

Request for Proposals
RFP S19101

On-Call Land Surveying and Mapping Services

Date: August 28, 2019
Chris Valle, Contracts Administrator



TABLE OF CONTENTS

INTRODUCTION	3
I. INSTRUCTIONS TO PROPOSERS	5
II. PROPOSER'S MINIMUM QUALIFICATIONS	8
III. EVALUATION AND SELECTION	9
IV. PROPOSAL FORMAT AND CONTENT	10
V. BUSINESS DIVERSITY PROGRAM POLICY	12
VI. INSURANCE AND INDEMNIFICATION REQUIREMENTS	18
VII. PROTESTS	18
VIII. SCOPE OF SERVICES	19
IX. ADMINISTRATIVE SUBMITTALS	21
X. EXHIBITS	31



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

For more information about VTA, log on to www.VTA.org.

ABOUT RFP S19101: VTA seeks proposals to establish an on-call list of qualified firms to provide land surveying and mapping services for various facilities, operations, real estate, highway, and rail projects. Selected firms will be expected to meet on an as-needed basis with VTA staff and to provide the complete, professional and high-quality services needed to complete the tasks outlined in section VIII “Scope of Services”. VTA will be the sole judge determining which proposed firms best meet the needs of VTA.

The majority of the projects for which on-call surveying and mapping services may be needed consist of highway improvement and rail extension projects. Highway projects involve congestion relief elements such as express lanes, pedestrian overcrossings, noise mitigations (sound walls), and interchange improvements. Rail projects include light rail extensions and BART’s extension to Santa Clara County.

Most of the survey services required for highway and rail projects include both right-of-way survey support services and construction verification surveys. Typically, construction staking for highway and rail projects is performed by land surveying firms working directly for construction contractors rather than VTA. Examples of other types of projects for which on-call services may be needed include improvements to VTA’s transit facilities, such as bus yards.

VTA has in-house survey staff who provide some of the right-of-way survey services themselves. However, VTA relies upon consultants to augment these efforts. VTA does not have the survey equipment or staff required to provide field survey services and instead relies upon consultants for this entirely.

NOTICE TO PROPOSERS OF LIMITATION OF FUTURE CONTRACTING: The Proposer(s) selected under this RFP will be precluded from submitting proposals or bids as a prime



contractor or subcontractor for any future procurement with VTA if the specifications, requirements, scope of services, and/or RFPs for such work were developed or influenced by the work performed under the contract resulting from this RFP. Further, if a contractor or subcontractor obtains or has access to nonpublic information related to a future RFP through work performed under this RFP, that contractor or subcontractor may be barred from submitting proposals as a prime contractor or subcontractor on that future RFP.

NOTICE TO PROPOSERS OF REQUIREMENT TO AVOID CONFLICTS OF INTERESTS: Contractors and subcontractors performing work resulting from this RFP are required to avoid conflicts of interest resulting from services provided to VTA through other engagements. In particular, contractors and subcontractors providing services under any engagements that developed or influenced the requirements, scope of services, or criteria for this RFP are ineligible to participate in the work resulting from this RFP. Contractors and subcontractors providing services under such engagements that involve the supervision, oversight, review, critique, or acceptance of work products under this RFP are also ineligible to participate in the work resulting from this RFP.

Similarly, contractors and subcontractors who have or who have had access to nonpublic information related to this RFP may have a conflict of interest and should refrain from participating in the work resulting from this RFP.

Contractors and subcontractors proposing to provide services under this RFP remain responsible for avoiding conflicts of interest and must review their existing VTA engagements with their prospective teaming partners before submitting proposal under this RFP to assure that conflicts of interest are avoided. Contractors and subcontractors performing work resulting from this RFP must continue to monitor for and avoid conflicts of interest at all times.

In addition to contractors' and subcontractors' obligations to avoid conflicts of interest, VTA also monitors for potential conflicts. VTA reviews all potential conflicts, whether actual or apparent, on a case-by-case basis. VTA reserves the right to determine whether an actual conflict exists in its sole discretion and to determine whether a potential conflict of interest exists in its reasonable discretion. Nothing in this RFP is intended to operate as a waiver of either actual or apparent conflicts.



I. INSTRUCTIONS TO PROPOSERS

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

Table 1

ACTIVITY	DATE/TIME
Issue RFP	8/28/2019
Pre-Proposal Conference	9/11/2019 at 2:00 p.m.
Deadline to Submit Questions	9/13/2019 at 4:00 p.m.
Deadline to Submit Proposal	9/24/2019 at 4:00 p.m.
Interviews	10/9/2019 – 10/10/2019

B. DESIGNATED POINT OF CONTACT: All communications with VTA regarding this RFP shall be in writing (US mail/email) to the Designated Point of Contact identified below. All emails must indicate in the subject line “RFP S19101 for On-Call Land Surveying and Mapping Services.” No telephone calls will be accepted. Except as otherwise provided herein, no contact will be entertained by the Procurement, Contracts, and Materials Management staff outside of the formal Q&A period, and/or by anyone other than the Designated Point of Contact regarding this RFP.

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

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

Chris Valle, Contracts Administrator II
Santa Clara Valley Transportation Authority
3331 North First Street, Building A
San Jose, California 95134
Email: chris.valle@VTA.org

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

Santa Clara Valley Transportation Authority
3331 North First Street, Building B, Room 104
San Jose, California 95134

D. EXAMINATION OF PROPOSAL DOCUMENTS: By submitting a Proposal, the Proposer represents that it has thoroughly examined and become familiar with the work



required under this RFP, and that it is capable of performing quality work to achieve VTA's objectives.

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

Questions or comments regarding this RFP must be submitted in writing and must be received by VTA no later than the date and time stated in Table 1. Email questions must be submitted to the Designated Point of Contact listed above, and shall include "RFP S19101 QUESTIONS" in the subject line.

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

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

The Proposer shall submit five (5) printed copies and one (1) copy of the Proposal in an electronic format in the form of a CD, DVD, or flash drive accompanied by a separate and sealed envelope, containing one printed copy of the Rate Sheet (Form 4) and the DBE/SBE forms (Forms 5, Parts 1 and 2).

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

"RFP S19101 ON-CALL LAND SURVEYING AND MAPPING SERVICES"

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

- G. WITHDRAWAL OF PROPOSALS:** A Proposer may withdraw its Proposal at any time before the expiration of the time for submission of Proposals as provided in this RFP by delivering to the Designated Point of Contact a written request for withdrawal signed by, or on behalf of, the Proposer.



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

VTA reserves the right to:

- Reject any or all Proposals.
- Issue subsequent Requests for Proposal.
- Postpone opening for its own convenience.
- Remedy technical errors in the Request for Proposal process.
- Approve or disapprove the use of particular subcontractors.
- Solicit best and final offers from all or some of the Proposers.
- Award a professional services contract to one or more Proposers.
- Waive informalities and irregularities in Proposals.
- Conduct interviews at its discretion.
- Evaluate the performance of any contractor at the close-out of a task order or contract.

I. CONTRACT TYPE: It is anticipated that VTA will award a professional services contract (“Contract”). If awarded, the Contract will be a Task Order contract with a term of five (5) years plus two one-year options. This RFP does not commit VTA to enter into such Contract nor does it obligate VTA to pay for costs incurred in preparation or submission of Proposals or in anticipation of entry into a Contract.

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

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

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

L. ECONOMIC INTEREST FORM 700: The Proposer’s key person as well as other positions within his or her firm, determined by VTA, to be participating in the making of governmental decisions will each be required to file a Form 700 the financial disclosure form mandated by the Fair Political Practices Commissions (FPPC). The Form 700 will be



required to be filed upon execution of the Contract in which the VTA retains the services of the Proposer, annually thereafter, and upon separation of services pursuant to FPPC rules and regulations.

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

II. PROPOSER'S MINIMUM QUALIFICATIONS

A. REQUIRED MINIMUM QUALIFICATIONS OF THE FIRM: The Proposer must have knowledge and experience with:

- Application of the regulations of the California Land Surveyor's and Subdivision Map Acts;
- Principles and practices of boundary determination, construction staking, drafting, legal descriptions, project control adjustments, project management, right-of-way mapping, and other typical land surveying services; and
- Preparation of clear and comprehensive reports and technical correspondence.

B. THE REQUIRED MINIMUM QUALIFICATION OF THE PROPOSER'S PROJECT MANAGER:

As part of its Proposal, the Proposer must identify one proposed personnel member to serve as "Project Manager" for the Contract, if Proposer is selected for award. If the Proposer is selected for award, the Project Manager will be the single point-of-contact between VTA's Survey and Mapping Manager, or their designee, and the Proposer for the duration of the Contract. In addition, the Project Manager will be responsible for the project management of any Task Orders issued under the Contract including, but not limited to: planning, executing, managing, controlling, and closing Task Orders. The Project Manager must have the following knowledge and experience:

- Be registered to practice land surveying in the State of California;
- Have at least ten (10) years of experience providing land surveying services;
- Have a proven track record of successfully completing projects of this type including expediting delivery;
- Have demonstrated excellence in project management; and
- Have effective communication skills, both verbally and in writing.



III. EVALUATION AND SELECTION

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

Qualification of the Firm	50 Points
Staffing and Project Organization	40 Points
Local Firm Preference	10 Points

1. **QUALIFICATION OF THE FIRM:** Qualifications to be considered include but are not limited to: technical experience in performing work of a closely similar nature; experience working with transit properties or other public agencies; record of completing work on schedule; strength and stability of the firm; technical experience and strength and stability of proposed subcontractors; and assessments by client references.
2. **STAFFING AND PROJECT ORGANIZATION:** Qualifications of project staff will be considered, particularly key personnel, and, especially, the Project Manager. Other factors to be considered include but are not limited to key personnel’s level of involvement in performing related work, logic of project organization; adequacy of labor commitment, and concurrence in the restrictions on changes in key personnel (including the Project Manager).
3. **LOCAL FIRM PREFERENCE** Five (5) points shall be awarded if at least fifty percent (50%) of the dollar value of services to be rendered will be performed by a local firm. An additional point shall be awarded for each additional ten percent (10%) of the dollar value of services to be performed by a local firm, to a maximum point award of ten (10) points.

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

Proposers are asked to keep the interview dates stated in Section I, A Table 1 available in the event the review board conducts interviews. If invited to interview, VTA will notify Proposers regarding the schedule and other pertinent interview information. Typically, the interview is scheduled for one (1) hour and requires the project manager to be a lead participant.

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



C. BASIS OF AWARD: When the review board has completed its work, negotiations will be conducted for the labor rates and exceptions to the Contract listed on Form 3.

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

When the review board has completed its work, VTA will establish an on-call list of qualified firms. VTA will issue a Notice of Recommended Award.

Following evaluations of the stated criteria, VTA will open the sealed Proposed Billing Rate from the highest ranked Proposer and enter into negotiations for cost and any timely-submitted exceptions submitted by the Proposer.

In the event negotiations are unsuccessful and the parties have reached an impasse, negotiations are deemed concluded and cannot later be resumed with that Proposer.

Once on-call contract(s) have been awarded, task orders will be assigned as follows: The issuance of task orders to specific firms will be based upon the firm's: expertise in the surveying and mapping tasks required for the task order; availability of sufficient resources needed to complete the task order on time, within budget, and to the quality standards required; and direct experience with similar projects and/or specific VTA projects.

IV. PROPOSAL FORMAT AND CONTENT

Proposals must be typed, concise and establish the Proposer's ability to provide high-quality surveying and mapping services to VTA for transportation projects. Proposals must be free of promotional material. To facilitate the evaluation of Proposals, the Proposals must contain a cover page and table of contents and be organized into the sections outlined below:

1. Executive summary

In the form of a cover letter, introduce the firm, Project Manager, and sub-consultant firms. Include an executive summary of the how the Proposer intends to provide the services requested in this RFP. The cover letter should be on the firm's letterhead and be signed by a member of the Proposer's firm that is authorized to execute legal documents on its behalf.

2. General firm and sub-consultant(s) profile

Provide an overview of how the Proposer's firm is structured and operated. Include the office locations, main areas of expertise, number of field and office staff, and company background of the Proposer's firm and sub-consultants. Provide a list of which services will be offered by the Proposer and by each of its sub-consultants.



3. Capacity and capability

Provide an organization diagram outlining the Proposer's team. Describe how the Proposer's firm can provide the full range of services, substantially with its own staff, and the proposed responsibilities of the proposed key personnel within the firm and sub-consultants. "Proposed key personnel" is defined as those individuals who are considered essential by Proposer to the successful completion of the services described in the Scope of Services.

Discuss the qualifications and recent, relevant experience of proposed key personnel. Include the field capacity of the Proposer's team and where field crews would be dispatched from for VTA projects in Santa Clara County.

4. Narrative

Outline the reasons that the Proposer's firm should be selected to provide the services outlined in the Scope of Services. Describe the Proposer's approach to solving complex land surveying problems encountered in the recent past, including the surveying techniques used. Comment on areas that may make the Proposer's firm different from their competitors.

5. Key Field and Office Staff Resumes

Proposer must provide resumes for key field and office staff, and such resumes must include information regarding education and years of experience, and the resumes must highlight qualifications that would be best suited for the task requirements of this RFP.

6. Client Reference

Proposer must provide at least 3 client references including name of firm, address, point of contract, telephone and e-mail address.



V. BUSINESS DIVERSITY PROGRAM POLICY

Contractor shall adhere to VTA’s Business Diversity Program requirements, as applicable.

If the Proposer is awarded a contract funded with non-federal dollars, Contractor will adhere to the following requirements:

A. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE POLICY AND REQUIREMENTS: It is the policy of the Santa Clara Valley Transportation Authority to ensure that Minority and Women-Owned Business Enterprises (“MWBE”), as defined in the VTA MWBE Program, have an equitable opportunity to participate in the performance of contracts and subcontracts financed with local funds. VTA has an 18% MWBE aspirational goal. In this regard, Proposer will use its best efforts to ensure that MWBE firms have an equitable opportunity to compete for subcontract work.

For more information on VTA’s Business Diversity Programs, please see website at www.vta.org/osdb or call the Office of Business Diversity Programs at (408) 321-5962 for assistance in identifying eligible MWBE firms. Listings of eligible firms are also available at the following:

B. SMALL BUSINESS ENTERPRISE POLICY AND REQUIREMENTS: It is VTA policy to ensure that Small Business Enterprise (“SBE”) firms, as defined in Federal Regulations 13 CFR Part 121 and 49 CFR Part 26, have an equitable opportunity to participate in the performance of contracts and subcontracts.

1. SBE PROGRAM REQUIREMENTS:

a. Goal Assignment: Goals for participation of SBE firms will be set on each individual Task Order based upon the subcontracting opportunities for that specific Task Order and the availability of SBE subcontractors for the specialties identified. In order to achieve its goals, VTA may require Contractor to subcontract work out that it would normally perform.

Listings for SBE and DBE firms are:

VTA SBE Database:

- <http://www.VTA.org/about-us/doing-business-with-VTA-search-for-sbes>

California UCP DBE Database:

- http://www.dot.ca.gov/hq/bep/find_certified.htm

b. Consultant Registration: All SBE DBE and MWBE firms listed on Form 5, Listing of MWBE Prime and Subcontractors and Form 6, Listing of SBE Prime and Subcontractors, must be certified by VTA’s OBDP, the California Unified



Certification Program (“CUCP”), and or accepted as certified by OBDP at the time of the Proposal due date to be counted toward the contract SBE goal. Proposers must comply with VTA's SBE Program Policy and Requirements on utilization of SBE.

- c. A Proposer who fails to achieve the SBE participation goal and who fails to demonstrate sufficient good faith efforts to meet such goal shall be deemed “non-responsive” and therefore ineligible for award of the Contract, see Good Faith Effort Guidelines, Section C.
- d. Form 5, MWBE Listing of Prime and Subcontractors, Form 6, SBE Listing of Prime and Subcontractors, Form 7, Designation of Subcontractors and Suppliers, and other documentation in compliance with SBE Program Policy and Requirements must be submitted at time of Proposal submittal.
- e. It is the Proposer’s sole responsibility for verifying sub-consultant certification as a SBE or DBE to VTA.

2.GOOD FAITH EFFORTS GUIDELINES

- a. Attendance at Pre-Bid/Pre-Proposal Meeting: Attendance at pre-proposal conference, if held by VTA.
- b. Identification of scope of work for subcontracts in order to meet the project goal: Selecting portions of the work that can be subcontracted to SBEs/DBEs in order to increase the likelihood that the overall SBE/DBE goal will be achieved. This includes where appropriate, breaking out contract work items into economically feasible units to facilitate SBE/DBE utilization.
- c. Advertisement of subcontracting opportunities: Advertisement in trade association publications and disadvantaged/minority and woman owned business focused media. Advertisements must identify specific subcontracting opportunities being solicited, project name and location, proposer contact person including name, address, phone, fax, and email, and Proposal solicitation submittal due date. Advertisements should appear a minimum of ten (10) days prior to Proposal due date.
- d. Written Requests for Bids/Proposals: Provision of written notices to the maximum number of SBE and DBE firms to solicit interest for each subcontracting area identified sufficient to meet the established goal. Notices should be issued at least ten (10) days prior to Proposal due date.



- e. **Solicitation Follow-Up:** Subsequent efforts to solicit SBE and DBE within all available subcontracting areas. The follow-up solicitation should occur within a reasonable time of the initial solicitation, in order to allow the Proposer to solicit additional SBE and DBE and identify additional subcontracting items to draw greater interest and sub-proposals.
- f. **Negotiation in Good Faith:** Negotiating in good faith with interested SBE and DBE to facilitate SBE and DBE utilization. Utilize a sound basis for selection and/or rejection of SBE and DBE Proposals.
- g. **Performance of Other Bidders/Proposers in meeting the SBE Goal:** In determining where the Proposer has made adequate efforts to meet the SBE and DBE goal, VTA will take into account the performance of other proposers in meeting the established contract-specific goal requirements.
- h. **Provision of assistance to DBEs to obtain bonding, lines of credit and/or insurance:** Provision of assistance to interested SBE and DBE firms in obtaining bonding, lines of credit, and/or insurance as required by the Proposer.
- i. **Utilization of community outreach services:** Utilization of outreach services within the DBE and SBE community, including consultant groups, local, State and federal SBE and DBE offices and other organizations that provide assistance in the recruitment and placement of SBE and DBE firms.

If the Proposer is awarded a contract funded with federal dollars, Contractor will adhere to the following requirements:

C. DISADVANTAGED BUSINESS ENTERPRISE POLICY: The Santa Clara Valley Transportation Authority (“VTA”) has established a Disadvantaged Business Enterprise (“DBE”) program in accordance with U.S. Department of Transportation (“DOT”) regulations 49 CFR Part 26. VTA has received Federal financial assistance from the DOT, and as a condition of receiving this assistance, VTA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of VTA to ensure that DBE firms, as defined in 49 CFR Part 26, have an equitable opportunity to receive and participate in DOT-assisted contracts.

- 1. DBE GOAL REQUIREMENT:** Goals for participation of DBE firms will be set on each individual Task Order based upon the subcontracting opportunities for that specific Task Order and the availability of DBE subcontractors for the specialties identified. In order to achieve its goals, VTA may require Contractor to subcontract work out that it would normally perform.



2. **CONTRACTOR REGISTRATION:** All DBE firms listed on Form 6, Listing of DBE Prime and Subcontractors, must be certified by the California Unified Certification Program (CUCP) at the time of Proposal submittal to be counted toward the contract DBE goal. Proposers must comply with VTA's DBE Program Policy and Requirements on utilization of DBE firms.
 - a. A Proposer must either achieve the DBE participation goal or provide documentation to demonstrate sufficient good faith efforts to meet such goal. See “Good Faith Efforts” Guidelines in paragraph F below. Proposer who does not achieve the goal or demonstrate sufficient good faith efforts shall be deemed “non-responsive” and therefore ineligible for award.
 - b. Form 6, DBE Listing of Prime and Subcontractors, Form 7, Designation of Subcontractors and Suppliers, Good Faith Efforts, and other documentation in compliance with DBE Program Policy and Requirements, must be included in the Proposal submittal.
 - c. It is the Proposer’s sole responsibility to verify and provide subcontractor’s DBE certification to VTA.
 - d. The list of certified CUCP DBE firms is available at: http://www.dot.ca.gov/hq/bep/find_certified.htm.
 - e. The CUCP DBE application is available at the OBDP website at: www.vta.org/osdb.
3. **CONTRACTOR REPORTING:** Proposer will be required to submit electronic monthly DBE utilization reports to the VTA’s OBDP through our web-based online system (B2Gnow), accessed from any computer via the internet at the following website: <https://VTA.sdbbe.com>. The monthly reports will document payments to the prime and the prime will report payments made to their sub-contractors. At the end of this Contract, Contractor will be required to submit a Final DBE Utilization Report.
4. Each Contractor and sub-consultant will receive an email providing information with Log-On identification, password and instructions on how to use the system. Proposer agrees to submit any and all required electronic reports to the OBDP.
5. **FINAL DBE SUBMITTAL:** At the conclusion of this Contract, Contractor will be required to electronically submit a final DBE Utilization Report by indicating a final audit where requested in the B2Gnow system.
6. **DBE MONITORING:** VTA will monitor compliance with contract requirements for DBE firms. All lower-tier subcontractors will be required to provide or verify DBE utilization documentation.



7. **“GOOD-FAITH EFFORTS” GUIDELINES:** The Proposer is required to document sufficient DBE participation to meet the goal. If the participation goal for this project is attained, the Proposer need not submit any documentation on the efforts made to achieve the goal. However, if the DBE goal is not attained, the Proposer must demonstrate that “Good Faith Efforts” were made to attain the goal. Proposer must document adequate efforts at the time of Proposal submittal, as provided for in 49 CFR 26.53, and in accordance with the “Good Faith Efforts” provisions below:

- a. **Pre-Proposal Meeting:** Proposer attended the pre-proposal conference that was scheduled by VTA to inform Proposers of the DBE program requirements for this RFP.
- b. **Identification of DBE Participation Opportunities:** Proposer identified selected specific items of the work to be performed by DBE firms to provide genuine opportunities for participation by DBE firms. Proposer shall provide documentation showing the items that were identified and selected and shall describe how such items were utilized by Proposer to solicit DBE participation.

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

- c. **Advertisements:** At least ten (10) calendar days before the Proposal due date Proposer solicited sub-contracts from DBE firms for specified categories of work or materials or supplies for the contract through advertisements.
- d. **Written Notice:** At least ten (10) calendar days before the Proposals due date, Proposer provided written notice to a sufficient number of DBE certified firms in each subcontracting work category, and to such firms in each category of materials or supplies for the project. Written notice to a minimum of ten (10) firms shall constitute a sufficient number of firms to be notified if the approved CUCP databases contain at least ten (10) firms for that category.
- e. **Follow-up of Initial Solicitations:** Proposer followed-up initial solicitations of interest by contacting the DBE firms to determine with certainty whether the firms were interested in submitting Proposals on the work. Such follow-up activity shall be documented with telephone, fax logs, or other written documentation that shall be submitted to VTA and that shall set forth, at a minimum, the following information:
 - 1) The type of contact; i.e., telephone, meeting, letter, fax, or e-mail;
 - 2) The name of the DBE firm contacted;
 - 3) The date and time the DBE firm was contacted;



- 4) The full name, title, telephone or fax number, and e-mail address of the person at the DBE firm contacted by Proposer;
 - 5) The responses of each of the DBE firms contacted with regard to its interest in submitting a sub-contract; and
 - 6) For each DBE firm contacted that declined to submit a Proposal, the reason(s) provided by the DBE firm for declining to submit a Proposal.
- f. Information Regarding Contract Scope of Work:** Proposer shall describe the information provided to interested firms; report the name of the firms involved and set forth the date and method of providing such information.
- g. Request for Assistance in the Recruitment of DBE Firms:** Proposer requested assistance from federal, state, and local agencies for lists of DBE firms. Proposer provided information about selected subcontract work and requirement to DBE firms.
- h. Good-Faith Evaluation of and Negotiation with Interested DBE Firms:** Proposer evaluated the Proposals of and negotiated in good faith with interested DBE firms, and did not unjustifiably reject DBE firm(s) as unsatisfactory or unqualified without sound reasons based on a thorough assessment of the capabilities of the firm(s) in question. Proposer shall list all DBE responses to the solicitation, and all DBE sub-contracts which were received but not used.

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

- 1) Contacting bonding and/or insurance companies on behalf of a DBE firm;
- 2) Arranging with sureties phased or incremental bonding for the DBE firm;
- 3) Waiving bonds or insurance requirements;

D. FRAUDS AND FRONTS: Contactors are cautioned against knowingly and willfully using “fronts” to meet the SBE/DBE goal of the Contract / Task Orders. The use of “fronts” or “pass through” subcontracts to non-disadvantaged firms constitutes a criminal violation.



VI. INSURANCE AND INDEMNIFICATION REQUIREMENTS

Contractor shall adhere to the insurance requirements set forth in Exhibit A6. Proposer's attention is directed to the insurance requirements in the exhibit. It is highly recommended that Proposers confer with their insurance carriers or brokers in advance of Proposal submission to determine the availability of insurance certificates and endorsements that will be required for the Contract awarded through this RFP.

Proposer's attention is also directed to the indemnification and defense of claims obligations set forth in Exhibit A10.

VII. PROTESTS

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

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

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

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

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



business days of VTA's final decision of the Proposal protest. See 2 C.F.R. § 200.318(k) for details.

VIII. SCOPE OF SERVICES

Contractor will perform work pursuant to Task Orders issued under the Contract. Each Task Order will have specific needs that may require any of the following services:

1. Project survey control reports
2. Land net surveys
 - a. Boundary resolutions
 - b. Reviewing title reports
 - c. Easement plotting
3. Design of topographic and utility surveys
4. Monument preservation and perpetuation
 - a. Corner records
 - b. Record of surveys
5. Construction staking and verification surveys
6. Right-of-way engineering support
 - a. Legal descriptions
 - b. Exhibits
 - c. Appraisal maps
 - d. Record right-of-way maps
7. Maps for subdividing property
8. GIS mapping
9. Acquisition of data using LiDAR
10. Unmanned aerial systems surveys
11. Subsidence monitoring
12. Aerial photogrammetry and photography
13. Supplemental staffing for surveying and mapping
14. Other surveying and mapping services

If VTA obtains right-of-entry on properties (pursuant to right-of-entry agreements with the property owner) upon which Contractor will perform services described herein, Contractor must strictly adhere to the requirements and restrictions specified in the applicable right-of-entry agreement(s). If applicable, Contractor must provide adequate, prior notice to necessary parties for work on private properties. Contractor must minimize the impact of its field survey work on the properties.

Contractor is responsible for the project management of all Task Orders issued hereunder. This will include project coordination, monitoring, and administration.



Contractor will also perform other professional and administrative tasks related to land surveying and mapping that are necessary to assist VTA. Contractor must perform rigorous quality control checks of all deliverables created pursuant to this Contract before submittal of such deliverables to VTA.



IX. ADMINISTRATIVE SUBMITTALS

Proposer must submit all forms as part of the Proposal. Form No. 4 must be printed and submitted in a separate and sealed envelope as part of the Proposal.

- FORM 1.** GENERAL INFORMATION
- FORM 2.** LEVINE ACT STATEMENT
- FORM 3.** EXCEPTIONS TO THE CONTRACT
- FORM 4.** RATE SHEET
- FORM 5.** PART 1: LISTING OF DBE PRIME AND SUBCONTRACTORS
- FORM 5.** PART 2: LISTING OF SBE PRIME AND SUBCONTRACTORS
- FORM 6.** LOCAL FIRM CERTIFICATION
- FORM 7.** CERTIFICATION OF RESTRICTIONS ON LOBBYING
- FORM 8.** CERTIFICATE OF CONSULTANT



FORM 1. GENERAL INFORMATION

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

Company Name _____

Street Address _____

City/State/Zip _____

Phone No. _____

DUNS No. _____

Federal Taxpayer ID No. _____

DIR No. _____

POINT(S) OF CONTACT

Primary

Name/Title _____

Phone No. _____

Cell Phone No. _____

E-mail _____

Alternate

Name/Title _____

Phone No. _____

Cell Phone No. _____

E-mail _____

AUTHORIZED SIGNATORIES:

Primary

Name/Title _____

Signature _____

E-mail _____

Alternate

Name/Title _____

Signature _____

E-mail _____



FORM 2. LEVINE ACT STATEMENT

Prime Proposer and Subconsultants must submit a signed Levine Act Statement

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

VTA's [Board members](#) and their alternates as of the date of this RFP are as follows:

Name	Title	Represents
Teresa O'Neill	Chairperson	City of Santa Clara
Cindy Chavez	Vice Chairperson	County of Santa Clara
Magdalena Carrasco	VTA Board Member	City of San Jose
Charles "Chappie" Jones	VTA Board Member	City of San Jose
Lan Diep	VTA Board Member	City of San Jose
Sam Liccardo	VTA Board Member	City of San Jose
Raul Peralez	VTA Board Member	City of San Jose
Devora "Dev" Davis	VTA Alternate Board Member	City of San Jose
John McAlister	VTA Board Member	City of Mountain View
Adrian Fine	VTA Alternate Board Member	City of Palo Alto
Rob Rennie	VTA Board Member	Town of Los Gatos
Howard Miller	VTA Alternate Board Member	City of Saratoga
Larry Carr	VTA Board Member	City of Morgan Hill
Marie Blankley	VTA Alternate Board Member	City of Gilroy
Rich Tran	VTA Board Member	City of Milpitas
Glenn Hendricks	VTA Alternate Board Member	City of Sunnyvale
Dave Cortese	VTA Board Member	County of Santa Clara
Susan Ellenberg	VTA Alternate Board Member	County of Santa Clara
Jeannie Bruins	Ex-Officio Member	Metropolitan Transportation Commission

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

No ___ Yes ___ Please identify the Board member or alternate: _____

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

No ___ Yes ___ Please identify the Board member or alternate: _____

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

Signature: Firm Name: Date:



FORM 3. EXCEPTIONS TO THE CONTRACT

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

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

Proposer takes exception to the following:

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

*Make copies of this page if necessary

“Proposer takes no exceptions”

Firm Name:

Name

Title

Signature

Date



FORM 5. PART 1: LISTING OF DBE PRIME AND SUBCONTRACTORS

Firm (Prime): _____ Phone: _____

DBE: Yes No Age of Firm _____

Address: _____ Name & Title: _____

City, State, Zip: _____ Signature/Date _____

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

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

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

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

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

Description of Work

1. _____

2. _____

3. _____

4. _____

5. _____

DBE GOALS ARE DETERMINED ON BASE PROPOSAL AMOUNT:

Total Contract Amount \$ _____

DBE Contract Amount \$ _____

$$\begin{array}{rcc}
 \text{DBE Contract Amount} & & \text{DBE Contract Goal} \\
 \times 100 = & \text{DBE Goal Achieved} & \\
 & \text{Base Contract} & \% \\
 & \underline{\hspace{2cm}} & \%
 \end{array}$$



FORM 5. PART 2: LISTING OF SBE PRIME AND SUBCONTRACTORS

Firm (Prime): _____ Phone: _____

SBE: Yes No Age of Firm _____

Address: _____ Name & Title: _____

City, State, Zip: _____ Signature/Date _____

Contract dollar value must exclude work performed by non-SBE 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 SBE 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.

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

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

Description of Work

1. _____

2. _____

3. _____

4. _____

5. _____

SBE GOALS ARE DETERMINED ON BASE PROPOSAL AMOUNT:

Total Contract Amount \$ _____

SBE Contract Amount \$ _____

SBE Contract Amount		SBE Goal Achieved		SBE Contract Goal
X 100 =		Base Contract	%	%



FORM 6. LOCAL FIRM CERTIFICATION

1. The Proposer hereby certifies that it is ___ / is not ___ a local firm. A local firm is a firm that currently has its main office or a branch office with meaningful production capability located within Santa Clara County, or a firm that, upon award of the contract by VTA, will establish such a local office.

If a local firm, specify local address: _____

2. The Proposer hereby certifies that _____% of the dollar value of services to be rendered will be performed by the following local firms (including Proposer, if applicable):

Name of Proposer or Subcontractor	% of Dollar Value
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

3. The above-listed subcontractors are local firms as defined in paragraph 1 above, and are located at the following local addresses:

Subcontractor Name	Address
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Firm Name: _____

Name _____ Title _____

Signature _____ Date _____



FORM 7. CERTIFICATION OF RESTRICTIONS ON LOBBYING

Proposer hereby certifies as follows:

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

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

Firm Name:

Name

Title

Signature

Date



FORM 8. CERTIFICATE OF CONSULTANT

I hereby certify that I am the duly authorized representative of the firm listed below, and that, except as hereby expressly stated, neither I nor the above firm that represent have:

- (a).employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this Contract; nor
- (b).agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the Contract; nor
- (c).paid, or agreed to pay to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, consideration or any kind for, or in connection with procuring or carrying out this Contract.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this Contract involving participation of Federal-aid Highway funds, and is subject to applicable state and Federal laws, both criminal and civil.

Firm Name and Address:

Name of Authorized Representative Title

Signature Date



X. EXHIBITS

EXHIBIT A	SAMPLE CONTRACT
EXHIBIT A1	SCOPE OF SERVICES
EXHIBIT A2	SAMPLE TASK ORDER
EXHIBIT A3	COMPENSATION, INVOICING and PAYMENT
EXHIBIT A4	RATE SHEET
EXHIBIT A5	APPROVED SUBCONTRACTORS
EXHIBIT A6	INSURANCE REQUIREMENTS
EXHIBIT A7	SMALL BUSINESS ENTERPRISE (SBE) REQUIREMENTS/ DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS ¹
EXHIBIT A8	REQUIRED FTA CLAUSES ²
EXHIBIT A9	PREVAILING WAGE REQUIREMENTS
EXHIBIT A10	DESIGN PROFESSIONAL SERVICES SPECIAL TERMS AND CONDITIONS
EXHIBIT A11	FED WAGE RATES
EXHIBIT A12	REQUIRED FHWA CLAUSES ³

¹ If Proposer is awarded a contract that is not funded in any part with federal funds, the Small Business Enterprise Requirements from Exhibit A7 will be part of the Contract. If Proposer is awarded a contract that is funded in whole or in part with federal funds, the Disadvantaged Business Enterprise requirements will part of the Contract.

² If Proposer is awarded a contract that is funded in whole or in part with FTA funds, Exhibit A8 will be part of the Contract.

³ If Proposer is awarded a contract that is funded in whole or in part with FHWA funds, Exhibit A12 will be part of the Contract.



EXHIBIT A SAMPLE CONTRACT
BETWEEN
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND
CONTNAME
FOR
ON-CALL LAND SURVEYING AND MAPPING SERVICES

CONTRACT NO. S19101

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

A. SERVICES TO BE PERFORMED: Contractor shall furnish all technical and professional labor and materials to perform the services described in Exhibit A1 (herein referred to as “Services”), as requested by VTA by issuance of specific Contract Task Orders and agreed to by Contractor.

Assignment of the Services shall be authorized by issuance of Task Orders in the format set forth in Exhibit A2.

B. TERM OF THE CONTRACT: The term of this Contract shall commence on the Effective Date (as defined in the signature block below) and continue through December 31, 2025 (unless otherwise earlier terminated pursuant to the terms and conditions set forth herein). The terms and conditions of the Contract shall remain in effect and applicable to all Task Orders issued during the term of this Contract.

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

D. COMPENSATION: Contractor shall be paid in accordance with Exhibit A3 for the Services.

A price shall be negotiated for each Task Order which will be governed by the labor rates listed in Exhibit A4.

Total compensation for the Services provided hereunder shall be at least \$[] but shall not exceed \$[].

E. PERFORMANCE OF THE SERVICES:



-
1. Contractor agrees that the Key Personnel listed in Exhibit A3 are essential to this Contract and that prior to the reassignment or replacement of any Key Personnel Contractor must submit a written request to VTA for consideration and acceptance of such replacement.
 2. Contractor will perform the Services in accordance with the representations and warranties set forth in Exhibit A9

F. ASSIGNMENT AND SUBCONTRACTS:

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

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

H. AUDIT AND RECORDS:

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



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

I. PROHIBITED INTERESTS:

- 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 this 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 (2) 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, presently, Contractor, its officers, directors or agents, have no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree (or create an appearance of conflict) with the performance of the Services. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be knowingly employed.

J. TERMINATION AND SUSPENSION:

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



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

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

K. GENERAL PROVISIONS:

1. CIVIL RIGHTS:

a. **NONDISCRIMINATION:** During performance of this Contract, Contractor, its employees and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any person because of race, religious creed, color, sex, gender, gender identity, gender expression, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), genetic information, marital status, age (over 40), sexual orientation, or military and veteran status. In addition, Contractor and any subcontractor shall not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. Contractor shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment.

b. **ADA Accessible Information and Communications:** Any and all deliverables provided by Contractor to VTA pursuant to the Contract must be prepared and delivered in a format that is accessible to individuals with disabilities, as required by (i) the American with Disabilities Act of 1990 (ADA); (ii) 28 CFR Parts 35 and 36; (iii) 49 CFR Part 37; (iv) Section 504 of the Rehabilitation Act of 1973, as amended; and (v) California's Unruh Civil Rights Act.

2. **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.

3. **FORUM SELECTION:** Any lawsuit or legal action arising from this Contract shall be commenced and prosecuted in the courts of Santa Clara County, California. Contractor



agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.

- 4. CONFIDENTIALITY AND DISCLOSURE:** Except as set forth in this paragraph, Contractor must not disclose to third parties any information, data, or materials that the Contractor obtains from VTA or otherwise learns of or is exposed to in the course of the performance of this Contract or information developed or obtained by Contractor in the performance of this Contract (“**Confidential Information**”). In addition, Contractor must not disclose or use any Confidential Information for any purpose other than the performance of the Services. Notwithstanding the foregoing, Contractor may disclose Confidential Information to third parties or use such information for purposes other than performance of the Services if: (1) VTA provides express written consent for such use or disclosure; (2) the information is known to Contractor prior to obtaining such information from VTA or performing Services under this Contract; (3) the information is, at the time of disclosure by Contractor, then in the public domain; (4) the information is obtained by or from a third party who did not receive it, directly or indirectly, from VTA and who has no obligation of confidentiality with respect thereto. In addition, Contractor may disclose Confidential Information if required to do so by court order. However, upon receipt of an order requiring such disclosure, Contractor must inform VTA as soon as practicable in order to allow VTA to challenge such order if it determines that such challenge is appropriate. For purposes of this Section, “third parties” do not include those employees or authorized subcontractors engaged in the performance of the Services.
- 5. NONWAIVER:** Failure of VTA to insist upon strict performance of any terms or conditions of this Contract or failure or delay in exercising any rights or remedies provided herein or by law or its failure to properly notify Contractor in the event of breach or its acceptance of or payment for any Services hereunder shall not release Contractor from the representations or obligations of this Contract and will not be deemed a waiver of any right of VTA to insist upon strict performance hereof or any of its rights or remedies hereunder.
- 6. SEVERABILITY:** If any of the provisions of this Contract (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and Contractor shall negotiate an equitable adjustment in the provisions this Contract with a view toward effecting the purpose of this Contract, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.
- 7. INDEPENDENT CONTRACTOR:** In performance of the Services, Contractor will be acting as an independent contractor and not the agent or employee of VTA.
- 8. ENTIRE CONTRACT:** This Contract constitutes the entire contract between VTA and Contractor relating to the subject matter hereof and supersedes any previous contracts, agreements, or understandings, whether oral or written.



9. AMENDMENT: Except as expressly provided herein, the provisions of this Contract cannot be altered, modified or amended except through the execution of a written amendment executed by VTA and Contractor.

10. COMPLIANCE WITH APPLICABLE LAW: In the performance of the Services, Contractor and its subcontractors shall comply with all applicable requirements of state, federal and local law. The provision of this paragraph shall be included in any subcontracts hereunder.

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

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

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

1. AUTHORIZED REPRESENTATIVES:

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

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

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

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



VTA:
Chris Valle, Contracts Administrator
3331 N. First Street, Bldg. A
San Jose, CA 95134-1927
chris.valle@vta.org

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

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

M. INSURANCE: Contractor shall adhere to the insurance requirements set forth in Exhibit A6.

N. DESIGN PROFESSIONAL SERVICES SPECIAL TERMS AND CONDITIONS: Contractor shall adhere to the design professional services special terms and conditions set forth in Exhibit A10.

O. BUSINESS DIVERSITY PROGRAM REQUIREMENTS: Contractor shall adhere to the Disadvantaged Business Enterprise requirements set forth in Exhibit A7.

P. SPECIAL PROVISIONS:

1. **FEDERAL REQUIREMENTS:** Contractor, its employees and subcontractors performing the Services hereunder shall adhere to the federal requirements set forth in Exhibit A8/A12.
2. **PREVAILING WAGE REQUIREMENTS:** Contractor shall adhere to the prevailing wage requirements set forth in Exhibit A9.
3. **HIGHWAY PROJECT REQUIREMENTS:** All files and drawings prepared and delivered by Contractor must comply with the CALTRANS current CADD User's Manual and current Drafting and Plans Manuals.

Signatures of parties on following pages



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

*Santa Clara Valley
Transportation Authority*

Contractor

Name
Title

Name
Title

Date

Date

Approved as to Form

VTA Counsel



EXHIBIT A1 SCOPE OF SERVICES
(To be inserted)



**EXHIBIT A3 COMPENSATION, INVOICING and PAYMENT
TASK ORDER CONTRACT**

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

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

1. BASE LABOR RATES: The basis for T&M, CPFF and FFP Task Order pricing and payment for work performed shall be subject to the direct labor, indirect labor, overhead and profit stated in **individual Task Orders**, and in accordance with the respective provisions stated below:

2. TIME AND MATERIALS. Payment for work performed on a T&M basis shall be in accordance with the following provisions.

a. Exempt Personnel: VTA shall pay for work by exempt personnel (as determined under the Fair Labor Standards Act, 29 U.S.C. § 201-219) at the labor rates listed below, which include direct labor, indirect labor, overhead and profit. VTA payment for work by exempt personnel shall not include any premium pay.

Name	Classification	Hourly Rate

b. Non-Exempt Personnel: VTA shall pay for overtime work by non-exempt personnel (Time and a Half, Double Time) in accordance with California law, at the labor rates listed below. VTA must approve all premium time in advance in writing.

Name	Classification	Hourly Rate



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

- b. Parking, tolls, deliveries, printing, and plan reproduction expenses directly associated with the work will be reimbursed at cost. Except as otherwise provided herein, telephone, computer costs, CAD machine charges, in-house copying and facsimile charges shall be included in overhead and shall not be reimbursed.
- c. All ODCs shall require appropriate documentation for reimbursement. VTA must approve in writing any ODC item estimated to exceed \$500.00 prior to incurring the expense.

B. INVOICING:

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

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

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

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

Contractor's Signature: _____

Contractor's Name: _____

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



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

Email: VTAAccountsPayable@VTA.org

5. **CONTESTING INVOICE/AUDIT:** Should VTA contest any portion of an invoice, that portion shall be held for resolution, and the uncontested balance shall be processed for payment. VTA may, at any time, conduct an audit of any and all records kept by Contractor related to the Services. Any overpayment uncovered in such an audit may be charged against the Contractor's future invoices and any retention funds.

C. PROMPT PAYMENT: VTA will pay Contractor within thirty (30) days after receipt by VTA of a proper, fully documented, invoice. Contractor shall pay subcontractors for satisfactory performance of any of the Services performed by subcontractors within thirty (30) days of receipt of payment by VTA for such Services. Contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed.



EXHIBIT A5 APPROVED SUBCONTRACTORS



EXHIBIT A6 INSURANCE REQUIREMENTS

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

A. Liability and Workers' Compensation Insurance:

1. **Minimum Scope of Coverage:** Coverage must be at least as broad as:

- a. Insurance Services Office General Liability coverage ("occurrence" form CG 0001). General Liability insurance written on a "claims made" basis is not acceptable.
- b. Insurance Services Office Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
- c. Workers' Compensation insurance as required by the Labor Code of the State of California, and Employers Liability insurance.
- d. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of Contractor's services under this Contract. This coverage must be maintained for a minimum of two (2) years following completion of this Contract. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section B.
- e. Railroad Protective Liability insurance covering the Applicant's liability for work performed on or adjacent to VTA's light rail line(s) for bodily injury, property damage, including damage to VTA's property, equipment and facilities; Insurance Services Office form number CG 0035. Applicant must apply for enrollment in VTA's Blanket Railroad Protective Liability program, for which VTA pays the premium directly to the insurer. Applicant will provide all necessary data for enrollment application, including but not limited to total work value (including Applicant's profit) on the entire project, and on that portion of the work performed within 50 feet of the VTA rail Right of Way, measured from the nearest rail.

In the event Applicant is not enrolled in VTA's program, Applicant must purchase, at its own expense, its own stand-alone project-specific Railroad Protective



Liability coverage, showing VTA as the Named Insured on the policy, covering liabilities arising out of work performed by Applicant within 50 feet of the VTA Rail Right of Way, measured from the nearest rail, for bodily injury, property damage, including damage to VTA's property, equipment, and facilities, under ISO coverage form CG 00 35 04 13 or equivalent.

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

- a. General Liability \$2,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If a General Liability 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. In no event may the General Liability primary policy limit per occurrence be less than \$2,000,000.
- b. Automobile 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. Professional Liability: \$2,000,000 each occurrence/aggregate minimum limit per claim.
- e. Railroad Protective Liability: if required, \$2,000,000 Combined Single Limit for bodily injury and property damage, with \$6,000,000 annual aggregate.

3. Self-Insured Retention: Any self-insured retention or deductible in excess of \$50,000 (\$100,000 if Contractor is a publicly-traded company) must be declared to and approved by VTA. If Contractor is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention in excess of the stipulated amounts stated herein, the Contractor must provide a current financial statement documenting the ability to pay claims falling within the self-insured retention. At the option of VTA, either: the insurer must reduce or eliminate such self-insured retention as respects VTA, its officers, officials, employees and volunteers; or the Contractor must procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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



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

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 Contractor; products and completed operations of the Contractor and its subcontractors; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage must contain no special limitations on the scope of protection afforded to VTA, 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 Contractor'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 Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.



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- e. The General Liability General Aggregate limit must apply per project, not per policy.
 - f. The General Liability policy must be endorsed to remove the exclusion for railroad liabilities, with coverage at least as broad as afforded by ISO CG 24 17.

D. ALL COVERAGES:

1. 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.
2. 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.
3. **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.
4. **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 herewith, and (3) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority
Procurement, Contracts and Materials Management
3331 North First Street
San Jose, CA 95134
Contract No. S19101

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



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

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

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

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



EXHIBIT A7 SMALL BUSINESS ENTERPRISE (SBE) REQUIREMENTS

A. MWBE POLICY:

1. It is the policy of VTA to ensure that Minority and Women Owned Business Enterprises (“MWBE”s), as defined in the VTA MWBE Program, have an equitable opportunity to participate in the performance of contracts and subcontracts financed with local funds. VTA has an 18% MWBE aspirational goal.
2. Contractor will use all reasonable efforts to ensure that MWBE firms have an equitable opportunity to compete for subcontracting work under this Contract.

B. SMALL BUSINESS ENTERPRISES:

1. It is VTA policy to ensure that Small Business Enterprise (“SBE”) firms, as defined in Federal Regulations at 13 CFR Part 121 and 49 CFR Part 26, have an equitable opportunity to participate in the performance of Contracts and subcontracts.

In connection with its performance under this Contract, Contractor agrees to cooperate with VTA in meeting the [] % SBE utilization goal set for this project.

Goals for participation of SBE firms will be set on each individual Task Order based upon the subcontracting opportunities for that specific Task Order and the availability of SBE subcontractors for the specialties identified. In order to achieve its goals, VTA may require Contractor to subcontract work out that it would normally perform.

2. VTA will monitor compliance with Contract requirements for SBE firms. Electronic submittal will be on a web-based online system (B2Gnow), accessed from any computer via the internet at the following website: <https://VTA.sdbbe.com>. Contractor and its subcontractors will receive an email providing a Log-On identification, password, and instruction on how to use the system. All lower-tier subcontractors and vendors will be required to provide or verify SBE utilization documentation.
3. Contractor will be required to submit monthly SBE utilization reports electronically to the VTA Office of Business Diversity Programs. These reports shall be submitted electronically by the Contractor and will document when payments to subcontractors were made, the dollar value of the payments to SBE firms, and the percentage of the contract completed.

- C. At the conclusion of this Contract, Contractor shall submit a final SBE utilization report electronically to the VTA Office of Business Diversity Programs to: OSDB.OSDB@VTA.org by indicating a final audit where requested in the B2Gnow system. This final report will document when payments to subcontractors were made, the dollar value of payments to SBE firms, and the percentage of the Services completed.



DISADVANTAGED BUSINESS ENTERPRISES (DBE) REQUIREMENT

- A. It is VTA policy to ensure that DBE firms, as defined in Federal Regulations at 13 CFR Part 121 and 49 CFR Part 26, have an equitable opportunity to participate in the performance of Contracts and subcontracts.

In connection with its performance under this Contract, Contractor agrees to cooperate with VTA in meeting the []% DBE utilization goal set for this project.

Goals for participation of DBE firms will be set on each individual Task Order based upon the subcontracting opportunities for that specific Task Order and the availability of DBE subcontractors for the specialties identified. In order to achieve its goals, VTA may require Contractor to subcontract work out that it would normally perform.

- B. VTA will monitor compliance with Contract requirements for DBE firms. Electronic submittal will be on a web-based online system (B2Gnow), accessed from any computer via the internet at the following website: <https://VTA.sbdbe.com>. Contractor and its subcontractors will receive an email providing a Log-On identification, password, and instruction on how to use the system. All lower-tier subcontractors and vendors will be required to provide or verify DBE utilization documentation.
- C. Contractor will be required to submit monthly DBE utilization reports electronically to the VTA Office of Business Diversity Programs. These reports shall be submitted electronically by the Contractor and will document when payments to subcontractors were made, the dollar value of the payments to DBE firms, and the percentage of the contract completed.
- D. At the conclusion of this Contract, Contractor shall submit a final DBE utilization report electronically to the VTA Office of Business Diversity Programs at: OSDB.OSDB@VTA.org by indicating a final audit where requested in the B2Gnow system. This final report will document when payments to subcontractors were made, the dollar value of payments to DBE firms, and the percentage of the Services completed.
- E. **CONTRACTOR ASSURANCES (as required by 49 C.F.R. 26.13):** The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contractor. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient¹ deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Contractor from future bidding as non-responsible.

Contractor must include this assurance in each of its subcontracts related to this Contract.



**EXHIBIT A8 REQUIRED FTA CLAUSES
PART 1**

In its performance under the Contract, Contractor will comply with all of the Federal Transit Administration (“FTA”) clauses which are identified below as applicable (if the box next to the clause is checked, the clause is applicable). The substance of these applicable requirements is set forth on the following pages of this Exhibit (Revised 08/2018).

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



REQUIRED FTA CLAUSES PART 2

These FTA terms and conditions (“FTA Clauses”) are required by the FTA pursuant to the Master Agreement between FTA and VTA, Section 16 (a copy of which may be viewed at <https://www.transit.dot.gov/>) and apply to all third party contracts awarded by VTA that are funded in whole or in part with FTA assistance. Unless specifically defined herein, the capitalized terms used in these FTA Clauses have the meanings as defined in the solicitation and/or Contract, as applicable. Contractor is responsible for its subcontractors’ compliance, as applicable, with these FTA Clauses (Revised 08/2018).

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

A. ACCESS TO RECORDS AND REPORTS: In addition to any other audit and record retention requirements set forth in the Contract, Contractor will comply with the following:

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

B. BONDING REQUIREMENTS: Contractor will comply with the bonding requirements set forth elsewhere in the Contract.



- C. BUS TESTING:** Contractor will comply with all bus testing requirements set forth elsewhere in the Contract.
- D. BUY AMERICA REQUIREMENTS:** If the Contract is for the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock, Contractor will comply with the following:
- a. **FLOW DOWN:** The requirements of this Section D apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section D.
 - b. **COMPLIANCE WITH FEDERAL LAW:** Contractor will comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.
 - c. **CERTIFICATIONS:** Contractor must submit to VTA the appropriate Buy America certification attached to the solicitation or otherwise provided by VTA with its (i) Bid (in the case of a sealed bidding procurement) or (ii) final offer or final revised Proposal (in the case of a negotiated procurement). Bids or Proposals (as applicable) that are not accompanied by a completed Buy America certification will be rejected as nonresponsive and cannot be considered by VTA.
- E. CARGO PREFERENCE REQUIREMENTS:** If the Contract involves equipment, materials, or commodities that may be transported by ocean vessels, Contractor will comply with the following:
- a. **FLOW DOWN:** The requirements of this Section E apply to Contractor and its Contract subcontractors at every tier involved with the transport of equipment, material, or commodities by ocean vessel. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section E.
 - b. **UNITED STATES-FLAG COMMERCIAL VESSELS:** Contractor will use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
 - c. **BILL-OF-LADING:** Contractor will furnish within 20 business days following the date of loading for shipments originating within the United States or within 30 business days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment



of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to VTA (through Contractor in the case of a subcontractor's bill-of-lading).

F. CHARTER SERVICE: If the Contract is for the operation of transportation service, Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section F apply to Contractor as the first tier service contractor. The provisions of this Section F do not flow down to subcontractors.
- b. **COMPLIANCE WITH FEDERAL LAW:** Contractor will comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:
 - i. Federal transit laws, specifically 49 U.S.C. § 5323(d);
 - ii. FTA regulations, "Charter Service," 49 C.F.R. Part 604;
 - iii. Any other federal Charter Service regulations; or
 - iv. Federal guidance, except as FTA determines otherwise in writing.
- c. **VIOLATIONS:** If Contractor engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on Contractor. These corrective measures and remedies may include:
 - i. Barring Contractor or any subcontractor operating public transportation under its award that has provided prohibited charter service from receiving federal assistance from FTA;
 - ii. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
 - iii. Any other appropriate remedy that may apply.

G. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT: If the Contract has a total value of more than \$150,000, Contractor will comply with the following:

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



-
- i. Not use any violating facilities;
 - ii. Report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
 - iii. Report violations of use of prohibited facilities to FTA; and
 - iv. Comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

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

- a. **FLOW DOWN:** The requirements of this Section H apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section H.
- b. **NONDISCRIMINATION:** In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, U.S. Department of Transportation (“DOT”) regulations at 49 C.F.R. Part 21, and federal transit law at 49 U.S.C. § 5332, Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.
- c. **RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX:** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and federal transit laws at 49 U.S.C. §5332, Contractor will comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (“U.S. DOL”) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action will include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor will comply with any implementing requirements FTA may issue.
- d. **AGE:** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (“U.S. EEOC”) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. Part 1625, the Age Discrimination Act of



1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. Part 90, and federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

- e. **DISABILITIES:** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and federal transit law at 49 U.S.C. § 5332, Contractor will not discriminate against individuals on the basis of disability. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

I. DISADVANTAGED BUSINESS ENTERPRISE (“DBE”): Contractor will comply with the DBE requirements set forth elsewhere in the Contract.

J. EMPLOYEE PROTECTIONS:

- a. **FLOW DOWN:** The requirements of this Section J apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section J.
- b. If the Contract is for construction, alteration, or repair in excess of \$2,000, Contractor will comply with the following:
 - i. **Prevailing Wage:** Contractor will comply with the prevailing wage requirements set forth in the Contract.
 - ii. **Anti-Kickback:** Contractor shall comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by U.S. DOL regulations at 29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
- c. If the Contract (i) has a total value of more than \$100,000 and (ii) involves the employment of mechanics or laborers, Contractor will comply with the following:
 - i. **Contract Work Hours and Safety Standards:** Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the U.S. DOL regulations at 29 C.F.R. Part 5. Under 40 U.S.C. § 3702 of the Contract Work Hours and Safety Standards Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is



permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

1. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply if the Contract is for (i) the purchase of supplies or materials or articles ordinarily available on the open market or (ii) transportation or transmission of intelligence.
 2. In the event of any violation of this section, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and any such subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by this section.
 3. The FTA shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor (i) under the Contract, (ii) under any other federal government contract with the same prime Contractor, or (iii) any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act and held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
 4. Contractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring all subcontractors to include these clauses in any lower tier subcontracts.
- ii. **Contract Work Hours and Safety Standards for Awards Not Involving Construction:** Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.



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

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

- a. **FLOW DOWN:** The requirements of this Section K apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section K.
- b. **MANDATORY STANDARDS AND POLICIES:** Contractor will comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

L. FLY AMERICA: If performance of the Contract involves transportation of persons or property by air between a place in the U.S. and a place outside the U.S., or between places outside the U.S., Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section L apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section L.
- b. **DEFINITIONS:**
 - i. **“International air transportation”** means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
 - ii. **“United States”** or **“U.S.”** means the 50 States, the District of Columbia, and outlying areas.
 - iii. **“U.S.-flag air carrier”** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.



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- c. **USE OF U.S.-FLAG AIR CARRIERS:** Pursuant to Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act), Contractor and all of its subcontractors at every tier must use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. Contractor understands that the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, will disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
 - d. **STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS:** In the event that Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, Contractor shall include a statement on vouchers involving such transportation essentially as follows:

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

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

[State reasons]: _____

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

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

- a. **FLOW DOWN:** If Contractor and/or any of its subcontractors enter into covered transactions with a participant at the next lower level, Contractor and/or its subcontractor, as applicable, must require that participant to: (a) comply with subpart C of 2 C.F.R. Part 180, as supplemented by 2 C.F.R. Part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. Part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.



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- b. **COMPLIANCE WITH FEDERAL LAW:** Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180. These provisions apply to the Contract and to (i) any subcontract at any tier of \$25,000 or more, and (ii) each contract at any tier for a federally required audit (irrespective of the contract amount), and (iii) each contract at any tier that must be approved by an FTA official irrespective of the contract amount.
- c. **CERTIFICATION:** By executing this Contract, Contractor hereby certifies that its principals, affiliates, and subcontractors are eligible to participate in the federally funded Contract and are not presently declared by any federal department or agency to be:
- i. Debarred from participation in any federally assisted award;
 - ii. Suspended from participation in any federally assisted award;
 - iii. Proposed for debarment from participation in any federally assisted award;
 - iv. Declared ineligible to participate in any federally assisted award;
 - v. Voluntarily excluded from participation in any federally assisted award; or
 - vi. Disqualified from participation in any federally assisted award.

This certification is a material representation of fact relied upon by VTA. If it is later determined by VTA that Contractor knowingly rendered an erroneous certification, in addition to remedies available to VTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

N. LOBBYING RESTRICTIONS: If the Contract has a total value of \$100,000 or more, Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section N apply to Contractor and its Contract subcontractors at every tier if such subcontract has a total value of \$100,000 or more. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section N.
- b. **CERTIFICATION:** Contractor must submit to VTA the appropriate Restrictions on Lobbying certification attached to the solicitation or otherwise provided by VTA with its (i) Bid or Proposal, or (ii) prior to the execution of the Contract, whichever occurs earlier.

O. NO GOVERNMENT OBLIGATION TO THIRD PARTIES: Contractor will at all times comply with the following requirements:



- a. **FLOW DOWN:** The requirements of this Section O apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section O.
- b. **NO OBLIGATION:** Contractor acknowledges that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the federal government, the federal government is not a party to the Contract and shall not be subject to any obligations or liabilities of VTA, Contractor or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the underlying Contract.

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

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



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

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

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



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

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

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

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

- a. **FLOW DOWN:** The requirements of this Section S apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section S.
- b. Contractor will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):



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- i. **U.S. DOL Certification:** Contractor will complete a certification issued by U.S. DOL as a condition of the Contract.
 - ii. **Special Warranty:** U.S. DOL will provide a Special Warranty for the award associated with the Contract. The U.S. DOL Special Warranty is a condition of the Contract.
 - iii. **Special Arrangements:** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractor in its provision of public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated into the Contract as required.

T. RECYCLED PRODUCTS: If (i) the Contract is for the purchase of items designated in guidelines of the U.S. Environmental Protection Agency (“EPA”) at 40 C.F.R. Part 247 and (ii) the purchase price of the relevant item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000, Contractor will comply with the following:

- a. **FLOW DOWN:** The requirements of this Section T apply to Contractor and its Contract subcontractors at every tier if the subcontract involves the purchase of EPA-selected items valued at \$10,000 or more. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section T.
- b. Contractor will provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6962, and EPA, “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. Part 247.

U. SAFE OPERATION OF MOTOR VEHICLES: Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

- a. **FLOW DOWN:** The requirements of this Section U apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section U.
- b. **SEAT BELT USE:** Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by Contractor or VTA.
- c. **DISTRACTED DRIVING:** Contractor will adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging



while using an electronic device supplied by an employer, and driving a vehicle the driver owns, leases, or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under the Contract.

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

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

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

- a. **FLOW DOWN:** The requirements of this Section W apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section W.
- b. Contractor will design and construct any new building or additions to existing buildings in accordance with the standards for Seismic Safety required in DOT Seismic Safety Regulations at 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. Contractor will ensure that all work performed under the Contract, including



work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued under the Contract.

X. SUBSTANCE ABUSE REQUIREMENTS: If the Contract requires Contractor or any of its subcontractors to perform safety-sensitive functions (as defined in 49 C.F.R. § 655.4), Contractor must comply with the following:

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

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

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

Y. TERMINATION: Contractor will comply with the termination provisions set forth elsewhere in the Contract. The requirements of this Section Y apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section Y.

Z. VIOLATION AND BREACH OF CONTRACT: If the Contract has a total value exceeding the simplified acquisition threshold as defined by 48 C.F.R. 2.101(b) (“Simplified Acquisition Threshold”), Contractor will comply with the following:

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



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- b. **DISPUTES:** VTA and Contractor intend to resolve all disputes under the Contract to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the VTA's and Contractor's organization. In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with VTA's direction or decisions made thereof.
 - c. **PERFORMANCE DURING DISPUTE:** Unless otherwise directed by VTA, Contractor shall continue performance under the Contract while matters in dispute are being resolved.
 - d. **REMEDIES:** The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by VTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

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

- a. **FLOW DOWN:** The requirements of this Section AA apply to Contractor and its Contract subcontractors performing construction work at every tier. Contractor is responsible for ensuring that all applicable lower tier contractors and subcontractors are in compliance with this Section AA.
- b. Contractor will comply with (i) U.S. DOL regulations set forth in 41 C.F.R. Part 60-4, (ii) Executive Order 11246 "Equal Employment Opportunity," as amended (including by Executive Order 11375), and (iii) 42 U.S.C. § 2000 (e) note.
- c. Contractor will comply with the equal opportunity clause set forth in 41 C.F.R. § 60-1.4(b), which is incorporated herein by reference pursuant to 41 C.F.R. § 60-1.4(d).
- d. Contractor will comply with the "Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)" set forth in 41 C.F.R. § 60-4.3, which specifications are attached hereto (if applicable).

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



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

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

- a. **FLOW DOWN:** The requirements of this Section CC apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section CC.
- b. Contractor will operate public transportation services and will keep its facilities used in public transportation services in compliance with: (i) 42 U.S.C. § 12101 et seq.; (ii) DOT regulations, including “Transportation Services for Individuals with Disabilities (ADA)” set forth at 49 C.F.R. Part 37; and (iii) Joint Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, including “Americans with Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles” set forth at 36 C.F.R. Part 1192 and “Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles” set forth at 49 C.F.R. Part 38. If Contractor is a private entity, Contractor must comply with the requirements of 49 C.F.R. Part 37 applicable to public entities.

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

- a. **FLOW DOWN:** The requirements of this Section DD apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section DD.
- b. Contractor will at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between VTA and FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor’s failure to comply will constitute a material breach of the Contract.



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

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

- b. The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth herein. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F and the Master Agreement or any revision thereto, are hereby incorporated by reference and made a part of the Contract, except to the extent FTA determines otherwise in writing. Anything to the contrary herein notwithstanding, all FTA-mandated terms are deemed to control in the event of a conflict with other provisions contained in the Contract. Contractor will not perform any act, fail to perform any act, or refuse to comply with any VTA requests which would cause VTA to be in violation of any FTA terms and conditions.



EXHIBIT A9 PREVAILING WAGE REQUIREMENTS

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



rates, holidays, premium pay, shift work, and travel and subsistence requirements can be found at www.dir.ca.gov.

- 3. FEDERAL PREVAILING WAGE RATES:** This Contract is also subject to federal requirements for payment of prevailing wages as determined by the Secretary of Labor. Federal wage rates are available at the DOL website at <https://www.wdol.gov/dba.aspx> and at the Contracts Office of VTA. The applicable federal wage rate determinations are attached hereto as Exhibit A11. Where there are differences between federal and state wage rates, the higher will apply. In addition, Contractor will pay wages not less than once per week.

F. APPRENTICES: In the performance of work under this Contract, Contractor is responsible for compliance with Labor Code Section 1777.5, pertaining to the employment of registered apprentices.

G. CERTIFIED PAYROLLS:

- 1. SUBMISSION TO VTA:** In the performance of work under this Contract, Contractor is responsible for its compliance, as well as that of its subcontractors of every tier, with Labor Code Section 1776. On a weekly basis, Contractor will present to VTA all applicable and necessary certified payrolls (for itself and all applicable subcontractors of every tier) for the time period covering the immediately preceding week. The term “certified payroll” includes all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by VTA.
- 2. SUBMISSION TO THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS (“DIR”):** In addition to submitting the certified payrolls and related documentation to VTA, on a weekly basis Contractor and subcontractors of all tiers must submit certified payroll and related documents electronically to the DIR. Failure to submit payrolls to the DIR when mandated by the Contract will also result in the withholding of progress, retention, and final payment, if applicable.
- 3. FLOW DOWN:** Contractor will incorporate into every lower-tier subcontract and purchase order these instructions where labor compliance documentation is required.

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



**EXHIBIT A10 DESIGN PROFESSIONAL SERVICES SPECIAL TERMS AND
CONDITIONS**

A. DEFINITIONS: In addition to other definitions set forth elsewhere in the Contract, the following definitions will apply to this Exhibit.

Contractor Intellectual Property means all Intellectual Property developed by Contractor and/or its subcontractors of any tier either (i) prior to the Effective Date, or (ii) independently of the Contract, or (iii) any Intellectual Property that is an improvement, continuation, or adaptation of Intellectual Property subject to (i) and/or (ii) herein, and is authored, created, invented, and/or put into practice under and/or for the purposes of the Project and incorporated into the Design Intellectual Property, Deliverable(s), Instruments of Service, and/or Services.

Deliverable(s) means, whether singular or plural, items and/or services provided or to be provided by Contractor under this Contract identified as a deliverable by designation, number, or context, in any scope of work, a schedule, or any document associated with the foregoing.

Design Intellectual Property means all Intellectual Property authored, created, developed, and/or invented under or for the purposes of the Contract and/or any Deliverable(s), Instruments of Service, and/or Services, excluding Intellectual Property that is (i) an improvement, continuation, or adaptation of Contractor Intellectual Property and (ii) authored, created, invented, and/or put into practice under and/or for the purposes of the Project.

Instruments of Service means all physical, electronic, and/or mechanical embodiments of, and documents disclosing, Intellectual Property. Without limiting the generality of the foregoing, Instruments of Service includes embodiments, documents, and/or Deliverables incorporating concepts, inventions (whether or not protected under patent laws), works of authorship, information, new or useful art, combinations, discoveries, formulae, algorithms, specifications, manufacturing techniques, technical developments, systems, computer architecture, artwork, models, designs, procedures, processes, and methods of doing business, and any other media, materials, plans, reports, project plans, work plans, training materials, and other tangible objects produced by Contractor under this Contract. Without limiting the generality of the foregoing, Instruments of Service include architectural plans, models, or drawings, formal or informal, complete or incomplete, and regardless of whether such is useful or instructive to VTA.

Intellectual Property means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, business and domain names, inventions, solutions



embodied in technology, and other intellectual activity. Without limiting the generality of the foregoing, Intellectual Property includes original architectural design in any tangible medium of expression, including a constructed building or structure, or architectural plans, models, or drawings.

VTA Intellectual Property means any Intellectual Property that is owned by, controlled by, or licensed to, VTA.

Third Party Intellectual Property means any Intellectual Property that is not owned by Contractor and is not VTA Intellectual Property.

Project means any work or project described in any Task Order issued under the Contract.

B. INTELLECTUAL PROPERTY RIGHTS:

- 1. OWNERSHIP:** Except for Contractor Intellectual Property, Contractor acknowledges and agrees that all Design Intellectual Property, in any medium, is specially ordered or commissioned by VTA, including works made for hire in accordance with Section 101 of the Copyright Act of the United States, and VTA shall be the owner and legal author thereof. To the extent that Design Intellectual Property does not qualify as a work made for hire in accordance with Section 101 of the Copyright Act, Contractor hereby irrevocably and exclusively assigns all right, title, and interest to Design Intellectual Property (including all patent, copyright, trademark, trade secret, and any other intellectual property right therein) to VTA immediately upon creation, authorship, development, or invention without any restriction, limitation, or condition precedent thereto. Contractor agrees to execute such further documents and to do such further acts, at VTA's expense, as may be necessary to perfect, register, or enforce VTA's ownership of such rights, in whole or in part. If Contractor fails or refuses to execute any such documents, Contractor hereby appoints VTA as Contractor's attorney-in-fact (this appointment to be irrevocable and a power coupled with an interest) to act on Contractor's behalf and to execute such documents.
- 2. VARA:** VTA acknowledges that Contractor may have rights pursuant to Section 106A ("VARA") of the Copyright Act of the United States related to the Design Intellectual Property and that Contractor may, in its sole discretion, elect to disclaim authorship or other attribution related to the Design Intellectual Property or Instruments of Service. Contractor hereby forever waives and agrees never to assert against VTA, its successors, or licensees any other rights pursuant to VARA not specifically identified in the preceding sentence that Contractor may have in Design Intellectual Property or Instruments of Service even after expiration or termination of this Contract. Subject to the right pursuant to VARA described above, Contractor specifically waives any and all rights, title, and



interest to Design Intellectual Property and acknowledges VTA's ownership thereof including without limitation any know-how, trade secrets, or design elements.

3. LICENSE GRANT TO CONTRACTOR: VTA hereby grants to Contractor a limited, non-exclusive license to use, exploit, manufacture, distribute, reproduce, adapt, and display the VTA Intellectual Property, Design Intellectual Property, and all Instruments of Service, as appropriate, solely in connection with and limited to the Allowed Uses (hereinafter referred to as "Design License"). "Allowed Uses" are: (a) incorporation into the Project and (b) performance, provision, furnishing, and discharge of the Services under the Contract. Any rights not specifically granted by VTA to Contractor under this **Section B.3. License Grant to Contractor** are reserved to VTA. This Design License will expire upon the termination or expiration of the Contract.

4. CONTRACTOR INTELLECTUAL PROPERTY:

i. Contractor Intellectual Property/License: Contractor hereby grants to VTA an irrevocable, perpetual, non-exclusive, transferable, fully paid-up right and license to make, sell, use, execute, reproduce, adapt, display, perform, distribute, make derivative works of, export, disclose, and otherwise disseminate or transfer any and all rights in and to the Contractor Intellectual Property that is required by, incorporated in, or exercised as part of, the Design Intellectual Property and/or Instruments of Service. The license granted under this **Section B.4.i. Contractor Intellectual Property/License** permits VTA to authorize its consultants (including but not limited to any replacement design professional firm(s)), contractors, subcontractors, sub-subcontractors, and suppliers, to reproduce applicable portions of the Instruments of Service, solely for purposes related to the Project. Any rights not specifically granted by Contractor to VTA under this **B.4.i. Contractor Intellectual Property/License** are reserved to Contractor.

ii. Identification of Contractor Intellectual Property: Contractor shall identify and disclose to VTA all Contractor Intellectual Property required by, incorporated in, or exercised as part of, the Design Intellectual Property, including using reasonable efforts to provide, to the extent reasonably available: (i) full and specific information detailing Contractor Intellectual Property claimed; (ii) date of authorship, creation, and/or invention; (iii) date of application(s); (iv) application number(s) and registering entity(ies); (v) date of registration(s); (vi) registration number(s) and registering entity(ies), if any; and (vii) owner including person or entity name and address.

5. THIRD PARTY INTELLECTUAL PROPERTY:

i. Third Party Intellectual Property/License: Contractor will not create any Design Intellectual Property and/or Instruments of Service that require, incorporate, or exercise



any Third Party Intellectual Property, unless VTA provides advance written approval of such. If VTA provides such approval, Contractor shall either (a) demonstrate it already has or (b) secure: an irrevocable, perpetual license(s) in the name of VTA to make, sell, use, execute, reproduce, adapt, display, perform, distribute, make derivative works of, export, disclose, and otherwise disseminate or transfer any and all rights in and to the Third Party Intellectual Property that is required by, incorporated in, or exercised as part of, the Design Intellectual Property and/or Instruments of Service, including a representation and warranty that the Third Party Intellectual Property does not infringe the rights, including Intellectual Property rights, of any other person or entity.

ii. Identification of Third Party Intellectual Property: Contractor shall identify and disclose to VTA all Third Party Intellectual Property required by, incorporated in, or exercised as part of, the Design Intellectual Property and/or Instruments of Service, including using reasonable efforts to provide, to the extent reasonably available: (i) full and specific information detailing Third Party Intellectual Property claimed; (ii) date of authorship, creation, and/or invention; (iii) date of application(s); (iv) application number(s) and registering entity(ies); (v) date of registration(s); (vi) registration number(s) and registering entity(ies), if any; and (vii) owner, including person or entity name and address.

6. PAYMENTS INCLUSIVE: Contractor acknowledges and agrees that the total compensation paid for the Services pursuant to Contract Section D. COMPENSATION and Exhibit A3 (Compensation, Invoicing and Payment) includes all royalties, fees, costs, and expenses arising from or related to the Design Intellectual Property, Instruments of Service, and any licenses granted hereunder.

C. NON-INTELLECTUAL PROPERTY RIGHTS: Unless otherwise specified by VTA in writing, Contractor shall deliver to VTA all Instruments of Service, documents, results, and related materials created in the development of Design Intellectual Property as soon as reasonably practicable, but in no event later than the effective date of Contract expiration or termination. Contractor and Contractor's subcontractors and consultants grant to VTA all physical ownership and possession of the Instruments of Service created under and for the purpose of the Contract. Contractor acknowledges and agrees that all Instruments of Service, documents, results, and related materials created in the development of Design Intellectual Property will be owned by VTA upon creation regardless of when they may be physically delivered to VTA.

D. STANDARDS OF CARE; REPRESENTATIONS AND WARRANTIES:



1. LICENSES, CERTIFICATIONS, REGISTRATIONS, OTHER APPROVALS:

- i.** All Services and/or Deliverables furnished by Contractor will be performed by, or under the supervision of, persons who (i) hold all necessary licenses, certifications, registrations, permits, or approvals to practice in the State of California; (ii) are experienced, competent, and skilled in their respective trades or professions; (iii) are professionally qualified to perform the Services; and (iv) will assume professional responsibility for the accuracy and completeness of the Deliverables, including designs, plans, and other documents prepared or checked by them. Contractor shall perform the Services with the degree of skill and judgment normally exercised by firms performing services of a similar nature. Contractor represents that it is sufficiently organized and financed to perform the Services.
- ii.** In addition to the other rights and remedies that VTA may have, VTA, at its option, may require Contractor, at Contractor's expense, to re-perform any Services that fail to meet the above standards.

2. POWER, AUTHORITY, AND QUALIFICATION:

- i.** Contractor is a **[INSERT ORGANIZATION TYPE]**, duly organized and validly existing under the laws of **[INSERT STATE]**, having the requisite power and all required licenses to carry on its present and proposed activities. Contractor has the full power, right, and authority to execute and deliver this Contract and to perform each and all of the obligations of Contractor provided for under this Contract. Contractor is duly qualified to do business and is in good standing in the State of California as of the Effective Date, and will remain duly qualified and in good standing throughout the Contract term and for as long as any obligations remain outstanding under the Contract.
- ii.** The execution, delivery, and performance of this Contract has been duly authorized by all necessary action of Contactor's governing body. Each person executing this Contract has been duly authorized to execute and deliver each such document on behalf of Contractor.

3. COMPLIANCE WITH APPLICABLE LAW: As of the Effective Date, Contractor is not in breach of any applicable law that would have a material adverse effect on the Services or the performance of any of its obligations under the Contract.

4. NO PENDING LEGAL ACTION: As of the Effective Date, there is no action, suit, proceeding, investigation, or litigation pending and served on Contractor which challenges Contractor's authority to execute, deliver, or perform, or the validity or enforceability of, this Contract, or which challenges the authority of the representative of Contractor executing this Contract; and Contractor has disclosed to VTA before the Effective Date any pending and



un-served or threatened action, suit, proceeding, investigation, or litigation with respect to such matters of which Contractor is aware.

5. NON-INFRINGEMENT: Contractor represents and warrants that the Design Intellectual Property, Instruments of Service, and any Contractor Intellectual Property required by, incorporated in, or exercised as part of, the Design Intellectual Property does not infringe upon any right, title, or interest of any person or entity including, without limitation, Intellectual Property rights under applicable United States law or international treaties to which the United States is a member or signatory party. Contractor further represents and warrants that, prior to any delivery of any Design Intellectual Property, Instruments of Service, or Contractor Intellectual Property to VTA, Contractor has conducted a diligent and comprehensive search and evaluation to ensure non-infringement of such upon any right, title, or interest of any person or entity including, without limitation, Intellectual Property rights under applicable United States law or international treaties to which the United States is a member or signatory party.

6. NON-PROJECT USE AND MODIFICATION:

i. Disclaimer of Suitability for Non-Project Use: Contractor does not represent that the Instruments of Service, as prepared and delivered by Contractor, are suitable for reuse by VTA or other parties for any purposes other than the Project. Reuse of the Instruments of Service by VTA for any purpose unrelated to the Project will be at VTA's sole risk without any liability to Contractor.

ii. VTA Non-Project Use: If VTA uses the Instruments of Service for purposes other than the Project, VTA shall indemnify, defend, and hold harmless Contractor from all third-party claims, damages, and expenses, including reasonable attorneys' fees, to the extent that the claim(s) is/are caused by such use by VTA.

iii. VTA Independent Modification: If VTA independently modifies the Instruments of Service without Contractor's involvement or consent, VTA shall indemnify, defend, and hold harmless Contractor from all third-party claims, damages, and expenses, including reasonable attorneys' fees, to the extent that the claim(s) is/are caused by such modification by VTA.

E. INDEMNIFICATION AND DEFENSE OF CLAIMS:

1. GENERAL INDEMNIFICATION AND DEFENSE OF CLAIMS:

i. Indemnification: Subject to the limitations in **Section E.3. Limitation on Indemnification and Defense of Claims** below, and to the greatest extent permitted by law, Contractor will indemnify, defend, and hold harmless VTA, its board members,



officers, agents, employees, and consultants (collectively, the “Indemnitees”) from any claims, causes of action, suits, legal or administrative proceedings, judgment, settlement monies (regardless of stated purpose or designation), liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys’ and experts’ fees and costs) (each a “Claim” and collectively “Claims”), to the extent that the Claims arise out of, pertain to, are caused by, or relate to the negligence, recklessness, or willful misconduct of Contractor and/or its agents, employees, or subcontractors, whether such Claims are based upon a contract, or for personal injury, death, or property damage, or upon any other legal or equitable theory whatsoever.

- ii. **Defense:** Subject to the limitations in **Section E.3. Limitation on Indemnification and Defense of Claims** below, and to the greatest extent permitted by law, Contractor will, at its own expense, and upon written request by VTA or any individual Indemnitee, immediately defend any suit, action, proceeding, dispute, or demand brought against any Indemnitee founded upon, alleging, or implicating any Claims covered by Contractor’s indemnity obligation set forth in subparagraph (i) immediately above, regardless of whether Contractor and/or any of its agents, employees, or subcontractors was in fact negligent or reckless or engaged in willful misconduct. In the event a court of competent jurisdiction determines that any suit, action, claim, or demand brought against any Indemnitee was caused in any part by VTA or its agents, servants, or independent contractors who are acting on behalf of VTA, VTA shall promptly reimburse Contractor for the costs of defending the Indemnitees in such action incurred by Contractor, but only in proportion to the liability of VTA or its agents, servants, or independent contractors who are acting on behalf of VTA. In no event will the cost to defend charged to Contractor exceed Contractor’s proportionate percentage of fault. However, notwithstanding the previous sentence, in the event that one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution, Contractor must meet and confer with other parties regarding unpaid defense costs.

2. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION AND DEFENSE OF CLAIMS:

- i. **Indemnification:** Subject to the limitations in **Section E.3. Limitation on Indemnification and Defense of Claims** below, and to the greatest extent permitted by law, Contractor will indemnify, defend, and hold harmless the Indemnitees from and against any and all Claims which may be suffered by, incurred by, accrued against, charged to, or recoverable by a third party from any Indemnitee, by reason of any such Claim arising out of or relating to any actual or alleged infringement of any Intellectual Property rights by any (i) Design Intellectual Property, (ii) Instruments of Service, (iii) Contractor Intellectual Property, or (iv) use of any of the aforementioned.



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- ii. Defense:** Subject to the limitations in **Section E.3. Limitation on Indemnification and Defense of Claims** below, and to the greatest extent permitted by law, Contractor will, at its own expense, and upon written request by VTA, or any individual Indemnitee, immediately defend any suit, action, claim, or demand brought against any Indemnitee founded upon, alleging, or implicating any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, or fees and costs covered by Contractor's indemnity obligation set forth in subparagraph (i) immediately above, regardless of whether any of the (i) Design Intellectual Property, (ii) Instruments of Service, or (iii) Contractor Intellectual Property did, in fact, infringe upon any Intellectual Property rights.
- iii. Additional Remedies:** If any part of the (i) Design Intellectual Property, (ii) Instruments of Service, or (iii) Contractor Intellectual Property is, or in Contractor's judgment may become, the subject of any infringement Claim, or is likely to be claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property right, Contractor will, at its expense and option, do one of the following: (a) procure for VTA the necessary right (including without limitation payment of any settlement monies, royalty, or license fee) to continue using such (i) Design Intellectual Property, (ii) Instruments of Service, or (iii) Contractor Intellectual Property, whether on its own and/or as incorporated into any Instruments of Service, the Project, or any building structure (regardless of construction status or operational status); (b) except when the Claim concerns a building structure (regardless of construction status or operational status), replace or modify the infringing portion of the (i) Design Intellectual Property, (ii) Instruments of Service, or (iii) Contractor Intellectual Property, so it becomes non-infringing; or (c) if (i) the Claim does not involve a building structure (regardless of construction status or operational status) and (ii) none of the foregoing are commercially reasonable, take back the infringing Instruments of Service and refund to VTA a pro-rated amount of any fees paid for the infringing portion of the Instruments of Service. If, in the sole opinion of VTA, the return of such infringing Instruments of Service makes the retention of other Instruments of Service acquired from Contractor under this Contract impractical, incomplete, or otherwise rendered useless for purposes of the Project, VTA will then have the option of terminating this Contract, or applicable portions hereof, without penalty. Contractor will take back such Instruments of Service and refund any fees VTA has paid Contractor.
- iv. Limitation on Infringement Indemnification and Defense of Claims:** Contractor shall have no liability or obligation under **Section E.2. Intellectual Property Infringement Indemnification and Defense of Claims** with respect to any Claim to the extent the Claim is based upon (a) any reuse of the Instruments of Service by VTA for any purpose unrelated to the Project, or (b) modifications, alterations, combinations, or enhancements of the Instruments of Service by any person or entity other than, and



independent of, Contractor, and at the request of VTA, but only to the extent of such modifications, alterations, combinations, or enhancements.

- v. **Procedures:** Contractor's obligations under **Section E.2. Intellectual Property Infringement Indemnification and Defense of Claims** are conditioned on the following: VTA must (a) promptly notify Contractor, in writing, of any Claim subject to **Section E.2. Intellectual Property Infringement Indemnification and Defense of Claims** of which VTA has actual knowledge (provided that failure to do so will only release Contractor from this indemnity and defense of claims obligation to the extent that such failure led to material prejudice); (b) in writing, grant Contractor control of the defense of any such Claim and of all negotiations for its settlement or compromise, subject to VTA's right to participate in the defense of such Claim (at VTA's own expense), and 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.
3. **LIMITATION ON INDEMNIFICATION AND DEFENSE OF CLAIMS:** Nothing in **Section E. INDEMNIFICATION AND DEFENSE OF CLAIMS** is intended to impose on Contractor a duty to defend, indemnify, or hold harmless that is prohibited by applicable law. Contractor's obligations under **Section E. INDEMNIFICATION AND DEFENSE OF CLAIMS** do not extend to Claims to the extent caused by the sole or active negligence or willful misconduct of VTA or its agents, servants, or independent contractors who are acting on behalf of VTA or from damages for defects in designs furnished by those persons. Furthermore, to the extent that Contractor's Services giving rise to a Claim under **Section E. INDEMNIFICATION AND DEFENSE OF CLAIMS** are subject to California Civil Code Section 2782.8, Contractor's obligations under **Section E. INDEMNIFICATION AND DEFENSE OF CLAIMS** shall be limited, to the extent required by Civil Code Section 2782.8, to any liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys' and experts' fees and costs) that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, and in no event shall the cost to defend charged to Contractor exceed Contractor's proportionate percentage of fault.
4. **SURVIVAL:** All of the requirements of **Section E. INDEMNIFICATION AND DEFENSE OF CLAIMS** will survive the expiration or termination of this Contract and remain in full force and effect.



EXHIBIT A11 FED WAGE RATES



**EXHIBIT A12 REQUIRED FHWA CLAUSES
PART 1**

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

- A. ACCESS TO RECORDS AND REPORTS
- B. BUY AMERICA REQUIREMENTS
- C. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT
- D. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
- E. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
- F. ENERGY CONSERVATION
- G. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION
- H. LOBBYING RESTRICTIONS
- I. NO GOVERNMENT OBLIGATION TO THIRD PARTIES
- J. PATENT RIGHTS AND RIGHTS IN DATA
- K. PROCUREMENT OF RECOVERED MATERIALS
- L. TERMINATION
- M. VIOLATION AND BREACH OF CONTRACT
- N. SPECIAL DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS



REQUIRED FHWA CLAUSES PART 2

These FHWA terms and conditions (“FHWA Clauses”) are required by the FHWA and apply to all third party contracts awarded by VTA that are funded in whole or in part with FHWA assistance. Unless specifically defined herein, the capitalized terms used in these FHWA Clauses have the meanings as defined in the solicitation and/or Contract, as applicable. Contractor is responsible for its subcontractors’ compliance, as applicable, with these FHWA Clauses. To the extent applicable, Form FHWA-1273 Required Contract Provisions is incorporated herein by this reference as if fully set forth herein.

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

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



B. BUY AMERICA REQUIREMENTS: OMITTED.

C. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT: If the Contract has a total value of more than \$150,000, Contractor will comply with the following:

- a. **Flow Down:** The requirements of this Section C apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section C.
- b. Contractor will:
 - i. Not utilize any person to perform under the Contract who is prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act;
 - ii. Not use any violating facilities;
 - iii. Report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
 - iv. Report violations of use of prohibited facilities to FHWA; and
 - v. Comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

D. DISADVANTAGED BUSINESS ENTERPRISE (“DBE”): Contractor will comply with the DBE requirements set forth elsewhere in the Contract.

E. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:

- a. **Overtime Requirements:** No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. **Violation; Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clause set forth in paragraph (a) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done



under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

- c. Withholding for Unpaid Wages and Liquidated Damages:** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.
 - d. Subcontracts:** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.
- F. ENERGY CONSERVATION:** Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:
- a. Flow Down:** The requirements of this Section F apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section F.
 - b. Mandatory Standards and Policies:** Contractor will comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- G. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION:** If the Contract has a total value of \$25,000 or more, Contractor will comply with the following:
- a. Flow Down:** If Contractor and/or any of its subcontractors enter into covered transactions with a participant at the next lower level, Contractor and/or its subcontractor, as



applicable, must require that participant to: (a) comply with subpart C of 2 C.F.R. Part 180, as supplemented by 2 C.F.R. Part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. Part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

- b. Compliance with Federal Law:** Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180. These provisions apply to the Contract and to (i) any subcontract at any tier of \$25,000 or more, and (ii) each contract at any tier for a federally required audit (irrespective of the contract amount), and (iii) each contract at any tier that must be approved by an FHWA official irrespective of the contract amount.

- c. Certification:** By executing this Contract, Contractor hereby certifies that its principals, affiliates, and subcontractors are eligible to participate in the federally funded Contract and are not presently declared by any federal department or agency to be:
 - i.** Debarred from participation in any federally assisted award;
 - ii.** Suspended from participation in any federally assisted award;
 - iii.** Proposed for debarment from participation in any federally assisted award;
 - iv.** Declared ineligible to participate in any federally assisted award;
 - v.** Voluntarily excluded from participation in any federally assisted award; or
 - vi.** Disqualified from participation in any federally assisted award.

This certification is a material representation of fact relied upon by VTA. If it is later determined by VTA that Contractor knowingly rendered an erroneous certification, in addition to remedies available to VTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- H. LOBBYING RESTRICTIONS:** If the Contract has a total value of \$100,000 or more, Contractor will comply with the following:
 - a. Flow Down:** The requirements of this Section H apply to Contractor and its Contract subcontractors at every tier if such subcontract has a total value of \$100,000 or more.



Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section H.

- b. Certification:** Contractor must submit to VTA the appropriate Restrictions on Lobbying certification attached to the solicitation or otherwise provided by VTA with its (i) Bid or Proposal, or (ii) prior to the execution of the Contract, whichever occurs earlier.

I. NO GOVERNMENT OBLIGATION TO THIRD PARTIES: Contractor will at all times comply with the following requirements:

- a. Flow Down:** The requirements of this Section I apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section I.
- b. No Obligation:** Contractor acknowledges that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the federal government, the federal government is not a party to the Contract and shall not be subject to any obligations or liabilities of VTA, Contractor or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the underlying Contract.

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

- a. Flow Down:** The requirements of this Section J apply to Contractor and its Contract subcontractors at every tier if the relevant subcontract meets the definition of a research-type project under 37 U.S.C. § 401.2. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section J.
- b. Intellectual Property Rights:** Certain Patent Rights and Data Rights apply to all subject data first produced in the performance of the Contract. Contractor grants VTA intellectual property access and licenses deemed necessary for the work performed under the Contract and in accordance with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FHWA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of the Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FHWA, until such time as FHWA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any



contract with an academic institution. For purposes of the Contract, the term “subject data” means recorded information, whether or not copyrighted, that is delivered or specified to be delivered by the Contract.

- c.** The federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described as follows:

 - i.** Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - ii.** Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FHWA.
- d.** “Federal Government Purposes,” means use only for the direct purposes of the federal government. The federal government may not extend its federal license to any other party without the copyright owner’s consent.
- e.** Unless FHWA determines otherwise, Contractor will permit FHWA to make available to the public, either FHWA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the federal government may direct.
- f.** Unless prohibited by state law, upon request by the federal government, Contractor will indemnify, save, and hold harmless the federal government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor will indemnify the federal government for any such liability arising out of the wrongful act of any employee, official, or agents of the federal government.
- g.** Nothing contained in this clause on rights in data shall imply a license to the federal government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the federal government under any patent.
- h.** Data developed by Contractor and financed entirely without using federal assistance provided by the federal government that has been incorporated into work required by the



underlying Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.

- i. Contractor will include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

K. PROCUREMENT OF RECOVERED MATERIALS: If (i) the Contract is for the purchase of items designated in guidelines of the U.S. Environmental Protection Agency (“EPA”) at 40 C.F.R. Part 247 and (ii) the purchase price of the relevant item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000, Contractor will comply with the following:

- a. **Flow Down:** The requirements of this Section K apply to Contractor and its Contract subcontractors at every tier if the subcontract involves the purchase of EPA-selected items valued at \$10,000 or more. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section K.
- b. Contractor will provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6962, and EPA, “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. Part 247.

L. TERMINATION: Contractor will comply with the termination provisions set forth elsewhere in the Contract. The requirements of this Section L apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section L.

M. VIOLATION AND BREACH OF CONTRACT: If the Contract has a total value exceeding the simplified acquisition threshold as defined by 48 C.F.R. 2.101(b) (“Simplified Acquisition Threshold”), Contractor will comply with the following:

- a. **Flow Down:** The requirements of this Section M apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section M.
- b. **Disputes:** VTA and Contractor intend to resolve all disputes under the Contract to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through



communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the VTA's and Contractor's organization. In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with VTA's direction or decisions made thereof.

- c. Performance During Dispute:** Unless otherwise directed by VTA, Contractor shall continue performance under the Contract while matters in dispute are being resolved.
- d. Remedies:** The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by VTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

N. SPECIAL U.S. DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS: If the Contract has a total value of \$10,000 or more and is for construction work as defined in 41 C.F.R. §60-1.3, Contractor will comply with the following:

- a. Flow Down:** The requirements of this Section N apply to Contractor and its Contract subcontractors performing construction work at every tier. Contractor is responsible for ensuring that all applicable lower tier contractors and subcontractors are in compliance with this Section N.
- b.** Contractor will comply with (i) U.S. DOL regulations set forth in 41 C.F.R. Part 60-4, (ii) Executive Order 11246 "Equal Employment Opportunity," as amended (including by Executive Order 11375), and (iii) 42 U.S.C. § 2000e *et seq.*
- c.** Contractor will comply with the equal opportunity clause set forth in 41 C.F.R. § 60-1.4(b), which is incorporated herein by reference pursuant to 41 C.F.R. § 60-1.4(d).
- d.** Contractor will comply with the "Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)" set forth in 41 C.F.R. § 60-4.3, which specifications are attached hereto (if applicable).