.0%.
- 5. FRAUDS AND FRONTS:** Contactors are cautioned against knowingly and willfully using "fronts" to meet the DBE goal of the Contract. The use of "fronts" or "pass through" subcontracts to non-disadvantaged firms constitutes a criminal violation.



## **VI. INSURANCE REQUIREMENTS**

Contractor shall adhere to the insurance requirements set forth in Exhibit A3. Proposer's attention is directed to the insurance requirements in the exhibit. It is highly recommended that Proposers confer with their insurance carriers or brokers in advance of Proposal submission to determine the availability of insurance certificates and endorsements that will be required for the Contract awarded through this RFP.

## **VII. PROTESTS**

- A. SOLICITATION PHASE:** Prior to the closing date for submittal of Cost Proposals, Proposer may submit to VTA protests regarding the procurement process, or alleged improprieties in specifications, or alleged restrictive specifications. Any such protests must be filed no later than ten (10) working days prior to the scheduled closing date. If necessary, the closing date of this solicitation may be extended pending a resolution of the protest.
- B. PRE-AWARD:** Protests dealing with alleged improprieties in the procurement or the procurement process that can only be apparent after the closing date for receipt of Cost Proposals must be filed within five (5) working days after issuance of the Notice of Recommended Award. Protests will contain a statement of the grounds for protests and supporting documentation. Protestor will be notified of VTA's final decision prior to issuance of award.

Protestors shall have an opportunity to appear and be heard before the agency prior to the opening of Proposals in the case of protests based on the content of the request for Proposals or prior to final award in the case of protests based on other grounds. Proposer's requests and protests shall be **in writing only** and be addressed to:

Santa Clara Valley Transportation Authority  
Attn: Thor Vue, Chief Procurement Officer  
Procurement, Contracts & Materials Management  
3331 North First Street, Building A  
San Jose, California 95134

The full text of VTA's Policy No. 36 may be obtained at <http://www.vta.org/about-us/doing-business-with-vta-policies>. Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection.

If this Contract is financed with federal assistance, pursuant to 2 C.F.R. § 200.318(k), protesters may raise, with the FTA, matters that are primarily a federal concern. Protesters must raise any federal matters arising out of VTA's award of a contract within five (5) business days of VTA's final decision of the Proposal protest. See 2 C.F.R. § 200.318(k) for details.



## **VIII. SCOPE OF SERVICES**

Contractor shall provide general engineering and architectural services for the BSV Phase II Program integrating functional areas detailed below. The scope of services described under the functional areas is not meant to be prescriptive or otherwise limiting. The Technical Proposal may include tasks, with a sound basis/rationale, for functional areas not listed below but which may be needed for the successful implementation of the program.

**A. GENERAL SCOPE OF SERVICES:** Contractor shall provide general engineering services required to prepare construction contracts for the advertisement and award related to the proposed BSV Phase II Program. Engineering services will include preliminary and final engineering, safety and security certification, support during construction package procurement, design review for design/build contracts, systems integration, design support during construction and support of project closeout and turnover.

Contractor must have a multidisciplinary team capable of supporting VTA's efforts to issue several construction contracts in accordance with the proposed "CONTRACTING STRATEGY" described in Section VIII.C below. Engineering services to be provided will include:

- Civil Engineering
- Structural Engineering
- Tunnel and TBM Design
- Traffic Engineering
- Geotechnical
- Architectural
- Landscape Architecture
- Electrical
- Mechanical
- Signaling
- Track Design
- Systems Design and Integration
- Communications
- Traction and Station Power
- Fire and Life Safety
- Technical Specifications
- Cost Estimating
- Scheduling

**B. TASK ORDERS:** Contractor will provide the Services necessary to support VTA with the delivery of the BSV Phase II Program based on the issuance of Task Orders under the Contract. Task Orders may include engineering services for one or more construction contract packages; support services necessary to deliver the BSV Phase II Program and close out the various contracts. The first Task Order will state the start date and the term, which is anticipated to be effective through June 2019, the end of VTA's fiscal year. Task Orders are typically finalized in June for the upcoming fiscal year (July - June). Contractor will provide a work plan, an organizational chart, and a detailed scope of work including deliverables, schedule, and cost proposal for each task order issued by VTA.

Work performed by Contractor prior to the issuance of a Task Order, or not included in the approved scope of work nor authorized by VTA, is not subject to reimbursement under the terms of the Contract.



The focus of the first Task Order is:

1. Preliminary engineering required for all proposed construction contract packages that will be developed for the BSV Phase II Program (Section VIII. C. CONTRACTING STRATEGY). Preliminary engineering is anticipated to have a duration of eighteen (18) months.
2. Development of technical plans, specifications, and criteria for the Tunnel & Heavy Civil (design/build) contract package to an approximate 30% level.

Preliminary engineering activities will include, but are not limited to:

- Engineering support for environmental activities, graphics and reports.
- Conceptual designs, including architectural visualizations/simulations.
- Right-of-way requirements.
- Preliminary designs, construction schedules, and phasing.
- Safety and Security requirements, including development of Preliminary Hazard Analysis (PHA) and Threat and Vulnerability Assessment (TVA)
- Contract Interface and Contract Management Plan.
- Renderings/drawings.
- Research on codes, rules, regulations, analytical system studies/calculations, surveys, current industry standards and practices necessary for the work to be performed.
- Project implementation plans.
- Risk analysis support
- Value engineering.
- Construction cost estimates.
- Preliminary engineering will be developed to approximately a 30 percent design level, and will include, at a minimum:
  - Final space proofing of the tunnel, to establish the final minimum internal diameter.
  - Final space proofing of all underground station entrances, emergency exits, ventilation shafts, and portals.
  - Development of the final Geotechnical Baseline Report (GBR).
  - Performing computer based simulations for the rail systems and mechanical, electrical and plumbing (MEP) systems to demonstrate the proposed designs will operate during normal, maintenance and contingency modes of operations as specified in the design criteria, codes and standards.

**C. CONTRACTING STRATEGY:** For purposes of preparing their Cost Proposals, Proposers should assume that VTA will implement a contracting strategy that calls for the following construction contracts and timetables (see Table 2) to finalize the technical documents for the corresponding construction contract:



- Enabling Works (design/bid/build) – advance work that will facilitate the tunnel construction. For example, scope could include building demolition and hazardous materials remediation.
- Tunnel & Heavy Civil (design/build)
- Station Fit-out (design/bid/build) – station construction completion excluding structural concrete work included in the tunnel & heavy civil contract.
- Track & Systems (design/bid/build) – track and systems installation and testing except for track work included in Newhall Yard contract.
- Newhall Yard and Maintenance Facility and Santa Clara Station (design/bid/build) – all work for the Newhall Yard and Maintenance Facility and the Santa Clara Station, including all track and systems off the mainline track and within the yard.
- Parking Garages (design/build) – all work associated with parking structures adjacent to Alum Rock and Santa Clara Stations.

Table 2.

CONTRACT STRATEGY	BASELINE - TASK ORDER NO. 1 EFFECTIVE DATE
Enabling Works (design/bid/build)	12 Months
Tunnel & Heavy Civil (design/build)	18 Months
Station Fit-out (design/bid/build)	42 Months
Track & Systems (design/bid/build)	30 Months
Newhall Facility/Santa Clara St. (design/bid/build)	36 Months
Parking Garages (design/build)	50 Months

An advance utility relocation to support tunnel construction will be designed and advertised separately by VTA; Contractor will provide only coordination effort for that construction contract.

Please note, however, that the ultimate contracting plan is subject to VTA's discretion.

Design to accommodate and/or design support may also be required for any Transit Oriented Joint Development (TOJD) at or near the stations. A separate task order may be issued for Contractor support of any TOJD, as the effort becomes better defined.

#### D. PROGRAM AND TASK ORDER ADMINISTRATION

Contractor will be fully responsible for securing and assigning staff necessary to successfully complete the task orders in the most cost-effective and efficient manner.



Duplication of services are to be avoided. Staff are to be fully utilized, with appropriate training, experience, and technical skills necessary to complete the work as prescribed.

Contractor's Project management, key staff, discipline leads and task leads, at a minimum, are expected to co-locate with VTA in San Jose, CA in an office provided by VTA.

Contractor will prepare and submit a management plan for staff and subconsultants.

Contractor management will meet with VTA on a regular basis throughout the life of the Contract to discuss program status, schedule and issues. Task order (project specific) meetings will be organized, facilitated, and documented by Contractor.

Contractor will maintain documentation in accordance with VTA's document control procedures.

Contractor will utilize and participate in VTA's Project Information & Control System.

Contractor will submit monthly progress reports and invoices in a format approved by VTA. Progress reports will include the following:

- Task order progress
- Schedule status – critical activities and milestones (actual vs. planned), proposed corrective actions to realign the schedule (if necessary)
- Budget – planned expenditure vs. actual, commentary and corrective action if necessary, status of DBE participation and corrective action if necessary
- Areas of concern – identify areas of concern and discuss proposed actions

## **E. QUALITY REQUIREMENTS**

Contractor shall adhere to the plan listed below, a copy of which is available on this RFP's procurement page and incorporated herein by this reference:

- **Appendix A - BSVII Quality Management Plan (QMP)**
1. Contractor shall develop, maintain and implement a Quality Management System (QMS) with associated Quality Plan in accordance with VTA's QMP. Contractor shall support VTA quality oversight as required, including participation in audits by VTA representatives or outside agencies.
  2. Quality checklists developed for the Project shall be integrated with the requirements management system discussed in the BSVII QMP to ensure incorporation of requirements in the design and Quality Control (QC) processes.
  3. Contractor's Quality Manager shall report above the Project reporting structure. Contractor's Quality Manager shall have a minimum of 15 years of experience,



including 10 years of experience as a Quality Manager on projects of similar size and complexity. Contractor shall ensure sufficient and qualified staff is available to oversee the Contractor's quality program.

## F. PROJECT INFORMATION & CONTROL SYSTEM

1. Contractor shall utilize VTA's Program Information and Controls System (PICS) established to track and manage the project. This system shall be an official record of all Project communication. Contractor shall upload all Project-related documents on PICS and utilize the system to conduct business with VTA as described in the system work instructions.
2. To obtain access to PICS, Contractor must schedule and complete the training provided by VTA.
3. Contractor must submit, track, review, and handle ALL submittals via PICS. This includes review of all submittals, shop drawings, and RFIs as well as invoices and pay applications.
4. All document transmittals must be made simultaneously via the PICS for record and by traditional means for paper documents, unless directed otherwise in writing by VTA. Once stamped/signed documents have been obtained, they must be scanned and uploaded to PICS. All Project documentation will reside in the PICS.
5. PICS will allow the integration of all program applications, software and hardware for effective Management and Control. Project documents transmitted via PICS must comply with the following electronic formats:
  - a. Documents generated by BIM/CAD software applications shall be submitted via PICS in Adobe Portable Document Format (PDF) generated by a PDF writer from the CAD application.
  - b. Documents that are marked up or unavailable in electronic format (drawings, sketches, correspondence, etc. generated by hand drafting methods) shall be scanned to PDF (.pdf) and submitted to PICS.
  - c. Documents that have been generated using Adobe Acrobat PDF printer drivers (not scanned) shall be submitted to PICS.
  - d. Electronic photographs shall be submitted to PICS in JPEG (.JPG) file format.
  - e. Grayscale or color photo images that are scanned shall be saved in JPEG (.JPG) file format and submitted via PICS.



- f. Product data that is available for download from the manufacturer's website, which has been generated using Adobe Acrobat .PDF printer drivers (not scanned), may also be submitted via PICS.
- 6. Outside of the co-located project office, Contractor must maintain high-speed broadband Internet connectivity in order to effectively utilize PICS and must comply with all work instructions and procedures relating to its use. Contractor must furnish all hardware and software required to effectively access and utilize PICS, including personal computers, peripheral software, virus protection software, firewall configuration, and high-speed document scanners. Contractor will be solely responsible for coordination between its subcontractors and suppliers and PICS. For more information, please see **Appendix B: PICS Engineering Tools/Functionality and Applications**.

## G. PROJECT COSTS

- 1. Contractor will coordinate efforts and work with VTA toward establishing and maintaining budgets for the various tasks, construction contracts, and all activities under this Contract. The Contractor shall ensure that each construction contract package is designed to an estimate established prior to initiation of the design.
- 2. Contractor will be responsible for preparation of cost estimates for all work to be completed for the Project. Cost estimates will be developed/updated at the 30, 60, 90 and 100 percent design, and at interim milestones such as the VTA's submittal to the Federal Transit Administration (FTA) for the Full Funding Grant Agreement (FFGA). Contractor's estimators will be experienced with work that is similar in nature, complexity and magnitude. Estimators under this contract will be subject to VTA approval.
- 3. If Contractor believes there are desirable improvements that are not explicitly defined in this scope, Contractor is to notify and get approval from VTA before proceeding with a formal study of the proposed improvements. It is important that Contractor understands how these improvements will impact the Project schedule and the Project cost. After the formal study, Contractor will submit for VTA's consideration a report with an estimated cost of the proposed improvements. The improvements may be included in the Project only after VTA's approval.

## END SCOPE OF SERVICES



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## **IX. ADMINISTRATIVE SUBMITTALS**

**Proposer must submit Forms 1 through 4 as part of the Technical Proposal.**

**Proposer must submit Forms 5 through 8, the Cost Proposal, in a sealed envelope no later than the date stated in Table 1.**

FORM 1. GENERAL INFORMATION

FORM 2. LEVINE ACT STATEMENT

FORM 3. EXCEPTIONS TO THE CONTRACT

FORM 4. CERTIFICATION OF RESTRICTIONS ON LOBBYING

FORM 5. COST PROPOSAL FORM

FORM 6. LISTING OF DBE PRIME AND SUBCONTRACTORS

FORM 7. DESIGNATION OF SUBCONTRACTORS AND SUPPLIERS

FORM 8. ESTIMATED BID CREDIT WORKSHEET

**FORM 1. GENERAL INFORMATION**

*Instructions: Please complete this form and include in your Proposal. On a separate page, list all subconsultants; include company name, address, phone number and type of service.*

Company Name \_\_\_\_\_  
Street Address \_\_\_\_\_  
City/State/Zip \_\_\_\_\_  
Phone No. \_\_\_\_\_  
DUNS No. \_\_\_\_\_  
Federal Taxpayer ID No. \_\_\_\_\_

**POINT(S) OF CONTACT****Primary**

Name/Title \_\_\_\_\_  
Phone No. \_\_\_\_\_  
Cell Phone No. \_\_\_\_\_  
E-mail \_\_\_\_\_

**Alternate**

Name/Title \_\_\_\_\_  
Phone No. \_\_\_\_\_  
Cell Phone No. \_\_\_\_\_  
E-mail \_\_\_\_\_

**AUTHORIZED SIGNATORIES:****Primary**

Name/Title \_\_\_\_\_  
Signature \_\_\_\_\_  
E-mail \_\_\_\_\_

**Alternate**

Name/Title \_\_\_\_\_  
Signature \_\_\_\_\_  
E-mail \_\_\_\_\_

**FORM 2. LEVINE ACT STATEMENT**

Prime Proposer and Subconsultants must submit a signed Levine Act Statement

California Government Code § 84308, commonly referred to as the "Levine Act," precludes an elected or appointed officer, or alternate, of a local government agency from participating in the award of a contract if he or she receives any contributions totaling more than \$250 in the twelve (12) months preceding the pendency of the contract award, and for three (3) months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer, or received by the officer on behalf of any other officer, or on behalf of any candidate for elective office or on behalf of any committee in federal, state or local elections.

VTA's Board members and their alternates as of the date of this RFP are as follows:

Name	Title	Represents
Sam Liccardo	Chairperson	City of San Jose
Teresa O'Neill	Vice Chairperson	City of Santa Clara
Charles "Chappie" Jones	VTA Board Member	City of San Jose
Johnny Khamis	VTA Board Member	City of San Jose
Lan Diep	VTA Board Member	City of San Jose
Raul Peralez	VTA Board Member	City of San Jose
Devora "Dev" Davis	VTA Alternate Board Member	City of San Jose
John McAlister	VTA Board Member	City of Mountain View
Vacant	VTA Alternate Board Member	
Savita Vaidhyanathan	VTA Board Member	City of Cupertino
Rob Rennie	VTA Alternate Board Member	Town of Los Gatos
Larry Carr	VTA Board Member	City of Morgan Hill
Daniel Harney	VTA Alternate Board Member	City of Gilroy
Bob Nuñez	VTA Board Member	City of Milpitas
Glenn Hendricks	VTA Alternate Board Member	City of Sunnyvale
Cindy Chavez	VTA Board Member	County of Santa Clara
Ken Yeager	VTA Board Member	County of Santa Clara
Dave Cortese	VTA Alternate Board Member	County of Santa Clara
Jeannie Bruins	Ex-Officio Member	

**1.** Have you or your company, or any agent on behalf of you or your company, made any contributions of more than \$250 to any VTA Board member or alternate in the twelve (12) months preceding the date of the issuance of this RFP?

No  Yes  Please identify the Board member or alternate: \_\_\_\_\_

**2.** Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any contributions of more than \$250 to any VTA Board member or alternate in the three months following the award of the contract?

No  Yes  Please identify the Board member or alternate: \_\_\_\_\_

Answering yes to either of the two questions above does not preclude VTA from awarding a contract to your firm. It does, however, preclude the identified Board member or alternate from participating in the contract award process for this contract.

---

Signature:

Firm Name:

Date:



## **FORM 3. EXCEPTIONS TO THE CONTRACT**

This form shall include any exceptions the Proposer takes to the Contract, which includes the “Compensation, Invoicing and Payment” and “Indemnity and Defense of Claims” and “Insurance Requirements.” If Proposer takes no exceptions, check the field “Proposer takes no exceptions” below.

All exceptions to the Contract terms and conditions must be stated on this form and submitted with the Technical Proposal. Proposer's failure to take timely exception to VTA's terms and conditions expressly waives Proposer's right to challenge or request modification of such terms and conditions and is conclusive evidence of Proposer's assent thereto.

Proposer takes exception to the following:

Section Reference		Disposition ( <b>For VTA Use Only</b> )
*Insert proposed changes here		
Section Reference		Disposition ( <b>For VTA Use Only</b> )
*Insert proposed changes here		

\*Make copies of this page if necessary

“Proposer takes no exceptions”

**Firm Name:**

Name \_\_\_\_\_

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### Title

### Signature

Date \_\_\_\_\_

**FORM 4. CERTIFICATION OF RESTRICTIONS ON LOBBYING**

Proposer hereby certifies as follows:

- 1.** No Federal appropriated funds have been paid or will be paid, by or on behalf of Proposer, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2.** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Proposer shall complete and submit Standard Form "Certificate of Restrictions on Lobbying," in accordance with its instructions.
- 3.** Proposer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contacts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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Firm Name:

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Representative's Name

Title

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Signature

Date

**FORM 5. COST PROPOSAL FORM**

Proposer:				
<b>DETAIL DESCRIPTION OF COST ELEMENTS</b>				
1. DIRECT COSTS - LABOR	ESTIMATED HOURS	RATE/HOUR	ESTIMATED COST (\$)	
TOTAL DIRECT COSTS				
2. INDIRECT COSTS - OVERHEAD RATE	O.H. RATE	X BASE =	ESTIMATED COST	
TOTAL INDIRECT COSTS				
TOTAL DIRECT AND INDIRECT COSTS				
3. PROFIT %				
4. SUBCONTRACTOR COSTS (Attach Itemization)				
5. OTHER DIRECT COSTS (Attach Itemization)				
TOTAL COST PROPOSAL				

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Firm Name:

---

Name

Title

---

Signature

Date

**FORM 6. LISTING OF DBE PRIME AND SUBCONTRACTORS**

Firm (Prime): \_\_\_\_\_ Phone: \_\_\_\_\_

DBE:  Yes  No Age of Firm \_\_\_\_\_

Address: \_\_\_\_\_ Name & Title: \_\_\_\_\_  
City, State, \_\_\_\_\_ Signature/ \_\_\_\_\_  
Zip: \_\_\_\_\_ Date \_\_\_\_\_

*Contract dollar value must exclude work performed by non-DBE except materials or equipment purchased and used in this contract.*

**CREDIT FOR DBE VENDOR** of materials or supplies is limited to 60% of its expenditures for materials and supplies required under this Contract and obtained from a DBE regular dealer. Credit for DBE manufacturers is given at 100% toward the DBE goal only where the DBE vendor manufactures or substantially alters the material prior to resale.

**CREDIT FOR DBE BROKERS** (Distributor or Representative) is limited to the fees and commissions of the amount paid. All other firms receive 100% credit, less work subcontracted by the DBE to non-DBE firms, towards the DBE goal.

A DBE must be certified or accepted as Certified by VTA. Refer to 49CFR Part 26.

Name & Address of Certified DBE	Certification Number	Agency Certifying	Age of Firm	Dollar Value Of Contract
1.				
2.				
3.				
4.				
5.				

**Description of Work**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

DBE GOALS ARE DETERMINED ON BASE PROPOSAL AMOUNT:

Total Contract Amount \$ \_\_\_\_\_  
DBE Contract Amount \$ \_\_\_\_\_

DBE Contract Amount X 100 =	DBE Goal Achieved Base Contract	DBE Contract Goal %
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**FORM 7. DESIGNATION OF SUBCONTRACTORS AND SUPPLIERS  
FOR  
DATA COLLECTION REQUIREMENTS**

Proposer: \_\_\_\_\_

Proposer shall completely fill in the form below for each proposed subcontract for all subcontractors, suppliers of materials, subconsultants. Include all firms, regardless of ethnicity, gender, or **SBE/DBE status**. Some information, such as ethnicity and gender is for information purposes only.

Firm Name/Address	DBE or SBE Certification	Portion of Work or Proposed Item	Ethnicity*	Gender+	Estimated Dollar Amount of Subcontract

\*A=Asian      \*AI= Asian Indian      \*B=Black      \*C=Caucasian  
\*H=Hispanic      \*NA=Native American      \*O=Other

+F=Female      +M=Male

Total Proposed Amount:      \$ \_\_\_\_\_

Amount to be subcontracted:      \$ \_\_\_\_\_

Percent to be subcontracted:      % \_\_\_\_\_

**FORM 8. ESTIMATED BID CREDIT WORKSHEET**

<b>FORM 8 Estimated Bid Credit Worksheet</b>			
Location Code:		Award Date: Enrollment Date: Close Out Date: Status:	
Contractor:			
Project:	Silicon Valley BART Phase II		
Awarding Owner:	VTA		
<b>CONTRACT INFORMATION</b>			
<b>Receipts</b>	\$0.00		
<b>Total Estimated Bid Credit</b>	<b>\$0.00</b>	<b>0.00%</b>	

<b>WORKER'S COMPENSATION</b>			
<b>Code</b>	<b>Est. Payroll</b>	<b>Rate</b>	<b>Est. Deduct</b>
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
<b>WC Subtotal</b>	<b>\$0.00</b>	<b>0.00%</b>	<b>\$0.00</b>
Experience Modifier		1.000000	\$0.00
Increased Limit Factor		1.000000	\$0.00
Premium Discount		1.000000	\$0.00
Scheduled Modification		1.000000	\$0.00
Miscellaneous Discounts		1.000000	\$0.00
Foreign Terrorism Factor		0.000300	\$0.00
Catastrophe		0.000100	\$0.00
<b>Modified Premium</b>			<b>\$0.00</b>
WCARF - CA Admin Revolving Fund Assessment		0.012247	\$0.00
WCFA - CA Fraud Assessment		0.002544	\$0.00
CIGA - California Insurance Guarantee Assoc. Assessment		0.002250	\$0.00
SIBT - SIB Fund Assessment		0.001291	\$0.00
UEBTF - UIEB Trust Fund Assessment		0.001603	\$0.00
OSHF - Occupational Safety & Health Fund		0.002166	\$0.00
LECF - Labor Enforcement & Compliance Fund		0.002452	\$0.00
<b>Worker's Compensation Credit Total</b>			<b>\$0.00</b>



<b>GENERAL LIABILITY</b>				
<b>Code</b>	<b>Est. Payroll / Receipts *</b>	<b>Rating Basis</b>	<b>Rate</b>	<b>Est. Deduct</b>
99999	\$0.00		\$0.00	
99999	\$0.00		\$0.00	
99999	\$0.00		\$0.00	
<b>General Liability Credit Total</b>				<b>\$0.00</b>

<b>EXCESS LIABILITY</b>				
	<b>Est. Payroll / Receipts</b>	<b>Rating Basis</b>	<b>Rate</b>	<b>Est. Deduct</b>
	\$0.00	Per \$1000 Receipts	\$0.00	\$0.00
<b>Excess Liability Credit Total</b>				<b>\$0.00</b>

<b>Lower Tier Subcontractor Bid Credit</b>		
<b>Location Code</b>	<b>Company Name</b>	<b>Est. Deduct</b>
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
<b>Lower Tier Subcontractor Credit Total</b>		<b>\$0.00</b>

<b>Total Bid Deduction</b>	
Workers Compensation	\$0.00
General Liability	\$0.00
Excess Liability	\$0.00
Contractor Sub Total	\$0.00
Subcontractor Deduct (Enrollment and Change Order Est. Deduct)	\$0.00
<b>Total Estimated Bid Credit</b>	
	<b>\$0.00</b>



By executing this Contract, Contractor grants VTA or their agent permission to inspect the insurance and payroll records used in determining the above insurance credit. VTA will deduct the verified insurance credit from Contractor's bid by amendment. A final audit will be conducted of the actual on-site payroll, receipts, and insurance costs. The insurance costs will be based upon the rates, credits and surcharges approved and agreed upon at the time of Contractor's enrollment. These rates will be applied to the audited project payroll and/or receipts. The final adjustment will be calculated based upon the total payroll or receipts less those estimated during the bidding/proposal process and any amendments. Any and all returns of premiums, dividends, discounts or other adjustments to any OCIP Policy is assigned, transferred and set over absolutely to VTA. This assignment is valid for insurance policies whose premiums have been paid by VTA on behalf of such Contractors.



**X. EXHIBITS**

EXHIBIT A CONTRACT

EXHIBIT A1 SAMPLE TASK ORDER

EXHIBIT A2 COMPENSATION, INVOICING and PAYMENT

EXHIBIT A3 INSURANCE REQUIREMENTS

EXHIBIT A4 DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENT

EXHIBIT A5 REQUIRED FTA CLAUSES PART 1

EXHIBIT A6 REQUIRED FTA CLAUSES PART 2

EXHIBIT A7 PREVAILING WAGE REQUIREMENTS



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**EXHIBIT A**  
CONTRACT  
BETWEEN  
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
AND  
[CONTRACTOR]  
FOR  
BART SILICON VALLEY PAHSE II PROJECT  
GENERAL ENGINEERING CONSULTING SERVICES

CONTRACT NO. S18088

THIS CONTRACT for professional services (“Contract”) is entered into between the Santa Clara Valley Transportation Authority (“VTA”) and [Contractor] (“Contractor”).

**A. SERVICES TO BE PERFORMED:** Contractor shall furnish all technical and professional labor and materials to perform the services described in Exhibit [ ] (herein referred to as “Services”), as requested by VTA by issuance of specific contract Task Orders and agreed to by Contractor.

Assignment of the Services shall be authorized by issuance of Task Orders in the format set forth in Exhibit A1.

**B. TERM OF THE CONTRACT:** The term of this Contract shall commence on the Effective Date (as defined in the signature block below) and continue through [ ] (unless otherwise earlier terminated pursuant to the terms and conditions set forth herein). The terms and conditions of the Contract shall remain in effect and applicable to all Task Orders issued during the term of this Contract.

**C. DAYS:** For purposes of this Contract, all references herein to “day” shall mean calendar day, unless specified otherwise. All references to “calendar day” shall mean any day, including Saturday, Sunday and all legal holidays. All references to “working day” or “business day” shall mean any business day, excluding Saturdays, Sundays and legal holidays.

**D. COMPENSATION:** Contractor shall be paid in accordance with Exhibit A2 for the Services.

A price shall be negotiated for each Task Order which will be governed by the labor rates listed in Exhibit [ ].

Total compensation for the Services provided hereunder shall not exceed \$[ ].

**E. PERFORMANCE OF THE SERVICES:**

1. Contractor represents that it is sufficiently experienced, properly qualified, registered, licensed, equipped, organized and financed to perform the Services.



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2. Contractor shall perform the Services with the degree of skill and judgment normally exercised by firms performing services of a similar nature. In addition to other rights and remedies that VTA may have, VTA, at its option, may require Contractor, at Contractor's expense, to re-perform any Services that fail to meet the above standards
  3. Contractor agrees that the Key Personnel listed below are essential to this Contract and that prior to the reassignment or replacement of Key Personnel Contractor must submit a written request to VTA for consideration and acceptance.

Key Personnel \_\_\_\_\_ Name \_\_\_\_\_

#### **F. ASSIGNMENT AND SUBCONTRACTS:**

1. Contractor shall not assign or transfer this Contract or any portion thereof without the prior written consent of VTA. Additionally, Contractor shall not subcontract any part of its Services other than to those subcontractors that may be identified herein. Any assignment, transfer, change or subcontract in violation of this Contract shall be void.
2. Contractor shall be fully responsible and liable for the Services, products and actions of all subcontractors and suppliers of any tier, and shall include in each subcontract any provisions necessary to make all the terms and conditions of this Contract fully effective.

#### **G. CHANGES:** By written notice from VTA's Authorized Representative (as defined in Section L.1), VTA may, from time to time, order work suspension or make changes within the general scope of this Contract. If any such changes cause an increase or decrease in Contractor's cost to perform the Service or in the time required for its performance, Contractor shall promptly notify VTA thereof and assert its claim for adjustment within ten (10) days after the change is ordered, and an equitable adjustment shall be negotiated.

#### **H. AUDIT AND RECORDS:**

1. Contractor shall maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records and data with respect to actual time devoted and costs incurred for the Services. Such documentation shall be supported by properly executed payrolls, invoices, contracts and vouchers evidencing in detail the nature and propriety of any charges. Such documentation shall be sufficient to allow a proper audit of the Services. All checks, payrolls, invoices, contracts and other accounting documents pertaining in whole or in part to the Services shall be clearly identified and readily accessible.
2. For the duration of this Contract, and for a period of three (3) years thereafter, VTA, its representatives and the state auditor shall have the right to examine and audit during Contractor's normal business hours the books, accounts, records, data and other relevant



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information to the extent required to verify the costs incurred hereunder where such costs are the basis for billings under this Contract.

3. Contractor shall report indirect costs in accordance with the cost principles contained in 48 CFR, Part 31, and follow the uniform administrative requirements set forth in 49 CFR, Part 18.
4. The provisions of this AUDIT AND RECORDS section shall be included in any subcontracts hereunder.

## **I. PROHIBITED INTERESTS:**

1. **SOLICITATION:** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, VTA shall have the right to rescind this Contract without liability.
2. **INTEREST OF PUBLIC OFFICIALS:** No Board Member, officer or employee of the VTA during his or her tenure or for two (2) years thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.
3. **INTEREST OF THE CONTRACTOR:** The Contractor covenants that, presently, Contractor, its officers, directors or agents, have no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree (or create an appearance of conflict) with the performance of the Services. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be knowingly employed.

## **J. TERMINATION AND SUSPENSION:**

1. VTA may, by giving at least ten (10) business days' written notice to Contractor, terminate this Contract, or suspend performance hereunder, in whole or in part at any time for VTA's convenience. Contractor shall be compensated in accordance with the terms of this Contract for the Services satisfactorily performed prior to the effective date and time of termination or suspension. Contractor shall have no right to recover lost profits on the balance of the Services.
2. VTA, by written notice given to Contractor, may declare default in Contractor's performance of any term of this Contract, specifying with particularity the basis for such default. Contractor shall deliver a response thereto in writing to VTA within two (2) business days of receipt of the notice, setting forth a reasonable proposal to cure the default. If Contractor fails to deliver the foregoing response on time or fails to cure the default within ten (10) business days after receipt of the notice (or within such additional time the



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Parties may agree upon in writing), VTA may elect to terminate this Contract for cause by serving written notice thereof to Contractor.

3. In the event of such termination for cause, VTA shall be relieved of any obligation of further payment to Contractor and may complete the remainder of the Services by itself, or by using an alternative, third party contractor. The additional cost to VTA for completing the Services shall be deducted from any sum due to the Contractor and the balance, if any, shall be paid to the Contractor upon demand. The foregoing shall be in addition to any other legal or equitable remedies available to VTA.
4. If, after termination for failure to fulfill Contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of VTA.

## K. GENERAL PROVISIONS:

1. **OWNERSHIP OF DATA:** All drawings, specifications, reports and other data developed by Contractor, its assigned employees or subcontractors pursuant to this Contract shall become the property of VTA as prepared, whether delivered to VTA or not. Unless otherwise provided herein, all such data shall be delivered to VTA or its designee upon completion of this Contract or at such other times as VTA or its designee may request.
2. **NONDISCRIMINATION:** During performance of this Contract, Contractor, its employees and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any person because of race, religious creed, color, sex, gender, gender identity, gender expression, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), genetic information, marital status, age (over 40), sexual orientation, or military and veteran status. In addition, Contractor and any subcontractor shall not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. Contractor shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment.
3. **GOVERNING LAW:** The laws of the State of California will govern these terms and conditions, as well as any claim that might arise between Contractor and VTA, without regard to conflict of law provisions.
4. **FORUM SELECTION:** Any lawsuit or legal action arising from this Contract shall be commenced and prosecuted in the courts of Santa Clara County, California. Contractor agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.
5. **CONFIDENTIALITY AND DISCLOSURE:** Except as set forth in this paragraph, Contractor must not disclose to third parties any information, data, or materials that Contractor obtains from VTA or otherwise learns of or is exposed to in the course of the performance of this Contract or information developed or obtained by Contractor in the performance of this



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Contract (“**Confidential Information**”). In addition, Contractor must not disclose or use any Confidential Information for any purpose other than the performance of the Services. Notwithstanding the foregoing, Contractor may disclose Confidential Information to third parties or use such information for purposes other than performance of the Services if: (1) VTA provides express written consent for such use or disclosure; (2) the information is known to Contractor prior to obtaining such information from VTA or performing Services under this Contract; (3) the information is, at the time of disclosure by Contractor, then in the public domain; (4) the information is obtained by or from a third party who did not receive it, directly or indirectly, from VTA and who has no obligation of confidentiality with respect thereto. In addition, Contractor may disclose Confidential Information if required to do so by court order. However, upon receipt of an order requiring such disclosure, Contractor must inform VTA as soon as practicable in order to allow VTA to challenge such order if it determines that such challenge is appropriate. For purposes of this Section, “third parties” do not include those employees or authorized subcontractors engaged in the performance of the Services.

- 6. NONWAIVER:** Failure of VTA to insist upon strict performance of any terms or conditions of this Contract or failure or delay in exercising any rights or remedies provided herein or by law or its failure to properly notify Contractor in the event of breach or its acceptance of or payment for any Services hereunder shall not release Contractor from the representations or obligations of this Contract and will not be deemed a waiver of any right of VTA to insist upon strict performance hereof or any of its rights or remedies hereunder.
- 7. SEVERABILITY:** If any of the provisions of this Contract (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and Contractor shall negotiate an equitable adjustment in the provisions this Contract with a view toward effecting the purpose of this Contract, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.
- 8. INDEPENDENT CONTRACTOR:** In performance of the Services, Contractor will be acting as an independent contractor and not the agent or employee of VTA.
- 9. ENTIRE CONTRACT:** This Contract constitutes the entire contract between VTA and Contractor relating to the subject matter hereof and supersedes any previous contracts, agreements, or understandings, whether oral or written.
- 10. AMENDMENT:** Except as expressly provided herein, the provisions of this Contract cannot be altered, modified or amended except through the execution of a written amendment executed by VTA and Contractor.
- 11. COMPLIANCE WITH APPLICABLE LAW:** In the performance of the Services, Contractor and its subcontractors shall comply with all applicable requirements of state, federal and local law. The provision of this paragraph shall be included in any subcontracts hereunder.



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**12. DOCUMENTS AND WRITTEN REPORTS:** In accordance with Government Code § 7550(a), any document or written report prepared in whole or in part by nonemployees of VTA shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of the document or written report if the total cost of the work performed by nonemployees of the agency exceeds five thousand dollars (\$5,000.00). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of the document or written report.

**13. INCORPORATION OF EXHIBITS AND ATTACHMENTS:** All exhibits and attachments referenced in this Contract are incorporated herein by this reference.

**L. AUTHORIZED REPRESENTATIVES AND POINTS OF CONTACT:** The Authorized Representatives identified below, or assigned designees, have authority to authorize changes to the scope, terms and conditions of this Contract, as set forth herein.

**1. AUTHORIZED REPRESENTATIVES:**

**VTA:**

Thor Vue, Chief Procurement Officer  
3331 N. First Street, Bldg. A  
San Jose, CA 95134-1927  
[thor.vue@vta.org](mailto:thor.vue@vta.org)

**Contractor:**

Name/Title  
Company Name  
Address  
City/State/Zip  
Email

**2. NOTICES:** Notices shall be in writing and addressed to the Authorized Representatives at the addresses set forth above.

**3. POINTS OF CONTACT:** The Points of Contact listed below are authorized to communicate regarding contract matters, except in the case where correspondence regarding legal notices must be addressed to the Authorized Representatives.

**VTA:**

Ephraim Cadaing, Sr. Contracts Administrator  
3331 N. First Street, Bldg. A  
San Jose, CA 95134-1927  
[Ephraim.Cadaing@vta.org](mailto:Ephraim.Cadaing@vta.org)

**Contractor:**

Name/Title  
Company Name



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Address  
City/State/Zip  
Telephone  
Email

4. Written notification to the other Party shall be provided, in advance, for changes in the name or address of the designated Authorized Representatives or Points of Contact stated above

**M. INSURANCE:** Contractor shall adhere to the insurance requirements set forth in Exhibit A3.

**N. INDEMNITY AND DEFENSE OF CLAIMS:**

1. To the greatest extent permitted by law, Contractor shall indemnify and hold harmless Santa Clara Valley Transportation Authority (hereinafter "VTA"), its board members, officers, agents, employees, and consultants (collectively, the "Indemnitees") from any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys' and experts' fees and costs) arising out of, pertaining to, or caused by, the negligence, recklessness, or willful misconduct of Contractor and/or its agents, employees, or subcontractors, whether such claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys' and experts' fees and costs) are based upon a contract, or for personal injury, death or property damage or upon any other legal or equitable theory whatsoever. It is the specific intent of VTA and Contractor that Contractor be required to provide the full breadth of indemnities allowed by California Civil Code section 2782.8. Notwithstanding the foregoing, Contractor is not obliged to indemnify and/or hold harmless the Indemnitees from any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs to the extent caused by the sole or active negligence or willful misconduct of VTA or its agents, servants or independent contractors who are directly responsible to VTA or from damages for defects in designs furnished by those persons.
2. To the greatest extent permitted by law, Contractor agrees, at its own expense, and upon written request by VTA or any individual Indemnitee, to immediately defend any suit, action, claim, or demand brought against any Indemnitee founded upon, alleging, or implicating any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs covered by Contractor's indemnity obligation set forth in subparagraph (1) immediately above and regardless of whether Contractor and/or any of its agents, employees, or subcontractors was in fact negligent or reckless or engaged in willful misconduct. In the event a court of competent jurisdiction determines that any suit, action, claim, or demand brought against any Indemnitee was caused by the sole or active negligence or willful misconduct by VTA or its agents, servants or independent contractors who are directly responsible to VTA, VTA shall promptly reimburse Contractor for costs of defending the Indemnitees in such action incurred by Contractor, but only in proportion to the sole or active negligence or willful misconduct of VTA or its agents, servants or independent contractors who are directly responsible to VTA.



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3. This indemnity and defense of claims provision will survive the expiration or termination of this Contract and remain in full force and effect.

**O. BUSINESS DIVERSITY PROGRAM REQUIREMENTS:** Contractor shall adhere to the Disadvantaged Business Enterprise requirements set forth in Exhibit A4.

**P. SPECIAL PROVISIONS:**

1. **CO-LOCATION:** Contractor's management, key staff, discipline leads and task leads, at a minimum, are expected to co-locate with VTA in San Jose, CA in an office provided by VTA.
2. **FEDERAL REQUIREMENTS:** Contractor, its employees and subcontractors performing the Services hereunder shall comply with the laws and regulations set forth in Exhibit A5.
3. **PREVAILING WAGE REQUIREMENTS:** Contractor shall adhere to the Prevailing Wage requirements set forth in Exhibit A6.

IN WITNESS WHEREOF, VTA and Contractor have executed this Contract as of the last date set forth below ("Effective Date").

*Santa Clara Valley  
Transportation Authority*

*[Contractor]*

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Name  
Title

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Name  
Title

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Date

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Date

Approved as to Form

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VTA Counsel



## **EXHIBIT A1 SAMPLE TASK ORDER**

The Contractor hereby agrees to perform the Services authorized herein in accordance with all the terms and conditions of the Contract referenced below. The Contractor shall furnish the necessary professional and technical personnel and materials required to complete this work.

Contract No. \_\_\_\_\_ Task Order No. \_\_\_\_\_  
Contractor: \_\_\_\_\_ SAP Requisition No. \_\_\_\_\_  
Term: Effective \_\_\_\_\_ and continue in effect through \_\_\_\_\_

### Compensation Type

T&M/Time & Materials       CPFF/Cost Plus Fixed Fee       FFP/Firm Fixed Price

Task Order value: \$ \_\_\_\_\_

Contract value available to authorize this Task Order \$ \_\_\_\_\_

**Funding source:**

Scope of Services: *attached*

#### **Key Personnel:** *attached*

#### **Subcontractors: attached**

**OBDP Requirements:**

**Approvals**

*Executed by:*

Santa Clara Valley Transportation Authority

[Contractor]

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Signature \_\_\_\_\_ Date \_\_\_\_\_

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Signature \_\_\_\_\_ Date \_\_\_\_\_

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### Name & Title

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**Name & Title**



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## EXHIBIT A2 COMPENSATION, INVOICING and PAYMENT TASK ORDER CONTRACT

For the satisfactory performance and completion of Services under this Contract, VTA will compensate Contractor as set forth herein.

**A. COMPENSATION:** This is a Task Order Contract with a maximum value of \$[ ], within which Contractor agrees to complete the Services defined in authorized Task Orders. Contractor is not authorized to provide Services hereunder costing in excess of the amount stated herein. Task Order compensation may be awarded on either a time and materials (T&M), cost plus fixed fee (CPFF), or firm fixed price (FFP) basis.

- 1. BASE LABOR RATES:** The basis for T&M, CPFF and FFP Task Order pricing and payment for work performed shall be subject to the direct labor, indirect labor, overhead and profit stated in **individual Task Orders**, and in accordance with the respective provisions stated below:
- 2. TIME AND MATERIALS.** Payment for work performed on a T&M basis shall be in accordance with the following provisions.
  - a. Exempt Personnel:** VTA shall pay for work by exempt personnel (as determined under the Fair Labor Standards Act, 29 U.S.C. § 201-219) at the labor rates listed in Exhibit [ ], which include direct labor, indirect labor, overhead and profit. VTA payment for work by exempt personnel shall not include any premium pay.
  - b. Non-Exempt Personnel:** VTA shall pay for overtime work by non-exempt personnel (Time and a Half, Double Time) in accordance with California law, at the labor rates listed in Exhibit [ ]. VTA must approve all premium time in advance in writing.
  - Contractor may request increases in labor rates. Increases in labor rates may only occur once in a twelve (12) month period per individual. All requests shall be made in writing to VTA at least thirty (30) days prior to the date the requested new rates are to become effective. VTA must approve in writing any adjustments in advance prior to the effective date of the new labor rates.
  - The labor rate paid by Contractor to each employee shall not increase more than the annual average of the Consumer Price Index for the San Francisco Bay Area, using the **CPI-U, All Urban Consumers** index type for the twelve (12) month period preceding a new rate.
  - VTA will consider individual exceptions to the above limitation, on a case-by-case basis, not to exceed one (1) adjustment per employee per year, where Contractor can demonstrate that additional compensation is necessary to retain a specific employee VTA considers to be essential.



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**3. COST PLUS FIXED FEE.** Payment for work performed on a cost plus fixed fee basis shall be the sum of direct labor costs, [\_\_%] indirect labor costs (fringes and overhead), a fixed-professional fee based on a [\_\_%] profit, subcontractor costs and other direct costs.

- a. Fixed Fee:** VTA shall pay the Contractor a fixed professional fee for the Services described in Task Orders issued under this Contract.

Each invoice submitted by Contractor shall include a progress payment of a portion of the fixed-fee. The portion of the fixed-fee included in each invoice shall be determined by multiplying the fixed-fee by the percent of total progress reported to VTA for that invoice period, less the total amount of the fixed-fee previously invoiced and paid.

Progress Percentage = (Total Costs Incurred to Date/Total Estimated Budget) X 100.

**4. FIRM FIXED PRICE.** Payment for work performed on a firm-fixed price basis will establish the maximum value upon issuance of Task Orders, within which Contractor agrees to complete the Services defined in the Task Order. Said sum will include Contractor's total direct costs, indirect costs, and profit. No additional compensation will be paid without a written amendment to this Contract.

**5. SUBCONTRACTOR COSTS:** VTA shall reimburse subcontractor costs at actual cost without mark-up. Subcontractor costs shall be supported by invoices, as are prime costs. See paragraph B, Invoicing.

**6. OTHER DIRECT COSTS (ODCs):** ODCs shall be authorized and reimbursed as follows. All ODCs shall be reimbursed at actual cost without mark-up and include the following types of expenses.

- a.** Travel expenses related to the performance of Services shall be reimbursed for actual and reasonable costs incurred for mileage, transportation, lodging, meals, and other miscellaneous expenses. Air travel, auto rental, and lodging must be "economy" based and traveler must obtain the lowest price possible. Lodging rates for the Palo Alto, Sunnyvale, and San Jose area are defined by the GSA website [www.gsa.gov](http://www.gsa.gov). The meals and incidental expenses shall not exceed the per diem rates, as stated on GSA website [www.gsa.gov/mie](http://www.gsa.gov/mie). At no time shall alcohol, travel upgrades, fines, memberships, loss of personal property or cash, "no shows," or personal itinerary changes be subject to reimbursement by VTA.

Invoicing travel expenses: All expenses related to travel shall be verified by legible, itemized receipts attached to a summary that provides the name of traveler, the date(s) traveled, and an itemized a description of each expense.

- b.** Parking, tolls, deliveries, printing, and plan reproduction expenses directly associated with the work will be reimbursed at cost. Except as otherwise provided herein, telephone, computer costs, CAD machine charges, in-house copying and facsimile charges shall be included in overhead and shall not be reimbursed.



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- c. All ODCs shall require appropriate documentation for reimbursement. VTA must approve in writing any ODC item estimated to exceed \$500.00 prior to incurring the expense.

## B. INVOICING:

- 1. **INVOICE FORMAT:** VTA shall pay Contractor on the basis of invoices submitted every month for the Services performed during the preceding month. Invoices shall be in a form acceptable to VTA and each invoice must include:

Time and Materials / Cost Plus Fixed Fee:

- Contract Number and Task Order Number
- Name, classification and labor rate of employee
- Description of work performed
- Hours worked by employee accompanying with signed timesheets
- Cost per classification
- Fixed Fee (if CPFF)
- Other Direct Cost
- Subcontractor costs with itemization in same format above
- Total costs

Firmed Fixed Price:

- Contract Number and Task Order Number
- Description of work performed
- Percentage of work performed
- Total costs

- 2. **CERTIFICATION BY CONTRACTOR:** Contractor shall include the following statement on all invoices for services authorized as T&M or CPFF as verification that all direct labor rates are billed at the actual rates earned.

I certify the statements and information contained in this invoice are true, accurate, and complete.

Contractor's Signature: \_\_\_\_\_

Contractor's Name: \_\_\_\_\_

- 3. **WAIVER:** Contractor shall be deemed to have waived the right to payment for Services not invoiced within six (6) months after the date the services were performed. For purpose of this provision the date of the invoice shall be the date of receipt by VTA.

- 4. **INVOICE SUBMITTAL:** Contractor shall submit invoices by e-mail to the address listed below. Invoices shall be in a PDF, Word, or Excel format.



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Email: [VTAAccountsPayable@VTA.org](mailto:VTAAccountsPayable@VTA.org)

- 5. CONTESTING INVOICE/AUDIT:** Should VTA contest any portion of an invoice, that portion shall be held for resolution, and the uncontested balance shall be processed for payment. VTA may, at any time, conduct an audit of any and all records kept by Contractor related to the Services. Any overpayment uncovered in such an audit may be charged against the Contractor's future invoices and any retention funds.
- C. PROMPT PAYMENT:** VTA will pay Contractor within thirty (30) days after receipt by VTA of a proper, fully documented, invoice. Contractor shall pay subcontractors for satisfactory performance of any of the Services performed by subcontractors within thirty (30) days of receipt of payment by VTA for such Services. Contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed.



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## EXHIBIT A3 INSURANCE REQUIREMENTS

**INSURANCE:** Without limiting the Contractor's indemnification of VTA, the Contractor must procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees, or subcontractors. The cost of such insurance must be included in the Contractor's Bid/Proposal. The Contractor must furnish complete copies of all insurance policies, within three (3) business days of any such request by VTA.

### A. LIABILITY AND WORKERS' COMPENSATION INSURANCE

- 1. Minimum Scope of Coverage:** Coverage must be at least as broad as:
  - a. Insurance Services Office General Liability coverage ("occurrence" form CG 0001). General Liability insurance written on a "claims made" basis is not acceptable. This insurance must be maintained for a minimum of ten (10) years following completion of this Contract.
  - b. Insurance Services Office Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
  - c. Workers' Compensation insurance as required by the Labor Code of the State of California, and Employers Liability insurance.
  - d. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of Contractor's services under this Contract. This coverage must be continuously maintained for a minimum of ten (10) years following completion of this Contract. This coverage may be written on a claims-made basis; if so, see special provisions in Section B.
  - e. Contractor's Pollution Liability: covering liability arising out of the treatment, handling, storage, transportation, or accidental release of any hazardous material.
  - f. Cyber Liability (including network security coverage, and/or privacy liability coverage, as applicable.
  - g. Railroad Protective Liability insurance covering liability for work performed on or adjacent to VTA's light rail line(s) for bodily injury, property damage, including damage to VTA's property, equipment and facilities; Insurance Services Office form number CG 00 35. Contractor must apply for enrollment in VTA's Blanket Railroad Protective Liability program, for which VTA pays the premium directly to the insurer. Contractor will provide all necessary data for enrollment application, including but not limited to total Contract value (including Contractor's profit) on



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the entire project, and on that portion of the Work performed within 50 feet of the VTA rail Right of Way, measured from the nearest rail.

In the event Contractor is not enrolled in VTA's blanket program, Contractor must purchase, at its own expense, its own stand-alone project-specific Railroad Protective Liability coverage, showing VTA as the named insured on the policy, covering liabilities arising out of work performed by Contractor within 50 feet of the VTA rail Right of Way, measured from the nearest rail, for bodily injury, property damage, including damage to VTA's property, equipment, and facilities, under ISO coverage form CG 00 35 04 13 or equivalent.

**2. Minimum Limits of Insurance:** Contractor must maintain limits no less than:

- a. General Liability (Including umbrella/excess liability): \$25,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella, but in no event, may the General Liability primary policy limit per occurrence be less than \$5,000,000. Excess or Umbrella policies must feature inception and expiration dates concurrent with the underlying general liability policy, and "Follow Form" and "Drop Down" provisions.
- b. Automobile Liability (including umbrella/excess liability): \$5,000,000 limit per accident for bodily injury and property damage. This requirement may be satisfied by a combination of Auto Liability with Excess or Umbrella, but in no event may the Automobile Liability primary policy limit per occurrence be less than \$2,000,000. Excess or Umbrella policies must feature inception and expiration dates concurrent with the underlying auto liability policy, and "Follow Form" and "Drop Down" provisions.
- c. Workers' Compensation and Employers Liability: Statutory Workers' Compensation limits and Employers Liability limits of \$1,000,000 per accident.
- d. Professional Liability: \$25,000,000 each occurrence/aggregate minimum limit per claim. This requirement may be satisfied by a combination of primary Professional Liability with Excess, but in no event, may the Professional Liability primary policy limit per occurrence be less than \$5,000,000. Excess policies must feature inception and expiration dates concurrent with the underlying Professional Liability policy, and "Follow Form" and "Drop Down" provisions.
- e. Contractor's Pollution Liability: \$10,000,000 per occurrence. This requirement may be satisfied by a combination of Pollution Liability with Excess or Umbrella, but in no event, may the Pollution Liability primary policy limit per occurrence be less than \$2,000,000. Excess or Umbrella policies must feature inception and



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expiration dates concurrent with the underlying Pollution Liability policy, and a “Drop Down” provision.

- f.** Cyber Liability: \$5,000,000 per occurrence. This requirement may be satisfied by a combination of Cyber Liability with Excess or Umbrella, but in no event, may the Cyber Liability primary policy limit per occurrence be less than \$2,000,000. Excess or Umbrella policies must feature inception and expiration dates concurrent with the underlying Cyber Liability policy, and a “Drop Down” provision.
  - g.** Railroad Protective Liability: if required, \$5,000,000 Combined Single Limit for bodily injury and property damage, with \$10,000,000 annual aggregate.
- 3. Self-Insured Retention:** Any self-insured retention or deductible in excess of \$50,000 (\$100,000 if Contractor is a publicly-traded company) must be declared to and approved by VTA. If Contractor is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention in excess of the stipulated amounts stated herein, the Contractor must provide a current financial statement documenting the ability to pay claims falling within the self-insured retention. At the option of VTA, either: the insurer must reduce or eliminate such self-insured retention as respects VTA, its officers, officials, employees and volunteers; or the Contractor must procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**B. CLAIMS MADE PROVISIONS (NOT APPLICABLE TO GENERAL LIABILITY OR AUTO LIABILITY):** Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must provide that:

- 1. The policy must be in effect as of the date of this Contract and the retroactive date must be no later than the date of this Contract.
- 2. If any policy is not renewed or the retroactive date of such policy is to be changed, the Contractor must obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must be of at least ten (10) years or the maximum commercially available.
- 3. No prior acts exclusion to which coverage is subject that predates the date of this Contract.
- 4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.



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**C. OTHER PROVISIONS:** The policies are to contain, or be endorsed to contain, the following provisions:

**1. General Liability and Automobile Liability**

- a.** VTA, BART, their respective officers, officials, employees and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor, including VTA's or BART's general supervision of the Contractor; products and completed operations of the Contractor and its subcontractors; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage must contain no special limitations on the scope of protection afforded to VTA, BART, or their respective officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
  - b.** The Contractor's insurance coverage must be primary insurance as respects VTA, BART, and their respective officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by VTA, BART, or their respective officers, officials, employees, or volunteers must be excess of the Contractor's insurance and may not contribute with it.
  - c.** Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, BART, or their respective officers, officials, employees, or volunteers.
  - d.** The Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - e.** The General Liability General Aggregate limit must apply per project, not per policy.
  - f.** The General Liability policy must be endorsed to remove the exclusion for railroad liabilities, with coverage at least as broad as afforded by ISO CG 24 17.
- 2. All Coverages:** The insurer must agree to waive all rights of subrogation against VTA, BART, and their respective officers, officials, employees, and volunteers for losses arising from work performed by the Contractor and its subcontractors for VTA.

**3. Other Insurance Provisions**

- a.** The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.



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- b.** If any coverage forms or endorsements required by this Contract are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Contract, VTA reserves the right to require the Contractor to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.
  - c.** If any of the work under this Contract is performed by subcontractors, the subcontract or Task Order will require subcontractors to carry the same insurance that Contractor is required to carry. Contractor may apply to VTA for exceptions to this requirement prior to the execution of any subcontract or issuance of any Task Order, which applications shall be reviewed on a case-by-case basis without the presumption of any creation of precedent.
- D. ACCEPTABILITY OF INSURERS:** Insurance and bonds must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.
- E. CERTIFICATES OF INSURANCE:** Contractor must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy are to be signed by an authorized representative of that insurer. The certificates will be issued on a standard ACORD Form. The contractor must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to [Insurance.certificates@vta.org](mailto:Insurance.certificates@vta.org).

The certificates will (1) identify the underwriters, the types of insurance, the insurance limits, the deductibles, and the policy term, (2) include copies of all the actual policy endorsements required above, and (3) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority ("VTA")  
3331 North First Street  
San Jose, CA 95134

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA Contract number must appear, the list of policies scheduled as underlying on the Umbrella policy must be listed, Certificate Holder should be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Contract Documents.

All certificates and endorsements are to be received and approved by VTA before work commences. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

If the Contractor receives any notice that any of the insurance policies required by this Exhibit may be cancelled or coverage reduced for any reason whatsoever, Contractor or



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insurer must immediately provide written notice to VTA that such insurance policy required by this Exhibit is canceled or coverage is reduced.

**F. MAINTENANCE OF INSURANCE:** If Contractor fails to maintain such insurance as is called for herein, VTA, at its option, may suspend payment for work performed and/or may order the Contractor to suspend work at Contractor's expense until a new policy of insurance is in effect.

**G. OWNER'S OPTIONS TO PROCURE INSURANCE:** Pursuant to the below specifications, VTA may elect any or all of the following:

1. Prior to the commencement of on-site construction, VTA reserves to itself the right to implement an Owner-Controlled Insurance Program (OCIP) in lieu of any or all other insurance coverages required herein, provided, however, VTA shall make this election prior to the commencement of the Services. Pursuant to Civil Code § 2782.96, if VTA elects to implement an OCIP, an OCIP Exhibit will be added to this Contract.
  - a. If an OCIP is implemented, all eligible contractor(s) and subcontractor(s) of any tier will be required to complete the enrollment process in order to gain coverage in the OCIP as enrolled contractors. Ineligible contractors must provide their own insurance as required in Section A through F above. If implemented, the Owner will procure and maintain the OCIP coverage at all times during the performance of this Agreement as well as for extension periods for completed operations coverage. OCIP Premiums will be paid by VTA.
  - b. If an OCIP is implemented, Contractor's responsibility for insurance deductibles will be stipulated in the program manual.
  - c. The Contractor must prepare and sign an Estimated Bid Credit Worksheet as included in Section J below to facilitate the procurement of an OCIP as specified in Section G(1) above. The insurance costs submitted in the Insurance Worksheet as part of the Bid/Proposal will be included in the total Contract price. The Contractor warrants the accuracy of the information used to calculate their insurance costs. VTA, through a representative, its insurance broker, or insurer, reserves the right to audit the Contractor's records and insurance agreements to confirm the accuracy of the information.
  - d. If VTA elects to proceed with an OCIP as specified in Section G(1) above, VTA will require the Contractor to complete the OCIP enrollment process to gain coverage in the OCIP as an Enrolled Contractor. VTA reserves the right to review and determine applicable insurance coverage and limits required of the Contractor for compliance with the OCIP parameters. If applicable, VTA may negotiate and amend the Contract relative to Insurance Specification Requirements.
    - a. Prior to commencement of on-site construction activities, to require the Contractor to procure project-specific Professional Liability as required in the foregoing



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Section A(1)(d) and Section A(2)(d), including a minimum extended reporting period (ERP) of 10 years or the maximum commercially available ERP. The retroactive date must be no later than the date of this Contract.

- H.** The Contractor must cooperate with VTA in a spirit of utmost good faith to support VTA's procurement of the insurances mentioned in the preceding paragraphs G(1) and G(2).



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## Section I. Railroad Protective Liability Insurance Blanket Program Enrollment Application

Date: \_\_\_\_\_

VTA Contract No. S18088

1. Name & address of Contractor

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2. Name & address of project owner for whom work is being done  
Santa Clara Valley Transportation Authority

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3. Physical description and location of work being performed. Attach diagram of work being performed within 50' of rail ROW.

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3a. For VTA projects, is this capital or operations? X Capital    Operations

4. Anticipated start date

4a. # of total work days on site: \_\_\_\_\_

5. Anticipated completion date

6. Total Contract Value

7. Total cost of work within 50 feet of rail

8. Specific description of work within 50 feet of rail. If any movement of track, please describe:

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8a. How many trains pass through the jobsite each day? \_\_\_\_\_

9. Confirm VTA is additional insured on Contractor's policies: Yes    No   

10. Confirm VTA is held harmless in contract? Yes    No   

11. Confirm the contractual exclusion for work within 50 feet of a railroad has been removed from the contractor's general liability, automobile and umbrella insurance policies.

Yes    No   

12. Attach project scope of services, and General Contractor's certificate of insurance, with all of the following endorsements: GL and Auto Additional Insured; GL Railroad CG 24 17; Waiver of Subrogation for all lines; Primary & Noncontributory for all lines; Separation of Insureds for all lines; Umbrella or Excess policy Schedule of Underlying Insurance; Umbrella or Excess Drop Down and Follow Form endorsements or policy snapshots



### FORM 8 Estimated Bid Credit Worksheet

Location Code:		Award Date:	
Contractor:		Enrollment Date:	
Project:	Silicon Valley BART Phase II	Close Out Date:	
Awarding Owner:	VTA	Status:	
<b>CONTRACT INFORMATION</b>			
<b>Receipts</b>	<b>\$0.00</b>		
<b>Total Estimated Bid Credit</b>	<b>\$0.00</b>	<b>0.00%</b>	

WORKER'S COMPENSATION			
Code	Est. Payroll	Rate	Est. Deduct
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
<b>WC Subtotal</b>	<b>\$0.00</b>	<b>0.00%</b>	<b>\$0.00</b>
Experience Modifier	1.000000	\$0.00	
Increased Limit Factor	1.000000	\$0.00	
Premium Discount	1.000000	\$0.00	
Scheduled Modification	1.000000	\$0.00	
Miscellaneous Discounts	1.000000	\$0.00	
Foreign Terrorism Factor	0.000300	\$0.00	
Catastrophe	0.000100	\$0.00	
<b>Modified Premium</b>			<b>\$0.00</b>
WCARF - CA Admin Revolving Fund Assessment	0.012247	\$0.00	
WCFA - CA Fraud Assessment	0.002544	\$0.00	
CIGA - California Insurance Guarantee Assoc. Assessment	0.002250	\$0.00	
SIBT - SIB Fund Assessment	0.001291	\$0.00	
UEBTF - UIEB Trust Fund Assessment	0.001603	\$0.00	
OSHF - Occupational Safety & Health Fund	0.002166	\$0.00	
LECF - Labor Enforcement & Compliance Fund	0.002452	\$0.00	
<b>Worker's Compensation Credit Total</b>			<b>\$0.00</b>

GENERAL LIABILITY				
Code	Est. Payroll / Receipts *	Rating Basis	Rate	Est. Deduct
99999	\$0.00		\$0.00	
99999	\$0.00		\$0.00	
99999	\$0.00		\$0.00	



<b>General Liability Credit Total</b>	<b>\$0.00</b>
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<b>EXCESS LIABILITY</b>				
	<b>Est. Payroll / Receipts</b>	<b>Rating Basis</b>	<b>Rate</b>	<b>Est. Deduct</b>
	\$0.00	Per \$1000 Receipts	\$0.00	\$0.00
<b>Excess Liability Credit Total</b>				<b>\$0.00</b>

<b>Lower Tier Subcontractor Bid Credit</b>		
<b>Location Code</b>	<b>Company Name</b>	<b>Est. Deduct</b>
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
<b>Lower Tier Subcontractor Credit Total</b>		<b>\$0.00</b>

<b>Total Bid Deduction</b>		
Workers Compensation		\$0.00
General Liability		\$0.00
Excess Liability		\$0.00
Contractor Sub Total		\$0.00
Subcontractor Deduct (Enrollment and Change Order Est. Deduct)		\$0.00
<b>Total Estimated Bid Credit</b>		<b>\$0.00</b>

By executing this Contract, Contractor grants VTA or their agent permission to inspect the insurance and payroll records used in determining the above insurance credit. VTA will deduct the verified insurance credit from Contractor's bid by amendment. A final audit will be conducted of the actual on-site payroll, receipts, and insurance costs. The insurance costs will be based upon the rates, credits and surcharges approved and agreed upon at the time of Contractor's enrollment. These rates will be applied to the audited project payroll and/or receipts. The final adjustment will be calculated based upon the total payroll or receipts less those estimated during the bidding/proposal process and any amendments. Any and all returns of premiums, dividends, discounts or other adjustments to any OCIP Policy is assigned, transferred and set over absolutely to VTA. This assignment is valid for insurance policies whose premiums have been paid by VTA on behalf of such Contractors.



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## Railroad Protective Liability Insurance Blanket Program Enrollment Application

Date: \_\_\_\_\_

VTA Contract No. S18088

1. Name & address of Contractor

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2. Name & address of project owner for whom work is being done  
Santa Clara Valley Transportation Authority

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3. Physical description and location of work being performed. Attach diagram of work being performed within 50' of rail ROW.

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3a. For VTA projects, is this capital or operations?  Capital  Operations

4. Anticipated start date

4a. # of total work days on site: \_\_\_\_\_

5. Anticipated completion date

6. Total Contract Value

7. Total cost of work within 50 feet of rail

8. Specific description of work within 50 feet of rail. If any movement of track, please describe:

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8a. How many trains pass through the jobsite each day? \_\_\_\_\_

9. Confirm VTA is additional insured on Contractor's policies: Yes  No

10. Confirm VTA is held harmless in contract? Yes  No

11. Confirm the contractual exclusion for work within 50 feet of a railroad has been removed from the contractor's general liability, automobile and umbrella insurance policies.

Yes  No

12. Attach project scope of services, and General Contractor's certificate of insurance, with all of the following endorsements: GL and Auto Additional Insured; GL Railroad CG 24 17; Waiver of Subrogation for all lines; Primary & Noncontributory for all lines; Separation of Insureds for all lines; Umbrella or Excess policy Schedule of Underlying Insurance; Umbrella or Excess Drop Down and Follow Form endorsements or policy snapshots



### FORM Estimated Bid Credit Worksheet

Location Code:		Award Date: Enrollment Date: Close Out Date: Status:		
Contractor:				
Project:	Silicon Valley BART Phase II			
Awarding Owner:	VTA			
<b>CONTRACT INFORMATION</b>				
<b>Receipts</b>	\$0.00			
<b>Total Estimated Bid Credit</b>	<b>\$0.00</b>	<b>0.00%</b>		

### WORKER'S COMPENSATION

Code	Est. Payroll	Rate	Est. Deduct
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00
<b>WC Subtotal</b>	<b>\$0.00</b>	<b>0.00%</b>	<b>\$0.00</b>
Experience Modifier	1.000000	\$0.00	
Increased Limit Factor	1.000000	\$0.00	
Premium Discount	1.000000	\$0.00	
Scheduled Modification	1.000000	\$0.00	
Miscellaneous Discounts	1.000000	\$0.00	
Foreign Terrorism Factor	0.000300	\$0.00	
Catastrophe	0.000100	\$0.00	
<b>Modified Premium</b>			<b>\$0.00</b>
WCARF - CA Admin Revolving Fund Assessment	0.012247	\$0.00	
WCFA - CA Fraud Assessment	0.002544	\$0.00	
CIGA - California Insurance Guarantee Assoc. Assessment	0.002250	\$0.00	
SIBT - SIB Fund Assessment	0.001291	\$0.00	
UEBTF - UIEB Trust Fund Assessment	0.001603	\$0.00	
OSHF - Occupational Safety & Health Fund	0.002166	\$0.00	
LECF - Labor Enforcement & Compliance Fund	0.002452	\$0.00	
<b>Worker's Compensation Credit Total</b>			<b>\$0.00</b>

### GENERAL LIABILITY

Code	Est. Payroll / Receipts *	Rating Basis	Rate	Est. Deduct
99999	\$0.00		\$0.00	



99999	\$0.00		\$0.00	
99999	\$0.00		\$0.00	
<b>General Liability Credit Total</b>			<b>\$0.00</b>	

<b>EXCESS LIABILITY</b>				
	<b>Est. Payroll / Receipts</b>	<b>Rating Basis</b>	<b>Rate</b>	<b>Est. Deduct</b>
	\$0.00	Per \$1000 Receipts	\$0.00	\$0.00
<b>Excess Liability Credit Total</b>				<b>\$0.00</b>

<b>Lower Tier Subcontractor Bid Credit</b>		
<b>Location Code</b>	<b>Company Name</b>	<b>Est. Deduct</b>
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
		\$0.00
<b>Lower Tier Subcontractor Credit Total</b>		<b>\$0.00</b>

<b>Total Bid Deduction</b>	
Workers Compensation	\$0.00
General Liability	\$0.00
Excess Liability	\$0.00
Contractor Sub Total	\$0.00
Subcontractor Deduct (Enrollment and Change Order Est. Deduct)	\$0.00
<b>Total Estimated Bid Credit</b>	
<b>\$0.00</b>	

By executing this Contract, Contractor grants VTA or their agent permission to inspect the insurance and payroll records used in determining the above insurance credit. VTA will deduct the verified insurance credit from Contractor's bid by amendment. A final audit will be conducted of the actual on-site payroll, receipts, and insurance costs. The insurance costs will be based upon the rates, credits and surcharges approved and agreed upon at the time of Contractor's enrollment. These rates will be applied to the audited project payroll and/or receipts. The final adjustment will be calculated based upon the total payroll or receipts less those estimated during the bidding/proposal process and any amendments. Any and all returns of premiums, dividends, discounts or other adjustments to any OCIP Policy is assigned,



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transferred and set over absolutely to VTA. This assignment is valid for insurance policies whose premiums have been paid by VTA on behalf of such Contractors.



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## EXHIBIT A4 DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENT

### A. DISADVANTAGED BUSINESS ENTERPRISES:

1. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. VTA's DBE overall goal for Federal Fiscal Year 2017-2019 is 13%. Contractor will be required to report its DBE participation throughout the period of performance.
  2. The Contractor 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 this DOT assisted contract. 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 VTA deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
  3. The Contractor is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than seven (7) days after the Contractor's receipt of payment for that work from VTA. In addition, the Contractor is required to return any retainage payments to those subcontractors within seven (7) days after the subcontractor's work related to this contract is satisfactorily completed.
  4. The Contractor must promptly notify VTA whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of VTA.
- B. It is VTA policy to ensure that DBE firms, as defined in Federal Regulations at 13 CFR Part 121 and 49 CFR Part 26, have an equitable opportunity to participate in the performance of Contracts and subcontracts.
1. In connection with its performance under this Contract, Contractor agrees to cooperate with VTA in meeting the **15.45%** DBE utilization goal set for this project.
- Goals for participation of DBE firms will be set on each individual Task Order based upon the subcontracting opportunities for that specific Task Order and the availability of DBE subcontractors for the specialties identified. In order to achieve its goals, VTA may require Contractor to subcontract work out that it would normally perform.



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2. VTA will monitor compliance with Contract requirements for DBE firms. Electronic submittal will be on a web-based online system (B2Gnow), accessed from any computer via the internet at the following website: <https://VTA.sbdbe.com>. Contractor and its subcontractors will receive an email providing a Log-On identification, password, and instruction on how to use the system. All lower-tier subcontractors and vendors will be required to provide or verify DBE utilization documentation.
  3. Contractor will be required to submit monthly DBE utilization reports electronically to the VTA Office of Business Diversity Programs. These reports shall be submitted electronically by the Contractor and will document when payments to subcontractors were made, the dollar value of the payments to DBE firms, and the percentage of the contract completed.
  4. At the conclusion of this Contract, Contractor shall submit a final DBE utilization report electronically to the VTA Office of Business Diversity Programs at: [OSDB.OSDB@VTA.org](mailto:OSDB.OSDB@VTA.org) by indicating a final audit where requested in the B2Gnow system. This final report will document when payments to subcontractors were made, the dollar value of payments to DBE firms, and the percentage of the Services completed.
  5. **“GOOD-FAITH EFFORTS” GUIDELINES:** The Proposer is required to document sufficient DBE participation to meet the goal. If the participation goal for this project is attained, the Proposer need not submit any documentation on the efforts made to achieve the goal. However, if the DBE goal is not attained, the Proposer must demonstrate that “Good Faith Efforts” were made to attain the goal. Proposer must document adequate efforts at the time of Proposal submittal, as provided for in 49 CFR 26.53, and in accordance with the “Good Faith Efforts” provisions below:
    - a. **Pre-Proposal Meeting:** Proposer attended the pre-proposal conference that was scheduled by VTA to inform Proposers of the DBE program requirements for this RFP.
    - b. **Identification of DBE Participation Opportunities:** Proposer identified selected specific items of the work to be performed by DBE firms to provide genuine opportunities for participation by DBE firms. Proposer shall provide documentation showing the items that were identified and selected and shall describe how such items were utilized by Proposer to solicit DBE participation.

Where appropriate, Proposer allocated work to facilitate DBE participation, even when Proposer preferred to perform this work with its own forces.

- c. **Advertisements:** At least ten (10) calendar days before the Technical Proposal due date Proposer solicited sub-contracts from DBE firms for specified categories of work or materials or supplies for the contract through advertisements.
- d. **Written Notice:** At least ten (10) calendar days before the Technical Proposals due date, Proposer provided written notice to a sufficient number of DBE certified firms in each subcontracting work category, and to such firms in each category of materials or supplies for the project. Written notice to a minimum of ten (10) firms shall constitute



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a sufficient number of firms to be notified if the approved CUCP databases contain at least ten (10) firms for that category.

- e. **Follow-up of Initial Solicitations:** Proposer followed-up initial solicitations of interest by contacting the DBE firms to determine with certainty whether the firms were interested in submitting Proposals on the work. Such follow-up activity shall be documented with telephone, fax logs, or other written documentation that shall be submitted to VTA and that shall set forth, at a minimum, the following information:
  - The type of contact; i.e., telephone, meeting, letter, fax, or e-mail;
  - The name of the DBE firm contacted;
  - The date and time the DBE firm was contacted;
  - The full name, title, telephone or fax number, and e-mail address of the person at the DBE firm contacted by Proposer;
  - The responses of each of the DBE firms contacted with regard to its interest in submitting a sub-contract; and
  - For each DBE firm contacted that declined to submit a Proposal, the reason(s) provided by the DBE firm for declining to submit a Proposal.
- f. **Information Regarding Contract Scope of Work:** Proposer shall describe the information provided to interested firms; report the name of the firms involved, and set forth the date and method of providing such information.
- g. **Request for Assistance in the Recruitment of DBE Firms:** Proposer requested assistance from federal, state, and local agencies for lists of DBE firms. Proposer provided information about selected subcontract work and requirement to DBE firms.
- h. **Good-Faith Evaluation of and Negotiation with Interested DBE Firms:** Proposer evaluated the proposals of and negotiated in good faith with interested DBE firms, and did not unjustifiably reject DBE firm(s) as unsatisfactory or unqualified without sound reasons based on a thorough assessment of the capabilities of the firm(s) in question. Proposer shall list all DBE responses to the solicitation, and all DBE sub-contracts which were received but not used.

**NOTE: If no DBE Proposals are received, this fact must be stated. When applicable, Proposer shall provide, at a minimum, the following information:**

- Contacting bonding and/or insurance companies on behalf of a DBE firm;
- Arranging with sureties phased or incremental bonding for the DBE firm;



- 
- Waiving bonds or insurance requirements;
- 6. 49 CFR PART 26.39 – FOSTERING SMALL BUSINESS PARTICIPATION**
- As part of the VTA's Disadvantaged Business Enterprise (DBE) Program, Small Business Enterprise (SBE) prime and subcontractors are encouraged to participate in VTA's contracting opportunities. VTA's SBE Aspirational Goal for this contract is 30.0%.
- 7. FRAUDS AND FRONTS:** Contactors are cautioned against knowingly and willfully using "fronts" to meet the DBE goal of the Contract. The use of "fronts" or "pass through" subcontracts to non-disadvantaged firms constitutes a criminal violation.



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## EXHIBIT A5 REQUIRED FTA CLAUSES PART 1

*Rev. 06/2018*

In its performance under the Contract, Contractor will comply with all the Federal Transit Administration (“FTA”) clauses which are identified below as applicable (if the box next to the clause is checked, the clause is applicable). The substance of these applicable requirements is set forth on the following pages of this Exhibit.

- A. ACCESS TO RECORDS AND REPORTS
- B. BONDING REQUIREMENTS
- C. BUS TESTING
- D. BUY AMERICA REQUIREMENTS
- E. CARGO PREFERENCE REQUIREMENTS
- F. CHARTER SERVICE
- G. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT
- H. CIVIL RIGHTS LAWS AND REGULATIONS
- I. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
- J. EMPLOYEE PROTECTIONS
- K. ENERGY CONSERVATION
- L. FLY AMERICA
- M. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION
- N. LOBBYING RESTRICTIONS
- O. NO GOVERNMENT OBLIGATION TO THIRD PARTIES
- P. PATENT RIGHTS AND RIGHTS IN DATA
- Q. PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES
- R. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS
- S. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS
- T. RECYCLED PRODUCTS
- U. SAFE OPERATION OF MOTOR VEHICLES
- V. SCHOOL BUS OPERATIONS
- W. SEISMIC SAFETY
- X. SUBSTANCE ABUSE REQUIREMENTS
- Y. TERMINATION
- Z. VIOLATION AND BREACH OF CONTRA
- AA. SPECIAL DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS [Must include attachment]
- BB. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE
- CC. ADA ACCESS
- DD. CHANGES
- EE. INCORPORATION OF FTA TERMS



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## EXHIBIT A6 REQUIRED FTA CLAUSES PART 2

*Rev. 06/2018*

These FTA terms and conditions (“FTA Clauses”) are required by the FTA pursuant to the Master Agreement between FTA and VTA, Section 16 (a copy of which may be viewed at <https://www.transit.dot.gov/>) and apply to all third party contracts awarded by VTA that are funded in whole or in part with FTA assistance. Unless specifically defined herein, the capitalized terms used in these FTA Clauses have the meanings as defined in the solicitation and/or Contract, as applicable. Contractor is responsible for its subcontractors’ compliance, as applicable, with these FTA Clauses.

In the event that any of these FTA Clauses conflict with other terms of the Contract, these FTA Clauses will prevail.

- A. ACCESS TO RECORDS AND REPORTS:** In addition to any other audit and record retention requirements set forth in the Contract, Contractor will comply with the following:
  - a. Flow Down:** The requirements of this Section A apply to Contractor and its Contract subcontractors at every tier. Contractor will ensure compliance with this Section A by all of its subcontractors of every tier.
  - b. Record Retention:** Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
  - c. Retention Period:** Contractor will comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of the Contract, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
  - d. Access to Records:** Contractor will provide sufficient access to the FTA and its contractors to inspect and audit records and information related to performance of the Contract as reasonably may be required.
  - e. Access to the Site of Performance:** Contractor will permit FTA and its contractors access to the sites of performance under the Contract as reasonably may be required.
- B. BONDING REQUIREMENTS:** Contractor will comply with the bonding requirements set forth elsewhere in the Contract.



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- C. **BUS TESTING:** Contractor will comply with all bus testing requirements set forth elsewhere in the Contract.
  - D. **BUY AMERICA REQUIREMENTS:** If the Contract is for the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock, Contractor will comply with the following:
    - a. **Flow Down:** The requirements of this Section D apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section D.
    - b. **Compliance with Federal Law:** Contractor will comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.
    - c. **Certifications:** Contractor must submit to VTA the appropriate Buy America certification attached to the solicitation or otherwise provided by VTA with its (i) Bid (in the case of a sealed bidding procurement) or (ii) final offer or final revised Proposal (in the case of a negotiated procurement). Bids or Proposals (as applicable) that are not accompanied by a completed Buy America certification will be rejected as nonresponsive and cannot be considered by VTA.
  - E. **CARGO PREFERENCE REQUIREMENTS:** If the Contract involves equipment, materials, or commodities that may be transported by ocean vessels, Contractor will comply with the following:
    - a. **Flow Down:** The requirements of this Section E apply to Contractor and its Contract subcontractors at every tier involved with the transport of equipment, material, or commodities by ocean vessel. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section E.
    - b. **United States-Flag Commercial Vessels:** Contractor will use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.



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- c. **Bill-of-Lading:** Contractor will furnish within 20 business days following the date of loading for shipments originating within the United States or within 30 business days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to VTA (through Contractor in the case of a subcontractor's bill-of-lading).
  - F. **CHARTER SERVICE:** If the Contract is for the operation of transportation service, Contractor will comply with the following:
    - a. **Flow Down:** The requirements of this Section F apply to Contractor as the first tier service contractor. The provisions of this Section F do not flow down to subcontractors.
    - b. **Compliance with Federal Law:** Contractor will comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:
      - i. Federal transit laws, specifically 49 U.S.C. § 5323(d);
      - ii. FTA regulations, “Charter Service,” 49 C.F.R. Part 604;
      - iii. Any other federal Charter Service regulations; or
      - iv. Federal guidance, except as FTA determines otherwise in writing.
    - c. **Violations:** If Contractor engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on Contractor. These corrective measures and remedies may include:
      - i. Barring Contractor or any subcontractor operating public transportation under its award that has provided prohibited charter service from receiving federal assistance from FTA;
      - ii. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or
      - iii. Any other appropriate remedy that may apply.
  - G. **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT:** If the Contract has a total value exceeding the simplified acquisition threshold as defined by 48



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C.F.R. 2.101(b) (hereinafter, "Simplified Acquisition Threshold"), Contractor will comply with the following:

- a. Flow Down:** The requirements of this Section G apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section G.
- b. Contractor will:**
  - i.** Not use any violating facilities;
  - ii.** Report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities,"
  - iii.** Report violations of use of prohibited facilities to FTA; and
  - iv.** Comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

**H. CIVIL RIGHTS LAWS AND REGULATIONS:** Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

- a. Flow Down:** The requirements of this Section H apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section H.
- b. Nondiscrimination:** In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, U.S. Department of Transportation ("DOT") regulations at 49 C.F.R. Part 21, and federal transit law at 49 U.S.C. § 5332, Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.
- c. Race, Color, Religion, National Origin, Sex:** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and federal transit laws at 49 U.S.C. §5332, Contractor will comply with all applicable equal employment opportunity requirements of U.S. Department of Labor ("U.S. DOL") regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by



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any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action will include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor will comply with any implementing requirements FTA may issue.

- d. Age:** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (“U.S. EEOC”) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. Part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. Part 90, and federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
  - e. Disabilities:** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 *et seq.*, and federal transit law at 49 U.S.C. § 5332, Contractor will not discriminate against individuals on the basis of disability. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- I. DISADVANTAGED BUSINESS ENTERPRISE (“DBE”):** Contractor will comply with the DBE requirements set forth elsewhere in the Contract.

**J. EMPLOYEE PROTECTIONS:**

- a. Flow Down:** The requirements of this Section J apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section J.
- b. If the Contract is for construction, alteration, or repair in excess of \$2,000, Contractor will comply with the following:**
  - i. Prevailing Wage:** Contractor will comply with the prevailing wage requirements set forth in the Contract.



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- ii. **Anti-Kickback:** Contractor shall comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by U.S. DOL regulations at 29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
  - c. If the Contract (i) has a total value of more than \$100,000 and (ii) involves the employment of mechanics or laborers, Contractor will comply with the following:
    - i. **Contract Work Hours and Safety Standards:** Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the U.S. DOL regulations at 29 C.F.R. Part 5. Under 40 U.S.C. § 3702 of the Contract Work Hours and Safety Standards Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
      - 1. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply if the Contract is for (i) the purchase of supplies or materials or articles ordinarily available on the open market or (ii) transportation or transmission of intelligence.
      - 2. In the event of any violation of this section, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and any such subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by this section.
      - 3. The FTA shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause



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to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor (i) under the Contract, (ii) under any other federal government contract with the same prime Contractor, or (iii) any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act and 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 this section.

4. Contractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring all subcontractors to include these clauses in any lower tier subcontracts.

- ii. **Contract Work Hours and Safety Standards for Awards Not Involving Construction:** Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

1. Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.
2. Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

- K. **ENERGY CONSERVATION:** Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:



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- a. **Flow Down:** The requirements of this Section K apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section K.
  - b. **Mandatory Standards and Policies:** Contractor will comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- L. FLY AMERICA:** If the Contract includes transportation of persons or property by air between a place in the U.S. and a place outside the U.S., or between places outside the U.S., Contractor will comply with the following:
- a. **Flow Down:** The requirements of this Section L apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section L.
  - b. **Definitions:**
    - i. **“International air transportation”** means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
    - ii. **“United States”** or **“U.S.”** means the 50 States, the District of Columbia, and outlying areas.
    - iii. **“U.S.-flag air carrier”** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
  - c. **Use of U.S.-Flag Air Carriers:** Pursuant to Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act), Contractor and all of its subcontractors at every tier must use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. Contractor understands that the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, will disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
  - d. **Statement of Unavailability of U.S.-Flag Air Carriers:** In the event that Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, Contractor shall include a statement on vouchers involving such transportation essentially as follows:



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### Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403.

*[State reasons]:*

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- e. **Subcontracts:** Contractor shall include the substance of this clause, including this paragraph (5), in each subcontract or purchase under the Contract that may involve international air transportation.
- f. **Code Share Agreement:** Contractor is permitted to use transportation on a foreign air carrier when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number.
- g. **Air Transportation Agreement:** Contractor is permitted to use transportation by a foreign air carrier if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.

### M. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION: If the Contract has a total value of \$25,000 or more, Contractor will comply with the following:

- a. **Flow Down:** If Contractor and/or any of its subcontractors enter into covered transactions with a participant at the next lower level, Contractor and/or its subcontractor, as applicable, must require that participant to: (a) comply with subpart C of 2 C.F.R. Part 180, as supplemented by 2 C.F.R. Part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. Part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.
- b. **Compliance with Federal Law:** Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. These provisions apply to the Contract and to (i) any subcontract at any tier of \$25,000 or more, and (ii) each contract at any tier for a federally required audit (irrespective of the contract amount), and (iii) each contract at any tier that must be approved by an FTA official irrespective of the contract amount.



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- c. **Verification:** Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in the federally funded Contract and are not presently declared by any federal department or agency to be:
    - i. Debarred from participation in any federally assisted award;
    - ii. Suspended from participation in any federally assisted award;
    - iii. Proposed for debarment from participation in any federally assisted award;
    - iv. Declared ineligible to participate in any federally assisted award;
    - v. Voluntarily excluded from participation in any federally assisted award; or
    - vi. Disqualified from participation in any federally assisted award.
  - d. **Certification:** Contractor must submit to VTA the Government-Wide Debarment and Suspension certification attached to the solicitation or otherwise provided by VTA with its (i) Bid or Proposal, or (ii) prior to the execution of the Contract, whichever occurs earlier.
- N. LOBBYING RESTRICTIONS:** If the Contract has a total value of \$100,000 or more, Contractor will comply with the following:
- a. **Flow Down:** The requirements of this Section N apply to Contractor and its Contract subcontractors at every tier if such subcontract has a total value of \$100,000 or more. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section N.
  - b. **Certification:** Contractor must submit to VTA the appropriate Restrictions on Lobbying certification attached to the solicitation or otherwise provided by VTA with its (i) Bid or Proposal, or (ii) prior to the execution of the Contract, whichever occurs earlier.
- O. NO GOVERNMENT OBLIGATION TO THIRD PARTIES:** Contractor will at all times comply with the following requirements:
- a. **Flow Down:** The requirements of this Section O apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section O.
  - b. **No Obligation:** Contractor acknowledges 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 the Contract and shall not be subject to any obligations or liabilities of



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VTA, Contractor or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the underlying Contract.

**P. PATENT RIGHTS AND RIGHTS IN DATA:** If the Contract is for the performance of experimental, developmental, or research work, Contractor will comply with the following:

- a. **Flow Down:** The requirements of this Section P apply to Contractor and its Contract subcontractors at every tier if the relevant subcontract meets the definition of a research-type project under 37 U.S.C. § 401.2. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section P.
- b. **Intellectual Property Rights:** Certain Patent Rights and Data Rights apply to all subject data first produced in the performance of the Contract. Contractor grants VTA intellectual property access and licenses deemed necessary for the work performed under the Contract and in accordance with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of the Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of the Contract, the term "subject data" means recorded information, whether or not copyrighted, that is delivered or specified to be delivered by the Contract.
- c. The federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described as follows:
  - i. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
  - ii. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- d. "Federal Government Purposes," means use only for the direct purposes of the federal government. The federal government may not extend its federal license to any other party without the copyright owner's consent.



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- e. Unless FTA determines otherwise, Contractor will permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the federal government may direct.
  - f. Unless prohibited by state law, upon request by the federal government, Contractor will indemnify, save, and hold harmless the federal government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor will indemnify the federal government for any such liability arising out of the wrongful act of any employee, official, or agents of the federal government.
  - g. Nothing contained in this clause on rights in data shall imply a license to the federal government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the federal government under any patent.
  - h. Data developed by Contractor and financed entirely without using federal assistance provided by the federal government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.
    - i. Contractor will include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

**Q. PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES:** If the Contract is for the purchase of revenue service rolling stock, Contractor will comply with the following:

- a. **Flow Down:** The requirements of this Section Q apply to Contractor as the first tier service contractor. The provisions of this Section Q do not flow down to subcontractors.
- b. Contractor will comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. Part 663. Contractor shall comply with the Buy America certification(s) submitted with its Bid/Proposal. Contractor will participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. Part 663 and related FTA guidance.



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- c. For more information about pre-award and post-delivery audit requirements, please go to FTA's Buy America page on its website.

**R. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS:** Contractor will at all times comply with the following requirements:

- a. **Flow Down:** The requirements of this Section R apply to Contractor and its Contract subcontractors at every tier if the relevant subcontract involves the making, presenting, or submitting of covered claims and statements. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section R.
- b. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the Contract. Upon execution of the Contract, 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 Contract or the FTA assisted project for which the Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the federal government deems appropriate.
- c. 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. chapter 53, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the federal government deems appropriate.
- d. Contractor will include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. Contractor will not modify the clauses, except to identify the subcontractor who will be subject to the provisions.

**S. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS:** If (i) Contractor is recognized by FTA to be a transit operator and (ii) the Contract is for transit operations, Contractor will comply with the following:

- a. **Flow Down:** The requirements of this Section S apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section S.



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- b. Contractor will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):
      - i. **U.S. DOL Certification:** Contractor will complete a certification issued by U.S. DOL as a condition of the Contract.
      - ii. **Special Warranty:** U.S. DOL will provide a Special Warranty for the award associated with the Contract. The U.S. DOL Special Warranty is a condition of the Contract.
      - iii. **Special Arrangements:** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractor in its provision of public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated into the Contract as required.
  - T. **RECYCLED PRODUCTS:** If (i) the Contract is for the purchase of items designated in guidelines of the U.S. Environmental Protection Agency (“EPA”) at 40 C.F.R. Part 247 and (ii) the purchase price of the relevant item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000, Contractor will comply with the following:
    - a. **Flow Down:** The requirements of this Section T apply to Contractor and its Contract subcontractors at every tier if the subcontract involves the purchase of EPA-selected items valued at \$10,000 or more. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section T.
    - b. Contractor will provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6962, and EPA, “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. Part 247.
  - U. **SAFE OPERATION OF MOTOR VEHICLES:** Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:
    - a. **Flow Down:** The requirements of this Section U apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section U.



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- b. **Seat Belt Use:** Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by Contractor or VTA.
  - c. **Distracted Driving:** Contractor will adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns, leases, or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under the Contract.

**V. SCHOOL BUS OPERATIONS:** If the Contract is for the operation of public transportation service, Contractor will comply with the following:

- a. **Flow Down:** The requirements of this Section V apply to Contractor as the first tier service contractor.
- b. Contractor will comply with 49 U.S.C. 5323(f) and 49 C.F.R. Part 604 and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:
  - i. Federal transit laws, specifically 49 U.S.C. § 5323(f);
  - ii. FTA regulations, “School Bus Operations,” 49 C.F.R. Part 605;
  - iii. Any other federal school bus regulations; or
  - iv. Federal guidance, except as FTA determines otherwise in writing.
- c. If Contractor violates this Section V, FTA may:
  - i. Bar Contractor from receiving federal assistance for public transportation; or
  - ii. Require Contractor to take such remedial measures as FTA considers appropriate.
- d. When operating exclusive school bus service under an allowable exemption, Contractor may not use federally funded equipment, vehicles, or facilities.
- e. Contractor should include the substance of this clause in each subcontract under the Contract that may operate public transportation services.



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**W. SEISMIC SAFETY:** If the Contract is for the construction of new buildings or additions to existing buildings, Contractor will comply with the following:

- a. Flow Down:** The requirements of this Section W apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section W.
  - b.** Contractor will design and construct any new building or additions to existing buildings in accordance with the standards for Seismic Safety required in DOT Seismic Safety Regulations at 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. Contractor will ensure that all work performed under the Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued under the Contract.
- X. SUBSTANCE ABUSE REQUIREMENTS:** If the Contract requires Contractor or any of its subcontractors to perform safety-sensitive functions (as defined in 49 C.F.R. § 655.4), Contractor must comply with the following:

- a. Flow Down:** The requirements of this Section X, along with VTA's Drug and Alcohol Policy, apply to Contractor and its Contract subcontractors at every tier that require the performance of a safety-sensitive function. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section X.
- b.** Contractor will establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Part 655; produce any documentation necessary to establish its compliance with 49 C.F.R. Part 655; and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California or VTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Part 655 and review the testing process.
- c. Certification:** Contractor will certify annually its compliance with 49 C.F.R. Part 655 before December 15 and to submit the Management Information System (MIS) reports before March 10 to:

Linda Durham  
Sr. Human Resources Analyst  
3331 North First Street-Building B1, San Jose, CA 95134

To certify compliance, Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.



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- Y. TERMINATION:** Contractor will comply with the termination provisions set forth elsewhere in the Contract. The requirements of this Section Y apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section Y.
  - Z. VIOLATION AND BREACH OF CONTRACT:** If the Contract has a total value exceeding the Simplified Acquisition Threshold, Contractor will comply with the following:
    - a. Flow Down:** The requirements of this Section Z apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section Z.
    - b. Disputes:** VTA and Contractor intend to resolve all disputes under the Contract to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the VTA's and Contractor's organization. In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with VTA's direction or decisions made thereof.
    - c. Performance During Dispute:** Unless otherwise directed by VTA, Contractor shall continue performance under the Contract while matters in dispute are being resolved.
    - d. 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 VTA 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.

**AA. SPECIAL U.S. DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS:** If the Contract has a total value of \$10,000 or more and is for construction, Contractor will comply with the following:

- a. Flow Down:** The requirements of this Section AA apply to Contractor and its Contract subcontractors performing construction work at every tier. Contractor is responsible for



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ensuring that all applicable lower tier contractors and subcontractors are in compliance with this Section AA.

- b.** Contractor will comply with (i) U.S. DOL regulations set forth in 41 C.F.R. Part 60-4, (ii) Executive Order 11246 “Equal Employment Opportunity,” as amended (including by Executive Order 11375), and (iii) 42 U.S.C. § 2000 (e) note.
- c.** Contractor will comply with the equal opportunity clause set forth in 41 C.F.R. § 60-1.4(b), which is incorporated herein by reference pursuant to 41 C.F.R. § 60-1.4(d).
- d.** Contractor will comply with the “Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)” set forth in 41 C.F.R. § 60-4.3, which specifications are attached hereto (if applicable).

**BB. CONFORMANCE WITH I.T.S. NATIONAL ARCHITECTURE:** If the Contract is (i) for the implementation of Intelligent Transportation Systems (“ITS”) and (ii) funded through the Federal Highway Trust Fund, Contractor will comply with the following:

- a. Flow Down:** The requirements of this Section BB apply to Contractor and its Contract subcontractors performing ITS project work at every tier. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section BB.
- b.** Except as otherwise permitted or determined by FTA in writing, Contractor will conform to the National Intelligent Transportation Systems (“ITS”) Architecture and Standards of 23 U.S.C. § 517(d), as amended by MAP-21.
- c.** Contractor will comply with FTA Notice, “Federal Transit Administration National ITS Architecture Policy on Transit Projects,” 66 FR 1455, January 8, 2001.

**CC. ADA ACCESS:** Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

- a. Flow Down:** The requirements of this Section CC apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section CC.
- b.** Contractor will operate public transportation services and will keep its facilities used in public transportation services in compliance with: (i) 42 U.S.C. § 12101 et seq.; (ii) DOT regulations, including “Transportation Services for Individuals with Disabilities (ADA)” set forth at 49 C.F.R. Part 37; and (iii) Joint Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, including “Americans with Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles” set forth at 36 C.F.R.



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Part 1192 and “Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles” set forth at 49 C.F.R. Part 38. If Contractor is a private entity, Contractor must comply with the requirements of 49 C.F.R. Part 37 applicable to public entities.

**DD. CHANGES:** Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

- a. **Flow Down:** The requirements of this Section DD apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section DD.
- b. Contractor will 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 VTA and FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor’s failure to comply will constitute a material breach of the Contract.

**EE. INCORPORATION OF FTA TERMS:** Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

- a. **Flow Down:** The requirements of this Section EE apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section EE.
- b. The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth herein. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F and the Master Agreement or any revision thereto, are hereby incorporated by reference and made a part of the Contract, except to the extent FTA determines otherwise in writing. Anything to the contrary herein notwithstanding, all FTA-mandated terms are deemed to control in the event of a conflict with other provisions contained in the Contract. Contractor will not perform any act, fail to perform any act, or refuse to comply with any VTA requests which would cause VTA to be in violation of any FTA terms and conditions.



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## EXHIBIT A7 PREVAILING WAGE REQUIREMENTS

- A. CALIFORNIA PREVAILING WAGE LAW:** This Contract is a “public work” as defined in Section 1720 through 1720.6 of the California Labor Code (“Labor Code”) and is therefore subject to the requirements of Labor Code Section 1720 et seq. requiring the payment of prevailing wages and compliance with other applicable requirements. Contractors and subcontractors of all tiers who perform work under this Contract are required to comply with these requirements.
- B. FEDERAL PREVAILING WAGE LAW:** This Contract is federally funded and is therefore also subject to federal prevailing wage requirements. Under 49 U.S.C. §5333(a), prevailing wage protections apply to laborers and mechanics employed on Federal Transit Administration (“FTA”) assisted construction, alteration, or repair projects. Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§3141-3144 and 3146-3148 as supplemented by U.S. Department of Labor (“DOL”) regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.”
- C. DIR REGISTRATION:** Contractor and subcontractors of all tiers used for the Contract must be registered with the DIR pursuant to Labor Code Section 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)) prior to (i) submission of the bid or proposal and/or (ii) execution of the Contract, as applicable. Those who fail to register and maintain their status as a public works contractor are not permitted to perform work hereunder.
- D. SUBCONTRACTOR LISTING:** Contractor must provide VTA with a list of all subcontractors of every tier, for any dollar amount. Contractor must not allow any unidentified subcontractor of any tier to perform work under this Contract.
- E. APPLICABLE RATES:** Workers employed under the Contract must be paid at the rates at least equal to the prevailing wage rates as adopted. If Contractor uses a craft or classification not shown on the prevailing wage determinations, Contractor may be required to pay the wage rate of that craft or classification most closely related to it as shown in the general determinations effective at the time of Contract award.
  - 1. CALIFORNIA PREVAILING WAGE RATES:** The applicable California prevailing wage rates can be found at [www.dir.ca.gov](http://www.dir.ca.gov) and are on file with the Contracts Office at VTA, which will be available to any interested party upon request. Contractor is also required to have a copy of the applicable prevailing wage rates posted and/or available at the jobsite or material staging area.
  - 2. SPECIAL PREVAILING WAGE RATES:** Special prevailing wage rates generally apply to work performed on weekends, holidays, and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractor is on notice, and responsible for



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ensuring that its subcontractors of all tiers are on notice, that information about such special rates, holidays, premium pay, shift work, and travel and subsistence requirements can be found at [www.dir.ca.gov](http://www.dir.ca.gov).

- 3. FEDERAL PREVAILING WAGE RATES:** This Contract is also subject to federal requirements for payment of prevailing wages as determined by the Secretary of Labor. Federal wage rates are available at the DOL website at <https://www.wdol.gov/dba.aspx> and at the Contracts Office of VTA. The applicable federal wage rate determinations are attached hereto as **Appendix C**. Where there are differences between federal and state wage rates, the higher will apply. In addition, Contractor will pay wages not less than once per week.
- F. APPRENTICES:** In the performance of work under this Contract, Contractor is responsible for compliance with Labor Code Section 1777.5, pertaining to the employment of registered apprentices.

## **G. CERTIFIED PAYROLLS:**

- 1. SUBMISSION TO VTA:** In the performance of work under this Contract, Contractor is responsible for its compliance, as well as that of its subcontractors of every tier, with Labor Code Section 1776. On a weekly basis, Contractor and all applicable subcontractors of every tier (if performing covered work) shall be required to submit certified payrolls and labor compliance documentation electronically for the period covering the immediately preceding week, when work is performed. Electronic submission will be a web-based system, accessed electronically on the internet at the address provided by VTA. The web based system is LCPtracker. Contractor and each subcontractor will be given a Log On identification and password to access the reporting system. Contractor shall be responsible for managing and certifying all lower tier subcontractors certified payroll submittals. The term "Certified Payroll" includes all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq., as well as any additional documentation requested by VTA.
- 2. SUBMISSION TO THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS ("DIR"):** In addition to submitting the certified payrolls and related documentation to VTA, on a weekly basis Contractor and subcontractors of all tiers must submit certified payroll and related documents electronically to the DIR. Failure to submit payrolls to the DIR when mandated by the Contract will also result in the withholding of progress, retention, and final payment, if applicable.

**Flow Down:** Contractor will incorporate into every lower-tier subcontract and purchase order these instructions where labor compliance documentation is required.

- H. FAILURE TO COMPLY:** VTA or the DIR may impose penalties upon Contractor and subcontractors of any tier for failure to comply with prevailing wage requirements. This Contract is subject to compliance monitoring and enforcement by the DIR.



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## **XI. APPENDICES**

**Appendix A** BSVII Quality Management Plan (QMP) – The QMP is available on the VTA procurement site for this RFP.

**Appendix B** PICS Engineering Tools/Functionality and Applications (attached hereto)

**Appendix C** Federal Wage Determination is available on the VTA procurement site for this RFP.



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## APPENDIX B

### PICS Engineering Tools / Functionality and Applications

Software/Service	Tasks / Functionality
Primavera P6	P6 is the Project scheduling tool. The Master Program in P6 will integrate all contract schedules and will be resource loaded.
SharePoint	SharePoint is the Project document and records collaborative management site.
Acumen (Fuse/Risk/360)	Acumen is the schedule and cost analysis suite of tools that provides a visual assessment of the quality of schedules (Fuse), generates risk information including risk models (Risk), improves accuracy of cost forecasts and provides forensic analysis (360).
ProjectWise	ProjectWise is the engineering suite of tools used on the project. ProjectWise will help the team with multi-disciplinary design and analysis, project collaboration, WorkFace Planning, construction management, and engineering content management. ProjectWise is the single platform in which drawings can be collaborated on and managed.
Bluebeam	Bluebeam is VTA's drawing review and mark-up tool
VDC / BIM	VDC and BIM both are comprised of multiple software tools including CAD drawings, Revit and other tools to provide a model-based approach.

- VTA BIM/CAD Requirement** **Project-Wide BIM Use** - VTA is committed to using 3D Building Information Modeling (BIM) on the Project, for improved program delivery throughout the life of the Project. Use of 3D BIM is required of all teams with BIM/CAD deliverables in their Scope of Work, to facilitate efficient 3D design and construction, and to ensure meaningful and relevant BIM/CAD information is delivered to VTA for future operational and maintenance activities.
- BIM/CAD Roles & Responsibilities** - Upon contract award, VTA will provide a BSV Phase II Program BIM Toolkit which will include the following Information:

- Project Standard BIM Definitions
- BIM Roles and Responsibilities
- BIM Execution Plan Template
- General BIM Requirements
- Design BIM Requirements
- Construction BIM Requirements
- BIM/CAD Deliverables List
- BIM/CAD Quality Control Checklist
- BIM/CAD Application Templates
- BIM Asset Management Requirements



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3. **BIM/CAD Roles & Responsibility Requirements** - Contractors will be required to assign BIM staff members to fulfill the roles of BIM Manager & BIM Coordinators. The BIM Manager will lead BIM/CAD efforts for the contract. BIM Coordinators will be assigned to lead BIM efforts for each discipline involved in the Contract.
  4. **BIM/CAD Software Applications** - To ensure consistency in BIM/CAD deliverables across all contracts, it will be mandatory for Contractor to utilize the BIM applications required by VTA. The required BIM applications will be used throughout design, design development, design coordination, visualization, constructability planning, construction management, and As-Built information creation deliverables for the project delivery. The Following BIM/CAD Applications will be required for both Vertical & Horizontal components of the Project:
    - **Vertical Components (Stations)**
      - Autodesk Revit 2018 - 3D Design, Construction & As-built (all disciplines)
    - **Horizontal Structures (Civil, Track, Utilities)**
      - Bentley Inroads and/or Bentley Track V8i SS4 – 3D Track Design, Construction & As-built
      - Autodesk Civil 3D 2018 – 3D Civil Design & Utility modeling
      - Autodesk AutoCAD 2018 – Final 2D Drawing Deliverables Requirement
    - **3D Design Coordination & Clash Detection (Vertical & Horizontal Components)**

## 5. Safeguarding of Covered Contractor Information Systems

(a) Definitions. As used in this paragraph 5 of Appendix, B:

*Covered contractor information system* means an information system that is owned or operated by Contractor that processes, stores, or transmits Contract Information.

*Contract Information* means information, not intended for public release, that is provided by or generated for VTA under a contract to develop or deliver a product or service to the VTA, but not including information provided by VTA to the public (such as on public websites) or simple transactional information, such as necessary to process payments.

*Information* means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.

*Information system* means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

*Safeguarding* means measures or controls that are prescribed to protect information systems.

(b) Safeguarding requirements and procedures.

(1) Contractor must apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems must include, at a minimum, the following security controls:

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).



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- (ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.
  - (iii) Verify and control/limit connections to and use of external information systems.
  - (iv) Control information posted or processed on publicly accessible information systems.
  - (v) Identify information system users, processes acting on behalf of users, or devices.
  - (vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.
  - (vii) Sanitize or destroy information system media containing Contract Information before disposal or release for reuse.
  - (viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.
  - (ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
  - (x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.
  - (xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
  - (xii) Identify, report, and correct information and information system flaws in a timely manner.
  - (xiii) Provide protection from malicious code at appropriate locations within organizational information systems.
  - (xiv) Update malicious code protection mechanisms when new releases are available.
  - (xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(xvi) Otherwise take measures consistent with the industry standard of care to (A) ensure the security of any covered contractor information systems that connect to any of VTA's information systems (the "Connecting Systems"); and (B) to prevent the loss or compromise of any VTA information.

(2) Other requirements.

(i) Contractor must notify VTA of any data loss or compromise through or breach to the Connecting Technology (including physical penetration of Contractor's facilities where Connecting Technology resides) within 3 hours of discovery of the data loss, data compromise, or breach, even if no data was actually lost or compromised.

(ii) This clause does not relieve Contractor of any other specific safeguarding requirements specified by VTA or VTA's funding Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) Subcontracts. Contractor must include the substance of this paragraph 5 of Appendix B, including this paragraph (c), in subcontracts under this Contract (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which



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the subcontractor may have Contract Information residing in or transiting through its information system.