

INVITATION FOR BIDS

P18268

LIGHT RAIL VEHICLE TRACTION SAND



*Procurement, Contracts and Materials Management Department
3331 North First Street, Building A
San Jose, CA 95134-1906
www.vta.org*

Buyer	Giang Ngo
<u>Key IFB Dates</u>	
Date Issued	May 15, 2019
Pre-Bid Conference	May 29, 2019; 10:00 AM P.T.
Submit Questions/Brand Name or Equals	June 05, 2019 by 5:00 PM P.T.
Submit Bids:	June 19, 2019 by 2:00 PM P.T.

**INVITATION FOR BIDS
P18268**

CONTENTS:

INVITATION FOR BIDS	3
INSTRUCTIONS TO BIDDERS	10
STANDARD TERMS AND CONDITIONS	14
SPECIAL CONDITIONS	33
SCOPE OF WORK	34
BID FORM 1-A: BIDDER ACKNOWLEDGEMENT OF ADDENDA.....	37
BIDDER SIGNATURE PAGE	39
SMALL BUSINESS ENTERPRISE (SBE) POLICY AND REQUIREMENTS	40
BID FORM 2-A: LISTING OF SBE CONTRACTOR OR SUBCONTRACTORS.....	43
BID FORM 2-B: SBE SUPPLEMENTAL CONTRACTOR AND SUBCONTRACTOR INFORMATION.....	45
QUALITY ASSURANCE AND WARRANTY PROVISION.....	46
WARRANTY PROVISION.....	47
INSURANCE REQUIREMENTS- EXHIBIT M-2	48
CONTRACTOR’S QUESTIONNAIRE – EXHIBIT O.....	52
SAMPLE CONTRACT	56
APPENDIX A- RESTRICTED ACCESS WORK PERMIT FORM.....	60
ATTACHMENT 2- USE OF PERSONAL ELECTRONIC DEVICES BY BUS AND LIGHT RIGHT POLICY	



*Procurement, Contracts and Materials Management Department
3331 North First Street. Building "A"
San Jose, CA 95134-1906*

**INVITATION FOR BIDS
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LIGHT RAIL VEHICLE TRACTION SAND**

Invitation for Bid. Request for quotation. Request for proposal.

INSTRUCTIONS:

The enclosed Santa Clara Valley Transportation Authority (herein referred to as "VTA") "conditions" form an integral part of each bid ("Bid"). Prices must be F.O.B destination, freight prepaid and allowed, unloaded to the dock unless otherwise specified.

BUYER	DATE ISSUED	CLOSING TIME/DATE	BID NUMBER
Giang Ngo	May 15, 2019	June 19, 2019	P18268
Phone (408) 952-4254 FAX (408) 955-9729 e-mail: giang.ngo@vta.org	<ul style="list-style-type: none"> • Pre-Bid Conference: May 29, 2019 at 10:00 AM P.T. • Last Day to ask Questions and submit Brand Name or Equals: June 05, 2019; by 5:00 PM P.T. • Bids will be received until 2:00 PM P.T. on the above closing date. 		

- CONTRACT TITLE:** LIGHT RAIL VEHICLE TRACTION SAND
- PRE-BID CONFERENCE:** A Pre-Bid conference is scheduled for June 19, 2019 at 10:00 AM P.T. at the following address:

**Santa Clara Valley Transportation Authority
3331 North First St., Building A
San Jose, California 95134-1906**

Attendance at the Pre-Bid Conference is not mandatory, but is strongly encouraged. Attendance may be in person or via teleconference. Email the buyer ("Buyer") listed above to register as a teleconference attendee. Teleconference registration deadline is **May 28, 2019 by 2:00 PM P.T.**

3. **BID OPENING TIME & LOCATION:** Each bidder (“Bidder”) must submit its sealed Bid no later than 2:00 PM P.T. on at the Santa Clara Valley Transportation Authority’s Procurement, Contracts and Materials Management Department at 3331 North First Street, Building A, San Jose, CA 95134, and, at that time, publicly opened and read. No Bids will be received or accepted after 2:00PM P.T. on June 19, 2019.

4. **BID DOCUMENTS:** The following, in addition to this Invitation for Bid, constitute the Bid documents (“Bid Documents”) in order of precedence, and are the instructions and conditions to this Bid:

- Solicitation Amendments, if any
- Invitation for Bid
- Technical Specifications and/or Scope of Work
- Contractor Acknowledgement of Addenda (Bid Form 1-A)
- Schedule of Prices and Estimated Quantities (Bid Form 1-B)
- Listing of SBE Contractor or subcontractors (Bid Form 2-A)
- Supplemental Contractor and subcontractor Information (Bid Form 2-B)
- Instructions to Bidders
- Special Conditions
- VTA Standard Terms and Conditions
- Exhibit M-2 – Insurance Requirements
- Exhibit O – Bidder’s Questionnaire
- Exhibit I – “No Bid” Response Form
- Appendix A- Restricted Access Permit Form
- Attachment 2- Use of Personal Electronic Devices By Bus And Light Right Policy

5. **TERM OF CONTRACT:** The term of the contract (“Contract”) awarded to the successful Bidder (herein also referred to as the “Contractor”) shall be five (5) years from date of award by VTA.

6. **CONTRACT TYPE:**

VTA anticipates the award of a firm fixed price requirements contract as a result of this solicitation.

This is an exclusive contract. Except as the Contract otherwise provides, VTA shall order from the Contractor all the goods or services specified in the Scope of Work and/or Schedule of Prices and Estimated Quantities that are required to be purchased by VTA. The quantities of the various unit price items or services specified in the Scope of Work and/or Schedule of Prices and Estimated

Quantities are the estimated total quantities of such items or services required by VTA. The estimate is not a representation to Contractor that the estimated quantities will be required or ordered, or that conditions affecting requirements will be stable or normal. The estimates are not in any way guaranteed and will not form any basis for any claims or damages including, but not limited to, lost profits should the estimates change in any way.

7. **OBLIGATION:** This Invitation for Bids does not obligate VTA to award a Contract or to pay costs incurred in the preparation or submittal of any Bid.
8. **INSURANCE:** Each prospective Bidder (herein referred to as the “Bidder” or “Contractor”) is cautioned to review the Insurance requirements of this solicitation. See Exhibit M-2.
9. **PRICE:** It is the desire of VTA to enter into a firm fixed price Contract with the successful Bidder who agrees that the prices quoted are firm and fixed for the duration of the Contract. The unit price as bid will apply regardless of the actual quantity purchased.
 - A. No additional charges will be allowed unless agreed to in writing by VTA prior to delivery of goods and/or services. Bidder agrees that the prices quoted on the attached Bid Form 1-B are maximum for the period of the proposed Contract, and in the event of a price decline, the benefit of such lower price shall be extended to VTA.
10. **PRICE INCREASE:** [OMITTED].
11. **FREIGHT TERMS:** All materials shall be FOB Destination, prepaid and allowed, at no additional cost to VTA unless specified otherwise in the Scope of Work, attached hereto. Destination is defined for purposes of this Contract as the VTA Yard locations as specified under Delivery or on the individual purchase orders associated with this Contract. Any exception to this policy may deem the Bid non-responsive.
12. **INVOICE BILLING/PAYMENT TERMS:** Invoices shall be prepared per descriptions and pricing in this Bid.

Note: Invoices for goods or services not specifically covered in this Bid will not be approved for payment.
13. **SPECIFICATIONS:** See Scope of Work.
14. **QUANTITIES:** See CONTRACT TYPE section (above), Scope of Work, and the Schedule of Prices and Estimated Quantities.
15. **BIDS:** All Bids must be received in sealed envelopes with the Bidder’s company name, bid number, closing date and time noted on the outside of the envelope. **At this time, electronically submitted Bids cannot be accepted.**
16. **AWARD CRITERIA:** Contracts shall be awarded to the lowest responsive and responsible Bidder found to have the fitness, quality, and capacity to satisfactorily deliver the goods and services as detailed in the Bid Documents. Any potential Contract award will be subject to a VTA technical and business evaluation of the Bidder prior to any Contract award. VTA reserves the right to reject any and all Bids or to waive any informalities or technicalities in any Bid in the best interest of VTA.

Single conforming Bids are subject to price or cost analysis by VTA. Bids will be valid for review and award up to ninety (90) days after Bid opening.

The specific basis of award is the Total Bid designated on Bid Form 1-B Schedule of Prices sheet that is a part of these Bid Documents.

17. SOLICITATION SUBMITTALS: Your Bid submittal should include the following forms which are included in this IFB:

BID FORM 1-A: BIDDER ACKNOWLEDGEMENT OF ADDENDA.....	37
BID FORM 1-B: SCHEDULE OF PRICES AND ESTIMATED QUANTITIES	Error! Bookmark not defined.
BIDDER SIGNATURE PAGE	39
BID FORM 2-A: LISTING OF SBE CONTRACTOR OR SUBCONTRACTORS.....	43
BID FORM 2-B: SBE SUPPLEMENTAL CONTRACTOR AND SUBCONTRACTOR INFORMATION.....	45
CONTRACTOR’S QUESTIONNAIRE – EXHIBIT O	52
SAMPLE CONTRACT.....	56
APPENDIX A- RESTRICTED ACCESS WORK PERMIT FORM	Error! Bookmark not defined.

18. BRAND NAME OR EQUAL: This is a brand name or equal requirement. It is not the intent of these specifications to exclude other processes, equipment, or materials of equal value and utility, which are approved by VTA. If items called for in this IFB are identified in the Scope of Work and/or Schedule of Prices and Estimated Quantities by a “brand name or equal” description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory.

To be considered for award, offers of “equal” products, including “equal” products of the brand name manufacturer, must:

- (1) Meet the salient physical, functional, and/or performance characteristics set forth in the Scope of Work,
- (2) Clearly identify the product by:
 - a. Brand name,
 - b. Make or model number, and
 - c. The brand name product (and any associated Bid sheet item/product number) which Bidder proposes to substitute with the “equal” product.
- (3) Include descriptive literature such as:
 - a. Technical sheets,
 - b. Part illustration/description, and
 - c. Material Safety Data Sheet (MSDS).
- (4) Clearly describe any modifications the Bidder plans to make to the “equal” product to make it conform to the IFB requirements. Mark any descriptive material to clearly show such modifications.

VTA will be the sole judge as to the equality and suitability of the proposed alternatives or equals. Brand Name or Equal must be submitted by June 05, 2019.

19. Q/A AND WARRANTY PROGRAMS SUBMITTALS:

All QA and warranty submittals should be provided no later than Notice to Proceed (NTP) plus 15 working days.

A. SUPPLIER QUALITY PROGRAM REQUIREMENTS:

- (1) Quality Manager contact information.
- (2) Quality program manual.
- (3) ISO quality program certificate (If available).

B. SUPPLIER WARRANTY PROGRAM REQUIREMENTS:

- (1) Written legal limited warranty (Claims) policy.
- (2) Return Materials Authorization (RMA) procedure.

20. DELIVERY ADDRESS: See Scope of Work.

21. SMALL BUSINESS ENTERPRISE POLICY:

- A. POLICY:** It is VTA policy to ensure that Small Business Enterprises (SBEs), as defined in Federal Regulations at 13 CFR Part 121, have the maximum opportunity to participate in the performance of contracts and subcontracts.
- B. SBE GOAL:** VTA has not established a specific Small Business Enterprise (SBE) goal for this project. However, Bidder agrees to cooperate with VTA in meeting VTA's overall goal of 19% annual utilization of Small Business Enterprises. In this regard, Contractor will use its best efforts to ensure that SBEs shall have an equitable opportunity to compete for subcontract work under this Contract.

- (1) All SBE firms listed on Bid Form 2-A must be certified by VTA's Office of Business Diversity Program (OBDP) or the California Unified Certification Program (CUCP) at the time of Bid to be counted toward the Contract SBE goal.
- (2) Bid Form 2-A and Bid Form 2-B are required to be submitted at the Bid opening.
- (3) It is the Bidder's sole responsibility for verifying subcontractor certification as a SBE to VTA. The list of VTA SBEs is available at http://vtaproduction2.securesites.net/procurement/general/sbe_search.html.
- (4) The VTA SBE application is available at <http://www.vta.org/sfc/servlet.shepherd/document/download/069A0000001EJF6>.

22. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) POLICY AND REQUIREMENTS:

- A. **POLICY:** It is the policy of the Santa Clara Valley Transportation Authority to ensure that Minority and Women-Owned Business Enterprises (MWBEs) as defined in the VTA MWBE Program have an equal opportunity to participate in the performance of contracts and subcontracts financed with local funds. VTA has an 18% MWBE aspirational goal.

VTA's Office of Business Diversity Program encourages Contractors to call (408) 321-5962 for assistance in identifying eligible MWBE firms. Listings of eligible firms are also available on the World Wide Web at the following:

- www.vta.org/obdp

B. POST AWARD ACTIVITIES:

- (1) **NONDISCRIMINATION:** The Contractor shall make VTA's contracting requirements known to subcontractors, vendors and suppliers who are certified or accepted as certifiable as MWBE, as well as to non-MWBE businesses, and shall provide a practical opportunity for all firms to participate in the contract.
- (2) **PROMPT PAYMENT:** The Contractor must adhere to all federal and California prompt payment laws and regulations. If Contractor does not adhere to prompt payment requirements, penalties may apply.

23. **WEBSITE REGISTRATION:** Bidders must register on VTA's website as a condition of bidding to ensure receiving notification of any potential addenda or other pertinent information, as well as notification of closing and award **even if this was a manually processed Bid invitation.** Go to <http://www.vta.org>, hover over "About Us," and then select "Doing Business with VTA." From this page, click "register now" and enter your email address in the box indicated. The system will take you to the registration page where you will enter registration information and select categories of interest to your company. This solicitation falls into the following category: Goods, Supplies & Equipment and under the sub-category "Other Miscellaneous products."

When you complete the registration page, click the submit button. A verification email will be sent to the email address you provided. Click the verification link in the email to complete the registration process. When you click the verification link, the VTA "Vendor Settings" page will open and the final sentence on the page will confirm your registration.

Once you are confirmed as a registered vendor, click the "Solicitations" link on the left side of the "Vendor Settings" page. This will take you to the "Procurements" page where you will select this solicitation. Once you are on the page for this solicitation, enter your email address in the box indicated and click "check." This will register you as a plan holder for this solicitation.

It is vital to register as a plan holder, because if any addenda or notifications are posted for this solicitation, you will get an email directing you to go to the site for viewing and possible download.

Note: To review Bids after award of Contract, contact the Buyer listed on page one (1) of this document.

24. **EXERCISE OPTIONS:** [OMITTED].

INSTRUCTIONS TO BIDDERS
P18268
LIGHT RAIL VEHICLE TRACTION SAND

1. EXAMINATION OF DOCUMENTS:

- A. A complete set of Bid Documents shall be used in preparing a Bid; VTA assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of documents.
- B. Each Bidder should carefully examine these Bid Documents and take such other steps as may be reasonably necessary to ascertain the Contract performance requirements. Failure to do so will not relieve Bidders from responsibility for estimating properly the difficulty or cost of successfully performing the Contract. Extra compensation will not be allowed for conditions that are determinable by examining these documents.

2. INTERPRETATION: Should any discrepancies or omissions be found in the Bid specifications, or doubt as to their meaning, the Bidder shall notify the Buyer in writing at once. The Buyer will send written instruction or addenda to all Bidders. Receipt of addenda by the Bidder must be acknowledged in the space provided on Bid Form 1-A. VTA shall not be held responsible for oral interpretations. Questions must be received at least ten (10) days before date set to receive Bids. All addenda issued shall be incorporated into the Contract. VTA will assume no responsibility for any understanding or representations concerning conditions made by any of its officers, agents or employees prior to the execution of the Contract, unless included in these documents.

3. BIDDER QUALIFICATIONS AND ELIGIBILITY FOR AWARD:

- A. Each Bidder shall complete, and submit with the Bid, the Bidder's Questionnaire contained in these documents. If the Bidder is a joint venture, each joint venturer shall prepare and submit a separate form. Failure to complete and return the Bidder's Questionnaire may be grounds for rejection of the Bid.
- B. When Federal, State or Local law or ordinance requires a special license or permit, a Bidder must be properly licensed prior to submitting a Bid and furnish evidence of such with the Bid.
- C. In order for a Bidder to be eligible to be awarded the Contract, the Bid must be responsive to the solicitation and VTA must be able to determine that the Bidder is responsible to perform the Contract satisfactorily.
- D. Bids deviating or taking exception to the solicitation requirements will not be considered.
- E. Bidder shall have the equipment, organization, facilities and financial capability to perform the services required by this solicitation.

4. PROTESTS: The following procedures shall be used by Bidders seeking review of the Bid Documents or the Contract process:

- A. **SOLICITATION PHASE:** Prior to the closing date for submittal of Bids, Bidder 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 the 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 Bids, shall be filed within five (5) working days of 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, Contracts and Materials Management Department
Attention: Chief Procurement Officer
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.

For federally funded projects, a Bidder 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.

5. PREPARATION OF BIDS:

- A.** All prices and notations must be printed in ink or typewritten. No erasures are permitted. Errors may be crossed out and corrections printed in ink or typewritten nearby and must be initialed in ink by person signing the Bid.
- B.** Bidder shall bid on each item separately. Prices should be stated in the units specified. Sales tax, if any, should be stated separately.
- C.** Delivery date or time of performance is a part of the Bid and must be adhered to.
- D.** All Bids must be signed by an authorized representative with the name, title, and firm name clearly printed.

6. SUBMISSION OF BIDS:

- A.** Each Bid must be submitted on enclosed VTA forms, in sealed envelope, with company name, Bid number, closing date and time noted on the outside of the envelope.

- B. Bid modifications or corrections thereof received after the closing time specified will be rejected.
 - C. Notwithstanding the time for Opening Bids established in the Request for Bid, the Bid opening might be postponed solely at VTA's discretion.
7. **ACCEPTANCE OF BIDS:** Bids are subject to acceptance at any time **within ninety (90) days** after Bid opening, unless otherwise stipulated in the Bid.
8. **TIE BIDS:** In the event that two or more low Bids equal in all respects are received by VTA, the Contract shall be awarded to the Bidder by the flip of a coin in the presence of witnesses, or the entire Bid may be rejected and re-bid.
9. **AWARD:**
- A. Award of a firm fixed-price Contract, if awarded, will be made to the lowest responsive and responsible Bidder.
 - B. The basis of award shall be the **Total Bid as submitted on Bid Form 1-B.**
 - C. Unless the Bidder specifies otherwise in the Bid, or the Bid gives notice of an all or none award, VTA may accept any item or group of items of any Bid.
 - D. VTA reserves the right to reject any or all Bids and to waive informalities and minor irregularities in Bids received.
 - E. In the event of a discrepancy between the unit price bid and the price extension, the unit price bid will be deemed intended by the Bidder and the extension will be adjusted accordingly. Failure to list a unit price will result in the Bid being rejected as non-responsive.
 - F. The Bidder whose Bid is accepted shall, within the time established in section 7 above, enter into a written Contract with VTA and furnish the required Certificate of Insurance within five (5) working days of Notice of Award.
10. **TAXES:** Contractor will be responsible for assessing any and all applicable taxes related to the purchase of, or installation of, materials used as part of this Contract. For material used on a VTA project, the Contractor will assess any and all applicable taxes and will, for purposes of determining transaction or use tax liability, use the VTA job site as the place where "engaged in business".
11. **SBE DOCUMENTATION:** All Bidders are required to submit the following documents to the Buyer at the Bid Opening:
- A. Bid Form 2-A.
 - B. Bid Form 2-B.
12. **DISCLOSURE OF BID INFORMATION:** After award, all Bids shall be open to public inspection. VTA assumes no responsibility for the confidentiality of information offered in a Bid.

13. DESIGNATED POINT OF CONTACT: All communications with VTA regarding this [RFP/IFB/RFQ] shall be in writing (US mail/ email) to the Designated Point of Contact identified below. All emails must indicate in the subject line “IFB P18268 for Light Rail Vehicle Traction Sand.” No telephone calls will be accepted. Except as otherwise provided herein, no contact will be entertained by the Procurement, Contracts, and Materials Management staff outside of the formal Q&A period, and/or by anyone other than the Designated Point of Contact regarding this IFB.

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

VTA Designated Point of Contact:
Giang Ngo, Buyer Title
3331 N. First Street, Bldg. A
San Jose, CA 95134-1906
Giang.ngo@vta.org

**STANDARD TERMS AND CONDITIONS
P18268
LIGHT RAIL VEHICLE TRACTION SAND**

1. **ACCEPTANCE:** VTA shall not be bound by the terms and conditions stated in these Bid Documents until the Contractor executes and returns to VTA an appropriately signed Contract or accepts deliveries against the purchase order. These Bid Documents shall be deemed incorporated into the Contract, and the Contractor shall be bound by the terms and conditions set forth in these Bid Documents, when it executes and returns said Contract. By entering into the Contract, Contractor shall be deemed to have accepted the terms and conditions set forth herein; any additional or different terms proposed by Contractor shall not be deemed a part the Contract unless expressly assented to in writing by VTA.

2. **TERMINATION AND SUSPENSION:**

- A. **FOR NON-APPROPRIATION OF FUNDS:** VTA may terminate the Contract without liability, penalty, or further obligation to make payments if funds to make payments under this Contract are not appropriated or allocated by VTA for such purpose.
- B. **FOR CAUSE:** 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 five (5) 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) working 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.

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 Contractor's obligations by itself or using an alternative, third-party contractor. The reasonable additional cost to VTA for completing the remaining Contractor obligations shall be deducted from any sum due the Contractor and the balance, if any, shall be paid to the Contractor upon demand. The foregoing will be in addition to any other legal or equitable remedies available to VTA.

- C. **RESTRICTION AGAINST MANUFACTURING IN ADVANCE OF REQUIREMENTS:** Unless otherwise authorized in writing by VTA, Contractor will not make commitments for materials nor fabricate in advance of time necessary to permit shipment on delivery dates. In the event of termination of this Contract, no claim will be allowed for goods or materials manufactured or procured in advance of such schedule.

3. **WARRANTY:**

- A. Contractor expressly warrants that all services covered by this Contract shall conform to the specifications or other descriptions upon which this Contract is based and shall be fit and sufficient for the purpose intended.
- B. Contractor agrees to re-perform any services not conforming to the foregoing warranty promptly, without expense to VTA, when notified of such nonconformity by VTA. In the event of failure by Contractor to correct defects in or re-perform non-conforming services

promptly, VTA, after reasonable notice to Contractor, may make such corrections or re-perform such services and charge Contractor for the cost incurred by VTA thereby.

- C. VTA may, at its option, require Contractor to grant full refund or credit to VTA, in lieu of re-performance, with respect to any item VTA is entitled to reject hereunder. VTA shall have the right to cancel this order or any partial order if service conforming to specifications shall not be ready at the time and in the quantities herein set forth. The foregoing shall be in addition to any legal remedies available to VTA.

4. **FORCE MAJEURE:** An event of force majeure refers to an event beyond the control and without the fault or negligence of the Party affected which prevents a Party from complying with any of its obligations under this Contract, including but not limited to:
- Acts of God (such as, but not limited to earthquakes, flood, fire or other physical natural disaster)
 - War, hostilities (whether declared or not), invasion, acts of terrorism, civil war, rebellion, revolution, requisition
 - Contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- A. Neither Party is responsible for any failure to perform its obligations under this Contract if it is prevented or delayed in performing its obligations by an event of force majeure.
- B. Where there is an event of force majeure, the Party prevented from or delayed in performing its obligations under this Contract (“Affected Party”) must immediately notify the other Party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that Party from, or delaying that Party in, performing its obligations under the Contract, and the Affected Party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its performance of the Contract and must use reasonable efforts to fulfill its obligations under the Contract.
- C. Upon completion of the event of force majeure, the Affected Party must, as soon as reasonably practicable, re-commence the performance of its obligations under this Contract
5. **CHANGES:** VTA shall have the right at any time prior to the delivery date of the services or goods to make changes in drawings, designs, specifications, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for performance, or otherwise affect any other provision of this Contract, a mutually agreed upon adjustment shall be made and this Contract shall be modified in writing accordingly. Any claim by Contractor for adjustment under this clause shall be deemed waived unless made in writing within ten (10) working days after receipt by Contractor of notice of such change. Price increases or extensions of time for delivery shall not be binding on VTA unless evidenced by a written change order executed by an authorized agent of VTA.
6. **VTA’s PROPERTY:** The Contractor agrees that any documentation and equipment or material, including drawings, patterns and specifications, supplied or paid for by VTA shall be and remain VTA’s properties and shall be held by the Contractor for VTA unless directed otherwise by VTA. The Contractor will account for such items and keep them in good/working condition and fully covered by insurance at all times without expense to VTA.

7. **ASSIGNMENTS AND SUBCONTRACTING:** This Contract and any payments to be made hereunder may not be assigned, subcontracted or transferred without the prior written approval of VTA.
8. **WAIVER:** VTA's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or VTA's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, rights or privileges.
9. **BANKRUPTCY/INSOLVENCY:** In the event of any proceeding by or against Contractor in bankruptcy, reorganization or insolvency or any assignment for the benefit of creditors or of a receiver, VTA shall have the right, upon written notice to Contractor and without liability, to cancel this Contract with respect to any portion thereof not complete.
10. **ADDITIONAL DOCUMENTS:** All specifications and documents expressly referred to in this Contract are incorporated herein by reference. If such reference is to a portion of such specifications or documents, then only the portions referenced shall be incorporated herein.
11. **COMPLIANCE WITH LAWS:** Contractor warrants that all services performed have been performed in compliance with, and Contractor agrees to be bound by, all applicable federal, state and local laws, orders, rules and regulations.
12. **THIRD PARTIES NOT TO BENEFIT:** This Contract is binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.
13. **AUDIT AND RECORDS:**
- A. 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 services under this Contract. 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.
 - B. 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 successful Bidder 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.
14. **PROHIBITED INTERESTS:**
- A. **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.

- B. 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.
- C. INTEREST OF THE CONTRACTOR:** The Contractor covenants that neither it nor its officers, directors or agents, presently has any interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The Contractor further covenants that in the performance of this Contract no person having any such interest shall knowingly be employed.
- 15. NONDISCRIMINATION:** During performance of this Contract Contractor its employees and sub-Bidders 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, and the denial of 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.
- 16. CONFIDENTIALITY AND PUBLICITY:** Without the written consent of VTA, Contractor shall not disclose to third parties other than its employees or authorized sub-Bidders or disclose or use for any purpose other than performance of the services any information provided to Contractor by VTA in connection with performance of this Contract, or any information developed or obtained by Contractor in the performance of this Contract, unless: (1) the information is known to Contractor prior to obtaining same from VTA or performing services under this Contract; (2) the information is, at the time of disclosure by Contractor, then in the public domain; or (3) 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.
- 17. SEVERABILITY:** If any of the provisions or portions or applications thereof of this Contract 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.
- 18. NOTICES:** Notices provided for under this Contract shall be provided in writing and addressed to VTA's authorized representative.
- 19. INDEPENDENT CONTRACTOR:** Contractor is an independent Contractor and not the agent or employee of VTA in performing its services under this Contract.
- 20. ENTIRE CONTRACT:** This Contract constitutes the entire contract between VTA and Contractor relating to the subject matter hereof and supersedes any previous contracts or understandings, oral or written.
- 21. 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.
- 22. DAYS:** For purposes of this Contract, all references herein to "day" shall mean calendar day, unless specified otherwise. All references to "calendar day" shall mean any day, including Saturday, Sunday

and all legal holidays. All references to “working day” shall mean any business day, excluding Saturdays, Sundays and legal holidays.

- 23. 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.
- 24. FORUM SELECTION:** Contractor will resolve any claim, cause of action or dispute (collectively “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.
- 25. INDEMNIFICATION:**

GENERAL INDEMNIFICATION

Contractor agrees to indemnify, defend, and hold harmless VTA and its respective board members, officers, agents, employees, and consultants (each an “Indemnitee”) from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (each, a “Claim” and collectively, the “Claims”), including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, negligence, or misconduct of Contractor and its officers, directors, agents, employees, and subcontractors, during the performance of this Contract, including, without limitation, Claims arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or real property; (b) any payment required to be paid by Contractor to subcontractors, if any; (c) any material misrepresentation or breach of warranty of any representation or warranty set forth in this Contract; or, (d) any material breach of any covenant set forth in this Contract; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the acts or omissions of an Indemnitee.

INFRINGEMENT INDEMNIFICATION

Contractor agrees to indemnify, defend, and hold harmless Indemnitee from and against any and all Claims, including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to the goods and/or services infringing or misappropriating any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right. In the event that Contractor is enjoined from providing the goods and/or services and such injunction is not dissolved within thirty (30) calendar days, or in the event that VTA is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the access or use of the good and/or services, then Contractor shall, at its expense: (a) obtain for VTA the right to continue using such goods and/or services; (b) replace or modify such goods and/or services so that they do not infringe upon or misappropriate such proprietary right and is free to be used by VTA; or, (c) in the event that Contractor is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, Contractor shall promptly refund to VTA any pre-paid fees (includes pre-paid support fees).

To the greatest extent permitted by law, Contractor agrees, at its own expense, and upon written request by VTA, to immediately defend any suit, action, claim, or demand brought against any Indemnitee founded upon, alleging, or implicating any liabilities, damages, losses, expenses, claims, demands, suits, fines, or fees and costs covered by Contractor’s indemnity obligation set forth in this

Infringement Indemnification regardless of whether Contractor and/or any of its agents, employees, or subcontractors did, in fact, infringe any intellectual property rights.

INDEMNIFICATION PROCEDURES

Contractor's obligations under these Indemnification sections are expressly conditioned on the following: VTA shall (a) promptly notify Contractor, in writing, of any such Claim of which VTA has actual knowledge (provided that failure to do so will only release Contractor from this indemnity obligation to the extent that such failure led to material prejudice), (b) in writing, grant Contractor sole control of the defense of any such claim and of all negotiations for its settlement or compromise, provided that no such settlement or compromise may impose any liability or other obligations on VTA, and (c) reasonably cooperate with Contractor to facilitate the settlement or defense of the claim. Notwithstanding the foregoing, VTA may participate, at VTA's own expense, in the defense of such Claim.

SURVIVAL

This indemnification provision will survive the expiration or termination of the Contract and remain in full force and effect.

26. SAFETY PRECAUTIONS, PROGRAMS AND FIRST AID REQUIREMENTS: Contractor shall promptly and fully comply with, carry out, and shall, without separate charge to VTA, enforce compliance with the requirements stated herein, prescribed by applicable laws and regulations and those prescribed by an official or representative charged with the enforcement thereof. Contractor shall take such other measures as may be necessary to the end that work under the Contract ("Work") will be done in a safe manner and that the safety and health of employees and the people of local communities is safeguarded. Compliance with the provisions of this section by subcontractors is the responsibility of Contractor.

A. Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall:

(1) Identify a competent individual (i.e., a superintendent or foreman) who will be assigned to work at the site of the Work ("Worksite") and will be responsible for Worksite safety (the "designated safety representative"),

(2) Contractor shall submit a VTA-wide work plan (or "safety program") to VTA which addresses the scope of work to be performed and certifies that the designated safety representative has received competent person training in all aspects of the site-specific work plan, and

(3) Contractor will comply with all state, federal, and local safety regulations. Contractor will provide a copy of its Industrial Injury Prevention Program.

The designated safety representative shall set up, carry forward, and aggressively and effectively maintain the aforementioned safety program covering all phases of the Work. Contractor shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees, and licensees of VTA who may be involved. This requirement applies continuously and is not limited to normal working hours.

B. If Contractor encounters material reasonably believed to be asbestos on the Worksite, polychlorinated biphenyl (PCB), or other Hazardous Substance (as defined below) that has

not been rendered harmless, Contractor shall immediately stop Work in that affected area and report the condition to VTA in writing. If in fact the material is asbestos or PCB or other Hazardous Substance and has not been rendered harmless, that portion of the Work in the affected area must not be resumed VTA and Contractor agree in writing to resume such Work. That portion of the Work in the affected area will be resumed in the absence of asbestos or PCB or other Hazardous Substance, or when it has been rendered harmless, by written agreement of VTA and Contractor, or in accordance with a final determination by an environmental consultant employed or retained by VTA.

Contractor is not required to perform any portion of the Work relating to asbestos, PCB or other Hazardous Substances.

Contractor will not permit any Hazardous Substances to be brought onto or stored at the Worksite or used in connection with the Work, except for specified materials and commonly used construction materials for which there is no reasonable substitute. All such materials must be handled in accordance with all manufacturer's guidelines, warnings and recommendations and in full compliance with all applicable laws. All notices required to be given with respect to such materials must be given by Contractor. Contractor will not intentionally release or dispose any Hazardous Substance at the Worksite or into the soil, drains, surface or ground water, or air; Contractor will not allow any subcontractor, or supplier or any other person for whose acts Contractor or any subcontractor, sub-subcontractor or supplier may be liable, to do so. "Hazardous Substance" includes all substances set forth in California Health and Safety Code, Chapter 6.6, (and all regulations enacted pursuant thereto) and, to the extent not set forth in the Health and Safety Code, any additional substance or material determined to be capable of posing a risk of injury to health, safety, property, or the environment by any federal, state, or local governmental authority.

Contractor and subcontractors of each tier shall provide VTA with Material Safety Data Sheets for all materials to be incorporated into or used in the performance of the Work, including commonly used construction materials that contain any Hazardous Substance or mixture, including without limitation, any chemical listed by the State of California as a chemical known to cause cancer or reproductive harm (as defined in California Health and Safety Code, Chapter 6.6, and all regulations pursuant thereto). The Safety Data Sheets must contain all necessary and legally required information concerning substances such as asphalts, solvents, adhesives, epoxy resins, roofing sealant and bonding agents, mixtures, or chemicals in a format approved by VTA or as required by law.

Contractor shall set forth in writing its safety precautions and programs in connection with the Work, which meets or exceeds any and all applicable laws, ordinances, rules, regulations, and orders of any public, quasi-public, or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to the Federal Occupational Safety and Health Act of 1970, as amended, the California Occupational Safety and Health Act of 1973, and the California Labor Code.

In the event of conflicting requirements, the more stringent requirement shall govern.

All Work, equipment, machinery, materials, tools and like items incorporated or used in the Work must be in compliance with and conform to all applicable laws, ordinances, rules, regulations, and orders of any public, quasi-public, or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to,

the Federal Occupational Safety and Health Act of 1970, as amended, and all rules and regulations now or hereafter in effect pursuant to said Act.

Contractor shall provide each worker on the Worksite with the proper safety equipment for the duties performed by that worker and will not permit any worker on the Worksite who fails or refuses to use the same. VTA has the right to order Contractor to send a worker off the Worksite for the day or to discharge a worker for his or her failure to comply with safety practices.

- C. Protection of Work and Property; Responsibility for Loss.** Contractor shall, throughout the performance of the Work, (a) maintain adequate and continuous protection of all Work and temporary facilities against loss or damage from whatever cause; (b) protect the property of VTA and third parties from loss or damage from whatever cause arising out of the performance of Work; and (c) comply with the requirements of VTA and its insurance carriers, and with all applicable laws, codes, rules, and regulations with respect to the prevention of loss or damage to property as a result of fire or other hazards to:

Employees on the Worksite and other persons who may be affected thereby;

The Work, materials, and equipment to be incorporated therein, whether in storage on or off of the Worksite, under care, custody, or control of Contractor and/or its sub-subcontractors; and

Other property at the Worksite or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

Solvents, oils, and any other substance that may be harmful to plant life must be disposed of in containers and removed from the Worksite. At completion of the Work, any contaminated soil must be removed and replaced with soil of equal quality prior to contamination by Contractor at no additional cost to VTA.

- D. VTA Patrols.** VTA may, but is not be required to, make periodic patrols of the Worksite as a part of its normal security and safety program. In such event, however, Contractor will not be relieved of its aforementioned responsibilities and VTA will not assume same. VTA will not assume any responsibility otherwise imposed upon Contractor.

- (1) Contractor is responsible for the payment of all fines levied against VTA arising from or related to activities over which Contractor has responsibility under the Contract or for work that does not conform to the Contract.

In addition to any other notice requirements in the Contract, Contractor shall give notice in writing, at least forty-eight (48) hours before breaking ground, to all persons having interests on or near the Worksite, including public utility companies, owners of property having structures or improvements in proximity to the Worksite, superintendents, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise who may be affected by Contractor's operation, in order that they may remove any obstruction for which they are responsible and have a representative on the Worksite to see that their property is properly protected. Such notice does not relieve

Contractor of responsibility for any damages, claims, or defense of all actions against VTA resulting from performance of such Work.

- (2) Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent Worksites and utilities.
- (3) Use or storage of explosives by Contractor is prohibited.
- (4) Contractor shall rebuild, repair, restore, and make good all losses of, and injuries or damages to, the Work performed or any portion thereof (specifically including owner-supplied equipment or other items to be utilized in connection with, or incorporated in, the Work) before final acceptance of the Work. Such rebuilding, repair, or restoration will be at Contractor's sole cost and expense unless the loss, injury, or damage requiring such rebuilding, repair, or restoration is caused by a hazard against which VTA is required to insure provided, however, that if the loss, injury, or damage would not have occurred but for the negligent act or omission of Contractor, or its subcontractors of any tiers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, the rebuilding, repair, or restoration will be at Contractor's cost and expense to the extent of the deductible in said insurance. If any policy of insurance covering loss or damage to the Work is voided due to any action of Contractor or any of its subcontractors of any tier, such rebuilding, repair, or restoration will be at Contractor's sole cost and expense.

E. Dangerous Conditions / Payment of Fines. Contractor shall designate its project superintendent, or such other qualified member of Contractor's organization at the Worksite, as be approved by VTA, to be responsible for the prevention of accidents. If VTA or any public agency with jurisdiction notifies Contractor of any claimed dangerous condition at the Worksite which is within Contractor's care, custody, or control, Contractor shall take immediate action to rectify the condition at no additional cost to VTA. Contractor shall be responsible for the payment of all fines levied against VTA for deficiencies relating to Contractor's supervision or conduct of the Work.

Contractor will not load or permit any part of the construction or Worksite to be loaded so as to endanger the safety of persons or property.

Contractor will not permit open fires on the Worksite.

Contractor shall return all improvements on or about the Worksite and adjacent property which are not shown to be altered, removed, or otherwise changed to the conditions they were in prior to Contractor's starting performance under the Contract.

F. Emergencies. In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the Work or its performance, Contractor shall ensure that at least one of Contractor's employees with authority is on duty during working hours, and Contractor will act immediately to prevent threatened damage, injury, or loss or to remedy said violation, whichever is applicable. If Contractor fails to carry out the obligations in this section, VTA may immediately take whatever action it deems necessary, including but not

limited to, suspending the Work as provided above in Termination & Suspension. Contractor shall also establish and maintain adequate First Aid facilities at locations close to work areas, and mark such locations with signs of adequate size and composition. Contractor shall also ensure that at least one of Contractor's employees qualified by a recognized authority to perform First Aid is on duty while Work is being performed

VTA may offset any and all costs or expenses of whatever nature, including attorneys' fees, paid or incurred by VTA in taking such actions against any sums then or thereafter due to Contractor.

G. Contractor Safety & Light Rail Transit Operations. This section includes requirements to control and reduce potential hazards of light rail traction power and moving trains in any environment where contractors and outside parties have access to right-of-way and/or facilities of VTA's Light Rail Transit ("LRT") system. These requirements and procedures are designed to add an extra measure of safety for the public, passengers, and employees of VTA, and VTA's Contractors. These procedures do not supersede existing California Public Utilities Code ("CPUC"), Cal Occupational Safety and Health Administration ("OSHA"), Workers Compensation, or any other federal, state, or local safety regulations.

These procedures apply to any person(s) working on or in any light rail restricted access area including electrical substations, overhead contact system ("OCS"), signal or communications facilities, Operations Control Center ("OCC"), tracks, stations, and any area where moving trains or light rail traction power are present or may be affected.

Contractor is responsible for insuring that their employees, their subcontractors, and any lower tier contracted services working under their purview are fully informed and responsive to these safety requirements. Contractor or their employees found to be in violation of these safety procedures may be removed from the Worksite. Failure of Contractor to conform to these requirements will result in a work stoppage issued by VTA until Contractor is in compliance with these requirements. VTA reserves the right to assess penalties for repeated safety violations up to and including termination of the Contract.

For work that occurs at the Guadalupe Light Rail Transit facility, workers must follow the following VTA Railway Worker Protection training guidelines:

All workers must (1) attend and be certified with VTA Railway Worker Protection ("RWP") training classes, (2) display the sticker on hardhats as instructed, and (3) carry the issued RWP identification card to be presented to VTA at its request. All training classes will be reimbursed to the Contractor and Contractor shall incorporate worker class time into the Contract Scope of Work. Contractor must supply any translators as needed to properly train its workers. Contractor shall provide safety precautions to separate the work area(s) from pedestrian or vehicular traffic and to prevent damage to the building, its occupants, and the surrounding areas. Contractor shall observe applicable OSHA, CPUC, and California State OSHA requirements.

Contractor is responsible for obtaining all RWP stickers and classes. All RWP Training and right-of-way ("ROW") access permits expire on 12/31 of each year the permits are issued. Contractor must start the renewal processes in October of each year of the Contract. Work is not allowed near any rail ROW, including inside of the rail yard, if

training and permits are not acquired by January 1 of each year the Contract is in force. Not having the appropriate training and documents in place at the time of annual turnover could be determined as failure to perform and result in disciplinary action up to and including termination for default above in Termination & Suspension.

Contractor may charge for the time required to meet the regulatory requirements. Hours in the Contract are included for these purposes. Contractor must be allowed up to 5 hours' time for up to six (6) employees being RWP-trained. Contractors may charge up to two (2) hours of time for each track allocation meeting for three (3) employees. For most contractors, this will happen once a year during the annual permitting process. If work requires permitting outside of the annual permits, VTA and Contractor will agree in a written amendment to the Contract on the charges for Contractor time.

All of Contractor's employees must be background checked per VTA requirements. Costs for the background checks will be reimbursed to the Contractor. To attain current pricing of the background checks, please go to the contracted vendor website. VTA has contracted with IPROVEIT (<https://improveit.com/>) for background checks. The background checks provider is subject to change.

(1) Definition of Terms:

Access: Permission granted by VTA, to be on, in, or near the LRT ROW or rail transit facilities of VTA.

OCC: Operation Control Center

CPUC: California Public Utilities Commission

FRA: Federal Railroad Administration

I.D. Badge: VTA-issued badge identifying successful completion of Contractor Safety Seminar.

Lockout and Tagout Procedure: A VTA safety process & procedure to provide protection when working near the traction power electrification system or when working in a safety sensitive area.

OCS: Overhead Contact System: The electrical power system supplying 800 vdc to trains.

Restricted Area (or Restricted Access Work Area): Any point or area within 10 feet of the nearest rail of any track.

Restricted Access Permit (or Permit): Application process, paper form, and permission granted by VTA to be on, in, or near the LRT ROW or rail transit facilities of VTA.

Right-of-Way (ROW): VTA property or facilities including track, OCS, and buildings used for LRV train operations, that contain traction power or signal and communications facilities and equipment.

Safety Seminar (or Safety Training or Class): Required orientation applicable to all Contractor employees working on or within 10 feet of the rail of any track or OCS facility.

Site Specific Work Plan ("SSWP", also, "Work Plan"): Task and activity plan and detailed schedule prepared and submitted by Contractor for approval by VTA which includes work activities, equipment, and safety procedures.

Substation (or Traction Power Substation): Any facility including power feed and power distribution cabling for delivery of commercial electrical power to 800 vdc and delivery of that power to the LRT overhead contact system.

Train: LRV(s) operated under traction power or by tow-motor power.

Track Allocation Meeting: Joint meeting of VTA and its contractor(s) to determine track access, obtain power-down permission, and schedule coordination of work between contractors. Scheduled weekly or as deemed necessary by the VTA.

(2) **Restricted Access Permit.** At any time or location Contractor requires access to:

(a) enter on, cross over, or cross under the ROW, tracks, or OCS of VTA,

(b) to enter into facilities including yard, maintenance buildings, stations, substations, OCC, or

(c) signal and communications equipment or facilities,

and any Work is to be performed within ten (10) feet of the nearest rail of any track, a Restricted Access Permit application must be submitted by Contractor who will perform the Work.

Unless specifically requested and approved, a Restricted Access Permit does not authorize any work operations or equipment on the tracks or within 10 feet of the OCS. It does not authorize any act which may interfere with the safe and timely operation of VTA's public rail transportation services.

Attached to this IFB is a copy of VTA's Restricted Access Permit form (Appendix A), including Restricted Access Work Rules on the reverse of the form. Contractor must submit this Restricted Access Permit form, in original, for each day, week, or for each independent work operation to be performed by Contractor, as determined by VTA. Contractor shall submit a completed form and any additional illustration or schedule details to support the application at least seven (7) days prior to the start of Work. An approved copy of the Restricted Access Permit must be maintained at each Worksite and must be read and understood by all personnel at the Worksite.

(3) **Site Specific Work Plan.** In addition to the requirements of the Restricted Access Permit process, if at any time the Work of Contractor may impact train operations or has the possibility of impacting the integrity or physical configuration of the LRV track, the traction power system and/or the LRT signal and communications system, or if VTA determines that it is necessary for the safety of personnel and equipment, Contractor must develop and submit for approval a Site Specific Work Plan ("SSWP").

A SSWP must describe each of the activities or tasks necessary to perform the relevant portion of the Work and must include a detailed schedule of the Work items that have a duration of one (1) hour or more, indicating the hourly progress of each activity. The SSWP must include staffing, materials, and equipment that will be used to complete the Work. The schedule must include a time for which all activities planned under the SSWP will be completed.

The SSWP must include a detailed description of the safety measures to be taken for the protection of personnel and equipment. Such items as protective gear, flag and sign

placement, flaggers, specialized safety equipment, ventilation equipment, in-house safety programs, and additional safety supervision will be identified.

Where the Work adds, removes, or changes any element of the traction power system, the track structure, or the signal or communications system(s), the SWWP must clearly identify the changed or fully restored condition of the OCS, track, or signal and communications system and must provide a detailed alternative plan to restore traction power, track, and/or signal and communications system if the planned Work cannot be completed successfully.

The SSWP must be submitted by Contractor not less than seven (7) days prior to the date and time of the proposed start of Work or seven (7) days prior to the scheduled Track Allocation Meeting, whichever is earlier. No Work will be undertaken until the SSWP has been reviewed by VTA, approved, or approved with changes noted and returned to Contractor. VTA may request additional explanation, request changes, or require Contractor to revise and resubmit the SSWP. If the SWPP is not acceptable to VTA, Contractor shall revise the SWPP and resubmit the SSWP and obtain approval before proceeding with the Work.

Failure of Contractor to complete its scheduled activities and restore the track way and traction power system within the time period allowed above may adversely impact VTA's LRT operations. In the event that LRT service is delayed by Contractor's action or failure to act, the Contractor will be liable for the actual expenses incurred by VTA, including but not limited to busing passengers, overtime wages for crew and flagging persons, and cost of additional dispatching. VTA reserves the right to deduct the amount of such delay expenses from any payment to Contractor under the Contract.

- (4) **Safety Seminar Record & Report.** Contractor shall maintain and submit, on no less frequently than a monthly basis, a current list of all employees safety-trained by VTA and Contractor, including I.D. Badge number and expiration date and specific categories of training. Contractor shall forward Safety Seminar records on a monthly basis to VTA's Designated Safety Coordinator, and to the representative of the Owner-Controlled Insurance Program.
- (5) **General Contractor Safety Seminar.** Working on and around rail transit operations and traction power facilities includes a unique set of potential hazards. VTA has developed a Safety Seminar to prepare all construction workers for these hazards. The information provided in the Safety Seminar is meant to supplement all existing CPUC, Cal OSHA, Workers' Compensation, federal, state, and local safety regulations. The goal of the Safety Seminar is to educate each Contractor employee on the unique hazards that may be encountered on any VTA rail project and how best to respond to those hazards.

Each and every employee, foreman, superintendent, office personnel and manager, any and all subcontractors, and any third tier services personnel who will enter on or work on VTA's ROW within 10 feet of the near rail of any track or within ten (10) feet of the traction power system, any substation, or any communications and signal facilities or equipment is required to attend a one (1) hour Safety Seminar conducted by VTA.

Contractor Safety Seminar class will be provided by VTA each Friday at a location and time to be established by VTA. VTA will attempt to provide the Seminar at a time and location convenient to Contractor.

If at any time Contractor intends to bring new employees onto the Worksite, each of those employees must first attend one of the regularly scheduled Contractor Safety Seminar classes. Contractor is responsible for scheduling their employees for this mandatory training with the VTA Authorized Representative.

Re-certification of Contractor employees is required on an annual basis. Attendance to renew the certification at a Contractor Safety Seminar is required annually.

Contractor employees who have successfully attended a Contractor Safety Seminar class will be provided with an I.D. Badge which will be prominently displayed and visible at all times when working on VTA's ROW or Worksite. Contractor shall monitor adherence to this requirement by their employees, subcontractors, and third tier service personnel. Contractor employees not displaying the proper I.D. Badge may be subject to being removed from the Worksite. The I.D. Badge will bear the holder's name, Contractor's name, a serial number, and the date of the Safety Seminar.

- (6) **Safety Audits.** Individual responsibility is the basis for and a necessary key to any safety program. VTA may conduct safety audits or interviews as deemed reasonably necessary by VTA. The purpose of the audits or interviews is to ensure that each Contractor employee granted permission to work on the ROW is familiar with VTA's safety rules and understands the work area and time limits and can identify Contractor and the VTA representative in charge of safety at the Worksite. The audit or interview may also include verification that an approved copy of the Restricted Access Permit is being maintained at the Worksite and that it has been read and understood by all personnel working at the Worksite.
- (7) **Restricted Access Work Rules.** The Restricted Access Permit provides for the physical presence on VTA's construction or operating ROW of personnel and/or equipment. Unless specifically authorized in the Restricted Access Permit, the Restricted Access Permit does NOT authorize Work within 45 inches of the nearest rail of any track, does NOT authorize operations of any equipment on the LRT tracks, and does NOT authorize any access or equipment within 10 feet of any OCS, signal cabinet, or within any traction power substation. Restricted Access Work Rules are provided as part of the Restricted Access Permit form (See appendix A).
- (8) **Track Allocation Procedures.** Prior to occupying the trackway, Contractor shall submit a Restricted Access Permit Application to the VTA Track Allocation Coordinator not later than 24 hours prior to the next scheduled Track Allocation Meeting.

Contractor shall provide a qualified representative to attend the Track Allocation Meeting. If a representative fails to attend, the Restricted Access Permit Application is subject to being disapproved.

VTA will reimburse the Contractor for each employee that has attended the Track Allocation Meeting at the hourly rate submitted on the Contractor's Bid Sheet.

Track allocation procedures must be implemented as part of the Restricted Access Work Rules at the discretion of VTA in the interest of the safety of all personnel and equipment in and around the Worksite.

The Track Allocation meeting is used to identify Work locations, type of Work activities, and presence and protection against high voltage traction power and moving trains. Track allocation procedures work in concert with other safety procedures to ensure all Contractor and all VTA operations and safety personnel are fully informed concerning construction activities and LRT safety.

Track Allocation Meetings: The requirements identified herein are mandatory for VTA and for all contractors working on the Worksite beginning from the earliest occurrence of either of the following two events:

- i. Electrical power is installed in any substation or any portion of the traction power system is capable of being energized, and / or
- ii. VTA LRV or on-track equipment is operated on any portion of the track by VTA personnel.

Track Allocation meetings must be held weekly and require the attendance of a representative of Contractor and their subcontractors managing their own track access permits. VTA Resident Inspectors, a representative of VTA's Construction Manager, and VTA's Authorized Representative or Designated Contact Person and representatives of the Track Allocation team and Operations Testing personnel will attend as required by VTA.

The weekly meeting will be conducted by the VTA Track Allocation Coordinator who will establish the weekly time and location for scheduled meetings and procedures for communicating between all parties involved. The meeting will begin with a roll call confirming that all parties have properly submitted requests and are in attendance at the meeting. Items to be discussed will include, but not be limited to: identification of track(s) and trackway segments effected, level of personnel protection required, previous conflicts or problems, status of traction power, planned testing by VTA and/or train movements, planned construction activities, and potential conflicts and their resolution.

Following the weekly meeting, the VTA Track Allocation Coordinator shall prepare a written Track Allocation Schedule for the following week. The Track Allocation Schedule must include all planned testing, the traction power status for the week, and any safety requirements. The Track Allocation Schedule, the accompanying Restricted Access Permits, approved or rejected, will be distributed to all parties prior to the end of the following day.

Contractor's Responsibilities:

Contractor shall confirm that all of their scheduled work is included on the Restricted Access Permit application including the proper days, times, tracks, access point(s), personnel requirements, and equipment to be used in the Work.

Where any conflict may exist with other contractors at or near the Worksite, Contractor shall strive to arrive at a mutually agreeable resolution to allow the maximum productive track access for all parties.

Contractor is responsible for assuring that all of its employees, as well as all of its subcontractors and its lower tier service personnel, are aware of any scheduled safety-

critical items and that they actively respond to the safety requirements of the Restricted Access Permit and Track Allocation Schedule, if granted.

Where more than one contractor is scheduled to work in the same or overlapping work limits, the contractor having primary access will be responsible for all elements of coordination and access as between contractors, subcontractors, and third tier services. Where multiple independent contractors are granted authority to work within the same or overlapping work limits, VTA's Resident Inspector or OCC supervisor or Track Allocation Coordinator shall designate and enforce rights of priority and access by various contractors.

VTA is not responsible for conflicts or limitations in access to restricted work areas or facilities or for schedule impacts that result following approval of coordinated schedules effecting the same work locations, facilities, or use of limited VTA resources.

- (9) **Lockout and Tagout Procedures.** All "Lockout and Tagout Procedures" must be coordinated with VTA's Authorized Representative.

The Lockout and Tagout Procedure provides the highest level of protection for personnel. Traction power is removed, and a worksite is established and secured through a series of locked and tagged switches, ground straps, and warning signs or flags. This procedure is always required along with an approved Restricted Access Permit for working within 10 feet of the OCS or any traction power equipment or facilities. This procedure may also be required through the Restricted Access Permit process for work on elevated structures, within a tunnel, or when it is deemed necessary by VTA for the safety of VTA.

The requirements identified herein are mandatory for VTA and for all contractors working on the Worksite beginning from the earliest occurrence of either of the following two events:

- i. Electrical power is installed in any substation or any portion of the traction power system is capable of being energized; and/or
- ii. VTA LRV or on-track equipment is operated on any portion of the track by VTA personnel.

Prior to implementing Lockout and Tagout Procedure at any work location, the VTA representative in charge of worksite safety shall identify and confirm the following with Contractor and with VTA's OCC:

All details as approved on the Restricted Access Permit, the Site-Specific Work Plan (if used), and the VTA Light Rail Power Removal Form, including work limits, locations of track, or OCS access and specific tracks and substations affected;

Scope of work, specific Contractor activities and equipment to be used must be only those specifically approved by VTA; and

Expected duration of Work and time for restoration of track and OCS to VTA OCC.

The VTA OCC supervisor and Way, Power and Signal employee on site shall then secure all power, install required lockout devices, issue lockout tags, install required traction power system ground(s), and place flags, cones, and/or signs as required to secure the Worksite.

Contractor's representative in charge of the Work at the Worksite may then proceed with approved Work Plan and activities only after obtaining specific approval and direction from the VTA Resident Inspector or their designee (OCC supervisor and Way, Power and Signal employee.)

The VTA OCC supervisor or Way, Power and Signal employee in charge at the Worksite may suspend or modify any aspect of the Work Plan, assignment of personnel, or use of equipment at any time when determined necessary to ensure any aspect of Worksite safety. Contractor must promptly respond to such direction and alter Work operations and discontinue any Work activity or all Work activity as necessary to comply with Worksite safety directives.

At the completion of Work or prior to the expiration of Work time granted at the Worksite, Contractor shall restore all aspects of track, OCS, and/or signal and communications systems to full operation, including necessary testing, to the condition identified in the approved Work Plan. All Contractor personnel, equipment, and materials must be removed from the trackway, OCS facilities, substation, or equipment room and returned to approved storage or marshaling area.

Contractor representative in charge of the Work at the Worksite shall notify the OCC supervisor and the Way, Power and Signal employee in charge of any conditions, facilities, or materials not in conformance with the approved Work Plan or of any condition that will or may affect any aspect of safety of VTA's facilities, trains, personnel, or public safety prior to releasing his use and control of the Work and will not leave the Worksite unless and until VTA has inspected and accepted any changed condition or facility.

In the event that Contractor fails to restore any VTA facility to the proper condition for VTA operations or as identified in the approved Work Plan or if Contractor fails to release Contractor's access to track, OCS, or signal and communications facility, VTA OCC supervisor and Way, Power and Signal employee shall make a sweep of the track, OCS, or other facilities and determine that equipment and systems are safe to operate. VTA OCC will then direct the restoration of power, the Way, Power and Signal employee shall remove flags, cones and/or signs, ground straps, switch locking devices, and tags from track and traction power facilities, and restore the track and OCS to service for VTA.

The permit will be canceled with an effective time, date, and OCC approval written on Contractor's permit, including an explanation of cause for restoration of track and power in the absence of Contractor.

Failure of Contractor to conform to the requirements of the approved Restricted Access Permit, the approved Site-Specific Work Plan, or the safety directions provided by the VTA Resident Inspector or their designee (OCC supervisor or Way, Power and Signal employee) in charge at the Worksite will result in a work stoppage issued by VTA until these deviations of the Contract requirements are in compliance.

- (10) **LRT Flagger(s).** Contractor shall provide LRT flagger(s) for each work group as provided in the Restricted Access Work Rules (See Appendix A) and these specifications. A work group is one or more persons performing work. “Work” is any construction activity other than marking, inspecting, or measuring.

The following provision supersedes Restricted Access Work Rule 2, on page 3 of the June 28, 2000, version of the Restricted Access Procedures Manual:

LRT flagger(s) shall be present when (1) work is performed within 10 feet of any rail or (2) when equipment that is greater than 10 feet high or has devices which can extend more than 10 feet in length, such as cranes, fork lifts, boom trucks, are being used to perform work.

LRT flagger shall notify workers of approaching trains or rail mounted equipment and clear the track way with sufficient time so that all personnel, equipment, and unsecured materials are clear of the track way a minimum of 30 seconds prior to the train or rail mounted equipment entering the work limits. Once the track way is clear, the LRT flagger shall give a hand signal to proceed to the operator of the train or rail-mounted equipment.

If trains must slow or stop because the track way is not clear before the train arrives at the work limits, LRT flagger shall increase the time notifying work groups of approaching trains by not less than one minute.

A single LRT flagger may be assigned to multiple work groups only if the LRT flagger can view approaching trains and rail mounted vehicles and can notify all workers of the approaching trains and rail mounted equipment.

Contractor shall furnish all LRT flaggers for the Contract. Full compensation for LRT Flaggers must be included in the Contract price for the items of Work requiring LRT flagger(s), and no separate payment will be made therefore.

- (11) **Restricted Access Permit Fees.**

VTA will waive the following fees:

- i. Restricted Access Permit - \$3,050.00 per location, per year (**VTA will reimburse this fee**);
- ii. General Contractor Safety Seminar (also known as, Roadway Worker Protection Training) - \$85.00 per class for each participant (**VTA will reimburse this fee**);

VTA will deduct the following amounts from any payment owed to Contractor for services provided by VTA Operations staff:

- i. Power Shutdown - \$1,010 each;
- ii. Bus Bridging: \$180 per hour for each bus;
- iii. Modified Bus and/or Light Rail Services:
 - Hourly cost for each additional Bus required for service (regular or bus bridge): \$162.33 per hour for each bus;
 - Hourly cost for a one-car Train; \$435;

- Hourly cost for a Train with 2 cars; \$515;
- Hourly cost for a Train with 3 cars: \$590.

Background Security Checks for VTA Permittees. The permit applicant will be required to have their employees undergo a background security check through a process determined by VTA. VTA will reimburse the Contractor for the Background Security Check fee. VTA reserves the right to decide all aspects of the background security check process, including but not limited to all costs. Currently the cost of the Background Security Check is estimated to be \$100.00 per person (**VTA will reimburse this fee**).

VTA will reimburse the Contractor for Restricted Access Permit Fees, which are detailed in Bid Form 1-B. Contractor shall pay all Restricted Access Permit fees directly to the Track Allocation Coordinator (VTA will reimburse this fee).

(12) **Worker’s Safety Provisions: Use of Electronic Devices.** In compliance with CPUC requirements, the use of electronic devices is prohibited at all times when within 6 feet of the trackway. This includes but is not limited to scanners, cellular telephones, personal audio devices, or watches or headsets associated with those devices and any Personal Digital Assistant (“PDA”) with the following exceptions:

- Two-way radio equipment.
- Photography equipment (but not cellular telephones) that are required for the Work to be performed or for inspection purposes and have been approved by VTA.

Cellular phones with the ability to be used as two-way communication devices or as photography equipment are also prohibited.

Contractor’s Safety Officer is responsible for implementing worker’s safety requirements and should be part of their daily safety tailgate meeting. Any Contractor employee violating the worker’s safety requirements will be immediately removed from the Worksite and permanently banned from the Work. CPUC also may impose or levy fines and penalties against Contractor for violation of these requirements.

Contractor must further comply with all the requirements in VTA’s “Policy on the Use of Personal Electronic Devices by Bus and Light Rail Employees and Contractor Staff (ATU)” attached hereto as **Attachment 2** and incorporated herein by this reference.”

**SPECIAL CONDITIONS
P18268
LIGHT RAIL VEHICLE TRACTION SAND**

1. **COMPENSATION:** As full consideration for the satisfactory performance of the Contract by the Contractor, VTA shall pay to the Contractor amounts designated in Bid Form 1-B – Schedule of Prices and Estimated Quantities.
2. **QUANTITY:** Contractor agrees Bid price(s) apply to any quantity purchased under this Contract and such prices are guaranteed for the term of the Contract unless otherwise agreed by both parties in writing.
3. **TAXES:** Sales tax (when applicable) shall be included in the bid as a separate line item.
4. **INVOICING AND PAYMENTS:**

- A. The successful Bidder shall submit its invoice for payment to the address listed below for the services provided, which have been accepted by VTA.

**VTA ACCOUNTS PAYABLE
3331 NORTH FIRST STREET, BUILDING A
SAN JOSE, CA 95134-1906**

or

VTAAccountsPayable@VTA.org

- B. Payments will be made to the successful Bidder within thirty (30) days following receipt of a properly prepared invoice.
 - C. Payment will be considered to have been made on the date VTA mails payment.
 - D. Discounts offered by Contractor for early payment will be taken by VTA if payment is made within the discount period specified.
 - E. VTA shall not be responsible for late payment charges unless they are an express part of this Contract.
 - F. Upon completion of this Contract, the final payment shall be made on determination by VTA that all requirements hereunder have been completed, and such determination shall not be unreasonably delayed.
5. **LIQUIDATED DAMAGES:** [OMITTED].

**SCOPE OF WORK
P18268
LIGHT RAIL VEHICLE TRACTION SAND**

1. OVERVIEW

VTA is currently seeking to enter into a contract to furnish and deliver Cemex “Locomotive Sand” traction sand (brand name or equal) for VTA’s Light Rail Vehicles. The traction sand is used by VTA to aid in the traction, braking, starting, and accelerating of light rail vehicles.

2. LIST OF DELIVERABLES AND SALIENT CHARACTERISTICS:

A. Deliverables:

DESCRIPTION	Package	Estimated Annual Qty
Traction Sand	Bulk 150 Tons	10
	50 Pound Sack	1080

VTA is currently using Cemex brand “Locomotive Sand.”
Cemex P/N# 1413850 (150 Tons) and P/N# 1413851 (50 pounds sack)

B. Brand Name or Equal:

An equal product baring the salient characteristics listed herein may, at VTA’s sole discretion, be acceptable. Please refer to section 18, “Brand Name or Equal” of the IFB.

C. Salient Characteristics:

- i. Must be natural sand manufactured from natural rocks with a minimum content of 80% (weight) SiO₂. The sand must be without metallic compounds or argillaceous, loamy, humic, or binder-type components. Sand particle size must be 0.5 to 2.0mm in size.
- ii. The sand must be uniform and consist of at least ninety percent (90%) by weight hard grains of quartz or siliceous material. The clay and other impurities content (for example, pebbles, gravel, pieces of glass, vegetable remains, earth, silt, or dust) must not exceed two percent (2%) by weight. It is permissible for the remaining materials to be of other mineral content.
- iii. The sand must, as far as possible, consist of rounded irregular shaped grains; quarry sands are preferable to river or sea sands, in order to avoid possible salt contamination.
- iv. Sand must be kiln dried to a water level that allows free and unhindered flowing from light rail sanding nozzles

D. Additional Requirements:

- i. Contractor must identify to VTA any and all constituents of their product which are identified as hazardous pursuant to federal and state regulations.
- ii. Contractor must furnish Material Safety Data Sheets (MSDS/SDS) to VTA.
- iii. Contractor must have at least three (3) years’ experience providing traction sand to Class 1 railroads or Mass Transit or a Light Rail Agency. References must be provided upon request by VTA.

- iv. In addition, Contractor must deliver bulk traction sand to the VTA maintenance facility during normal business hours, at the following address:

Guadalupe Light Rail Division
101 Younger Ave
San Jose, CA, 95110

- v. VTA will have the right to randomly sample and test traction sand for performance criteria and quality assurance. Cost of sampling and testing shall be paid by VTA. Any traction sand that does not meet VTA specifications shall be removed from VTA's maintenance facility within 24 hours and immediately replaced with sand that meets all contractual requirements.

3. TIME FOR DELIVERY:

Contractor will deliver the ordered goods or services within 1-5 days upon VTA's issuance of a purchase order hereunder.

4. REQUIREMENTS CONTRACT:

(a) This is a requirements contract for the goods or services specified, and effective for the period stated, in the Contract. The quantities of goods or services specified herein are estimates only and are not purchased by this Contract. Except as this Contract may otherwise provide, if VTA's requirements do not result in orders in the quantities described as "estimated" herein, that fact shall not constitute the basis for an equitable price adjustment.

(b) The Contractor shall furnish to VTA all goods or services specified herein and called for by purchase orders issued in accordance with the Contract.

(c) VTA may issue purchase orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Except as this Contract otherwise provides, VTA shall exclusively order from the Contractor all the goods or services specified herein that are required by VTA.

(e) If VTA urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this Contract, and if the Contractor will not accept an order providing for the accelerated delivery, VTA may acquire the urgently required goods or services from another source, which will not constitute a breach of this Contract.

(f) Any purchase order issued during the effective period of this Contract but not completed within that period shall be completed by the Contractor within the time specified in the order. This Contract shall govern the Contractor's and VTA's rights and obligations with respect to that order to the same extent as if the order were completed during the Contract's effective period.

**BID FORM 1-A: BIDDER ACKNOWLEDGEMENT OF ADDENDA
P18268
LIGHT RAIL VEHICLE TRACTION SAND**

In compliance with your **Invitation for Bid** for this project, the undersigned Bidder, being thoroughly familiar with the terms and conditions of the solicitation documents, hereby bids and agrees fully to perform the work within the time stated and in strict accordance with the solicitation documents.

Note: It is the Bidder’s responsibility to obtain all addenda to this solicitation.

The Bidder hereby acknowledges receipt of the following Addenda to the solicitation documents:

Addendum No. _____	Dated _____			Addendum No. _____	Dated _____		
Addendum No. _____	Dated _____			Addendum No. _____	Dated _____		
Addendum No. _____	Dated _____			Addendum No. _____	Dated _____		
Addendum No. _____	Dated _____			Addendum No. _____	Dated _____		

**BID FORM 1-B: SCHEDULE OF PRICES AND ESTIMATED QUANTITIES
P18268
LIGHT RAIL VEHICLE TRACTION SAND**

CEMEX P/N#	DESCRIPTION	Proposed MFG/ P/N#	Est. Annual Qty	Unit Price (USD)	Freight Cost (Per load)	Other Cost** (per load)	Total Unit Cost (Unit Price+ Freight+ Other Cost)	5 Year Est. Qty.	Extended Total Cost (Total Unit Cost x 5 Year Est. Qty)
1413850	Bulk Traction Sand (150 Tons)		10	\$	\$	\$	\$	50	\$
1413851	Bulk Traction Sand (50 lbs Sack)		1080	\$	\$	\$	\$	5400	\$
	DESCRIPTION (*Cost will be reimbursed to Contractor)		Est. Annual Qty	Rate				5 Year Est. Qty	Extended Total Cost (Rate x 5 Year Est. Qty)
	*RWP Safety Training Hourly Rate (Estimated 1 employees x 5 hours per year, Hourly)		5	\$				25	
	*Track Allocation Meetings (Hourly Rate)		1	\$				5	
	*Background Check Fees (charged by 3 rd party company, Yearly)		1	\$				5	
	*Restricted Access Permit (Yearly)		1	\$3,050.00				5	\$15,250.00
	*General Contractor Safety Seminar (also known as, Roadway Worker Protection Training, Yearly)		1	\$ 85.00				5	\$ 425.00
								Sub-Total	\$
								Sales Tax (9.25%)	\$
								BID TOTAL	\$

**Please specify Other Cost:

**BIDDER SIGNATURE PAGE
P18268
LIGHT RAIL VEHICLE TRACTION SAND**

BY SIGNING, THE BIDDER CERTIFIES THAT HE/SHE HAS READ AND UNDERSTANDS THE BID DOCUMENTS AND THAT HE/SHE OFFERS AND AGREES TO FURNISH THE GOODS AND/OR SERVICES SPECIFIED UNDER THE INSTRUCTIONS AND CONDITIONS STATED THEREIN.

SIGNATURE: _____

PRINT NAME: _____

FIRM: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL _____

DATE: _____

**SMALL BUSINESS ENTERPRISE (SBE) POLICY AND REQUIREMENTS
P18268
LIGHT RAIL VEHICLE TRACTION SAND**

1. **POLICY:** It is the policy of the Santa Clara Valley Transportation Authority to ensure that Small Business Enterprises (SBEs) as defined in federal regulations at 13 CFR Part 121 shall have the opportunity to participate in the performance of contracts and subcontracts financed with local funds.
 - A. Any certified DBE is eligible to participate as an SBE toward the SBE goal.
 - B. VTA's Office of Business Diversity Program encourages Contractors to call (408) 321-5962 for assistance in identifying eligible SBE firms. Listings of eligible firms are also available on the internet at the following: vta.org/procurement/general/sbe_search.html.
2. **GOAL:** There is no specific goal established for this Contract. However, Contractor is encouraged to make every effort to meet VTA's overall agency goal of 19% where possible.
3. **COUNTING TOWARD THE SBE GOAL:** SBEs may perform as Contractors, subcontractors (1st tier), or subcontractor to subcontractor (2nd tier). Only the value of the work actually performed by the SBE, including materials and supplies, will be counted toward the SBE goal.
 - A. An SBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.

If an SBE does not perform or exercise responsibility of at least thirty percent (30%) of the total cost of its Contract with its own work force, or if the SBE subcontracts a greater portion of work of a Contract than would be expected on the basis of normal industry practice, then it will be presumed that the SBE is not performing a commercially useful function.
 - B. Credit for an SBE vendor of materials or supplies is limited to sixty percent (60%) of the amount to be paid to the vendor for the materials or supplies unless the vendor manufactures or substantially alters the goods. Credit for SBE brokers is limited to only the fees and commissions portion of the amount paid. All other firms receive one hundred percent (100%) credit, less work subcontracted by the SBE to non-SBE firms, toward the SBE goal.
 - C. Credit for SBE trucking firms is limited to the amount performed by the SBE's own trucks and drivers and by certified SBE trucking sub haulers. An SBE trucking firm must itself own and operate at least one fully licensed, insured and operational truck used on the Contract.
 - D. In a joint venture, only the portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the SBE performs with its own forces will be counted toward the SBE goal.
 - E. During the life of a Contract, work performed by SBE firms whose certification has expired will not continue to be counted toward the SBE goal. Only work performed by a certified SBE firm will be counted toward the SBE goal when the SBE firm has been paid.

- F. Bidders are encouraged to utilize services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in VTA's community and marketplace.
4. **AWARD OF THE CONTRACT:** VTA will award this Contract to the lowest responsible and responsive Bidder as required by federal and California laws.
5. **SUBMITTALS:** All Bidders shall submit the following:
- A. Bid Form 2-A: Listing of SBE Contractor, subcontractor(s) or supplier(s) Bidder intends to use and count toward VTA's overall agency SBE goal, with a complete description of services or supplies to be provided by each, work which the SBE further subcontracts to non-SBE firms, and the dollar value of each such subcontracting or supplies transaction.
 - B. Bid Form 2-B: Supplemental Contractor and Subcontractor Information.
6. **NONDISCRIMINATION:** The Contractor shall make VTA's contracting requirements known to subcontractors, vendors and suppliers who are certified or accepted as certifiable as SBE, as well as to non-SBE businesses, and shall provide a practical opportunity for all firms to participate in the Contract.
7. **SUBSTITUTION OF SBE SUBCONTRACTOR WITH NON-SBE SUBCONTRACTOR:** An SBE subcontractor or supplier shall not be replaced without the prior written consent of VTA. Contractor shall make good faith efforts to find another SBE subcontractor or supplier to substitute for the original SBE. The efforts employed by the Contractor shall be those that one could reasonably expect a Contractor to take if the Contractor were actively and aggressively trying to engage a certified SBE firm to substitute for an SBE firm that has to be replaced and shall include the following:
- A. Contractor shall immediately notify VTA in writing of its intent to replace a SBE firm, and of the reasons therefore, prior to any solicitation or advertisement for replacement firms. A copy of the notice shall be provided to the VTA Office of Business Diversity Program (OBDP).
 - B. VTA will provide written notice to the SBE firm of Contractor's request for substitution and of the reasons therefor and they will be requested to provide any written objections within five (5) working days.
 - C. Contractor shall utilize the following sources for identifying certified SBE firms for solicitation: California DBE Uniform Certification Program (UCP) database; California Department of General Services Small Business database; VTA SBE database.
 - D. Contractor shall provide written notice to at least five (5) firms in each work or material/supply category to be substituted. If Contractor provides written notice to fewer than (5) five firms Contractor shall explain to OBDP in writing why the number of firms solicited was sufficient. Written notice shall be sent first to firms located in the County of Santa Clara and its contiguous counties ("local firms") and then, where appropriate, to out-of-area SBE firms.

- E. Contractor shall contact the SBE firms solicited to determine with certainty whether the firms are interested in bidding on the project. This follow-up shall be documented with telephone logs, fax logs or other written documentation and submitted to OBDP.
 - F. Contractor shall provide OBDP with the following information:
 - (1) A list and copies of all SBE and non-SBE responses to the solicitation, including all Bids received.
 - (2) If a Bid is rejected by Contractor, the reasons for the rejection.
 - (3) If Contractor rejected an SBE firm as unqualified, a description of the qualification assessment conducted by Contractor and the factors considered.
 - G. A Contractor who fails to use good faith efforts to replace an SBE firm with another SBE firm may be subject to the imposition of a penalty of up to fifteen percent (15%) of the value of the work of the subcontractor or supplier replaced.
8. **MONTHLY SBE UTILIZATION REPORT:** Contractors are required to submit a monthly SBE Utilization Report electronically to the SBE Administrator, VTA Office of Business Diversity Program. These monthly reports shall be submitted electronically and the Contractor will document the dollar value of payments to SBE firms, and the percentage of the Contract completed. VTA will monitor the Contract for compliance with SBE requirements.
- A. This system is web-based, accessible from any computer via the internet at <https://vta.sbdbe.com>. Each Contractor and subcontractor will receive an email providing them with Log On identification, and a temporary password and instructions on how to use the system. Classroom training will also be provided. Other assistance will be provided upon request.
 - B. Contractor will include this requirement in all of its subcontracts and purchase orders when required to provide or verify SBE utilization documentation.
 - C. If the SBE Utilization Reports indicate potential problems, the Contractor shall meet with the appropriate VTA representative(s) to address any deficiencies and discuss appropriate corrective actions.
 - D. Prior to final payment, Contractor will be required to submit a final SBE Utilization Report. In addition to payments to the SBEs, the final report must include payments to and other information about all other businesses, including non-SBE subcontractors, suppliers of materials, trucking firms, consultants and others.
 - E. Failure by Contractor to submit required reports as described above may be considered grounds for a determination by VTA of nonresponsibility in consideration of Contractor's eligibility to bid on or be awarded future work.
9. **PROMPT PAYMENT:** The Contractor must adhere to all federal and California prompt payment laws and regulations. If Contractor does not adhere to prompt payment requirements, penalties may apply.

**BID FORM 2-A: LISTING OF SBE CONTRACTOR OR SUBCONTRACTORS
P18268
LIGHT RAIL VEHICLE TRACTION SAND**

Issued May 15, 2019

Firm: _____	Street Address: _____
City, State: _____	Zip Code: _____
Phone: _____	Fax/E-mail: _____
Age of Firm: _____	Small Business Enterprise: Yes _____ No _____
Name and Title: _____	Signature: _____ Date: _____

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

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

CREDIT FOR SBE 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 SBE to non-SBE firms, towards the SBE goal.

CREDIT FOR SBE TRUCKING FIRMS is limited to amount performed by the SBE's own trucks and drivers and by certified SBE trucking subhaulers. A SBE trucking firm must itself own and operate at least one fully licensed, insured and operational truck used on the Contract. *A SBE must be certified or accepted as Certified by VTA.* Refer to 49 CFR Part 26.

**BID FORM 2-A: LISTING OF SBE CONTRACTOR OR SUBCONTRACTORS
P18268
LIGHT RAIL VEHICLE TRACTION SAND**

Issued May 15, 2019

Name & Address of Certified SBE	Certification Number	Agency Certifying	Age Of Firm	M* W**	Description of Work	Bid Item	Dollar Value of Contract
							\$

SBE GOALS ARE DETERMINED ON BASE CONTRACT AMOUNTTOTAL..... Total \$ _____

Base Contract Amount:	\$
SBE Contract Amount:	\$

Goal Achieved _____ % **SBE Goal** _____ %

SBE Amounts and Base Amounts Must Exclude Alternate Bids

*Minority Type: **A** = Asian, **SA**= Subcontinent Asian, **B** = Black, **H** = Hispanic, **NA** = Native American, **O** = Other, ** Woman

$\frac{\text{SBE Contract Amount}}{\text{Base Contract Amount}} \times 100 =$ _____ % _____ %

IMPORTANT! THIS FORM MUST BE SUBMITTED WITH THE BID

**BID FORM 2-B: SBE SUPPLEMENTAL CONTRACTOR AND SUBCONTRACTOR INFORMATION
P18268
LIGHT RAIL VEHICLE TRACTION SAND**

Issued May 15, 2019

This form shall be copied by the Bidder and distributed to all sub-Bidders. The completed forms are to be submitted with the Bid.

Date: _____
Contract Name and Number: _____
Firm Name: _____
Firm Address: _____
Phone Number: _____
Fax Number: _____
Age of Firm: _____

(Check one)					
Annual Gross Receipts					
Indicate bracket of income					
Below \$500K	\$500K - \$1M	\$1M-\$4M	\$4M-\$6M	\$6-\$13M	Above \$13M

Check One:	DBE <input type="checkbox"/>	SBE <input type="checkbox"/>	Non-SBE/DBE <input type="checkbox"/>
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Ethnicity*: _____ Gender: _____ Work/Trade Category: _____

A = Asian, SA = Subcontinent Asian, B = Black, C = Caucasian, H = Hispanic, NA = Native American, O = Other

Completed by Company _____
 Email Address: _____

Valley Transportation Authority
 Office of Business Diversity Program
 3331 North First Street, Bldg. A San Jose, CA 95134-1906
If you require additional forms or information, call (408) 321-5719

QUALITY ASSURANCE AND WARRANTY PROVISION
P18268
LIGHT RAIL VEHICLE TRACTION SAND

1. **QUALITY ASSURANCE SYSTEM POLICY:** The Contractor and/or supplier shall have and maintain an effectively defined and documented Quality Assurance System which demonstrates the Contractor and/or supplier's policy, objective and commitment to quality at all levels of the organization. This system manual or current quality program certification document shall be submitted in writing to VTA as part of the Bid package for approval. The Contractor and/or supplier shall also have the capability to ensure original design integrity, inspection, testing, adhering to Scope of Work and/or technical specification by preventing nonconformity at all stages from production through delivery.

2. **MANAGEMENT ORGANIZATION:** The Contractor and/or supplier shall have a designated quality assurance representative with the defined responsibility and authority to verify Contract conformance and initiate corrective and/or preventative actions on the occurrence of any nonconformance relating to product (systems, parts, components, materials, and services), performance, customer service, process and/or Quality Assurance System. VTA reserves the right to audit and assess the effectiveness of this Quality Assurance System organization. The Contractor and/or supplier shall:
 - A. Identify, document and communicate changes to the Quality Assurance System, and any problems relating to the system and its nonconformity.
 - B. Initiate, recommend or provide solutions through designated channels.
 - C. Verify the implementation of corrections, preventative actions and/or solutions.
 - D. Ensure that the Quality Assurance System requirements of this Contract are established, implemented and maintained.
 - E. Review, audit and report on the Quality Assurance System at defined intervals sufficient to ensure its continuing suitability and effectiveness in satisfying the requirements of this Contract.

WARRANTY PROVISION
P18268
LIGHT RAIL VEHICLE TRACTION SAND

1. **WARRANTY:** Warranties in this Document are in addition to any statutory remedies or warranties imposed on the Contractor and/or supplier. Consistent with this requirement, the Contractor and/or supplier shall guarantee and warrant all products adhering to products manufacture performance requirements and VTA's specified requirements. The Contractor and/or supplier shall also have and maintain an effectively defined and documented warranty administration system that demonstrates the Contractor and/or supplier's and/or Products Manufacturer's policy, procedure and commitment to respond to and resolve product returns and warranty claims within a reasonable time. The Contractor and/or supplier is required to submit warranty policy, procedure, and forms for VTA review.

INSURANCE REQUIREMENTS- EXHIBIT M-2

I. INSURANCE

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

A. Liability and Workers' Compensation Insurance

1. Minimum Scope of Coverage

Coverage must be at least as broad as:

- a. General Liability coverage; Insurance Services Office "occurrence" form CG 0001. General Liability insurance written on a "claims made" basis is not acceptable.
- b. Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
- c. Workers' Compensation insurance, as required by the Labor Code of the State of California, and Employers Liability insurance.
- d. Contractor's Pollution Liability: covering liability arising out of the treatment, handling, storage, transportation, or accidental release of any hazardous material.
- e. Cargo insurance; coverage equivalent to AIMU "All Risk" form including War, Strikes, Riots & Civil Commotion, and Domestic Transit if applicable. If cargo is shipped on an "On Deck" bill of lading, insurance policy must provide coverage for the full value of the shipment. Property insurance "In Transit" coverage is sufficient if applicable to "customers goods" or "property of others" and there is no exclusion for the means of conveyance.

2. Minimum Limits of Insurance

Contractor must maintain limits no less than:

- a. General Liability (including umbrella/excess liability): \$3,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
- b. Automobile Liability (including umbrella/excess liability): \$1,000,000 limit per accident for bodily injury and property damage.
- c. Workers' Compensation and Employers Liability: Statutory Workers' Compensation limits and Employers Liability limits of \$1,000,000 per accident.

- d. Contractor's Pollution Liability: \$2,000,000 per occurrence
- e. Cargo insurance: The limit shown on the policy must be equivalent to the largest individual shipment traveling on a single conveyance.

B. Claims Made Provisions (not applicable to General Liability or Auto Liability)

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must provide that:

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

C. Other Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability.

- a. VTA, its officers, officials, employees and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor, including VTA's general supervision of the Supplier; products and completed operations of the Supplier and its subcontractors; premises owned, occupied or used by the Supplier; or automobiles owned, leased, hired or borrowed by the Supplier. The coverage must contain no special limitations on the scope of protection afforded to VTA, its officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
- b. The Supplier's insurance coverage must 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 must be excess of the Contractor's insurance and may not contribute with it.
- c. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its officers, officials, employees, or volunteers.

- d. The Supplier's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. The General Liability General Aggregate limit must apply per project, not per policy.

2. All Coverages

- a. The insurer must 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.

3. Other Insurance Provisions

- a. The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.
- b. If any coverage forms or endorsements required by this Contract are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Contract, VTA reserves the right to require the Contractor to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

D. Acceptability of Insurers

Insurance and bonds must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

E. Certificates of Insurance

Contractor must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy are to be signed by an authorized representative of that insurer. The certificates will be issued on a standard ACORD Form. The contractor must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to Insurance.certificates@vta.org.

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

Santa Clara Valley Transportation Authority ("VTA")
3331 North First Street
San Jose, CA 95134-1906

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA Contract number must appear, the list of policies scheduled as underlying on the Umbrella policy must be listed,

Certificate Holder should be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Contract Documents.

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

C. Maintenance of Insurance

If the Contractor receives any notice that any of the insurance policies required by this Exhibit may be cancelled or coverage reduced for any reason whatsoever, Contractor or insurer must immediately provide written notice to VTA that such insurance policy required by this Exhibit is canceled or coverage is reduced.

Ed. Rev. 7-1-17

**CONTRACTOR'S QUESTIONNAIRE – EXHIBIT O
P18268
LIGHT RAIL VEHICLE TRACTION SAND**

This questionnaire is an integral part of a Vendor's quote, and shall be completed. Failure to provide the required information may cause rejection of your quote. All references and information shall be current and traceable. If the Vendor is a joint venture, each venturer shall prepare a separate form.

NAME OF VENDOR:

PRINCIPAL OFFICE

STREET ADDRESS OR P.O. NUMBER

CITY

STATE

ZIP CODE + 4

TELEPHONE

FAX

E-MAIL ADDRESS

- 1.** Are you an individual _____, a partnership _____, a corporation _____, or a joint venture _____?
(Check appropriate business structure).

If partnership, list names and addresses of partners; if corporation, list names of officers and directors and State of incorporation; if joint venture, list names and addresses of venturers and, if any venture is a corporation, partnership or joint venture, list the same information for each such corporation, partnership and joint venture.

NAME	ADDRESS

2. How many years has your organization been in business as a Contractor under your present business name? _____ years.
3. How many people are currently employed by your firm? _____ In Santa Clara County? _____
4. Of the people employed, what are the job classifications involved in the services required by this solicitation, and how many people are assigned to each classification?

JOB CLASSIFICATION	NO. OF EMPLOYEES

5. What is the location of your facility located in Santa Clara County? What is the square footage of this facility? (If the facility is not in Santa Clara County, indicate the location and square footage of the nearest facility to VTA's Administrative Offices on First Street, San Jose).

6. What are the types and number of vehicles you will use in the performance of services required by this solicitation?

TYPE	NUMBER

7. List the names of companies and public agencies that you have furnished service to within the last twelve months.

NAME AND ADDRESS:	
TYPE OF BUSINESS:	
CONTACT INFORMATION:	
NAME AND ADDRESS:	
TYPE OF BUSINESS:	
CONTACT INFORMATION:	
NAME AND ADDRESS:	
TYPE OF BUSINESS:	
CONTACT INFORMATION:	

8. List the names of companies and public agencies that you have current orders for the same or similar service.

NAME AND ADDRESS:	
TYPE OF BUSINESS:	
CONTACT INFORMATION:	
NAME AND ADDRESS:	
TYPE OF BUSINESS:	
CONTACT INFORMATION:	
NAME AND ADDRESS:	
TYPE OF BUSINESS:	
CONTACT INFORMATION:	

9. Have you or your organization, or any officer or partner thereof, failed to complete a contract? If so, give details:

10. Is any litigation pending against your organization? If so, give details:

11. Are you a certified SBE/DBE? If yes, with which agency do you hold your certification:

The undersigned certifies that (s)he is legally authorized by the Vendor to make the statements and representations contained in this document, and represents and warrants that the foregoing information is true and accurate to the best of his knowledge, and intends that the Santa Clara Valley Transportation Authority, Santa Clara County, California, rely thereon in evaluating the Vendor.

NAME OF COMPANY

SIGNATURE

PRINTED NAME/ TITLE

DATE

SAMPLE CONTRACT

CONTRACT P18268

BETWEEN

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

AND

SUPPLIER NAME

FOR

LIGHT RAIL VEHICLE TRACTION SAND

CONTRACT No. P18268

This contract ("Contract") is made and entered into by and between Santa Clara Valley Transportation Authority ("VTA") and _____ ("Contractor"). This Contract expresses the terms and conditions for the purchase of Light Rail Vehicle Traction Sand.

1. **CONTRACT COMPONENTS:**

The Contract consists of:

- A. Exhibit 1 – Invitation for Bid P18268 dated May 15, 2019, and any addenda thereto (the "IFB")
- B. Exhibit 2 – Contractor's Bid Form 1-B dated June 19, 2019

All parts of the Contract are intended to be complementary and what is set forth in any one document is as binding as if set forth in each document.

In case of any conflict among these documents where the parties' intended resolution is not clear, the order of precedence shall be in the order listed above. In the event that any of the language set forth in the Contract is inconsistent or contradictory, then the language that is most favorable to VTA shall control.

2. **SCOPE OF WORK:** Contractor shall furnish and deliver Light Rail Vehicle Traction Sand as described in the Scope of Work of the IFB.

3. **CONTRACT PRICE:** VTA shall pay Contractor as set forth in Exhibit 2. The total Contract price shall not exceed [\$XXX.XX].

4. **TERM OF CONTRACT:** Unless otherwise earlier terminated pursuant to the terms herein, the term of this Contract will be five (5) years from the Effective Date (as defined in the signature block below).

5. **SERVICE OF NOTICE:** Any notice required or permitted to be given under this Contract shall be deemed given when personally delivered to recipient thereof or mailed by registered or certified mail, return receipt requested, postage prepaid, to the appropriate recipient thereof, in the case of the Contractor at the business address specified in its Bid and in the case of VTA, at 3331 North First Street, Building A, San Jose, CA 95134-1927, or at any other address which either party may subsequently designate in writing to the other party.

6. **ENTIRE AGREEMENT:** This Contract constitutes the complete and entire agreement between VTA and the Contractor and supersedes any prior representations, understandings, communications, commitments, agreements or Proposals, oral or written, which are not incorporated as part of the Contract.

7. **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.

8. **FORUM SELECTION:** Contractor will resolve any claim, cause of action or dispute (collectively “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.
9. **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.

A. AUTHORIZED REPRESENTATIVES:

VTA:

Thor Vue
Chief Procurement Officer
Procurement, Contracts and Materials Management
3331 N. First Street, Bldg. A
San Jose, CA 95134-1906
thor.vue@vta.org

CONTRACTOR NAME:

Name/Title
Address
City/State/Zip
Telephone
Email

B. NOTICES: Notices shall be in writing and addressed to the Authorized Representatives at the address set forth above.

C. 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:

Giang Ngo, Buyer Title
3331 N. First Street, Bldg. A
San Jose, CA 95134-1906
Buyer.name@vta.org

CONTRACTOR NAME

Name/Title
Address
City/State/Zip
Telephone

APPENDIX A- RESTRICTED ACCESS WORK PERMIT FORM



Solutions that move you

ACCESS PERMIT APPLICATION

CONSTRUCTION ACCESS PERMIT (CAP)

RESTRICTED ACCESS PERMIT

Permit Applicant:		Address		VTA Contract / Project Number:P18268
City:		State	Zip:	SION Number:
Contact Person:		Title:		Phone Number:
Fax Number:	E-Mail Address:		24 Hour Emergency Phone Number:	
Emergency Contact Person:				
WORK BEING PERFORMED FOR:				
Company Name:		Address:		
City:		State	Zip:	
Contact Person:		Phone Number:	E-Mail Address:	
WORK BEING PERFORMED By:				
Company Name:		Address:		
City:		State	Zip:	
Contact Person:		Phone Number:	E-Mail Address:	
PROJECT LOCATION				
Location:				
Start Date:	Completion Date:	Estimated Regular Work Days:	Overtime, Weekend & Holiday Days	
Number of Persons to be Safety Trained:			X (\$85.00 Per Person)	
<p>PERMIT EVALUATION PROCESS USUALLY AVERAGES 7 - 14 DAYS FROM DATE RECEIVED</p> <p>Submit Completed Application Package To: Santa Clara Valley Transportation Authority Restricted Access Permit Office 101 West Younger Ave. Build. A 2nd Floor, San Jose, CA 95110 Phone: (408) 546-7608; Fax: (408) 993-2174</p>				
By signing this application form, the permit applicant agrees to all of the terms and conditions contained herein and to any provisions set forth in the Restricted Access Permit.				
Authorized Signature:		Print Name:	Date:	Phone Number:

RESTRICTED ACCESS PERMIT

VTA Restricted Access Permit Office 101 West Younger Avenue San Jose California 95110

Restricted Access Permit Office: (408) 546-7608
Restricted Access Permit Office Fax (408) 993-2174

VTA Operations Control Center (OCC) (408) 546-7688
VTA Construction Permits Fax (408) 321-7569

General Contractor ("Contractor") Name:			Main Office Phone Number	VTA PERMIT NUMBER	
Address:			After hours Phone Number	SION	
City:	State	Zip	On Site Wireless Number	VTA Project / Contract Number	
Subcontractor:		Requester's Name		Safety Critical Item Check List Completed:	
Number of Work Sites	Number Of Employees	Security Background:	Restricted Access	Way Power and Signal	
Type of Work to be Performed:					
Equipment to be Used:					
EXACT LOCATION OF WORK					
Direction: (Check Appropriate Boxes) <input type="checkbox"/> North <input type="checkbox"/> South <input type="checkbox"/> East <input type="checkbox"/> West					
At:		Between:		And:	
Start Date:	Start Time:	End Date:	End Time:		
PROTECTION REQUIRED					
Power Off / Lock & Tag	# Tags required	Reduced Speed Zone	VTA Staff on Site		
# of Locks required	Train Operations	Flagmen Required	Hardhats Required		
Special Requirements: (See Back of Permit for NORMAL Rules)					
CONTRACTOR AGREEMENT					
I have read and Understand the rules and requirements detailed above and on the reverse side of this form and will abide by them. This permit may be revoked at any time for any violation of listed rules and requirements or as deemed necessary for the safety of personnel and equipment. It is further understood I will comply with all material contained in the "Roadway Worker Protection" training book and the "Roadway Worker On-Track Safety Manual" received during roadway worker training.					
Signature of Contractor's Authorized Representative:		Title:		Date:	
VTA AUTHORIZATION					
Power Department	Track Department	Signal Department	Superintendent WP&S		
Superintendent Vehicle Maintenance	Signal Department	Facility Maintenance Supervisor	Vehicle Maintenance Supervisor		
RESTRICTED ACCESS OFFICE					
Approved <input type="checkbox"/>			Denied <input type="checkbox"/>		
VTA Track Allocation Representative:		Date:	CPO Representative:		Date:

A DOUBLE-SIDED COPY OF THIS PERMIT MUST BE AVAILABLE AT THE WORK SITE AT ALL TIMES

Distribution: Original-Restricted Access Permit

Copy: Contractor, OCC, Way Power & Signal Superintendent

Revised: 08-05-11

RESTRICTED ACCESS WORK RULES

1. **PERMIT REQUIREMENTS-** Any access to enter or cross the track as well as all worked performed within ten (10) feet of the nearest rail or Overhead Contact System (OCS) shall require a permit. Permits are available through the Light Rail Restricted Access Permit Office. Unless the Track Allocation Chairperson makes an exception, all permit and training fees must be paid prior to issuance of a permit or attendance in a safety training class. In other cases such as urgent work or emergencies, by signing this document, Contractor agrees to pay all associated permit and training fees.
2. **CLEARANCE FROM TRAINS-** Under California Public Utilities Commission (CPUC) General Order 143C, all worked performed within six (6) feet of the nearest rail shall require a Lookout/Watchperson to watch for approaching trains. This Lookout/Watchperson shall instruct workers to take equipment and move to the predetermined place of safety at least six (6) feet from the track fifteen (15) seconds prior to the approach of a train. When workers are clear, ONLY the EIC (as defined in paragraph 5 below) or SEIC shall give the train a "PROCEED" hand signal. If workers or equipment fail to clear, the train must be given a "STOP" hand signal. When clear the train will be given a "PROCEED" Signal.
3. **CLEARANCE FROM ENERGIZED OVERHEAD POWER LINES-** The OCS is energized with 600 to 900 volts of direct current at all times, in accordance with CAL- OSHA Title 8, all work (including metal ladders, metal handle extensions, or equipment) shall remain ten (10) feet from any overhead wire unless a ground strap has been installed and is visible to the workers and VTA's Lock Out / Tag Out Procedures have been approved and completed.
4. **PERMIT AVAILABILITY-** A double sided copy of this permit must be available at the Worksite. Permits must be shown to any VTA, CPUC or FRA representative as well as any other authorized person when requested.
5. **SAFETY TRAINING-** Prior to commencement of work all workers must attend and complete VTA's "Basic Roadway Worker Protection" training class. This class trains persons working on VTA's right-of-way to work safely in a railroad environment. Every work crew must have an "Employee In Charge" referred to as the EIC The EIC must successfully complete the VTA "Advanced Roadway Worker Protection" training class and must be at the Worksite at all times. The EIC Must have the ability to read, write and speak English in order to communicate with VTA's Operation Control Center (OCC) to document and relay instructions. Once training fees have been paid, you may schedule training classes by calling the Light Rail Technical Training Department at (408) 952-6800. Training fees are \$85.00 per person. Training may be provided off site to large groups when approved in advance. An estimate for training costs will be provided, a control number will be issued and must be provided when making training reservations.
6. **SAFETY EQUIPMENT-** Proper safety equipment must be worn at all times as specified in the VTA Roadway Worker Protection training manual.
7. **CONES AND FLAGS-** Work zone cones and flags shall be posted when working within six (6) feet of the nearest rail. The work zones shall be established as described in the "Roadway Worker Protection" training manual. VTA requires workers to establish a safe work area for workers and to provide advance warning to train operators allowing them to slow to a safe speed or stop prior to reaching workers. VTA may require a work zone outside the safety envelope when tools or equipment are used that have the potential to foul the trackway. Cones and flags left longer than thirty (30) minutes without the obvious presence of workers (unless approved by OCC) shall be removed by Contractor and become the property of VTA. Cost and procurement of cones and flags shall be the responsibility of Contractor. Cones and flags may be purchased at local safety suppliers. Twenty-two (22) inch reflective cones illuminated from within shall be used during times of limited visibility. Cones and flags must be no closer than eighteen (18) inches from the rail and placed to allow a clear unobstructed view by train operators.
8. **NOTIFICATION TO OCC-**The E.I.C. shall call OCC at (408) 546-7688 prior to establishing work zones and again at the end of the work shift when the work zone is to be removed.
9. **OVERHEAD POWER REMOVAL-** Power removal, when necessary shall be done in accordance with VTA's Lock Out / Tag Out procedures under the direction of VTA's Way Power and Signals Department and VTA's Operation Control Center. All request must be coordinated through the Track Allocation Meeting.
10. **SAFETY ADHERENCE / PERMIT EXPIRATION / DURATION-** Contractors shall be strictly confined to the time and location restrictions of their permit. When performing work on or about the right-of-way, contractors must adhere to all rules and procedures contained in the "Light Rail Restricted Access Procedures Manual". Work sites will be monitored; any deviation from or violation of these rules may be cause for immediate eviction of Contractor from the Worksite at the expense of Contractor.
11. **COST / CLAIMS-** Any cost to VTA resulting from this permit, the level of protection required (such as power removal, Lookout/Watchmen, EIC, Bus Bridge, etc.) or any unscheduled disruption to train or bus service caused by Contractor's actions or inaction will be the responsibility of Contractor. In consideration of issuance of this permit and , in addition to any other indemnity obligations it may have to VTA, Contractor shall indemnify and hold harmless the Valley transportation Authority (VTA), its employees and agents from any demands, claims or judgments arising as a result of any act or omission of Contractor, or Contractor's employees or agents.
12. **SIGNALS-** Hand signals used by EIC/SEIC shall be as described in VTA's "Roadway Worker Protection" training manual and as instructed in the Roadway Worker Protection safety training class. On the Vasona Freight track Roadway Worker Protection rules shall apply. Caution must be used as Union Pacific freight trains may not observe VTA hand signals.
13. **GENERAL CONDITIONS- LEGAL RESPONSIBILITIES AND RELATIONSHIPS**

CHARACTER OF WORKMEN: If any subcontractor or person employed by Contractor shall appear to VTA to be incompetent or to act in a disorderly, improper or unsafe manner, such person shall be discharged immediately at the request of VTA, and such person may not be employed on any current or future VTA project.

WORKING ENVIRONMENT- Contractor shall ensure and maintain a working environment free of harassment and intimidation between Contractor's staff, VTA employees and members of the public at all VTA project sites and in all VTA facilities where Contractors staff are assigned to work. Conduct that creates an intimidating, hostile or offensive working environment is prohibited. Failure to comply with the above will be considered a material breach of this Contract.

RESTRICTED ACCESS PERMIT (RAP) TERMS AND CONDITIONS

I. THE FOLLOWING ITEMS OR CONDITIONS ARE REQUIRED FOR ALL PERMIT APPLICATIONS:

- a. A completed and signed Restricted Access Permit Form. All applicants must adhere to the VTA background security screening process prior to applying for a Restricted Access Permit.
 - b. Minimum Application Fee of \$3,050.00 per location per year and Roadway Worker Protection (RWP) Safety Training Fee of \$85.00 per person. The final permit fee will be determined after review of the plans. Payment may be made by cash or check, payable to "Valley Transportation Authority" (VTA). For further information regarding permit fees call (408) 546-7608. Permit Applicant agrees to reimburse VTA for all actual and direct costs expended by VTA, including costs to process this application and inspect the permit work.
- * All public agencies that are self-insured must provide to VTA evidence of self-insurance in a form acceptable to VTA prior to issuance of the permit.

II. THE FOLLOWING ITEMS OR CONDITIONS ARE REQUIRED WHEN APPLICABLE:

- a. When workers or their equipment are working within or have the potential of working within 10 feet of the Light Rail Tracks/System, or over/under any catenary system, Contractor is required to obtain a Restricted Access Permit.
- b. When workers or their equipment are working within or have the potential of working within 15 feet of Caltrain's (JPB) tracks or 25 feet of Union Pacific Railroad's (UPRR) tracks, within VTA property, all workers are required to complete the appropriate RWP
- c. Work within the Silicon Valley Rapid Transit (SVRT/BART) Corridor requires a permit or written authorization from UPRR. For UPRR permit information, contact Patrick Kerr, Manager of Public Projects, Union Pacific Railroad, 10031 Foothills Blvd., Roseville, California 95747, or call (916) 789-6334. A copy of UPRR's permit or written authorization will be required prior to VTA issuing a permit. The UPRR's website address is www.uprr.com. All workers are required to complete RWP Safety Training. Call the SVRT Rail Access Coordinator for further information: Bill Baker (408) 321-5925 or James Mendez (408) 715-8279.
- d. An approved traffic control plan. (If applicable)
- e. Work within 50 feet of the Light Rail Tracks/System or over/under any Catenary System or within 50 feet of Heavy Rail Tracks requires Railroad Protective Liability Insurance.
- f. A copy of Contractor's State of California Contractor's License.
- g. Applicants needing to install a utility or a facility on property owned in fee by VTA must submit a copy of a document such as a License Agreement or Recorded Easement, that allows applicant to enter, construct, install, maintain or operate within VTA property. If no such document exists, applicant must enter into an applicable Agreement with VTA prior to receiving a Construction Access Permit. Due to the fact that license fees are based on property values and other factors, fee information will be provided after the application has been reviewed and approved by VTA.
- h. As stated in Government Code 4216.9. (a), "No permit to excavate ...shall be valid unless the applicant has been provided with an initial inquiry identification number..." Permit Applicant or its Contractor shall notify VTA's Permit & Utility Services Unit of the USA Ticket Number prior to start of work.

III. POWER SHUTDOWN:

VTA will make an assessment to determine if a power shutdown of the OCS is required. In your (Permit Applicant's) opinion, will this job require the OCS power to be shut down in order to safely perform this work?

Yes No

Required for all work above or within 10' of OCS

If VTA determines that an OCS power shutdown is required, any costs incurred will be borne by Permit Applicant or its Contractor.

IV. BUS STOP AND/OR SERVICE INTERRUPTION:

Will this project require blockage of a VTA Bus Stop or cause a Service Interruption?

Yes No

Revised: 05.07.14

Authorized Signature:	Print Name:	Date:	Phone Number:
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SAFETY CRITICAL ITEMS CHECK LIST

Contractor / VTA Employee:	Contract Number: P18268	Project Number:	Permit Number:
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Contractor will check the boxes of those items they will and/or may come in contact with in the process of performing their job. In the additional space provided indicate the selected item number and provide a brief explanation of those items. If any items other than "NONE OF THE ABOVE" have been selected, signatures are required on the bottom of the form prior to commencement of work.

- 1. Electrical Panels / Cabinets
- 2. Cables (any)
- 3. Tracks (or rail)
- 4. Electrical Systems
- 5. Traction Electrification System (TES)
- 6. Electrical Sub Systems
- 7. Signals (including TWC Loops)
- 8. Overhead Catenary System (OCS)
- 9. Sub Stations
- 10. Negative Return Cables
- 11. Track Switches
- 12. Impedance Bonds
- 13. Electrified Gates or Doors
- 14. Confined Spaces (must provide proof of training)
- 15. Manholes or Duct Bank Work
- 16. Digging (any) USA Tag Number:
- 17. Other:
- 18. Other:
- 19. None of the Above

Explanation of Items 1-17 (more space provided on reverse side):

Contractor Signature:

Date:

Track Allocation Chairperson:	Date:	Power Supervisor:	Date:
Track Supervisor:	Date:	Superintendent of Way Power & Signal	Date:
Signal Supervisor:	Date:	Superintendent of Vehicle Maintenance	Date:
Passenger Facility Maintenance Supervisor:	Date:	Signal Supervisor:	Date:

