

Request for Proposals
RFP S19126

Pedestrian Gates Design Services

August 19, 2019
Norman David, Contracts Administrator

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

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

ABOUT RFP S19126: VTA seeks Proposals from qualified firms to provide the following engineering services (“Services”) for the Plans, Specifications, & Estimates (“PS&E”) phase of VTA’s Pedestrian Gates project.

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	August 19, 2019
Pre-Proposal Conference	September 5, 2019 at 11:00 AM
Deadline to Submit Questions	September 9, 2019 at 4:00 PM
Deadline to Submit Proposal	October 17, 2019 at 4:00 PM
Interviews	November 5, 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 S19126 for Pedestrian Gates Design 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:

Norman David, Contracts Administrator
Santa Clara Valley Transportation Authority
3331 North First Street, Building A
San Jose, California 95134
Email: norman.david@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 B104
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 S19126 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 Cost Proposal Form 4 and DBE Forms 5 and 6.

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

"RFP S19126 PEDESTRIAN GATES DESIGN 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.

I. CONTRACT TYPE: It is anticipated that VTA will award a professional services contract (“Contract”). If awarded, the Contract will be compensated as a Cost Plus Fixed Fee, and Time and Materials with a term of two (2) years. This RFP does not commit VTA to enter into such Contract nor does it obligate VTA to pay for costs incurred in preparation or submission of Proposals or in anticipation of entry into a Contract.

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

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

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



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

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

II. PROPOSER'S MINIMUM QUALIFICATIONS

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

1. The Proposer must have sufficient experience and comprehensive knowledge of grade crossing warning system on light or heavy rail systems.
2. The Proposer or Proposer's project manager or lead engineer shall have at least ten (10) years of experience in managing light and heavy rail projects including at-grade road crossing design and project management.
3. The Proposer's project manager or lead engineer shall possess the applicable professional engineering license(s) in the State of California to perform the engineering design services for the project scope. Professional Engineering (Civil) license is required.
4. The Proposer shall possess knowledge of all applicable regulations and codes.
5. The Proposer shall possess knowledge of Federal Railroad Administration (FRA) and State of California Public Utilities Commission (CPUC) codes and regulations governing light and heavy rail.

B. PREFERRED QUALIFICATIONS:

1. The Proposer shall be familiar with local conditions relating to the project scope and work in Santa Clara County.
2. The Proposer shall possess knowledge of Caltrain and Union Pacific Railroad (UPRR) requirements and standards.



III. EVALUATION AND SELECTION

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

Qualification of the Firm	30 Points
Staffing and Project Organization	30 Points
Work Plan / Project Understanding	30 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 similar nature; experience working with UPRR, FRA, Caltrain, transit agencies, and 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, particularly project manager and key personnel; their level of involvement in performing related work; logic of project organization; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel.
3. **WORK PLAN / PROJECT UNDERSTANDING:** Proposer’s demonstrated understanding of the project requirements, potential problem areas, project approach, work plan, the delivery process including project approach, key risks and challenges for delivering a project, the firm’s quality assurance program, along with total level of effort will be evaluated.
4. **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 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 date stated in Section I, A Table 1 available in the event the review board conducts interviews. If invited to interview, VTA will notify Proposers regarding the schedule and other pertinent interview information. 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 extent of services to be rendered.

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

Following evaluations of the stated criteria, VTA will open the sealed cost Proposal from the highest ranked Proposer and enter into negotiation for costs 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. VTA may enter into negotiations with the next highest-ranked Proposer. If necessary, negotiations with successive Proposers in descending order of ranking may be conducted until contract award can be made to the Proposer whose price is considered fair and reasonable by VTA.

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

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

IV. PROPOSAL FORMAT AND CONTENT

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

- B. CONTENT:** The Proposer shall include the information described below:

- 1. PROFILE OF FIRM:** This section shall include a brief description of the firm's size as well as the local organizational structure; it shall also include a discussion of the firm's financial stability, capacity and resources. Additionally, this section shall include a listing of any lawsuit or litigation and the result of that action resulting from (a) any public project undertaken by the Proposer or by its subcontractors where litigation is still pending or has occurred within the last five (5) years or (b) any type of project



where claims or settlements were paid by the Proposer or its insurers within the last five (5) years.

- 2. QUALIFICATIONS OF THE FIRM:** This section shall include a brief description of the Proposer's and subconsultants qualifications and previous experience on similar or related projects. Description of pertinent project experience shall include a summary of the work performed, the total project cost, the percentage of work the firm was responsible for, the period over which the work was completed. Give a brief statement of the firm's adherence to the schedule and budget for each project. Proposer must provide the name, title, and phone number of three (3) clients to be contacted for references.
- 3. WORK PLAN/PROJECT UNDERSTANDING:** By presentation of a well-conceived work plan, this section of the Proposal shall establish the Proposer understands VTA's objectives and work requirements and Proposer's ability to satisfy those objectives and requirements. The work plan shall describe the work assigned to the prime and each subconsultant. The work plan shall also include a timetable for completing all work specified in the Scope of Work. Proposer must state the Business Diversity Program goal commitment as a percentage of total contract value. The Proposer may also suggest technical or procedural innovations that have been used successfully on other projects and which may facilitate the completion of this project.
- 4. PROJECT STAFFING:** This section shall discuss how the Proposer would propose to staff this project. Proposer project team members shall be identified by name, location, specific responsibilities on the project and the estimated person-hours of participation. An organizational chart for the project team and resumes for key personnel shall be included. Key personnel will be an important factor considered by the review board. Once the Proposal is submitted, there can be no change of key personnel without the prior approval of VTA.
- 5. ADMINISTRATIVE SUBMITTALS:** The Proposer must complete all the forms attached hereto and submit in the Proposal. Forms No. 3 through No. 7 must be printed and submitted in a separate and sealed envelope as part of the Proposal.



V. BUSINESS DIVERSITY PROGRAM POLICY: Contractor shall adhere to VTA's Business Diversity Program requirements.

A. 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 WITH GOAL REQUIREMENT:** In connection with performance of this Contract, Proposer shall fully comply with VTA policy and procedures pertaining to utilization of DBE firms. A 6.33% DBE contract specific participation goal has been established by the Office of Business Diversity Programs ("OBDP") as stated in this RFP.
- 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 quarterly 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.

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.

4. **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.
5. **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.
6. **“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;

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

VI. INSURANCE AND INDEMNIFICATION REQUIREMENTS: Contractor shall adhere to the insurance requirements set forth in Exhibit A5. 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 A6.

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:

A. PROJECT BACKGROUND

As VTA continues to evaluate the safety of the light rail system and looks for opportunities to improve safety, one of the areas identified for safety enhancement is the pedestrian crossings of light rail tracks along the VTA Corridor. Many of our crossings are gated for pedestrians in the direction of vehicular traffic but not in the opposite direction also known as the off-quadrant. The goal of this project (Project) is to improve safety for pedestrians at the crossings by installing automatic pedestrian gates at those locations, mostly in the off-quadrants. The installation also includes swing gates for emergency egress, railings to channelize pedestrians, and civil and related signal improvements as necessary to make the crossing equipment functional and operational at the following ten (10) at-grade street crossings all located within Santa Clara County, California:

1. Orchard City and Railway Avenue (NE and SE Quadrants) – Campbell, CA
2. Campbell Avenue and Railway Avenue (SE Quadrant) – Campbell, CA
3. Bascom Avenue and Borello Drive (NE, NW and SW Quadrants) – San Jose, CA and Campbell, CA
4. Stokes Street and Southwest Expressway (SE Quadrant) – San Jose, CA
5. Leigh Avenue and Southwest Expressway (SE Quadrant) – San Jose, CA
6. Fruitdale Avenue and Southwest Expressway (SE Quadrant) – San Jose, CA
7. Parkmoor Avenue and Race Street (SE Quadrant of Parkmoor, NE Quadrant of Race) – San Jose, CA
8. Lincoln Avenue (NE and SW Quadrants) – San Jose, CA
9. Auzerais Avenue (SE Quadrant) – San Jose, CA
10. Sunol Street (NE and SW Quadrants) – San Jose, CA



Additionally, VTA desires to improve safety at the Mountain View Light Rail Station located near the intersection of Castro Street and Central Expressway, in Mountain View, CA. This project includes the replacement of the existing swing gates with a combination of automatic pedestrian gates and emergency swing gates to control pedestrian traffic at the north end of the station.

B. PROJECT DETAILS

The Proposer's scope must include engineering and technical support, including the preparation of plans, specifications, cost estimates, packaging the bid documents, and providing support to VTA during the bidding and construction phases. The design of the automatic pedestrian gates, swing gates for emergency egress, railings to channelize pedestrians, and signal improvements at the ten (10) locations listed above and the design of the automatic pedestrian gates and emergency swing gates at the Mountain View Light Rail Station (hereinafter collectively and individually referred to as "Design") will accommodate VTA requirements (See VTA Furnished Materials below) and VTA approved recommendations from diagnostic meetings.

The Contractor will be responsible for performing all site investigations and studies needed to develop Design submittals except as noted elsewhere. The Contractor will be responsible for performing all work necessary to develop a complete Design, even if not explicitly listed as a deliverable below, as long as it is associated with the scope of this Project

C. PROJECT BREAKDOWN AND DELIVERABLES

1. Project Management

- a. Participate in a kick-off meeting, and other project meetings as described below with VTA. Attend bi-weekly meetings with VTA through submittal of Bid Ready documents (as described below in item 4. 100% PS&E (Bid Ready)).
- b. Prepare and distribute minutes of all meetings.
- c. Submit Design schedule.
- d. Submit plans, technical specifications, cost estimates and project schedules for Design review at all Design levels.
- e. Submit project contact and list of key personnel.
- f. Submit Design progress report with monthly invoices.
- g. Prepare and submit Quality Management Plan (QMP)

Deliverables: Meeting minutes, schedule, Design submittals, project contact, list of personnel, QMP, Design progress report, and invoices.



2. Conceptual Design

- a. Develop conceptual plans and cost estimates based on VTA exhibits.
- b. Attend one conceptual Design review meeting as part of the bi-weekly meetings.
- c. Confirm that the existing signal houses are capable of accommodating the additional equipment required for the Project.
- d. Prepare conceptual plans (for each location) for use during field diagnostic meetings.
- e. Attend field diagnostic meetings for each location with stakeholders to identify potential issues/conflicts. Contractor should assume there will be two full days of field diagnostic meetings, additional meetings may be added if required.

Deliverables: Conceptual Plans, cost estimates and diagnostic meeting minutes.

3. 65% Plan Development

- a. Complete Design to 65% level and submit PS&E to VTA for review and comments.
- b. Submittals shall include construction staging/phasing plan, traffic control plan, schedule for sequencing work to mitigate potential impact to VTA light rail operations. Coordinate the staging requirements with VTA Engineering, Operations, and Maintenance Department
- c. Attend one 65% Plan Review Meeting as part of the bi-weekly meetings.
- d. Prepare responses to review comments.
- e. Incorporate review comments.
- f. Provide all required information and prepare all CPUC applications for each location (GO-88B).

Deliverables: 65% plans and cost estimates, including notes and legend; easement, right-of-way, limit of work; existing utilities plan; construction details; traffic control; and train signals plan. In addition, specifications, construction schedule, draft ESCAPE (Erosion and Sediment Control Action Plan Element), technical submittals list and bid items list, 65% Review Meeting Minutes and responses to review comments.

4. 100% PS&E (Bid Ready)

- a. A hard copy (full-size) and electronic copy of Final PS&E.
- b. Construction Schedule.
- c. Electronic files of all drawings and documents (CAD).
- d. Construction Technical Submittal List and Bid Items list.



Deliverables: Bid Documents (Final) - A hard copy (full-size) and electronic copy of Final PS&E, including, technical specifications, technical submittals list, bid items list, complete construction quantities and cost estimate, construction schedule, completed ESCAPE plan, 100% plan review comment matrix, meeting minutes and responses to review comments.

5. Bidding Phase

- a. Address contractor's questions and attend pre-bid meeting as directed.
- b. Prepare addenda as directed.
- c. Prepare the conformed set of applicable contract documents after the contract is awarded which includes revised estimates, specifications and drawings.

Deliverables: Prepare Addenda, revise drawings, quantity and cost estimates, respond to Requests for Information, and prepare conformed contract documents.

6. Design Support During Construction (DSDC)

- a. Review and approve submittals, as directed.
- b. Respond to request for information (RFIs), as directed.
- c. Prepare Design change notices (DCN) on Design drawings specifications, and revise engineer's estimate, as directed.

Deliverables: Respond to RFIs and submittals; prepare: change notices, change Design drawings specifications, and revise engineer's estimate.

D. DESIGN DOCUMENT FORMAT

All construction documents must be developed on a computer format, including:

1. Drawings

Computer Aided Design (CAD) on "AutoCAD" 2016 or newer version. Electronic file shall be transmitted to **VTA** on a compact disc at the completion of final Design. Final Design plans shall be plotted on **VTA** standard 22' X 34", stamped and signed by the appropriate registered professional staff before advertisement. One (1) set of half-size 11" x 17" paper shall be transmitted to **VTA**.

2. Specifications

Use IBM PC compatible, MS Word format. All Project specifications must use the same format and combined into one complete word file. There will be two files; one for the Mountain View Station and the other for the ten at-grade street crossings.



3. Cost Estimate

Project cost estimate should be developed on a computer format using MS Excel. The cost estimate shall be separated into two parts for VTA budget purposes. The first part shall be for services associated with the Mountain View Station and the second part shall be for the ten at-grade street crossings.

4. Work Schedule

Tentative schedule for starting this Project is October 2019 with bid package scheduled for completion in July 2020.

Contractor shall adhere to the following schedule in the production and submittal of plans, specifications and bid documents.

Prepare Conceptual Design:	4 weeks
Prepare 65% Plan:	12 weeks
Review 65% Plan:	3 weeks
Prepare 100% Plan:	4 weeks
Review 100% Plan:	2 weeks
Prepare Bid Set:	1 week
Bid and Construction Support	12 months

5. VTA Furnished Materials

- a. Light Rail Transit Design Criteria Manual.
- b. Light Rail Standard Detail Manual.
- c. VTA As-Built Drawings (Vasona Line).
- d. VTA Safety and Security Light Rail Design Criteria.

E. QUALITY ASSURANCE/QUALITY CONTROL

REQUIREMENTS

The Contractor must establish and maintain a Quality Management Plan (QMP) and procedures that meets the VTA's QA Program requirements, as part of the Project Management Plan (PMP). The Contractor must conduct independent quality review of reports, plans, specifications, calculations, estimate and other required deliverables. The Contractor must:

- a. submit a QMP by which the Contractor proposes to implement the requirements of this Contract, within 20 calendar days after the execution of the Contract, for VTA's approval;
- b. assure promulgation of and strict adherence to the approved QMP and procedures in the conduct of all work;



- c. ensure sub-contractors subscribe to the approved Contractor's QMP. Waiver to this requirement shall be approved by VTA QA Manager on a case-by-case basis. In which case, the sub-contractor's QMP must be submitted to VTA QA Manager for approval;
- d. conduct and document quality reviews, and make findings and corrective actions available for VTA's review; and
- e. ensure distribution of all project correspondence and memoranda to appropriate personnel.

The QMP shall institute processes to ensure:

- a. quality control procedures are strictly adhered to, and properly documented throughout the entire course of all work;
- b. independent checking (check and back-check) of reports, plans, specifications, calculations, and estimates;
- c. those personnel responsible for assuring quality must be independent of those having direct responsibility for the work being performed;
- d. Contractor task leaders' assurance that required Quality Control (Intra-Disciplinary) review and activities have been satisfactorily performed and documented;
- e. evaluation of quality of the interface/integration and confirm that conflicts do not exist in areas where various items of work are shown on several discipline drawings; and
- f. Project Manager's approval and certification that required Inter-Disciplinary review and above requirements have been satisfactorily performed and documented prior to submittal to VTA or other approving agencies.

The Quality Assurance / Quality Control Manager shall conduct and document periodic and random audits of the Contractor and sub-contractors' work to verify and certify compliance with Contract requirements, Design criteria, constructability, other applicable standards, and the approved Quality Management Plan.

Definitions:

- a. Intra-Disciplinary Review: refers to internal (independent check) process within each discipline.
- b. Inter-Disciplinary Review: refers to external review process conducted to prevent conflicts and ensure proper interface/continuity among various disciplines.



IX. ADMINISTRATIVE SUBMITTALS

Proposer must submit all forms as part of the Proposal. Forms No. 4 and 5 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. COST PROPOSAL FORM

FORM 5. LISTING OF DBE PRIME AND SUBCONTRACTORS

FORM 6. DESIGNATION OF SUBCONTRACTORS AND SUPPLIERS

FORM 7. LOCAL FIRM CERTIFICATION

FORM 8. CERTIFICATION OF RESTRICTIONS ON LOBBYING

FORM 9. BUY AMERICA CERTIFICATION

FORM 9. 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.		DIR No.	
DUNS No.		CAGE No.*	
Federal Taxpayer ID No.		NAICS Codes	

*Commercial and Government Entity (www.sam.gov)

POINT(S) OF CONTACT

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

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

AUTHORIZED SIGNATORIES:

<u>Primary</u>	
Name/Title	_____
Signature	_____
E-mail	_____

<u>Alternate</u>	
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

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

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

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

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

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

Signature: Firm Name: Date:



FORM 3. EXCEPTIONS TO THE CONTRACT

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

All exceptions to the Contract terms and conditions must be stated on this form and submitted with the 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 4. COST PROPOSAL FORM

FOR A&E SERVICES, SUBMIT IN A SEPARATELY SEALED ENVELOPE

Proposer:

DETAIL DESCRIPTION OF COST ELEMENTS

1. DIRECT LABOR (Specify)	ESTIMATED HOURS	RATE/HOUR	ESTIMATED COST (\$)	
TOTAL DIRECT LABOR				
2. LABOR OVERHEAD	O.H. RATE	X BASE =	ESTIMATED COST	
TOTAL LABOR OVERHEAD				
TOTAL DIRECT LABOR AND OVERHEAD				
3. PROFIT %				
4. SUBCONSULTANT COSTS (Attach Itemization)				
5. OTHER DIRECT COSTS (Attach Itemization)				
TOTAL COST PROPOSAL				

Firm Name:

Name

Title

Signature

Date



FORM 5. LISTING OF DBE PRIME AND SUBCONTRACTORS

Firm (Prime): _____ Phone: _____

DBE: Yes No Age of Firm _____

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

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

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

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

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

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

Description of Work

1. _____
 2. _____
 3. _____
 4. _____
 5. _____

DBE GOALS ARE DETERMINED ON BASE PROPOSAL AMOUNT:

Total Contract Amount \$ _____
 DBE Contract Amount \$ _____

$$\frac{\text{DBE Contract Amount}}{\text{DBE Contract Amount}} \times 100 = \frac{\text{DBE Goal Achieved Base Contract}}{\text{DBE Contract Goal}} \%$$



**FORM 6. DESIGNATION OF SUBCONTRACTORS AND SUPPLIERS
FOR
DATA COLLECTION REQUIREMENTS**

Proposer: _____

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

This form is to be completed and submitted with your Proposal.

Firm Name	City and State	Portion of Work or Proposed Item	Ethnicity*	Gender+	Estimated Dollar Amount of Subcontract

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

+F=Female	+M=Male
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Total Proposed Amount: \$ _____

Amount to be subcontracted: \$ _____

Percent to be subcontracted: _____ %



FORM 7. 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 8. 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 9. 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 COMPENSATION, INVOICING and PAYMENT (Part 1)

EXHIBIT A3 COMPENSATION, INVOICING and PAYMENT (Part 2)

EXHIBIT A4 RATE SCHEDULE

EXHIBIT A5 DISADVANTAGED BUSINESS ENTERPRISES (DBE) REQUIREMENT

EXHIBIT A6 INSURANCE REQUIREMENTS

EXHIBIT A7 DESIGN PROFESSIONAL SERVICES SPECIAL TERMS AND
CONDITIONS

EXHIBIT A8 REQUIRED FTA CLAUSES PART 1

EXHIBIT A9 REQUIRED FTA CLAUSES PART 2

EXHIBIT A10 SAFETY REQUIREMENTS

EXHIBIT A11 RESTRICTED ACCESS WORK PERMIT FORM

EXHIBIT A12 USE OF PERSONAL ELECTRONIC DEVICES

EXHIBIT A13 PREVAILING WAGE REQUIREMENTS



EXHIBIT A SAMPLE CONTRACT

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

CONTRACT NO. S19126

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”).
- B. TERM OF THIS CONTRACT:** The term of this Contract shall commence on the Effective Date (as defined in the signature block below) and continue through December 31, 2021 (unless otherwise earlier terminated pursuant to the terms and conditions set forth herein).
- 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 Exhibits A2, and A3 for the Services.

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

E. PERFORMANCE OF THE SERVICES:

1. Contractor represents that it is sufficiently experienced, properly qualified, registered, licensed, equipped, organized and financed to perform the Services.
2. Contractor shall perform the Services with the degree of skill and judgment normally exercised by firms performing services of a similar nature. In addition to other rights and remedies that VTA may have, VTA, at its option, may require Contractor, at Contractor’s expense, to re-perform any Services that fail to meet the above standards.

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 **or** in Exhibit [], **if needed**. 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:

1. **SOLICITATION:** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure



this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, VTA shall have the right to rescind this Contract without liability.

2. **INTEREST OF PUBLIC OFFICIALS:** No Board Member, officer or employee of the VTA during his or her tenure or for two (2) years thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.
3. **INTEREST OF THE CONTRACTOR:** The Contractor covenants that, presently, Contractor, its officers, directors or agents, have no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree (or create an appearance of conflict) with the performance of the Services. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be knowingly employed.

J. TERMINATION AND SUSPENSION:

1. VTA may, by giving at least ten (10) business days' written notice to Contractor, terminate this Contract, or suspend performance hereunder, in whole or in part at any time for VTA's convenience. Contractor shall be compensated (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. **OWNERSHIP OF DATA:** All drawings, specifications, reports and other data developed by Contractor, its assigned employees or subcontractors pursuant to this Contract shall become the property of VTA as prepared, whether delivered to VTA or not. Unless otherwise provided herein, all such data shall be delivered to VTA or its designee upon completion of this Contract or at such other times as VTA or its designee may request.
2. **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.
3. **GOVERNING LAW:** The laws of the State of California will govern these terms and conditions, as well as any claim that might arise between Contractor and VTA, without regard to conflict of law provisions.
4. **FORUM SELECTION:** Any lawsuit or legal action arising from this Contract shall be commenced and prosecuted in the courts of Santa Clara County, California. Contractor agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.
5. **CONFIDENTIALITY AND DISCLOSURE:** Except as set forth in this paragraph, Contractor must not disclose to third parties any information, data, or materials that 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.

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



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

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

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

1. AUTHORIZED REPRESENTATIVES:

VTA:

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

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:

Norman David, Contracts Administrator
3331 N. First Street, Bldg. A
San Jose, CA 95134-1927
norman.david@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 A7.

O. INDEMNITY AND DEFENSE OF CLAIMS:

1. To the greatest extent permitted by law, Contractor shall indemnify and hold harmless VTA, its board members, officers, agents, employees, and consultants (collectively, the “Indemnitees”) from any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys’ and experts’ fees and costs) (each a “Claim” and collectively “Claims”), to the extent that the Claims arise out of, pertain to, 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. It is the specific intent of VTA and Contractor that Contractor be required to provide the full breadth of indemnities allowed by California Civil Code section 2782.8. Notwithstanding the foregoing, Contractor is not obliged to indemnify and/or hold harmless the Indemnitees from any Claims to the extent that the Claims are caused in any part by (i) VTA or its agents, servants, or independent contractors who are acting on behalf of VTA, or (ii) damages for defects in designs furnished by those persons.
2. To the greatest extent permitted by law, Contractor agrees, at its own expense, and upon written request by VTA or any individual Indemnitee, to immediately defend any suit, action, 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 (1) immediately above and regardless of whether Contractor and/or any of its agents, employees, or subcontractors was in fact negligent or reckless or engaged in willful misconduct. In the event a court of competent jurisdiction determines that any suit, action, claim, or demand brought against any Indemnitee was caused 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 costs of defending the Indemnites 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.

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

P. BUSINESS DIVERSITY PROGRAM REQUIREMENTS: Contractor shall adhere to the Disadvantaged Business Enterprise requirements set forth in Exhibit A5.

Q. SPECIAL PROVISIONS:

- 1. **FEDERAL REQUIREMENTS:** Contractor, its employees and subcontractors performing the Services hereunder shall comply with the laws and regulations set forth in Exhibit A9.
- 2. **PREVAILING WAGE REQUIREMENTS:** Contractor shall adhere to the prevailing wage requirements set forth in A13.

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 AT TIME OF CONTRACT AWARD]



EXHIBIT A2 COMPENSATION, INVOICING and PAYMENT (Part 1)
COST PLUS FIXED-FEE

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

A. COMPENSATION: This is a cost plus fixed-fee Contract with a maximum value of [\$\$XX,XXX.00], for which amount Contractor agrees to complete the Services defined in this Contract.

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

1. DIRECT LABOR COSTS: Direct labor costs shall be the total number of hours worked by each employee multiplied by the rate for such employee's labor category as set forth in the attached Exhibit A3. This exhibit shall contain the names and rates for Exempt and Non-Exempt Personnel.

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

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

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

2. LABOR RATE ADJUSTMENTS:

a. Contractor may request increases in labor rates. Increases in labor rates may occur only once in a twelve (12) month period per individual. Contractor must make all requests in writing and deliver them to VTA at least thirty (30) days prior to the date the requested new rates are to become effective. VTA will review the request and, at its sole discretion, approve or deny the request in writing. VTA will issue adjustments, if any, prior to the effective date of the new labor rates.

b. The labor rate paid by Contractor to each employee may not increase more than the annual average of the Consumer Price Index for the San Francisco Bay Area, using the **CPI-U, All Urban Consumers** index type for the twelve (12) month period preceding a new rate. The CPI is as a guideline only, and VTA is not obligated to match or increase this rate.



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- c. At its discretion, VTA will consider individual exceptions to the above limitations, on a case-by-case basis, not to exceed one (1) adjustment per employee per year, where Contractor can demonstrate that additional compensation is necessary to retain a specific employee VTA considers, in its sole discretion, to be essential.
- 3. INDIRECT LABOR COSTS:** Indirect labor costs shall be the direct labor costs multiplied by a field or home office provisional overhead rate. Based upon **YYYY** audited overhead rates, the provisional field office overhead rate at the inception of this Contract is [] % and the provisional home office overhead rate at the inception of this Contract is [] %. These rates shall be subject to adjustment annually, based on an audit by a recognized independent auditing firm, which shall determine the actual rate for the period in which services are provided hereunder.
- a. Contractor shall submit to VTA the audited overhead rates for Contractor's most recently audited fiscal year within thirty (30) days of receipt of such rates from their independent auditor.
 - b. Upon VTA's acceptance of the actual rates, any overpayment or underpayment resulting from a variance between the actual and provisional rates shall be refunded or credited in total to VTA or paid to Contractor.
- 4. FIXED FEE:** VTA shall pay the Contractor a fixed professional fee of **\$XX,XXX.00** for the Services described in Section 1 of this Contract.

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

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

- 5. SUBCONTRACTOR COSTS:** Subcontractor costs shall be reimbursed at actual cost with no markup. Subcontractor costs shall be supported by appropriate documentation for reimbursement.
- 6. OTHER DIRECT COSTS (ODCs):** ODCs shall be authorized and reimbursed as follows. All ODCs shall be reimbursed at actual cost without mark-up and include the following types of expenses.
- a. Travel expenses related to the performance of Services shall be reimbursed for actual and reasonable costs incurred for mileage, transportation, lodging, meals, and other miscellaneous expenses. Air travel, auto rental, and lodging should be "economy" based and traveler should obtain the lowest price possible. Lodging rates for the Palo Alto, Sunnyvale, and San Jose area are defined by the GSA website www.gsa.gov. The meals and incidental expenses shall not exceed the per diem rates, as stated on GSA



website www.gsa.gov/mie. At no time shall alcohol, travel upgrades, fines, memberships, loss of personal property or cash, “no shows,” or personal itinerary changes be subject to reimbursement by VTA.

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

- b. Parking, tolls, deliveries, printing, plan reproduction, and blue print services expenses directly associated with the work will be reimbursed at cost. Except as otherwise provided herein, telephone, computer costs, CAD machine charges, in-house copying and facsimile charges shall be included in overhead.
- c. All ODCs shall require appropriate documentation for reimbursement. VTA must approve in writing any ODC item estimated to exceed \$500.00 prior to incurring the expense.

B. INVOICING:

1. **INVOICE FORMAT:** Contractor shall be compensated and reimbursed by VTA on the basis of invoices submitted every month for the Services performed during the preceding month. The charges for each individual assigned under this Contract shall be listed separately. Further, invoices shall be in a form acceptable to VTA and each invoice must include:
 - Description of the work performed.
 - Hours worked by personnel classification.
 - Rate per personnel classification.
 - Other Direct Costs.
 - Subcontractor Costs supported by itemization in the same format.
 - Fixed-Fee.
 - Total Costs.
 - Percent of Schedule and Budget Expended.
2. **WAIVER:** Contractor shall be deemed to have waived the right to payment for Services not invoiced within six (6) months of the date the Services were performed. For purposes of this provision the date of the invoice shall be the date it is received by VTA.
3. **INVOICE SUBMITTAL:** Contractor shall submit invoices by e-mail to the address listed below. Invoices shall be in a PDF, Word, or Excel format.

Email: VTAAccountsPayable@vta.org

4. Should VTA contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. VTA may, at any time, conduct



an audit of any and all records kept by Contractor for the Services. Any overpayment uncovered in such an audit may be charged against the Contractor's future invoices and any retention funds.

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



EXHIBIT A3 COMPENSATION, INVOICING and PAYMENT (Part 2)
TIME and MATERIALS

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

A. COMPENSATION: This is a time and materials Contract with a maximum value of \$XX,XXX.00., for which amount Contractor agrees to complete the Services defined in this Contract. Contractor is not authorized to provide Services hereunder exceeding the above-stated amount.

1. LABOR COSTS: The Services shall be invoiced in accordance with the following rate schedules.

d. 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 (or as identified in Exhibit A4), 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

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

Name	Classification	Hourly Rate

f. Contractor may request increases in labor rates. Increases in labor rates may occur only once in a twelve (12) month period per individual. Contractor must make all requests in writing and deliver them to VTA at least thirty (30) days prior to the date the requested new rates are to become effective. VTA will review the request and, at its sole discretion, approve or deny the request in writing. VTA will issue adjustments, if any, prior to the effective date of the new labor rates.



- g. The labor rate paid by Contractor to each employee may not increase more than the annual average of the Consumer Price Index for the San Francisco Bay Area, using the **CPI-U, All Urban Consumers** index type for the twelve (12) month period preceding a new rate. The CPI is as a guideline only, and VTA is not obligated to match or increase this rate.
- h. At its discretion, VTA will consider individual exceptions to the above limitations, on a case-by-case basis, not to exceed one (1) adjustment per employee per year, where Contractor can demonstrate that additional compensation is necessary to retain a specific employee VTA considers, in its sole discretion, to be essential.
- 2. **SUBCONTRACTOR COSTS:** VTA shall reimburse subcontractor costs at actual cost without mark-up. Subcontractor costs shall be supported by invoices, as are prime costs. See paragraph II, Invoicing.
- 3. **OTHER DIRECT COSTS (ODCs):** ODCs shall be authorized and reimbursed as follows. All ODCs shall be reimbursed at actual cost without mark-up and include the following types of expenses.

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

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

- e. Parking, tolls, deliveries, copying, plan reproduction, and blue print services expenses directly associated with the work will be reimbursed at cost. Except as otherwise provided herein, telephone, computer costs, CAD machine charges, in-house copying and facsimile charges shall be included in overhead and shall not be reimbursed.
- f. 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.
- Name, classification and labor rate of employee.
- Description of work performed.
- Hours worked by employee accompanying with signed timesheets.
- Other Direct Costs.
- Subcontractor costs with itemization in same format above.
- Total costs.
- Percent of schedule and budget Expended.

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

3. INVOICE SUBMITTAL: Contractor shall submit invoices by e-mail to the address listed below. Invoices shall be in a PDF, word, or excel format.

Email: VTAAccountsPayable@vta.org

4. 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 performed under this Contract. Any overpayment uncovered in such an audit may be charged against the Contractor 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 A4 RATE SCHEDULE

Effective Date **MM/DD/20YY**

Identify the named key personnel, firm name, classification and labor rate. Provide the classification and labor rate for all your proposed staff.

Key Personnel:

Personnel Name	Classification	Direct Labor Rate	Home Office Overhead Rate	Field Office Overhead Rate	Profit (%)	Home Office Fully Burdened Rate	Field Office Fully Burdened Rate

Unnamed Personnel:

Classification	Direct Labor Rate	Home Office Overhead Rate	Field Office Overhead Rate	Profit (%)	Home Office Fully Burdened Rate	Field Office Fully Burdened Rate



**EXHIBIT A5 DISADVANTAGED BUSINESS ENTERPRISES (DBE) REQUIREMENT
WITH SPECIFIC DBE GOAL**

- 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 [6.33]% DBE utilization goal set for this project.

- 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.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 DBE utilization documentation.
- C. Contractor will be required to submit quarterly 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 Contract. 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.

¹ "Recipient" is VTA.



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.

2. All Coverages:

- a. The insurer must agree to waive all rights of subrogation against VTA, its officers, officials, employees, and volunteers for losses arising from work performed by the Contractor and its subcontractors for VTA.
- b. If any coverage forms or endorsements required by this Contract are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Contract, VTA reserves the right to require the Contractor to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

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

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

The certificates will (1) identify the underwriters, the types of insurance, the insurance limits, the deductibles and the policy term, (2) include copies of all the actual policy endorsements required 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. S19126

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 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 the design and construction of safety improvements for pedestrians by installing automatic pedestrian gates, swing gates, railings, and civil and related signal improvements at ten at-grade street crossings (listed herein) and the pedestrian crossing at Mountain View Station.

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 []. COMPENSATION and Exhibit [] (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.



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- 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 Contractor'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.
- 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 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



EXHIBIT A9 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:

1. **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.
2. **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.
3. **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.
4. **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.
5. **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:

1. **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.
2. **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.
3. **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:

1. **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.
2. **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.
3. **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:

1. **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.
2. **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:
 - a. Federal transit laws, specifically 49 U.S.C. § 5323(d);
 - b. FTA regulations, “Charter Service,” 49 C.F.R. Part 604;
 - c. Any other federal Charter Service regulations; or
 - d. Federal guidance, except as FTA determines otherwise in writing.
3. **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:
 - a. Barring Contractor or any subcontractor operating public transportation under its award that has provided prohibited charter service from receiving federal assistance from FTA;
 - b. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or
 - c. 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:

1. **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.
2. Contractor will:



- a. Not use any violating facilities;
- b. Report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- c. Report violations of use of prohibited facilities to FTA; and
- d. 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:

1. **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.
2. **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.
3. **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.



4. **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.

5. **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:

1. **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.

2. If the Contract is for construction, alteration, or repair in excess of \$2,000, Contractor will comply with the following:

a. **Prevailing Wage:** Contractor will comply with the prevailing wage requirements set forth in the Contract.

b. **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.

3. 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:

a. **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.
- b. 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:

1. **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.
2. **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:

1. **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.
2. **DEFINITIONS:**
 - a. **“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.



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- b. **“United States” or “U.S.”** means the 50 States, the District of Columbia, and outlying areas.
 - c. **“U.S.-flag air carrier”** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
3. **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.
4. **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]: _____

5. **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.
6. **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.
7. **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:



1. **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.

2. **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.

3. **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:
 - a. Debarred from participation in any federally assisted award;
 - b. Suspended from participation in any federally assisted award;
 - c. Proposed for debarment from participation in any federally assisted award;
 - d. Declared ineligible to participate in any federally assisted award;
 - e. Voluntarily excluded from participation in any federally assisted award; or
 - f. 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:

1. **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.



2. **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:

1. **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.
2. **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:

1. **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.
2. **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.



3. 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:
 - a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
4. “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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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:

1. **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.
2. 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.
3. 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:

1. **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.
2. 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.
3. 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.



4. 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:

1. **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.
2. Contractor will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):
 - a. **U.S. DOL Certification:** Contractor will complete a certification issued by U.S. DOL as a condition of the Contract.
 - b. **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.
 - c. **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:

1. **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.
2. 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:

1. **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.
2. **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.
3. **DISTRACTED DRIVING:** Contractor will adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns, leases, or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under the Contract.

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

1. **FLOW DOWN:** The requirements of this Section V apply to Contractor as the first tier service contractor.
2. 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:
 - a. Federal transit laws, specifically 49 U.S.C. § 5323(f);
 - b. FTA regulations, “School Bus Operations,” 49 C.F.R. Part 605;
 - c. Any other federal school bus regulations; or
 - d. Federal guidance, except as FTA determines otherwise in writing.
3. If Contractor violates this Section V, FTA may:
 - a. Bar Contractor from receiving federal assistance for public transportation; or
 - b. Require Contractor to take such remedial measures as FTA considers appropriate.



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4. When operating exclusive school bus service under an allowable exemption, Contractor may not use federally funded equipment, vehicles, or facilities.
 5. 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:

1. **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.
2. 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:

1. **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.
2. 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.
3. **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:

- 1. 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.
- 2. 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.
- 3. PERFORMANCE DURING DISPUTE:** Unless otherwise directed by VTA, Contractor shall continue performance under the Contract while matters in dispute are being resolved.
- 4. 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:



1. **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.
2. 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.
3. 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).
4. 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:

1. **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.
2. 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.
3. 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:

1. **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.
2. 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:

- 1. 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.
- 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:

- 1. 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.
- 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 A10 SAFETY REQUIREMENTS

Contractor shall promptly and fully comply with, carry out, and shall, without separate charge to VTA, enforce compliance with the requirements stated herein, prescribed by applicable laws and regulations and those prescribed by an official or representative charged with the enforcement thereof. Contractor shall take such other measures as may be necessary to perform the work required by the Contract (referred to hereafter in this Exhibit only as “Work”) in a safe manner and that the safety and health of employees and the people of local communities is safeguarded. Compliance with the provisions of this section by subcontractors is the responsibility of Contractor.

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

- (1) Identify a competent individual (i.e., a superintendent or foreman) who will be assigned to work at the site where Work will be performed (“Worksite”) and will be responsible for Worksite safety (the “designated safety representative”),
- (2) Submit a VTA-wide work plan (or “safety program”) to VTA which addresses the Work to be performed and certifies that the designated safety representative has received competent person training in all aspects of the site-specific work plan, and
- (3) Comply with all state, federal, and local safety regulations. Contractor will provide a copy of its Industrial Injury Prevention Program to VTA.

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

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

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



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

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

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

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

All Work, equipment, machinery, materials, tools and like items incorporated or used in the Work must be in compliance with and conform to all applicable laws, ordinances, rules, regulations, and orders of any public, quasi-public, or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970, as amended, and all rules and regulations now or hereafter in effect pursuant to said Act.

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



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

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

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

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

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

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

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

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

Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent worksites and utilities.



Use or storage of explosives by Contractor is prohibited.

Contractor shall rebuild, repair, restore, and make good all losses of, and injuries or damages to, the Work performed or any portion thereof (specifically including owner-supplied equipment or other items to be utilized in connection with, or incorporated in, the Work) before final acceptance of the Work. Such rebuilding, repair, or restoration will be at Contractor's sole cost and expense unless the loss, injury, or damage requiring such rebuilding, repair, or restoration is caused by a hazard against which VTA is required to insure, provided, however, that if the loss, injury, or damage would not have occurred but for the negligent act or omission of Contractor, or its subcontractors of any tiers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, the rebuilding, repair, or restoration will be at Contractor's cost and expense to the extent of the deductible in said insurance. If any policy of insurance covering loss or damage is voided due to any action of Contractor or any of its subcontractors of any tier, such rebuilding, repair, or restoration will be at Contractor's sole cost and expense.

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

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

Contractor will not permit open fires on the Worksite.

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

Emergencies. In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the Work or the performance thereof, Contractor shall ensure that at least one of Contractor's employees with authority is on duty during working hours, and Contractor will act immediately to prevent threatened damage, injury, or loss or to remedy said violation, whichever is applicable. If Contractor fails to carry out the obligations in this section, VTA may immediately take whatever action it deems necessary, including but not limited to, terminating or suspending the Work pursuant to the terms contained herein. Contractor shall also establish and maintain adequate First Aid facilities at locations close to work areas and mark such locations with signs of adequate size and composition. Contractor shall also ensure that at least one of Contractor's employees qualified by a recognized authority to perform First Aid is on duty while Work is being performed.



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

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

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

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

For Work that is performed at the Guadalupe LRT facility, Contractor must comply with the following VTA Railway Worker Protection training guidelines:

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

Contractor is responsible for obtaining all RWP stickers and classes. All RWP Training and right-of-way ("ROW") access permits expire on 12/31 of each year the permits are issued. Contractor must start the renewal processes in October of each year of the Contract. Performance of the Contract is not allowed near any rail ROW, including inside of the rail yard, if training and permits are not acquired by January 1 of each year the Contract is in force. Not having the appropriate training and documents in place at the time of annual turnover could be deemed failure to perform and result in disciplinary action up to and including termination for default pursuant to the terms set forth in the Contract.



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

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

Definition of Terms:

OCC: Operation Control Center

CPUC: California Public Utilities Commission

FRA: Federal Railroad Administration

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

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

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

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

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

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

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

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

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

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

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



Restricted Access Permit. Contractor must obtain a Restricted Access Permit from VTA any time Contractor requires access to:

- (a) enter on, cross over, or cross under the ROW, tracks, or OCS of VTA,
- (b) to enter into facilities including yard, maintenance buildings, stations, substations, OCC, or
- (c) signal and communications equipment or facilities.

Contractor must also obtain a Restricted Access Permit from VTA if Work will be performed within ten (10) feet of the nearest rail of any track.

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

Attached to this Contract is a copy of VTA's Restricted Access Permit form (Exhibit A5) including Restricted Access Work Rules on the reverse of the form. Contractor must submit this Restricted Access Permit form, in original, for each day, week, or for each independent work operation to be performed by Contractor, as determined by VTA. Contractor shall submit a completed form and any additional illustration or schedule details to support the application at least seven (7) days prior to the start of the applicable Work. An approved copy of the Restricted Access Permit must be maintained at each Worksite and must be read and understood by all personnel at the Worksite.

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

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

The SSWP must include a detailed description of the safety measures to be taken for the protection of personnel and equipment. Such items as protective gear, flag and sign placement, flaggers, specialized safety equipment, ventilation equipment, in-house safety programs, and additional safety supervision will be identified.

Where the Work adds, removes, or changes any element of the traction power system, the track structure, or the signal or communications system(s), the SSWP must clearly identify the changed or fully restored condition of the OCS, track, or signal and communications system



and must provide a detailed alternative plan to restore traction power, track, and/or signal and communications system if the planned Work cannot be completed successfully.

The SSWP must be submitted by Contractor not less than seven (7) days prior to the date and time of the proposed start of Work or seven (7) days prior to the scheduled Track Allocation Meeting, whichever is earlier. The relevant Work must not be undertaken until the SSWP has been reviewed by VTA, approved, or approved with changes noted and returned to Contractor. VTA may request additional explanation, request changes, or require Contractor to revise and resubmit the SSWP. If the SWPP is not acceptable to VTA, Contractor shall revise the SWPP and resubmit the SSWP and obtain approval before proceeding with the Work.

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

Safety Seminar Record & Report. Contractor shall maintain and submit, no less frequently than on a monthly basis, a current list of all employees safety-trained by VTA and Contractor, including I.D. Badge number and expiration date and specific categories of training. Contractor shall forward Safety Seminar records on a monthly basis to VTA's Designated Safety Coordinator, and to the representative of the Owner-Controlled Insurance Program, if applicable.

General Contractor Safety Seminar. Working on and around rail transit operations and traction power facilities includes a unique set of potential hazards. VTA has developed a Safety Seminar to prepare all relevant workers for these hazards. The information provided in the Safety Seminar is meant to supplement all existing CPUC, Cal OSHA, Workers' Compensation, federal, state, and local safety regulations. The goal of the Safety Seminar is to educate each Contractor employee on the unique hazards that may be encountered on any VTA rail project and how best to respond to those hazards.

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

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

If at any time Contractor intends to bring new employees onto the Worksite, each of those employees must first attend one of the regularly scheduled Contractor Safety Seminar classes.



Contractor is responsible for scheduling their employees for this mandatory training with the VTA Authorized Representative.

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

Safety Audits. Individual responsibility is the basis for and a necessary key to any safety program. VTA may conduct safety audits or interviews as deemed reasonably necessary by VTA. The purpose of the audits or interviews is to ensure that each Contractor employee granted permission to work on the ROW is familiar with VTA's safety rules and understands the work area and time limits and can identify Contractor and the VTA representative in charge of safety at the Worksite. The audit or interview may also include verification that an approved copy of the Restricted Access Permit is being maintained at the Worksite and that it has been read and understood by all personnel working at the Worksite.

Restricted Access Work Rules. The Restricted Access Permit provides for the physical presence on VTA's construction or operating ROW of personnel and/or equipment. Unless specifically authorized in the Restricted Access Permit, the Restricted Access Permit does NOT authorize Work within 45 inches of the nearest rail of any track, does NOT authorize operations of any equipment on the LRT tracks, and does NOT authorize any access or equipment within 10 feet of any OCS, signal cabinet, or within any traction power substation. Restricted Access Work Rules are provided as part of the Restricted Access Permit form (See Exhibit A5).

Track Allocation Procedures. Prior to occupying the trackway, Contractor shall submit a Restricted Access Permit Application to the VTA Track Allocation Coordinator not later than 24 hours prior to the next scheduled Track Allocation Meeting.

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

VTA will reimburse the Contractor for each employee that has attended the Track Allocation Meeting at the hourly rate submitted agreed to in the Contract.

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

The Track Allocation meeting is used to identify the Worksite(s), type of activities to be performed, and presence and protection against high voltage traction power and moving trains.



Track allocation procedures work in concert with other safety procedures to ensure all Contractor and all VTA operations and safety personnel are fully informed concerning construction activities and LRT safety.

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

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

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

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

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

Contractor's Responsibilities:

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

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



(c) Contractor is responsible for assuring that all of its employees, as well as all of its subcontractors and its lower tier service personnel, are aware of any scheduled safety-critical items and that they actively respond to the safety requirements of the Restricted Access Permit and Track Allocation Schedule, if granted.

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

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

Lockout and Tagout Procedures. All "Lockout and Tagout Procedures" must be coordinated with VTA's Authorized Representative.

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

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

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

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

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

(b) The specific Contractor activities and equipment to be used must be only those specifically approved by VTA; and



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

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

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

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

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

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

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

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

Failure of Contractor to conform to the requirements of the approved Restricted Access Permit, the approved SSWP, or the safety directions provided by the VTA Resident Inspector or their



designee (OCC supervisor or Way, Power and Signal employee) in charge at the Worksite will result in a work stoppage issued by VTA until these deviations of the Contract requirements are in compliance.

LRT Flagger(s). Contractor shall provide LRT flagger(s) for each work group as provided in the Restricted Access Work Rules (See Exhibit A5) and these specifications. A work group is one or more persons performing work.

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

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

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

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

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

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

Restricted Access Permit Fees.

VTA will waive the following fees:

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

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

- i. Power Shutdown - \$1,010 each;
- ii. Bus Bridging: \$180 per hour for each bus;



iii. Modified Bus and/or Light Rail Services:

- Hourly cost for each additional Bus required for service (regular or bus bridge): \$162.33 per hour for each bus;
- Hourly cost for a one-car Train; \$435;
- Hourly cost for a Train with 2 cars; \$515;
- Hourly cost for a Train with 3 cars: \$590.

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

VTA will reimburse the Contractor for Restricted Access Permit Fees. Contractor shall pay all Restricted Access Permit fees directly to the Track Allocation Coordinator (VTA will reimburse this fee).

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

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

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

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

Contractor must further comply with all the requirements in VTA’s “Policy on the Use of Personal Electronic Devices by Bus and Light Rail Employees and Contractor Staff (ATU)” attached hereto as Exhibit A6 and incorporated herein by this reference.



EXHIBIT A11 RESTRICTED ACCESS WORK PERMIT FORM

ACCESS PERMIT APPLICATION

- CONSTRUCTION ACCESS PERMIT (CAP) RESTRICTED ACCESS PERMIT

Permit Applicant:		Address		VTA Contract / Project Number:
City:		State	Zip:	SION Number:
Contact Person:		Title:		Phone Number:
Fax Number:	E-Mail Address:		24 Hour Emergency Phone Number:	
Emergency Contact Person:				

WORK BEING PERFORMED FOR:

Company Name:		Address:		
City:		State	Zip:	
Contact Person:		Phone Number:	E-Mail Address:	

WORK BEING PERFORMED By:

Company Name:		Address:		
City:		State	Zip:	
Contact Person:		Phone Number:	E-Mail Address:	

PROJECT LOCATION

Location:			
Start Date:	Completion Date:	Estimated Regular Work Days:	Overtime, Weekend & Holiday Days
Number of Persons to be Safety Trained:		X (\$85.00 Per Person)	

**PERMIT EVALUATION PROCESS USUALLY AVERAGES
7 - 14 DAYS FROM DATE RECEIVED**

Submit Completed Application Package To: **Santa Clara Valley Transportation Authority
Restricted Access Permit Office
101 West Younger Ave. Build. A 2nd
Floor, San Jose, CA 95110
Phone: (408) 546-7608; Fax: (408) 993-2174**

By signing this application form, the permit applicant agrees to all of the terms and conditions contained herein and to any provisions set forth in the Restricted Access Permit.

Authorized Signature:	Print Name:	Date:	Phone Number:
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RESTRICTED ACCESS PERMIT

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

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

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

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

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

Copy: Contractor, OCC, Way Power & Signal Superintendent

Distribution: Original-Restricted Access Permit

Revised: 08-05-11



RESTRICTED ACCESS WORK RULES

1. **PERMIT REQUIREMENTS-** Any access to enter or cross the track as well as all worked performed within ten (10) feet of the nearest rail or Overhead Contact System (OCS) shall require a permit. Permits are available through the Light Rail Restricted Access Permit Office. Unless the Track Allocation Chairperson makes an exception, all permit and training fees must be paid prior to issuance of a permit or attendance in a safety training class. In other cases such as urgent work or emergencies, by signing this document, Contractor agrees to pay all associated permit and training fees.
2. **CLEARANCE FROM TRAINS-** Under California Public Utilities Commission (CPUC) General Order 143C, all worked performed within six (6) feet of the nearest rail shall require a Lookout/Watchperson to watch for approaching trains. This Lookout/Watchperson shall instruct workers to take equipment and move to the predetermined place of safety at least six (6) feet from the track fifteen (15) seconds prior to the approach of a train. When workers are clear, ONLY the EIC (as defined in paragraph 5 below) or SEIC shall give the train a "PROCEED" hand signal. If workers or equipment fail to clear, the train must be given a "STOP" hand signal. When clear the train will be given a "PROCEED" Signal.
3. **CLEARANCE FROM ENERGIZED OVERHEAD POWER LINES-** The OCS is energized with 600 to 900 volts of direct current at all times, in accordance with CAL- OSHA Title 8, all work (including metal ladders, metal handle extensions, or equipment) shall remain ten (10) feet from any overhead wire unless a ground strap has been installed and is visible to the workers and VTA's Lock Out / Tag Out Procedures have been approved and completed.
4. **PERMIT AVAILABILITY-** A double sided copy of this permit must be available at the Worksite. Permits must be shown to any VTA, CPUC or FRA representative as well as any other authorized person when requested.
5. **SAFETY TRAINING-** Prior to commencement of work all workers must attend and complete VTA's "Basic Roadway Worker Protection" training class. This class trains persons working on VTA's right-of-way to work safely in a railroad environment. Every work crew must have an "Employee In Charge" referred to as the EIC The EIC must successfully complete the VTA "Advanced Roadway Worker Protection" training class and must be at the Worksite at all times. The EIC Must have the ability to read, write and speak English in order to communicate with VTA's Operation Control Center (OCC) to document and relay instructions. Once training fees have been paid, you may schedule training classes by calling the Light Rail Technical Training Department at (408) 952-6800. Training fees are \$85.00 per person. Training may be provided off site to large groups when approved in advance. An estimate for training costs will be provided, a control number will be issued and must be provided when making training reservations.
6. **SAFETY EQUIPMENT-** Proper safety equipment must be worn at all times as specified in the VTA Roadway Worker Protection training manual.



7. **CONES AND FLAGS-** Work zone cones and flags shall be posted when working within six (6) feet of the nearest rail. The work zones shall be established as described in the "Roadway Worker Protection" training manual. VTA requires workers to establish a safe work area for workers and to provide advance warning to train operators allowing them to slow to a safe speed or stop prior to reaching workers. VTA may require a work zone outside the safety envelope when tools or equipment are used that have the potential to foul the trackway. Cones and flags left longer than thirty (30) minutes without the obvious presence of workers (unless approved by OCC) shall be removed by Contractor and become the property of VTA. Cost and procurement of cones and flags shall be the responsibility of Contractor. Cones and flags may be purchased at local safety suppliers. Twenty-two (22) inch reflective cones illuminated from within shall be used during times of limited visibility. Cones and flags must be no closer than eighteen (18) inches from the rail and placed to allow a clear unobstructed view by train operators.
8. **NOTIFICATION TO OCC-**The E.I.C. shall call OCC at (408) 546-7688 prior to establishing work zones and again at the end of the work shift when the work zone is to be removed.
9. **OVERHEAD POWER REMOVAL-** Power removal, when necessary shall be done in accordance with VTA's Lock Out / Tag Out procedures under the direction of VTA's Way Power and Signals Department and VTA's Operation Control Center. All request must be coordinated through the Track Allocation Meeting.
10. **ADHERENCE / PERMIT EXPIRATION / DURATION-** Contractors shall be strictly confined to the time and location restrictions of their permit. When performing work on or about the right-of-way, contractors must adhere to all rules and procedures contained in the "Light Rail Restricted Access Procedures Manual". Work sites will be monitored; any deviation from or violation of these rules may be cause for immediate eviction of Contractor from the Worksite at the expense of Contractor.
11. **COST / CLAIMS-** Any cost to VTA resulting from this permit, the level of protection required (such as power removal, Lookout/Watchmen, EIC, Bus Bridge, etc.) or any unscheduled disruption to train or bus service caused by Contractor's actions or inaction will be the responsibility of Contractor. In consideration of issuance of this permit and, in addition to any other indemnity obligations it may have to VTA, Contractor shall indemnify and hold harmless the Valley transportation Authority (VTA), its employees and agents from any demands, claims or judgments arising as a result of any act or omission of Contractor, or Contractor's employees or agents.
12. **SIGNALS-** Hand signals used by EIC/SEIC shall be as described in VTA's "Roadway Worker Protection" training manual and as instructed in the Roadway Worker Protection safety training class. On the Vasona Freight track Roadway Worker Protection rules shall apply. Caution must be used as Union Pacific freight trains may not observe VTA hand signals.



13. GENERAL CONDITIONS- LEGAL RESPONSIBILITIES AND RELATIONSHIPS

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

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



RESTRICTED ACCESS PERMIT (RAP) TERMS AND CONDITIONS

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

A completed and signed Restricted Access Permit Form. All applicants must adhere to the VTA background security screening process prior to applying for a Restricted Access Permit.

Application Fee of \$3,050.00 per location per year and Roadway Worker Protection (RWP) Safety Training Fee of \$85.00 per person. The final permit fee will be determined after review of the plans. Payment may be made by cash or check, payable to “Valley Transportation Authority” (VTA). For further information regarding permit fees call (408) 546-7608. Permit Applicant agrees to reimburse VTA for all actual and direct costs expended by VTA, including costs to process this application and inspect the permit work.

* All public agencies that are self-insured must provide to VTA evidence of self-insurance in a form acceptable to VTA prior to issuance of the permit.

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

- a. When workers or their equipment are working within or have the potential of working within 10 feet of the Light Rail Tracks/System, or over/under any catenary system, Contractor is required to obtain a Restricted Access Permit.
- b. When workers or their equipment are working within or have the potential of working within 15 feet of Caltrain’s (JPB) tracks or 25 feet of Union Pacific Railroad’s (UPRR) tracks, within VTA property, all workers are required to complete the appropriate RWP
- c. Work within the Silicon Valley Rapid Transit (SVRT/BART) Corridor requires a permit or written authorization from UPRR. For UPRR permit information, contact Patrick Kerr, Manager of Public Projects, Union Pacific Railroad, 10031 Foothills Blvd., Roseville, California 95747, or call (916) 789-6334. A copy of UPRR’s permit or written authorization will be required prior to VTA issuing a permit. The UPRR’s website address is www.uprr.com. All workers are required to complete RWP Safety Training. Call the SVRT Rail Access Coordinator for further information: Bill Baker (408) 321-5925 or James Mendez (408) 715-8279.
- d. An approved traffic control plan. (If applicable)
- e. Work within 50 feet of the Light Rail Tracks/System or over/under any Catenary System or within 50 feet of Heavy Rail Tracks requires Railroad Protective Liability Insurance.
- f. A copy of Contractor’s State of California Contractor’s License.
- g. Applicants needing to install a utility or a facility on property owned in fee by VTA must submit a copy of a document such as a License Agreement or Recorded Easement,



that allows applicant to enter, construct, install, maintain or operate within VTA property. If no such document exists, applicant must enter into an applicable Agreement with VTA prior to receiving a Construction Access Permit. Due to the fact that license fees are based on property values and other factors, fee information will be provided after the application has been reviewed and approved by VTA.

- h. As stated in Government Code 4216.9. (a), “No permit to excavate ...shall be valid unless the applicant has been provided with an initial inquiry identification number...” Permit Applicant or its Contractor shall notify VTA’s Permit & Utility Services Unit of the USA Ticket Number prior to start of work.

III. POWER SHUTDOWN:

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

YES/NO

Required for all work above or within 10’ of OCS

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

IV. BUS STOP AND/OR SERVICE INTERRUPTION:

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

YES/NO

Revised: 05.07.14

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

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

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



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

Contractor Signature:

Date:

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



EXHIBIT A12 USE OF PERSONAL ELECTRONIC DEVICES

POLICY USE OF PERSONAL ELECTRONIC DEVICES BY BUS AND LIGHT RAIL EMPLOYEES AND CONTRACTOR STAFF (ATU)	Document Number:	OPS-PL-0001
	Version Number:	03
	Date:	12/20/2016

1.0 Purpose:

To establish the standards and restrictions for use of Personal Electronic Devices (PEDs).

2.0 Scope:

This policy applies to all VTA employees, contractors or their staff (hereafter collectively referred to as "Personnel"), who:

- Operate a VTA bus or Light Rail Vehicle (LRV);
- Operate hi-rail or any other on-track equipment;
- Act as Rail Controllers, flaggers, or the Employee In Charge (EIC) or otherwise control the movement of rail vehicles;
- Perform any task while Fouling the Tracks; and/or
- Perform work within the Safety Envelope.

Note: Electronic devices prescribed by a licensed medical practitioner to permit an employee to meet minimum levels as required by VTA or by a contractor performing work on VTA property, are exempt. Roadway Worker Protection Devices provided by VTA are also exempt.

3.0 Responsibilities:

All Personnel are responsible for the safe delivery of transportation services. All Personnel who operate vehicles in revenue service or operate hi-rail vehicles or other on-track equipment, or who control the movement of rail vehicles or perform work on the right of way will receive a copy of this Policy, and be responsible for strict adherence to this Policy and State and Federal regulations.

4.0 Policy:

It is VTA policy that all VTA-owned revenue service vehicles, or any hi-rail vehicles and on-track equipment operated on the VTA rail system, will be operated in a safe and responsible manner. Personnel who operate a VTA bus or LRV or control the movement of rail vehicles, or perform work on the right of way or Foul the Tracks in the performance of their duties are responsible for the safety of the passengers and the public at large. Personnel are prohibited from using cellular telephones or any other PEDs (as defined in section 5) while operating VTA buses, LRVs, hi-rail or other on track equipment.

4.1 Restrictions and Storage:



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POLICY USE OF PERSONAL ELECTRONIC DEVICES BY BUS AND LIGHT RAIL EMPLOYEES AND CONTRACTOR STAFF (ATU)	Document Number:	OPS-PL-0001
	Version Number:	03
	Date:	12/20/2016

- 4.1.1 For Personnel operating a VTA bus or LRV, the restrictions include, but are not limited to: making or receiving telephone calls, text messaging, checking e-mail messages, checking the time, using the clock feature of a cell phone, wearing a Fitbit or other fitness monitoring device, wearing a smart watch (e.g., Apple Watch, Samsung Gear, etc.) or similar watch, reading, playing games or listening to music or other audio. Personnel are prohibited from giving the PED to another person, including another employee, on the bus or LRV.

In an emergency, Personnel must proceed to a safe area and stop the bus, LRV, hi-rail vehicle, or on-track equipment, and vacate the operating area. Afterwards, Personnel may use a PED for the purposes of addressing the emergency.

All PEDs shall be Turned Off and Stowed Away while operating a bus or LRV, or while sitting in the Operator's Area, as defined in Section 5. The bag that the PED is stowed away in must conceal the device so that it is not visible without opening the bag.

PEDs may be used by bus and light rail Operators while on break or at a layover when the vehicle is safely stopped and the Operator is out of the Operator's Area. The PED must remain Turned Off and Stowed Away until the Operator has cleared the Operator's Area and must be Turned Off and Stowed Away prior to returning to the Operator Area.

- 4.1.2 For Personnel operating hi-rail or on-track equipment, the restrictions include, but are not limited to, making or receiving telephone calls, text messaging, checking e-mail messages, checking the time, using any feature of a cell phone, wearing a Fitbit or other fitness monitoring device, wearing a smart watch or similar watch, reading, playing games or listening to music or other audio.

PEDs shall be Turned Off and Stowed Away while operating a hi-rail vehicle or on-track equipment. Personnel operating a hi-rail vehicle or on-track equipment, who wish to use their PEDs while on break, must move their hi-rail or on track equipment off of the right of way to a location that is not Fouling the Tracks. Prior to retrieving and turning on their PED for use, Personnel must stop, shut off the engine, and clear the Operator's Area. The PED must be Turned Off and Stowed Away prior to returning to the Operator's Area or restarting the engine.

Use of cell phone communication is allowed to safely direct the movement of pushing a dead-car train only when no other means of communication is available and prior approval has been obtained from the Operations Control Center. Personnel who are directing, flagging, or otherwise controlling the movement of rail transit vehicles, or performing any task while Fouling the Tracks may keep the PED in their possession and powered on but must proceed to a safe area outside



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POLICY USE OF PERSONAL ELECTRONIC DEVICES BY BUS AND LIGHT RAIL EMPLOYEES AND CONTRACTOR STAFF (ATU)	Document Number:	OPS-PL-0001
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the Safety Envelope (minimum 6 feet from the nearest light rail) to use their PED. Rail Controllers in the Operations Control Center must unplug and step away from their console before using their PED.

4.2 Discipline:

Failure to adhere to this Policy may constitute a serious safety violation. Violations of this policy will be considered an instance (adverse entry) under the unsatisfactory record portion of Part A, Section 18.2 of the ATU Collective Bargaining Agreement (CBA) and will be subject to a two-year record review.

VTA employees who violate this policy will be subject to disciplinary action as listed below subject to the underlying circumstances and the individual employee. Talking on a PED, texting, playing video games or other violations that distract the Operator and pose the greatest risk will result in the highest levels of discipline.

Repeat violations of any portion of this Policy is considered a serious matter. The applicable sequence of the offenses (first, second, and third) is based on violations of any portion of this Policy. For example, if an employee violates Section 4.2.5 and six months later violates Section 4.2.2, the second violation will be considered a "Second Offense" and will be issued the corresponding discipline of termination. All "days" referenced in the box below are continuous calendar days of unpaid suspension.

	VIOLATION	1st Offense	2nd Offense	3rd Offense
4.2.1	Any violation of this policy where the employee is involved in an accident (preventable or non-preventable).	Termination		
4.2.2	Use of PED while operating a bus, LRV, hi-rail vehicle or on-track equipment.	20 – 30 days	Termination	
4.2.3	Use of PED in the Operator's Area, but not while operating a bus or LRV.	10 – 20 days	20 – 30 days	Termination
4.2.4	Use of PED while directing, flagging, acting as the EIC, or otherwise controlling the movement of rail transit vehicles, or performing any task while Fouling the Tracks.	10 – 20 days	20 – 30 days	Termination
4.2.5	Failure to Turn Off and properly Stow Away PED while operating a bus or LRV, or while in the Operator's Area.	Up to 10 days	10 – 30 days	Termination



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4.2.6 Any contractor staff violating this Policy will be removed from the job and will not be allowed to return to the project. The contractor may be made responsible for any fines levied on VTA for the violation. Repeat violations from the same contractor's staff may result in the contract being cancelled.

5.0 Definitions:

- 5.2 **Fouling the Track:** The placement of an individual in such proximity to a track that the individual could be struck by a moving train or other on-track equipment, or is within six feet of the nearest rail.
- 5.3 **Operator:** bus and Light Rail Vehicle Operators, hi-rail and on-track equipment operators, service workers, mechanics, and any other authorized VTA employee or contractor and their staff.
- 5.4 **Operator's Area:** On VTA buses, this area is defined as all area forward of the yellow line and expressly includes the Operator's seat. On Light Rail Vehicles, this is the area inside the Operator's cab and expressly includes the Operator's seat. On hi-rail or on-track equipment, this is the area where the Operator is positioned during operation of the vehicle or equipment.
- 5.5 **Personal Electronic Device or PED:** means any wireless or portable electronic device. This includes, but is not limited to, wireless phones, personal digital assistants, smart phones, two way pagers, portable internet devices, laptop computers, DVD players, iPods, MP3 players, smart watches, Fitbits or other personal fitness monitors, games, Bluetooth devices, or any headphones or ear buds of any type. The following devices are excluded from this definition:
 - 5.5.6 VTA-owned licensed radio communications equipment such as cab-mounted or portable two-way radios with channels dedicated solely for VTA operations.
 - 5.5.7 Electronic or electrical devices prescribed by a licensed medical practitioner to permit an employee to meet minimum levels as required by the VTA or contractor.
 - 5.5.8 Roadway worker protection devices.
- 5.6 **Rail Controllers:** Individuals tasked with flagging or otherwise controlling the movement of rail transit vehicles. Tasks include "dispatching" as described in California Public Utilities Commission (CPUC) General Order 172 (Rules and Regulations Governing the Use of Personal Electronic Devices by Employees of Rail Transit Agencies and Rail Fixed Guideway Systems).



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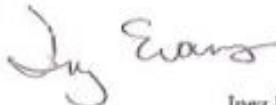
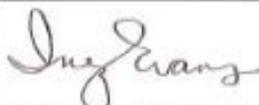
POLICY USE OF PERSONAL ELECTRONIC DEVICES BY BUS AND LIGHT RAIL EMPLOYEES AND CONTRACTOR STAFF (ATU)	Document Number:	OPS-PL-0001
	Version Number:	03
	Date:	12/20/2016

- 5.7 Safety Envelope: The area within six feet of the closest rail on light rail tracks or within ten feet of the overhead catenary.
- 5.8 Stowed Away: Not on one's person; must be completely concealed, so that it is not visible, in a backpack or bag and out of reach.
- 5.9 Turned Off: The power is off.

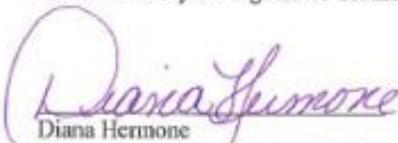
6.0 Summary of Changes:

Policy title changed. Policy updated to accurately reflect Safety Envelope. Greater clarity on discipline levels for different infractions were provided. Contractor language was added to provide policy on violations by contractors and their staff. Policy now allows for the use of cell phones when dead pulling a train when no other means of communications is available, with prior Operations Control Center approval.

7.0 Approval Information:

<i>Prepared by</i>	<i>Reviewed by</i>	<i>Approved by</i>
 George Sandoval Operations Manager-LR Mtc.	 Inez Evans Chief Operating Officer	 For Naria I. Fernandez General Manager/CEO

Concurrence by Amalgamated Transit Union, Local 265:


 Diana Hermone
 President & Business Agent, ATU


 Nick Smith
 Asst. Business Agent - Maintenance

Date Approved: 12-20-2016



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EXHIBIT A13 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. 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.
- C. 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.
- D. 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.
- E. 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.



F. 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.

G. 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.