

# **RFP S16308 REQUEST FOR PROPOSALS**

## **BART Silicon Valley (BSV) Phase II, Tunneling Methodology Independent Risk Assessment**

Jose Mares, Contracts Administrator  
1436 California Circle  
Milpitas, CA 95035  
Jose.Mares@VTA.org

<b>RFP SCHEDULE</b>	
Issue RFP	November 15, 2016
Pre-Proposal Conference	November 29, 2016 at 2:00 p.m.
Deadline to Submit Questions	December 1, 2016
Deadline to Submit Proposal	December 16, 2016
Interviews	January 17 and 18, 2017





**TABLE OF CONTENTS**

INTRODUCTION: ----- 3

I. INSTRUCTIONS TO PROPOSERS ----- 5

II. PROPOSER’S MINIMUM QUALIFICATIONS ----- 8

III. EVALUATION AND SELECTION ----- 8

IV. PROPOSAL FORMAT AND CONTENT ----- 9

V. DISADVANTAGED BUSINESS ENTERPRISE POLICY ----- 10

VI. INDEMNITY AND INSURANCE REQUIREMENTS ----- 11

VII. PROTESTS ----- 12

VIII. SCOPE OF SERVICES ----- 12

IX. ADMINISTRATIVE SUBMITTALS ----- 16

X. EXHIBITS ----- 24

**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).

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. The BSV Program is primarily funded by the 2000 Measure A 30-year one-half cent sales tax that became effective in April 2006. 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, currently under construction, through Milpitas to San Jose; and (ii) the Newhall Yard, a 40-acre property to be used

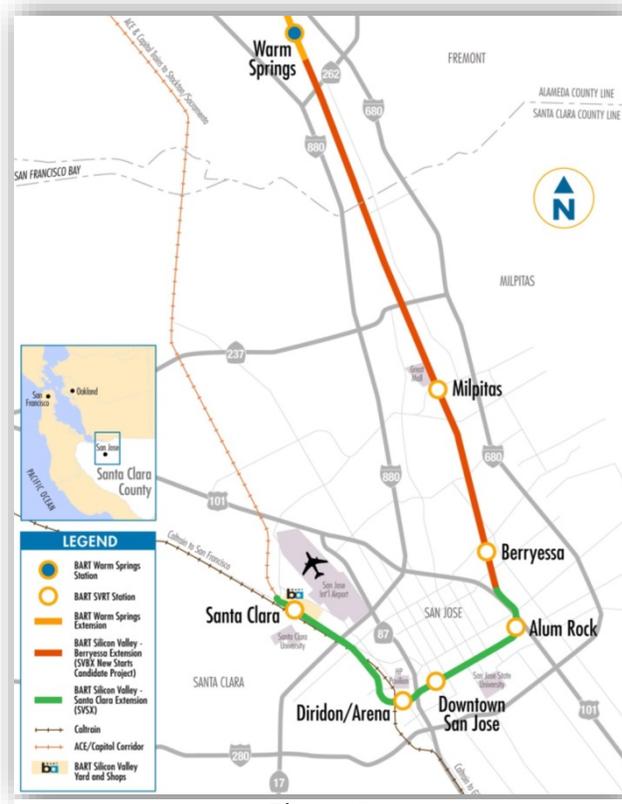


Figure 1

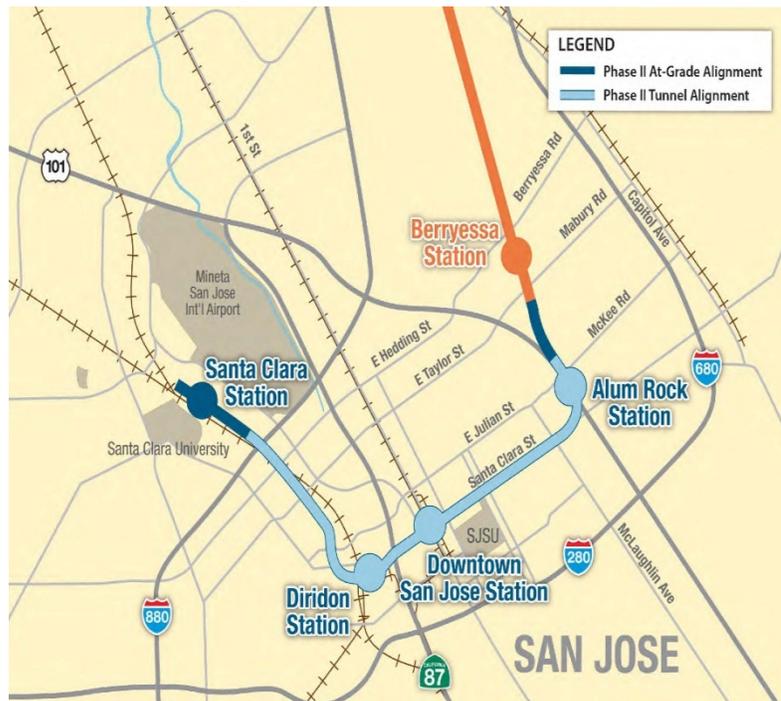
as a maintenance and storage facility for the BART extension to Santa Clara County. The operation and maintenance of the BART extension to Santa Clara County is funded by the 2008 Measure B 30-year one-eighth cent sales tax that became effective in July 2012.

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 underway with revenue service anticipated in the fall of 2017.

Phase II of the Program is a 6-mile, 4-station extension from the under-construction Berryessa Station to Santa Clara including an approximately 5-mile long tunnel through Downtown San Jose. Planning efforts for Phase II are underway with a review of project plans and an update to the state and federal environmental documents. The review of the project plans includes studying advances made in the tunneling industry since the completion of 95 percent engineering on the twin bore tunnel in 2008, learning lessons from other tunneling projects, reviewing feasibility of alternate tunneling methodologies. From the review, a single-bore tunneling approach has been identified as a potentially feasible alternative and efforts are underway to analyze the following four areas: tunnel diameter and profile, station configuration, ventilation, and emergency egress and response. A draft report of the single-bore technical analysis is expected to be available in December 2016.

Next steps include an assessment of risks associated with the two tunneling approaches before a decision on the tunneling methodology is made.

**ABOUT RFP S16308:** VTA seeks proposals from qualified firms to provide an independent risk assessment of the BSV Phase II Extension’s tunneling alternatives. The alternative configurations under consideration for this heavy-rail transit system are a twin-bore tunnel system and a single-bore tunnel.



The risk assessment will be used to facilitate VTA’s selection of the preferred tunneling alternative. The assessment should communicate the qualitative and quantitative risks associated with the two tunneling alternatives. Scope of Services details are detailed under Section VIII of this RFP.

**NOTICE TO PROPOSERS OF LIMITATION OF FUTURE CONTRACTING:** The Proposer(s) selected under this RFP will be precluded from submitting proposals as a prime contractor or subcontractor for the SVSX Project/Program Management services RFP.

## **I. INSTRUCTIONS TO PROPOSERS**

- A. PROCUREMENT SCHEDULE:** VTA’s procurement schedule dates are listed in the table below. All dates set forth in this Request for Proposals (“RFP”) are subject to change at VTA’s sole discretion; any such changes 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.

<b>ACTIVITY</b>	<b>DATE/TIME</b>
Issue RFP	November 15, 2016
Pre-Proposal Conference	November 29, 2016 at 2:00 p.m.
Deadline to Submit Questions	December 1, 2016
Deadline to Submit Proposal	December 16, 2016
Interviews	January 17 and 18, 2017

- B. DESIGNATED POINT OF CONTACT:** All communications with VTA must be in writing (US mail/ email) to the “Designated Point of Contact” identified below. All emails must indicate in the subject line “RFP S16308, BSV Phase II, Tunneling Methodology Independent Risk Assessment.” No telephone calls will be accepted. Proposers are prohibited from contacting anyone, including members of the VTA Board of Directors (“Board Members”) and VTA consultants, other than the Designated Point of Contact.

Any unauthorized contact related to this RFP is not permitted. Any breach of this provision or any undue “badgering” of VTA personnel, including Board Members and VTA consultants, may result in the Proposer’s submittal being deemed unresponsive and cause for rejection

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

Jose Mares, Contracts Administrator  
VTA’s BART Silicon Valley Office  
1436 California Circle  
Milpitas, CA 95035  
Email: Jose.Mares@VTA.org

- C. PRE-PROPOSAL CONFERENCE:** All prospective Proposers are strongly encouraged to attend the pre-proposal conference scheduled as follows:

2:00 p.m. on November 29, 2016  
VTA’s BART Silicon Valley Office  
1436 California Circle, Room 202  
Milpitas, CA 95035

**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 Proposal documents as it may deem appropriate up until the date for submission of the Proposals (set forth below). 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 5:00 p.m. on December 1, 2016. Email questions must be submitted to the Designated Point of Contact listed above, and shall include "RFP S16308 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:** Proposers must submit Proposals to the Designated Point of Contact no later than 5:00 p.m. on December 16, 2016.

The Proposer shall submit six (6) printed copies and one (1) copy of the proposal in an electronic format in the form of a CD, DVD, or flash drive.

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

"RFP S16308 BSV Phase II, Tunneling Methodology"

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 expiration of the time for submission of proposals as provided in this RFP 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:

- Reject any or all proposals.
- Issue subsequent Requests for proposal.
- Postpone opening for its own convenience.
- Remedy technical errors in the Request for proposal process.
- Approve or disapprove the use of particular subcontractors.
- Solicit best and final offers from all or some of the Proposers.
- Award a professional services contract to one or more Proposers.
- Waive informalities and irregularities in proposals.
- Conduct interviews at its discretion.
- Accept other than the lowest offer.
- Negotiate with any, all or none of the Proposers.

**I. CONTRACT TYPE:** It is anticipated that VTA will award a professional services contract (“Contract”) to a Proposer. If awarded, the Contract will be cost plus fixed fee with a term of six (6) months. 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 person 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 have sufficient qualifications with at least five years of experience in the risk assessment/risk management of multi-discipline engineering and construction projects, preferably rail projects with a tunnel guideway.
2. Experience should include at least one transportation infrastructure project with a minimum cost of \$500 million. Additionally, the Proposer or members on the Proposer's team shall have comprehensive knowledge of transit tunnel systems with underground stations.

## **III. EVALUATION AND SELECTION**

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

<b>Qualification of the Firm</b>	<b>15 Points</b>
<b>Staffing and Project Organization</b>	<b>25 Points</b>
<b>Work Plan / Project Understanding</b>	<b>40 Points</b>
<b>Cost Proposal</b>	<b>20 Points</b>

1. **QUALIFICATION OF THE FIRM:** Qualifications to be considered include, but are not limited to: technical experience in performing work of a closely similar nature; experience working with transit properties or other public agencies; record of completing work on schedule; strength and stability of the firm; 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, particularly key personnel, and, especially, the project manager and subject matter experts required to accomplish the tasks described in the Scope of Services. 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 / PROJECT UNDERSTANDING:** Proposer's demonstrated understanding of the project requirements, potential problem areas, project approach, work plan, and quality assurance program will be evaluated.
4. **COST PROPOSAL:** The review board will also evaluate the: reasonableness of the total price and competitiveness of this amount with other proposals received; adequacy of data in support of figures quoted; reasonableness of individual task budgets; basis on which prices are quoted.

**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 January 17 and 18, 2017 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. Typically, the interview is scheduled for one (1) hour and requires the project manager to be a 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. AWARD:** When the review board has completed its work, negotiations will be conducted for the extent of services to be rendered.

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

**A. FORMAT:** Proposals shall be typed, concise, 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:

1. **PROFILE OF FIRM:** This section shall include a brief description of the Proposer and the size of its subcontractor(s) (if any) as well as its local organizational structure; it shall also include a discussion of the firm's financial stability, capacity and resources. Additionally, this section shall include a listing of any lawsuit or litigation and the result of that action resulting from (a) 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 FIRM:** This section shall include a brief description of the Proposer's and subcontractors' (if any) qualifications and previous experience on similar or related projects. Description of pertinent project experience shall include a summary of the work performed, the total project cost, the percentage of work the firm was responsible for, the period over which the work was completed, and the name, title, and phone number of clients to be contacted for references. Give a brief statement of the firm's adherence to the schedule and budget for each project.
3. **WORK PLAN/PROJECT UNDERSTANDING:** By presentation of a well-conceived work plan, this section of the proposal shall establish the Proposer understands VTA's objectives and work requirements and Proposer's ability to satisfy those objectives and requirements. The work plan shall succinctly describe the proposed approach for risk assessment of the two tunneling alternatives, outlining the steps that would be undertaken in completing the assessment and specifying the sequence of activities, including document reviews, stakeholder interviews, and risk workshops with a list of tools/software applications to be utilized for the assessment. The Proposer shall include the names of Tunnel Boring Machine ("TBM") manufacturer(s), tunneling contractor(s) and peers from other transit agencies whose participation in risk interviews and risk assessment workshop is proposed. The work plan shall also include a timetable for completing all work specified in the Scope of Services. The work plan should list all data/information the Proposer will need from VTA for the assessment.
4. **PROJECT STAFFING:** This section shall discuss how the Proposer would propose to staff this project. Proposer project team members shall be identified by name, location, specific responsibilities on the project and the estimated person-hours of participation. Proposer shall include resumes of the proposed Project Manager and subject matter experts. The Project Manager should have experience with multi-billion-dollar, multi-discipline engineering and construction projects, and preferably at least one heavy rail project with a tunnel guideway. Subject matter experts on the Proposer's team shall have comprehensive knowledge of transit tunnel systems with underground stations. 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 proposal is submitted, there can be no change of key personnel without the prior approval of VTA.
5. **ADMINISTRATIVE SUBMITTALS:** The Proposer must complete the forms attached hereto (No. 1 through No. 7) and submit in the proposal.

## **V. DISADVANTAGED BUSINESS ENTERPRISE POLICY**

The Santa Clara Valley Transportation Authority ("VTA") has established a Disadvantaged Business Enterprise ("DBE") program in accordance with U.S. Department of Transportation ("DOT") regulations 49 CFR Part 26. VTA has received Federal financial assistance from the DOT, and, as a condition of receiving this assistance, VTA has signed 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.

**A. DBE WITH NO GOAL REQUIREMENT:** In connection with performance of this Contract, the Office of Small and Disadvantaged Businesses (“OSDB”) has not established a contract specific DBE participation goal for this project. However, the Proposer agrees to cooperate with VTA in attempting to meet its DBE overall goal of 13% for Federal Fiscal Year 2014-2016. In this regard, Proposer will use all reasonable efforts to ensure that DBE firms have an equitable opportunity to compete for subcontract work under this Request for Proposals.

**B. CONTRACTOR REGISTRATION:** 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.

1. It is the Proposer’s sole responsibility to verify and provide subcontractor’s DBE certification to VTA.
2. 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).
3. The CUCP DBE application is available at the OSDB website at: [www.vta.org/osdb](http://www.vta.org/osdb).

**C. CONTRACTOR REPORTING:** Contractor will be required submit electronic quarterly DBE utilization reports to the VTA’s OSDB through our web-based online system (B2Gnow), accessible from any computer via the internet at the following website: <https://VTA.sbdbe.com>. These monthly reports will document payments to the prime and the prime will report payments made to their subcontractor. The prime and its subcontractors will receive an email providing information with log-on identification, password and instructions on how to use the system. Contractor agrees to submit any and all required electronic reports to the VTA’s OSDB.

**D. FINAL DBE SUBMITTAL:** At the conclusion of this Contract, Contractor will be required to electronically submit a final DBE Utilization Report by indicating a final audit where requested in the B2Gnow system.

**E. DBE MONITORING:** VTA will monitor compliance with contract requirements for DBE firms. All lower-tier subcontractors will be required to provide or verify DBE utilization documentation.

## **VI. INDEMNITY AND INSURANCE REQUIREMENTS:**

Indemnity and insurance requirements for this Contract are set forth in Exhibit A.3.

## **VII. PROTESTS**

- A. SOLICITATION PHASE:** Prior to the closing date for submittal of proposal, Proposer may submit to VTA protests regarding the procurement process, or alleged improprieties in specifications or alleged restrictive specifications. Any such protests shall 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 proposals shall be filed within five (5) working days after issuance of the Notice of Recommended Award. Protests shall 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  
Procurement and Contracts Department  
Attn: Tina N. Yoke, Manager of Procurement, Contracts and Materials  
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, a Proposer may appeal VTA's determination of the protest to the Federal Transit Administration. All appeals submitted to the FTA shall be filed and will be handled in accordance with FTA Circular 4220.1F.

## **VIII. SCOPE OF SERVICES**

### **A. Background.**

**“Definition of Contractor.”** For purposes of this RFP, “Contractor” means the selected Proposer from this RFP, with whom VTA will enter into a contract.

**NOTICE TO PROPOSERS OF LIMITATION OF FUTURE CONTRACTING:** The Proposer(s) selected under this RFP will be precluded from submitting proposals as a prime contractor or subcontractor for the SVSX Project/Program Management services RFP.

**B. Scope.**

Contractor shall conduct an independent risk assessment of the BSV Phase II extension's tunneling alternatives. The alternatives to be assessed are a twin-bore tunnel system and a single-bore tunnel. Contractor will identify and characterize risks using a level of detail and precision sufficient to meet the decision-making objectives of the risk assessment. Contractor shall summarize the identified and evaluated risks in a Risk Register mapping the initial assessment of probability of occurrence and magnitude of impact of each risk. Contractor's quantification of risk impacts relative to cost, time, and performance will include a sensitivity and probability analysis. Contractor will identify risk control options to minimize the probability and impact of identified risks including recommendations for risk mitigation. The Contractor will have access to available reference information for the two tunneling alternatives including:

- Existing SVSX Twin Bore Design documents including cost and schedule information
- Existing SVSX Single Bore Feasibility Study
- Relevant Geotechnical Reports
- Plan & Profiles of proposed alignment
- BART Facilities Standards
- Ridership information
- Information available from current Single Bore Study Consultant relative to the current single bore concepts including concept level cost estimate and schedule information

The scope of services shall also include the following:

- 1) Interviews with technical experts as described below. ,
- 2) Identification and documentation of risks and opportunities in a register format
- 3) Qualitative risk/opportunity assessment of each alternative
- 4) Quantitative assessment of the identified risks/opportunities relative to cost, time, and project performance
- 5) Recommended risk mitigations and management or control options
- 6) Recommended allocation of risks

The identification and evaluation of risks will involve interviews with technical experts and relevant stakeholders including:

- 1) Subject matter experts involved in the technical analysis and design of the alternatives being considered
- 2) Stakeholder BART, the agency responsible for operating and maintaining the extension
- 3) Stakeholder VTA, the owner and the agency responsible for design and construction
- 4) Tunnel Boring Machine manufacturer(s) and or other TBM Subject Matter Experts

- 5) Tunneling contractor(s)
- 6) Peers from other transit agencies with similar tunneling projects that are either completed or underway.

In consultation with VTA, the Contractor will establish the process for interviewing TBM manufacturer(s), tunneling contractor(s) and peers from other transit agencies.

### **Qualitative Risk Assessment**

For each tunnel alternative the consultant shall analyze the available reference information to develop a Risk Register for each alternative to a level sufficient to compare and differentiate, from a cost, schedule and performance risk perspective, one alternative from the other. Each register shall be supplemented with additional risk events, as the Contractor may discover through interviews with technical experts and relevant stakeholders. The risk registers shall include a description of the potential risk event; its qualitatively-evaluated potential consequences and likelihood of occurrence and potential actions to mitigate the risk.

On completion of the development of the initial risk registers the Contractor shall facilitate a risk workshop, to be attended by representatives of VTA, BART, the single bore study consultant, and subject matter experts, who will further refine and agree on the identified risks and mitigations. The Contractor shall be fully responsible for organizing and facilitating the workshop which will be held at VTA offices in San Jose.

### **Quantitative Analysis**

Following the risk workshop the Contractor shall develop a quantitative cost and schedule model for each tunnel alternative that will quantify risk impacts relative to cost, time, and performance, and will include a sensitivity and probability analysis. The Contractor shall, in its proposal, describe the method it proposes to adopt to perform this quantitative analysis, including any analysis software that will be used.

### **Risk Mitigation, Management and Control**

During the risk workshop, the Contractor shall identify, discuss, and document the most appropriate mitigation, management, or control measures (e.g. Retain, Transfer, Insure) for each risk/opportunity identified.

### **Risk Allocation**

During the risk workshop the Contractor shall discuss and document in the risk register the party with the ability and the incentive to manage, mitigate, or own each risk/opportunity identified. The Contractor shall then complete the quantitative analysis with an evaluation of the sharing of risks between the various parties and stakeholders to the project.

## **Deliverables**

The Contractor shall prepare a draft and final report documenting and summarizing:

- 1) The basis of the risk assessment for each alternative including a summary of the information and data received, reviewed, and analyzed
- 2) The approach adopted for the qualitative and quantitative assessments
- 3) The base cost and schedule information for each alternative used for the risk assessment
- 4) A risk register for each alternative complete with risk mitigation, management, and control options
- 5) A quantitative risk analysis comparing twin bore and single bore alternatives
- 6) Recommendations for allocation of risks and distribution of risk value
- 7) Recommendations for continuous risk management efforts

Contractor shall provide a comprehensive draft of the Risk Assessment Report (“Report”) to VTA no later than three (3) months from the date that VTA awards the Contract. Accompanying the draft Report, the Contractor shall provide to VTA a presentation summarizing the results of the assessment.

Following review and comments by VTA on the draft Report, the Contractor shall complete all work and submit the final Report no later than four (4) months after the date that VTA awards the Contract.

**END SCOPE OF SERVICES**

**IX. ADMINISTRATIVE SUBMITTALS**

**Proposer must print forms No. 1 through No. 7, as part of the proposal.**

**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 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. \_\_\_\_\_

FAX No. \_\_\_\_\_

Federal Taxpayer ID No. \_\_\_\_\_

**POINT(S) OF CONTACT**

<b><u>Primary</u></b>	
Name/Title	_____
Phone No.	_____
Cell Phone No.	_____
E-mail	_____

<b><u>Alternate</u></b>	
Name/Title	_____
Phone No.	_____
Cell Phone No.	_____
E-mail	_____

**AUTHORIZED SIGNATORIES:**

<b><u>Primary</u></b>	
Name/Title	_____
Signature	_____

<b><u>Alternate</u></b>	
Name/Title	_____
Signature	_____



**FORM 2. LEVINE ACT STATEMENT**

Proposer and all subcontractors 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:

<b>Name</b>	<b>Title</b>	<b>Represents</b>
Cindy Chavez	Chairperson	County of Santa Clara
Jeannie Bruins	Vice Chairperson	City of Los Altos
Johnny Khamis	VTA Board Member	City of San Jose
Magdalena Carrasco	VTA Board Member	City of San Jose
Mahn Nguyen	VTA Board Member	City of San Jose
Raul Peralez	VTA Alternate Board Member	City of San Jose
Rose Herrera	VTA Board Member	City of San Jose
Sam Liccardo	VTA Board Member	City of San Jose
John McAlister	VTA Alternate Board Member	City of Mountain View
Howard Miller	VTA Alternate Board Member	City of Saratoga
Jason Baker	VTA Board Member	City of Campbell
Larry Carr	VTA Alternate Board Member	City of Morgan Hill
Perry Woodward	VTA Board Member	City of Gilroy
Glenn Hendricks	VTA Alternate Board Member	City of Sunnyvale
Teresa O'Neill	VTA Board Member	City of Santa Clara
Jose Esteves	VTA Board Member	City of Milpitas
Dave Cortese	VTA Alternate Board Member	County of Santa Clara
Ken Yeager	VTA Board Member	County of Santa Clara

**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 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 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 (For VTA Use Only)
*Insert proposed changes here		
Section Reference		Disposition (For VTA Use Only)
*Insert proposed changes here		

\*Make copies of this page if necessary

“Proposer takes no exceptions”

Proposer:

Firm

Signature

Printed Name

Title

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 Bidder, 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, Bidder 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.

---

Proposer:

---

Name

---

Title

---

Date



**FORM 5. COST PROPOSAL FORM**

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

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Name and Title of Authorized Representative

\_\_\_\_\_  
Date



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

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

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

Address: \_\_\_\_\_ Name & Title: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_ Signature/Date: \_\_\_\_\_

*Contract dollar value must exclude work performed by non-DBEs 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                      DBE Goal Achieved                      DBE Contract Goal

X 100 =                      Base Contract                      %                      %



**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 or DBE status. Some information, such as ethnicity and gender is for information purposes only.

*This form is to be completed and submitted with your proposal.*

<b>Firm Name</b>	<b>City and State</b>	<b>Portion of Work or Bid Item</b>	<b>Ethnicity*</b>	<b>Gender+</b>	<b>Estimated Dollar Amount of Subcontract</b>

*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: \_\_\_\_\_ %

**X. EXHIBITS**

EXHIBIT A1 CONTRACT

EXHIBIT A2 COMPENSATION

EXHIBIT A3 INDEMNITY and INSURANCE REQUIREMENTS

EXHIBIT A4 FEDERAL REQUIREMENTS

**EXHIBIT A1 CONTRACT**

CONTRACT  
BETWEEN  
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
AND  
[CONTRACTOR]  
FOR  
[SERVICES]

CONTRACT NO. S16XXX

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 A (herein referred to as “Services”).
- B. TERM OF THE CONTRACT:** The term of the Contract shall commence upon the execution of the Contract by both parties (the “Parties”) and continue through completion on or before [DATE].
- C. COMPENSATION:** Contractor shall be paid for the Services in accordance with Exhibit B<sup>1</sup>.

Total compensation for the Services provided hereunder shall not exceed \$xx,xxx.00.

**D. PERFORMANCE OF THE SERVICES:**

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

**E. 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 the Services other than to those subcontractors that may be identified in Exhibit [\_\_\_]. Any assignment, transfer, change or subcontract in violation of this Contract shall be void.

---

<sup>1</sup> For purposes of this Contract Exhibit B will be identical or substantially similar to Exhibit A2, attached hereto.

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 provisions of this Contract fully effective.

**F. CHANGES:** By written notice from VTA's Authorized Representative (as defined in Section L.1), VTA may, from time to time, 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 Services 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.

**G. INDEMNITY AND INSURANCE:** Contractor shall adhere to the indemnity and insurance requirements set forth in Exhibit C<sup>2</sup>.

**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 and 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. Contractor must keep detailed records of payments to all subcontractors, suppliers of materials, subconsultants and other businesses, including the ethnicity and gender on non-SBE/DBE subcontractors.
2. For the duration of the 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 these books, accounts, records, data and other relevant information to the extent required to verify the costs incurred hereunder where such costs are the basis for billings under this Contract.
3. When required to report indirect costs, 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 section shall be included in any subcontracts hereunder.

**I. DISADVANTAGED BUSINESS ENTERPRISES:**

1. It is VTA policy to ensure that Disadvantaged Business Enterprises (DBE) firms, as defined in 49 CFR Part 26, have the full opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds.

---

<sup>2</sup> Note: Exhibit C will be identical or substantially similar to Exhibit A3 attached to this RFP.

2. In connection with its performance under this Contract, although there is no specified DBE goal, Contractor agrees to cooperate with VTA in attempting to meet VTA's overall 13% annual utilization of DBE firms. In this regard Contractor will use all reasonable efforts to ensure that DBE firms shall have an equitable opportunity to compete for subcontract work under this Contract.
3. At the conclusion of this Contract, Contractor shall be required to electronically submit a final DBE Utilization Report by indicating a final audit where requested in the B2Gnow system. Contractor agrees to submit any and all required electronic reports to the Office of Small & Disadvantaged Businesses.

Electronic submittals will be to an online system (B2Gnow) at <https://VTA.sdbbe.com>. Contractor and each subcontractor will receive information pertaining to Log-On identification, password and instructions to use the system. All lower-tier subcontractors and vendors will be required to provide or verify DBE utilization documentation.

#### **J. 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 the 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 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, which 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.

#### **K. 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 the 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 work.

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 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 of completing the Services shall be deducted from any sum due 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.

**L. AUTHORIZED REPRESENTATIVES, NOTICES 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:**

Tina N. Yoke, Manager of Procurement, Contracts and Materials  
3331 N. First Street, Bldg. A  
San Jose, CA 95134-1906  
[tina.yoke@vta.org](mailto:tina.yoke@vta.org)

**Contractor:**

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

2. **NOTICES:** Notices shall be in writing and addressed to the Authorized Representatives at the address 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:**

Jose Mares, Contracts Administrator  
3331 N. First Street, Bldg. A  
San Jose, CA 95134-1906  
Jose.mares@vta.org

**Contractor:**

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

- 4.** Written notification to the other party shall be provided, in advance, of changes in the name or address of the designated Authorized Representative or Point of Contact stated above.

**M. 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 the 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:** Contractor will resolve any claim, cause of action or dispute (claim) that Contractor has with VTA arising out of or related to this Contract in a state or federal court located in 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 the 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 Contract (“**Confidential Information**”) to third parties. 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 same 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 subsection M.5, “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 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 shall 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 of the 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 shall not be affected thereby.
8. **INDEPENDENT CONTRACTOR:** In its 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, oral or written.

- 10. AMENDMENT:** Except as expressly provided herein, the provisions of this Contract shall not 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 hereunder, 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.
- 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.

**N. SPECIAL PROVISIONS:**

**FEDERAL REQUIREMENTS:** Contractor, its employees and subcontractors performing the Services hereunder shall comply with the laws and regulations set forth in Exhibit A4.

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 Name*

---

Name

---

Name

Title

Title

---

Date

---

Date

Approved as to Form

---

VTA Counsel

EXHIBIT A2  
COMPENSATION, INVOICING and PAYMENT  
COST PLUS FIXED-FEE

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

**A. COMPENSATION:** This is a cost plus fixed-fee contract with a maximum value of [\$xx,xxx.00], within which Contractor agrees to complete the Services defined in Section I of this Contract.

Compensation for the Services shall be on a cost reimbursement basis and shall be the sum of direct labor costs, indirect labor costs (fringes and overhead), a fixed-professional fee, subcontractor costs and other direct costs, described below:

**1. DIRECT LABOR COSTS:** Direct labor costs shall be the total number of hours worked by each employee multiplied by the rate for such employee's labor category as set forth in the attached Exhibit [ ]. This exhibit shall contain the names and rates for Exempt and Non-Exempt Personnel.

**Exempt Personnel:** The rates for exempt personnel shall be applicable to both straight time, overtime, and premium time.

**Non-Exempt Personnel:** Non-exempt personnel shall be compensated premium time in accordance with prevailing California laws.

**Overtime:** Premium rates shall be compensated in accordance with prevailing California laws. All premium time shall be pre-approved in advance by VTA.

**2. INDIRECT LABOR COSTS:** Indirect labor costs shall be the direct labor costs multiplied by a home office overhead rate. Based upon 2015 audited overhead rates.

**3. FIXED FEE:** VTA shall pay the Contractor a fixed professional fee of \$xx,xxx.00 for the Services described in Section A of 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. SUBCONTRACTOR COSTS:** Subcontractor costs shall be reimbursed at actual cost with no markup. Subcontractor costs shall be supported by appropriate documentation for reimbursement.

**5. 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 should be “economy” based and traveler should 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 description of each expense.

- b.** Parking, tolls, deliveries, film, photo developing, printing/copying and plan reproduction and blue print services 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.
- 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:** Contractor shall be compensated and reimbursed by VTA on the basis of invoices submitted every month for the Services performed during the preceding month. The charges for each individual assigned under this Contract shall be listed separately. Further, invoices shall be in a form acceptable to VTA and each invoice must include:

- Description of the work performed.
- Hours worked by personnel classification.
- Rate per personnel classification.
- Other Direct Costs.
- Subcontractor Costs supported by itemization in the same format.
- Fixed-Fee.
- Total Costs.
- Percent of Schedule and Budget Expended.

2. **WAIVER:** Contractor shall be deemed to have waived the right to payment for Services not invoiced within six (6) months of the date the Services were performed. For purposes of this provision the date of the invoice shall be the date it is received by VTA.
3. **INVOICE SUBMITTAL:** Contractor shall submit invoices by e-mail to the address listed below. Invoices shall be in a PDF, Word, or Excel format.

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

4. Should VTA contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. VTA may, at any time, conduct an audit of any and all records kept by Contractor for 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.

EXHIBIT A3  
INDEMNITY and INSURANCE REQUIREMENTS

**A. 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 (a) 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.
  
3. This indemnity and defense of claims provision will survive the expiration or termination of the Contract and remain in full force and effect.

**B. INSURANCE:** Without limiting the Contractor's indemnification of VTA, the Contractor shall procure and maintain for the duration of this Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by the Contractor, its agents, representatives, or employees, or subcontractors.

**1. LIABILITY AND WORKER'S COMPENSATION INSURANCE**

**a. Minimum Scope of Coverage:** Coverage shall be at least as broad as:

- 1) Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001). Liability insurance written on a "claims made" basis is not acceptable.
- 2) Insurance Services Office Business Auto Coverage form number CA 0001 covering Automobile Liability, code 1 "any auto".
- 3) Workers' Compensation insurance as required by the Labor Code of the State of California, and Employers Liability insurance.
- 4) 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 shall be maintained for a minimum of two (2) years following completion of this Contract. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section B.

**b. Minimum Limits of Insurance:** Contractor shall maintain limits no less than:

- 1) General Liability \$2,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. If a Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 2) Automobile Liability \$2,000,000 combined single limit per accident for bodily injury and property damage.
- 3) Workers' Compensation and Employers Liability: Statutory Workers' Compensation limits and Employers Liability limits of \$1,000,000 per accident.
- 4) Professional Liability: \$2,000,000 each occurrence/aggregate minimum limit per claim.



- 2) The Contractor's insurance coverage shall be primary insurance as respects VTA, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by VTA, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
  - 3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to VTA, its officers, officials, employees, or volunteers.
  - 4) The Contractor's insurance shall 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.
- b. Workers' Compensation and Employers Liability:** The insurer shall agree to waive all rights of subrogation against VTA, its officers, officials, employees, and volunteers for losses arising from work performed by the Contractor and its subcontractors for VTA.
4. **ACCEPTABILITY OF INSURERS:** Insurance and bonds are to be placed with insurers with a Best's rating of no less than A VII, unless specific prior written approval has been granted by VTA.
  5. **CERTIFICATES OF INSURANCE:** Contractor shall 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 or something substantially similar thereto. The Contractor shall instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to Insurance.Certificates@VTA.org.

The certificates will (1) identify the underwriters, the types of insurance, the insurance limits and the policy term, (2) specifically list the provisions enumerated for such insurance in Sections B and C. above, and (3) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority  
Procurement and Contracts Department  
3331 North First Street  
San Jose, CA 95134-1906  
Contract No. S16308

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

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

EXHIBIT A4  
FEDERAL REQUIREMENTS

- A. GENERAL:** In performance of its obligations pursuant to this Contract, Contractor (“Contractor”) agrees to comply with all applicable provisions of federal, state, and local law, regulations, and Federal Transit Administration (hereinafter called FTA) directives. The terms of the most recent amendment to any federal, state or local laws, regulations, FTA directives, and amendments to the grant or cooperative agreement providing funding for this Contract that may be subsequently adopted, are applicable to this Contract to the maximum extent feasible unless FTA provides otherwise in writing.
- B. FEDERAL CHANGES:** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between VTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.
- C. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES:**
1. VTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to any sub recipient, any third party contractor, or any other person not a party to the VTA, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
  2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- D. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS:**
1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n) (1) on the Contractor, to the extent the Federal Government deems appropriate.
3. Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**E. DEBARMENT AND SUSPENSION:**

1. This Contract is a covered transaction for purposes of 2 CFR Parts 180 and 1200. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR Part 180.905, are excluded or disqualified as defined at 2 CFR 180.940 and 180.945.
2. The Contractor is required to comply with 2 CFR, Subpart C and must include the requirement to comply with 2 CFR, Subpart C in any lower tier covered transaction it enters into.
3. By signing and submitting its Contract, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by VTA. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to VTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 CFR, Subpart C throughout the period of the Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**F. BREACHES AND DISPUTE RESOLUTION:** All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

The Breaches and Dispute Resolutions requirements flow down to all tiers.

1. **DISPUTES:** Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of VTA. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to VTA's authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of VTA's authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.
2. **PERFORMANCE DURING DISPUTE:** Unless otherwise directed by VTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
3. **CLAIMS FOR DAMAGES:** Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
4. **REMEDIES:** Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the VTA and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of California.
5. **RIGHTS AND REMEDIES:** The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the 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.

**G. TERMINATION:** Contractor acknowledges and agrees as follows:

1. **TERMINATION FOR CONVENIENCE:** The VTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the VTA's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to VTA to be paid the Contractor. If the Contractor has any property in its possession belonging to the VTA, the Contractor will account for the same, and dispose of it in the manner the VTA directs.
2. **TERMINATION FOR DEFAULT:** If the Contractor does not deliver supplies in accordance with the Contract delivery schedule, or, if the Contract is for services, the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any other provisions of the Contract, VTA may terminate this contract for default.

Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Contract.

If it is later determined by the VTA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the VTA, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- 3. OPPORTUNITY TO CURE:** The VTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to VTA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from VTA setting forth the nature of said breach or default, VTA shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude VTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- 4. WAIVER OF REMEDIES FOR ANY BREACH:** In the event VTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by VTA shall not limit VTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

**H. BUY AMERICA:** The Contractor agrees to 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 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, and include final assembly in the United States for fifteen (15) passenger vans and fifteen (15) passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j) (2) (C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

**I. RECYCLED PRODUCTS:** The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**J. ACCESS TO RECORDS AND REPORTS:**

1. The Contractor agrees to provide VTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
2. Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until VTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

**K. LOBBYING:** All Proposers who respond to an RFP for an award of \$100,000 or more shall file the enclosed “**Certification of Restrictions on Lobbying**” required by 49 CFR part 20. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**L. CLEAN AIR:** Contracts Exceeding \$100,000.

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to VTA and understands and agrees that VTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**M. CLEAN WATER REQUIREMENTS:** Contracts Exceeding \$100,000.

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.* The Contractor agrees to report each violation to VTA and understands and agrees that VTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**N. CIVIL RIGHTS REQUIREMENTS:** The following requirements apply to the underlying Contract:

1. **NONDISCRIMINATION:** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **EQUAL EMPLOYMENT OPPORTUNITY:** The following equal employment opportunity requirements apply to the underlying Contract:
  - a. **Race, Color, Creed, National Origin, Sex:** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to 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. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The 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, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- b. Age:** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - c. Disabilities:** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

**O. ENERGY CONSERVATION REQUIREMENTS:** The Contractor agrees to 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.

**P. 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 overall goal for DBE participation is 13%. Contractor will be required to report its DBE participation obtained through race-neutral means 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 thirty (30) 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 thirty (30) 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.

**Q. INCORPORATION OF FTA TERMS:** The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Contract provisions. All Contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor shall 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 the FTA terms and conditions.

**R. CARGO PREFERENCE REQUIREMENTS:** The Contractor agrees:

1. *to 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 underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
2. *to furnish within* twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of leading 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 the Contractor in the case of a subcontractor’s bill-of-lading.*)
3. *to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.*