

Request for Proposals  
RFP S19199

# I-280 Soundwalls Project

Engineering Services

October 16, 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](http://www.VTA.org).

**ABOUT RFP S19199:** VTA seeks Proposals (“Proposals”) from qualified firms to provide engineering services (“Services”) for the Project Approval/Environmental Document (“PA/ED”) phase under this RFP (the “Project”). It is VTA’s intent that, as additional funding becomes available, the selected Proposer providing services for the PA/ED phase of the Project may be awarded follow-on work by contract amendment which could include Plans, Specifications, & Estimates (“PS&E”), Design Services During Construction (“DSDC”).

**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 Proposals 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**

| <b>ACTIVITY</b>              | <b>DATE/TIME</b>               |
|------------------------------|--------------------------------|
| Issue RFP                    | October 16, 2019               |
| Pre-Proposal Conference      | October 29, 2019 at 11:00 AM   |
| Deadline to Submit Questions | October 31, 2019 at 4:00 p.m.  |
| Deadline to Submit Proposal  | November 15, 2019 at 4:00 p.m. |
| Interviews                   | December 3 and/or 4, 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 S19199 for I-280 Soundwalls Project.” 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 B106  
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 S19199 QUESTIONS” in the subject line.

Responses from VTA will be published on the VTA online procurement website.

**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 7 (seven) printed copies and one (1) copy of the Proposal in an electronic format in the form of a flash drive accompanied by a separate and sealed envelope, containing one printed copy of the Cost Proposal Form 4, DBE Forms 5 and 6, and Resource Plan (\$) Form 12 (the “Cost Proposal Packet”).

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

“RFP S19199 I-280 SOUNDWALLS PROJECT”

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 Cost Plus Fixed Fee 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 shall be a Civil Engineering firm with minimum of seven (7) years of highway design experience.
2. The Proposer’s Project Manager shall be a licensed engineer registered in the State of California with minimum of seven (7) years of experience in managing complex highway projects.

**B. PREFERRED QUALIFICATIONS:** The Proposer shall be familiar with Caltrans’, VTA’s, and the City of San Jose requirements, policies, procedures, manuals and standards including compliance with Federal Highway Administration (FHWA) requirements. Additionally, the Proposer shall possess knowledge of laws, regulations and codes related to State Highway projects. The Proposer shall demonstrate previous work performed on State Highway interchange projects in Caltrans District 4.





**III. EVALUATION AND SELECTION**

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

|  |                  |
|--|------------------|
| <b>Qualification of the Firm</b>                     | <b>10 Points</b> |
| <b>Staffing and Project Organization</b>             | <b>20 Points</b> |
| <b>Work Plan</b>                                     | <b>30 Points</b> |
| <b>Project Understanding / Delivery Efficiencies</b> | <b>30 Points</b> |
| <b>Local Firm Preference</b>                         | <b>10 Points</b> |

1. **QUALIFICATION OF THE FIRM:** Evaluation of this qualification will be based on the Proposer’s and subcontractors’ qualifications and previous experience on similar and/or related activities to develop and complete environmental, design, and right-of-way phases of projects. The evaluation will be based on the strength of the information for three key similar or related projects that the Proposer has completed in the past five years or has underway. The factors to be considered for each of these three projects are: details on the Project and its relevance as qualification for the proposed Project; the total cost of the Project; the percentage of work for which the Proposer was responsible; a comparison of the originally proposed duration of work by the Proposer compared to the actual completed or projected work duration by the Proposer; the originally proposed Proposer’s work budget compared to the actual completed or projected work budget to be considered; experience working with highway properties or other public agencies; strength and stability of the firm; and assessments by three client references.
  
2. **STAFFING AND PROJECT ORGANIZATION:** Evaluation of this criterion will be based on the Project Manager’s (“PM’s”), and if applicable, the Deputy Project Manager’s (“DPM’s”) and other key staff’s relevant experience, including staff from subcontractors on similar or related projects for the PA/ED and PS&E phases. The relevant experience includes experience in the past ten years: (i) working with Caltrans District 4 on projects that are similar and/or related to the Project that is the subject of this RFP; (ii) conducting similar or related project development for highway projects; and (iii) managing the development of complex highway improvement projects involving multiple agencies and stakeholders. Experience prior to the last ten years can be provided, but the focus of the evaluation for this criteria will be experience in the past ten years. The proposed PM/DPM should be able to demonstrate the ability to lead a multi-faceted team, manage a schedule, and budget in a dynamic environment and provide at least three references from experience in the past ten years who could be contacted to respond to questions regarding ability to manage a multi-faceted team, complex schedules and defined budgets. VTA’s investigation of staff references may extend beyond those provided in the Proposal.



- 3. WORK PLAN:** Evaluation of this criterion will be based on the presentation of a well-conceived work plan showing that the Proposer has a full grasp of the key technical issues to lead to project success through the Proposer's allocation and use of staff resources to meet VTA's objectives and work requirements for the Project. The Proposals shall succinctly describe the proposed approach for addressing the required work in an effective yet realistic manner, outlining the activities that would be undertaken in completing the various tasks and specifying who would perform the tasks including highlighting and explaining the importance of certain tasks as critical tasks. The Proposals shall include both a detailed schedule for completing the major subtasks specified in the Scope of Work, a high-level schedule identifying the most critical tasks coinciding with the discussion on critical tasks, and a discussion on the overall proposed duration for completing the work with added information on how the duration could change as needed. Finally, evaluation of this criterion will also be through an assessment of percentages and hours allocated to the major subtasks by staff (including key staff from subcontractors) to reflect the Proposers' overall understanding of the Project requirements and proposed flow of work.
  - 4. PROJECT UNDERSTANDING / DELIVERY EFFICIENCIES:** Evaluation of this criterion will be based on the presentation of the Project issues and critical items that need to be addressed during the development of the Project and discussion on key steps that will be taken to ensure optimizing of delivery effort. The Proposal will provide: 1) solutions, strategies, or recommendations for the identified project issues and critical items; 2) a detailed discussion on the proposed stakeholder involvement; and 3) identification of potential pitfalls to the successful delivery of this Project and steps that will be taken to avoid the pitfalls including an identification of the potentially most impactful three pitfalls. This Proposal will also show the relationship between the project issues/critical items and the proposed work plan (staffing, tasks, and schedule) identified in the "Work Plan" criteria. The use of graphical aids, figures, and tables to demonstrate the Proposer's project understanding and proposed delivery efficiencies will factor in the scoring for this criterion. Any new ideas including using available or new technologies to improve operations in lieu of constructed improvements as project alternative should be discussed in this section in the Proposal.
  - 5. LOCAL FIRM PREFERENCE:** 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. Five (5) points shall be awarded if at least fifty percent of the dollar value of services to be rendered will be performed by a local firm. An additional point shall be awarded for each additional ten percent (10%) of the dollar value of services to be performed by a local firm, to a maximum point award of ten (10) points.
- B. EVALUATION PROCEDURE:** The review board will evaluate Proposals based on the pre-established criteria to determine the successful Proposer or establish a shortlist of firms to interview. VTA reserves the right to conduct interviews at its discretion.



Proposers are asked to keep the interview 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.

Information on the PM/DPM and other key staff's availability to take on this Project shall be provided in Proposer's Proposal using the attached **Form 10 – Key Staff Availability**.

It is recommended that the Evaluation Criteria section of this RFP be reviewed very carefully for further details on the requested information related to firm qualifications, staff details, and project team organization that must be provided in the Proposal.

3. **WORK PLAN:** By presentation of a well-conceived work plan, this section of the Proposal shall establish that the Proposer understands VTA's objectives and work requirements and demonstrate the Proposer's ability to satisfy VTA's 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. It is recommended that the Evaluation Criteria section of this RFP be reviewed very carefully for further details on the required information related to the work plan. 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 UNDERSTANDING AND DELIVERY EFFICIENCIES:** This section shall include the Proposer's understanding of the Project's critical issues and solutions, strategies, and recommendations to address the critical issues for successful and efficient project delivery. This section will also identify the Proposer's understanding of stakeholder involvement on the issues, key pitfalls to project delivery, and related cost implications. The Proposer may also suggest technical or procedural innovations that have been used



successfully on other projects and will be applied to facilitate efficient delivery of this Project. It is recommended that the Evaluation Criteria section of this RFP be reviewed very carefully for further details on the information requested to demonstrate project understanding and proposed delivery efficiencies including the use of graphical aids, figures and tables for an easy to follow and understand presentation.

- 5. PROJECT STAFFING:** This section shall discuss how the Proposer would propose to staff this Project. The Proposer’s project team members shall be identified by name, location, specific responsibilities on the Project and the estimated person-hours of participation. An organizational chart for the project team and resumes for key personnel shall be included. Key personnel will be an important factor considered by the review board. The assignment of multiple tasks to project team members to ensure compactness of the proposed project team may be an important factor for the review board especially if such an organizational structure is shown to provide project delivery efficiencies and project management efficiencies. Once the Proposal is submitted, there can be no change of key personnel without the prior approval of VTA.
- 6. ADMINISTRATIVE SUBMITTALS:** The Proposer must complete all the forms attached hereto and submit in the Proposal. Forms No. 3 through No. 7, and Form 11 must be printed and submitted in a separate and sealed envelope titled “Cost Proposal Packet” 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 **4.28%** 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 5, 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 5, DBE Listing of Prime and Subcontractors, Form 6, 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.

The list of certified CUCP DBE firms is available at:

- <https://dot.ca.gov/programs/business-and-economic-opportunity/dbe-search>

The CUCP DBE application is available at the OBDP website at:

- [www.vta.org/osdb](http://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 quarterly 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 A8.**

## **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. Background Information**

This RFP is for the Project Approval/Environmental Document (PA/ED) services for this Project. The Project includes multiple phases of design and engineering work which may be awarded to the same Contractor via Additional Services, as described below. Such services would only be requested from a qualified Contractor that has demonstrated satisfactory performance of work on the current or previous phases during the course of the Contract. Proposers interested in the additional services shall include a statement of interest for such work in their Proposals.

### **B. Proposed Project**

In April 1992, Caltrans prepared a Noise Barrier Scope Summary Report ("NBSSR") for the proposed new soundwalls on I-280 from Bird Avenue to Los Gatos Creek. Due to noise deficiencies based on Section 215.5 of the Streets and Highways Code (Freeway Noise Attenuation), a proposal to construct soundwalls along both sides of I-280 within this limit was recommended as an effective noise abatement measure. The PA/ED will evaluate and make a recommendation on the actual number and location of the soundwalls. A Project location map is included in Appendix A that shows 5 potential wall locations and the NBSSR is included in Appendix B.

### **C. Proposed Scope of Work**

This scope of services is specifically based on providing planning, preliminary design, and environmental assessment services to VTA for completing the PA/ED phase for the



proposed Project. Proposer will perform all Services in accordance with standards outline below:

The key Project components of the Scope of Services for Phase 1 are as follows:

**PHASE 1 – PA/ED PHASE**

- TASK 1. Project Management
- TASK 2. Planning and Preliminary Investigations
- TASK 3. Project Approval/Environmental Document (PA/ED)

**PHASE 1 – PA/ED PHASE**

**Task 1: Project Management**

Contractor, under this PA/ED phase of the Contact, must provide project management for each task for the entire duration of the Contract schedule. The design documents must be bid-ready and constructible in accordance with Caltrans' approved standards. Management activities will consist of administration, coordination, supervision, project controls, attending meetings, and quality assurance and control as stated in the following:

1.1 **Project Administration/Project Coordination**

The Contractor will perform the following project administrative duties:

- Prepare and submit monthly progress reports that will identify work performed on each task in the preceding month. Percent complete compared to percentages billed for each task will be shown.
- Prepare a monthly summary of total charges made to each task. This summary must present the contract budget for each task, reallocated budget amounts, prior billing amount, current billing, total billed to date, and a total percent billed to date. An Engineering Progress and Performance Report (EPPR) or equivalent earned value analysis documentation must be attached as back up sheets which must include Contractor's charges to each sub-task with an estimated percent complete of work.
- Provide a summary table indicating the amount of firm participation each month based upon current billing and total billed to date.
- Provide a monthly invoice by task that will present charges by staff member at agreed to hourly rates, expense charges, and subcontractor charges. Support documentation for the Contractor's direct expenses and other charges will be attached.
- Prepare and submit quarterly DBE Utilization reports and Final DBE Utilization report.
- Prepare additional design services proposal as requested by VTA.

The Contractor must not perform any extra work without prior written authorization from VTA.



The Contractor must coordinate with agencies as required for project development. The Contractor must coordinate planning and design effort with team members, including, but not limited to, the following:

- Santa Clara Valley Transportation Authority (VTA)
- Caltrans
- Caltrain
- Affected utility companies including railroad companies
- Santa Clara County Department of Roads & Airports
- Federal Highway Administration (FHWA)
- Santa Clara Valley Water District (SCVWD)
- Public Utilities Commission (PUC)
- Private property owners
- City of San Jose

## 1.2 Project Management and Control

Project Management and Control Activities:

- Supervise, coordinate, and monitor activities and product development for conformance with Caltrans, VTA, County, and City standards and policies.
- Ensure compliance with other codes and standards as acceptable to Caltrans and approved by VTA.
- Ensure compliance with all applicable laws, regulations, and codes.
- Prior to the start of any work, the Contractor must interface with Caltrans, County, and City staff to establish and maintain format consistency of all deliverable(s). Any deviation from the agreed-upon format will be Contractor's responsibility to rectify, and no financial compensation will be provided for such deviations.
- Coordinate in-house design staff and subcontractors to ensure free and timely flow of information for each task activity.
- Maintain Project files in accordance with Caltrans' Uniform Filing System.
- Prepare a detailed Critical Path Method (CPM) schedule to reflect plan and progress of work and serve as a master schedule for the Project. The Contractor must submit an updated electronic file schedule on a monthly basis to include key milestones and work completed.
- Prepare and maintain an Action Item Log.
- Prepare and maintain Data Request Log.



- Prepare and maintain a Submittals Registry Log, which must include scheduled and actual submittal dates, review periods, and receipt of comments.
- Prepare Risk Register and Risk Management Plan in accordance with Caltrans guidelines and requirements.
- If required, the Contractor must assist VTA with the preparation of any other required documentation that may include, but are not limited to, Cooperative Activities or activities such as Public Outreach Support that are needed for the Project.

### 1.3 Meeting Preparation and Attendance

The Contractor will prepare for and attend the following meetings:

- Bi-Monthly (every other month) project development team (“PDT”) meetings. Contractor will arrange meetings, provide discussion material, and prepare minutes.
- As needed coordination meetings with VTA, Caltrans, City, and other agencies to resolve technical issues.
- Prepare and submit meeting agendas to VTA. Prepare and distribute draft meeting minutes for VTA review within ten (10) working days after each meeting allowing two (2) weeks for receipt of any comments. Prepare and distribute final meeting minutes to the PDT team incorporating relevant comments received on draft meeting minutes.

Provide support to VTA Project Manager in milestone update meetings with VTA Technical Advisory Board (TAC), VTA Congestion Management Planning and Programming (CMPP) standing committee and executive level Caltrans meeting if required.

### 1.4 Develop & Maintain a Quality Control / Quality Assurance (QA) Plan

The Contractor must establish and maintain a Quality Management Plan (QMP) and Procedures that meets the VTA’s QA Program requirements. Contractor must conduct independent Quality Review of reports, plans, specifications, calculations, estimate and other required deliverables. The Contractor must:

- Submit a Quality Management Plan, within twenty (20) calendar days after the execution of the Contract for VTA’s approval, whereby the Contractor proposes to implement the requirements of this Contract.
- Ensure promulgation of and strict adherence to the approved Quality Management Plan and Procedures in the conduct of the work.
- Subcontractors are required to subscribe to the Contractor’s approved QMP. Any waiver of this requirement must be approved by VTA QA Manager on a case-by-case basis. If VTA grants a waiver of this requirement, the subcontractor’s own QMP must be approved and certified by the Contractor as meeting the VTA’s QA Program requirements. VTA approval of the any subcontractor’s QMP is not required.



- Convene and document Quality Reviews, and make findings and corrective actions available for VTA's review.

The Contractor's approach to quality must meet or exceed industry standards and practices and those of VTA's QA Program requirements. The Contractor must establish and maintain a QMP as part of the Work Plan. The QMP will establish a process to ensure:

- 1) Quality Control procedures are strictly adhered to the approved Contractor's QMP and will be properly documented throughout the entire course of the work.
- 2) Independent checking (check, back-check, and verification) of calculations, plans, and specifications.
- 3) Distribution of all Project correspondence and memoranda to appropriate personnel.
- 4) Those personnel responsible for assuring quality must be independent of those having direct responsibility for the work being performed.
- 5) Discipline/Task Managers approval and certification that required Intra-Disciplinary review (refers to internal (independent check) process within each discipline) and Quality Control activities have been satisfactorily performed prior to submittal to the Contractor.
- 6) Project Manager's approval and certification that required Inter-Disciplinary review (refers to external review process between disciplines that are conducted to ensure proper interface/continuity and to prevent conflicts among various disciplines) and above requirements have been satisfactorily performed prior to submittal to VTA or other approving agencies (Caltrans, cities, etc.).
- 7) Quality Assurance/Quality Control Manager conducts and documents random audits of the Contractor and subcontractors work to check and certify compliance with the approved Quality Management Plan.
  - a. The Quality Management Plan will also establish a means to evaluate quality of the interface/integration and to confirm that conflicts do not exist in areas where various items of work are shown on several discipline drawings.
  - b. Verify that all design is accomplished in accordance with appropriate design criteria and required processes.
  - c. Conduct and document periodic audit of the Project Team (Contractor and Subcontractors) and participate in VTA's Quality Assurance Audits for conformance with contract requirements, design criteria, constructability and other project quality standards.



**Task 1 Deliverables**

- Detailed CPM design schedule
- Meeting agendas and draft/final meeting minutes
- Action Item Log
- Data Request Log
- Submittal Registry
- Invoices and progress reports including EPPR
- DBE Quarterly and Final Utilization Reports
- QA/QC Plan
- Risk Management Plan and Risk Registry

**Task 2: Planning and Preliminary Investigations**

Task 2 consists of compiling and reviewing existing data pertinent to the Project; planning phase activities; identifying and requesting supplemental information and surveys; establishing coordination with any adjacent projects; and obtaining information and requirements for utilities, right-of-way, permits, and geotechnical. Contractor activities must include, but are not limited to, the following:

2.1 **Data Collection and Review**

Contractor must obtain and review available data and information necessary for planning and designing the Project. This information may be obtained from VTA, Caltrans, local agencies, utilities, and other agencies and organizations. Data to be reviewed includes, but may not be limited to, the following:

- any previous report(s) or documents related to the proposed Project area;
- as-built plans;
- utility information;
- aerial photos and any available mapping, including digitized topography;
- survey control data;
- blank Caltrans Plan Sheet Overlays;
- preliminary Soundwall Layout Plans;
- Soundwall Layout Line Alignment; and
- right-of-way information.



## 2.2 Design Surveys and Survey Control Data

VTA will prepare and process encroachment permits necessary for fieldwork. Encroachment permit fees will be paid directly by VTA and are excluded from Contractor's cost.

### 2.2.1 Topographic Design Surveys

Field surveys for design must include additional surveys necessary to confirm mapping accuracy, topographic surveys necessary to complete design, including but not limited to verifying utilities and drainage facilities, tree survey locations, fences, drainage swales and ditches, and any other features necessary to complete the design. Field survey excludes traffic control and excludes survey on private property. The clearing of homeless encampments/sites within the Project limits will be performed by VTA or Caltrans for performance of surveys by Contractor.

Enter right-of-way lines based on existing right-of-way information from drawings. This excludes hard copy maps and record of survey developed from a field survey.

Develop planimetrics from aerial mapping which does not include ABC mapping or a GPS report. Aerial mapping to be supplemented with traditional topographic survey.

### 2.2.2 Utility Pothole Surveys

Contractor must determine those utilities that need to be potholed within Project limits. Number of utilities to be potholed must be determined during preliminary design phase. Potholing must be performed as an extra work task upon obtaining VTA authorization. Utilities must be potholed, reference surveyed, and plotted by the Contractor upon authorization of this extra work task.

## 2.3 Coordination with Others

Coordination must be performed for preliminary investigation among all project members, including subcontractors and other contractors. Investigation coordination also includes, but is not limited to, the following agencies:

- VTA and its contractors;
- Caltrans (all offices, departments, divisions and groups);
- utility companies through VTA's Utility Coordinator;
- City and Santa Clara County Agencies;





- private property owners; and
- Caltrain.

**Task 2 Deliverables**

- Topographic Mapping Submittal
- Right-of-Way and Planimetrics Submittal
- Utility Pothole Submittal

**Task 3: Project Approval/Environmental Document**

3.1 Project Approval:

Contractor will prepare a Project Report (PR) in accordance with Caltrans guidelines. Draft and Final versions will be prepared with respect to guidelines contained in the Caltrans Project Development Procedures Manual. The PR activities must consist of, but are not limited to, the following:

- preliminary right-of-way requirements;
- preliminary utility coordination;
- preliminary utility layout;
- preliminary soundwall layout;
- Traffic Management Plan (TMP) Data Sheet;
- Storm Water Data Report (PA/ED Level);
- preliminary Geotechnical Design Report (GDR);
- preliminary construction cost estimate;
- preliminary construction schedule; and
- draft and final PR including supporting documentation.

3.1.1 Preliminary Right-of-Way Requirements

It is assumed that no widening outside State right-of-way will be needed for this Project. Contractor will coordinate right-of-way requirements for the Project and prepare the Right-of-Way (“R/W”) Data Sheet per the above assumption. A certified R/W professional will prepare the R/W Cost Estimate and the R/W Data Sheet for VTA to review.

3.1.2 Preliminary Utility Coordination/Encroachment Policy Variance



Contractor will assist VTA with the preparation of Utility Policy Variance Request by providing existing utility map, relocation maps, table of all existing utilities and utilities that require an exception, and any additional information to obtain Caltrans approval. Contractor will update the existing utility mapping for the Project area, identify utilities that could potentially conflict with the proposed improvements, and develop preliminary utility relocation plans based on VTA inputs that will be used as the basis of discussions with the affected utility owners. It is assumed that final utility relocation plans will be prepared by each of the affected utility owners during the final PS&E phase.

Contractor will assess preliminary utility relocation costs for the PR that will be confirmed by the affected utility owners during the final PS&E phase once the utility relocation plans are developed and finalized by the utility owners.

### 3.1.3 Preliminary Soundwall Layout

Contractor will review the soundwall layouts shown on the Noise Barrier Scope Summary Report for further study for the Project. Contractor must expand on the previous soundwall layouts and define the improvements in sufficient detail to obtain the appropriate agencies consensus on preliminary soundwall layouts that will be discussed in the PR prepared for the Project and recommended for final design in the subsequent PS&E phase.

### 3.1.4 Traffic Management Plan Data Sheet

Contractor must prepare a Transportation Management Plan Data Sheet for inclusion with the PR.

### 3.1.5 Storm Water Data Report (PA/ED Level)

A Storm Water Data Report (SWDR) is required on all projects with improvements within CALTRANS highway right-of-way and focuses on the storm water quality issues to construct the project and implementation of appropriate temporary and permanent Best Management Practices (BMPs). The Contractor will prepare a PA/ED level SWDR summarizing Project impacts to water quality, general mitigation measures, and recommend best management practices. The SWDR (PA/ED Phase) will address only the impacts from roadway improvements and Contractor will utilize Caltrans standard SWDR checklists. Contractor will address the needs for erosion control measures and recommend BMPs for the Project.

It is assumed that the right-of-way within the current Project limits is sufficient to provide room for potential permanent treatment BMPs. Contractor will consider various types of BMP measures utilizing Caltrans Storm Water Manuals and Checklists. Contractor will recommend appropriate BMP measures such as grassy swales, detention basins, or infiltration basins, to minimize or mitigate water quality



impacts. Contactor will assess the right-of-way needs to address the required BMP applications.

3.1.6 Preliminary Geotechnical Report

Contractor must prepare a preliminary GDR in accordance with Caltrans current requirements. The preliminary GDR will be based on record information. Exploratory boring work will not be conducted during this phase.

The preliminary GDR must include all necessary information required to initiate the PS&E phase for this Project. This will include recommendation for the soundwalls. Draft and final versions will be prepared.

3.1.7 Preliminary Construction Cost Estimate and Schedule

Contractor must prepare a preliminary construction cost estimate for the Project. The estimate must be prepared using Caltrans format and attached to the PR. Contractor must prepare a preliminary construction schedule for future planning purposes.

3.1.8 Draft and Final PR including Supporting Documentation

The Contractor will prepare a draft PR that documents the need for the Project; summarizes key points from the draft environmental studies; and summarizes scope, cost, schedule, and overall impacts to enable an informed decision to be made to proceed toward Project approval. Following consideration of public comments, the Contractor will revise the draft PR. The Contractor will then submit the final PR to Caltrans for Project approval.

The following topics are typically covered in the draft and final PR:

- Introduction
- Recommendation
- Background
- Need and Purpose
- Deficiencies
- Corridor and System Coordination
- Alternatives
- Traffic Operational Analysis Summary
- Design Exceptions Summary (Limited to identification of design exceptions associated with proposed soundwalls and excludes identification of the existing freeway deficiencies)



- Community Involvement
- Storm Water Quality
- Transportation Management Plan Data Sheet
- Right-of-Way Data Sheet
- Environmental Determination/Document
- Funding
- Schedule
- Project Cost Estimates

### 3.2 Environmental Document:

It is expected that the Project will be environmentally cleared with a Categorical Exemption under the California Environmental Quality Act (CEQA) and a Categorical Exclusion under the National Environmental Policy Act (NEPA). The environmental document will be prepared by VTA with Caltrans as Lead Agency and in accordance with the current guidance and annotated outline templates posted by Caltrans on the Standard Environmental Reference (SER) website. Project impacts to environmental resources will be analyzed and technical studies will be prepared, as needed.

VTA will prepare the following environmental documents required for the Project:

#### 3.2.1 CEQA Environmental Document

VTA will be responsible for finalizing all aspects of a CEQA Environmental Document. The environmental document for the Project is expected to be a Categorical Exemption, which will be prepared in conformance with CEQA and the State CEQA Guidelines.

#### 3.2.2 NEPA Environmental Document

VTA will be responsible for the preparation of all aspects of a NEPA Environmental Document. The environmental document is expected to be a Categorical Exclusion, which will be prepared in conformance with NEPA, Council on Environmental Quality (CEQ) regulations implementing NEPA, and Caltrans and FHWA guidelines.

#### 3.2.3 Environmental Special Studies

VTA will be responsible for preparing and finalizing required environmental technical studies in coordination with Caltrans. The Contractor will provide support to VTA to facilitate the analysis contained in the technical studies, such as



providing plan sheets, exhibits, descriptions of work, anticipated durations, and other project-related information as requested by VTA. The Contractor will coordinate with VTA to review and comment on portions of technical reports as requested, and address questions from VTA related to the Project description.

The list of studies required will be coordinated with Caltrans and confirmed in writing between Caltrans and VTA.

Contractor's cost proposal will budget support for a maximum of eight (8) environmental special studies that may include but are not limited to, the following:

- Biology – Natural Environment Study-Minimal Impact
- Hazardous Materials – Initial Site Assessment
- Cultural – Area of Potential Effects Map, Archaeological Survey Report, Historic Property Survey Report, Historic Resources Evaluation Report
- Noise – Noise Study Report/Noise Abatement Decision Report
- Visual – Minor Visual Impact Assessment
- Paleontology – Paleontological Identification Report/Paleontological Evaluation Report

**Task 3 Deliverables**

- Draft and final PR hardcopy and electronic native files
- Preliminary Utility Layout
- Preliminary Soundwall Layout
- Traffic Management Plan Data Sheet
- Storm Water Data Report (PA/ED Level)
- Preliminary Geotechnical Report
- Preliminary Construction Cost Estimate and Schedule

Documents by Others:

- Final environmental document and associated technical studies by VTA
- Utility Policy Variance Request (PA/ED Level) by VTA



## APPLICABLE STANDARDS

The plans, specifications, and estimates must be prepared in accordance with Caltrans' regulations, policies, procedures, manuals, and standards and in accordance with all applicable laws, regulations, and codes. The following bullet items are not all-inclusive but are intended only to illustrate types of sources.

- Roadway design must be in accordance with the latest editions, as applicable, of the Caltrans Highway Design Manual, Standard Plans and Specifications, the California Manual on Uniform Traffic Control Devices (CA MUTCD), and VTA standards (available online on the VTA website). The current editions of those manuals are Caltrans Highway Design Manual 2018, the 2018 Standard Plans and Specifications, and the 2014 California Manual on Uniform Traffic Control Devices (CA MUTCD).
- Roadway plans must be prepared in conformance with the current editions of the Caltrans Plans Preparation Manual and the Caltrans CADD User's Manual.
- All surveys must conform to the current Caltrans Surveys Manual. Horizontal datum to be CCS 83, Epoch 2010.00 (California Coordinate System, North America Datum, 1983) and vertical datum to be NAVD 88 (North American Vertical Datum of 1988).
- All phases of design of improvements which impact existing or proposed underground utilities must conform to Caltrans' Policy on High and Low Risk Underground Facilities within Highway Rights of Way.
- All right-of-way maps must conform to the current Caltrans Right of Way Manual. Design of the Project must be performed in accordance with Caltrans standards and practices.
- Submittals must be made in the number and type specified in the current edition of the Caltrans publication entitled, *Guide for the Submittal of Plans, Specifications and Estimates*, and, where applicable, Externally Financed Projects Branch (EFPB) Information and Procedures Guide of the Division of Structures, unless noted otherwise in the contract documents.
- Applicable design standards must be approved by Caltrans via the process outlined in Caltrans Highway Design Manual and applicable memoranda and design bulletins published by Caltrans for the constructed improvements within the State right-of-way.
- All designs for the constructed improvements within the City of San Jose ("City") right-of-way shall conform to the City of San Jose Standards Plans, Guidelines, Policy and Procedure, and City Ordinances.
- All designs for the constructed improvements within the County right-of-way shall conform to the Santa Clara County Department of Roads & Airports Standards Plans, Guidelines, Policy and Procedure, and County Ordinances.



### **AWARD OF ADDITIONAL SERVICES**

It is VTA's intent that, as additional funding becomes available, the selected Proposer providing Services for the Project may be awarded follow-on work by Contract amendment, which could include PS&E and DSDC.

The following descriptions are provided to outline the general scope of potential additional services ("Additional Services") which may be requested on the resulting Contract. These Additional Services are considered optional and Proposer's are not to include cost/performance of this work in proposals, however in order to qualify for the Additional Services, Proposer's must contemplate the possibility of this work and inform VTA if they are qualified and capable of providing the Additional Services.

### **PHASE 2 – PS&E PHASE**

This final phase of design is the development and preparation of the plans and specifications required for construction bid documents, as well as an engineer's estimate on the total cost of construction and estimated build time. These documents are subject to FHWA, Caltrans, State of California, local rules and regulations, and any other applicable legal requirements. This work may include, but is not limited to, the drafting of design plans and detailed technical specifications, in-person meetings, presentations, stakeholder input, public outreach, multiple approval processes, and other work as required to submit a fully compliant and complete bid package to VTA. This task is comprised of preparing PS&E, reports and other deliverables for the

following submittals:

- 35% PS&E
- 65% PS&E
- 95% PS&E
- 100% PS&E
- Final encroachment permit
- Construction bid documents

### **PHASE 3 – DESIGN SUPPORT DURING CONSTRUCTION (DSDC) PHASE**

VTA may require the services of the Contractor and its subconsultants during construction. The DSDC Phase includes engineering services to support VTA with project delivery and acceptance. This task is comprised of, but not limited to, the following key tasks:

- Clarification of existing design
- Responses to contractor questions about the plans and specifications
- Review of shop drawings
- Review of contractor technical submittals for conformance with the plans and specifications



Subsequent Phases 2 and 3 scope of work of the PS&E and DSDC for the Project are anticipated to be performed based on the developed and approved PA/ED.

**RESERVE THE RIGHT TO NOT AWARD**

VTA reserves the right to not award any Additional Services, some of the Additional Services, or engage another party for any of these Additional Services. Contractor awarded Contract is not guaranteed work on any Additional Services.

**ADDITIONAL SERVICES BASED ON PERFORMANCE AND FUNDING**

Additional Services may not be funded at the time of Contract award and would only be requested as funding becomes available.

Prior to awarding any Additional Service, VTA will evaluate the performance of Services rendered to date. The quality of the Contractor's work, budget and schedule adherence, effectiveness of communications, response times, and other factors will be evaluated. VTA will only request Additional Services if Contractor's current performance on the Contract is found to be satisfactory and meeting VTA's expectations.

Upon VTA's request for any Additional Services, a detailed Scope of Services will be provided to the Contractor in order to prepare an Amendment Proposal. Upon successful negotiations, a Contract Amendment will be processed. No Additional Services are to be performed until this process is completed and a Notice to Proceed is issued.

**D. Work Schedule**

Proposer must include separate detailed schedules for completing the major subtasks specified in the Scope of Work and an overall proposed duration for completing PA/ED for the Project in the Proposals. Proposers must prepare schedules included in the Proposals in Gantt chart format (e.g. Microsoft Project or Primavera).

A preliminary Project schedule is included in Appendix C.





**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. CERTIFICATE OF CONSULTANT**

**FORM 10. KEY STAFF AVAILABILITY**

**FORM 11. RESOURCE PLAN (Hours)**

**FORM 12. RESOURCE PLAN (Dollars)**



**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](http://www.sam.gov))

**POINT(S) OF CONTACT**

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

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

**AUTHORIZED SIGNATORIES:**

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

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

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 \$ \_\_\_\_\_

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



**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 |
|-----------|---------|

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



**FORM 10. KEY STAFF AVAILABILITY**

| Key Staff | Location | Company Name | Role | Current Projects (*) | Current Workload % (*) | Availability | Estimated Person-Hours |
|-----------|----------|--------------|------|----------------------|------------------------|--------------|------------------------|
|           |          |              |      | 1.                   |                        |              |                        |
|           |          |              |      | 2.                   |                        |              |                        |
|           |          |              |      | 3.                   |                        |              |                        |
|           |          |              |      | 1.                   |                        |              |                        |
|           |          |              |      | 2.                   |                        |              |                        |
|           |          |              |      | 3.                   |                        |              |                        |
|           |          |              |      | 1.                   |                        |              |                        |
|           |          |              |      | 2.                   |                        |              |                        |
|           |          |              |      | 3.                   |                        |              |                        |
|           |          |              |      | 1.                   |                        |              |                        |
|           |          |              |      | 2.                   |                        |              |                        |
|           |          |              |      | 3.                   |                        |              |                        |
|           |          |              |      | 1.                   |                        |              |                        |
|           |          |              |      | 2.                   |                        |              |                        |
|           |          |              |      | 3.                   |                        |              |                        |
|           |          |              |      | 1.                   |                        |              |                        |
|           |          |              |      | 2.                   |                        |              |                        |
|           |          |              |      | 3.                   |                        |              |                        |
|           |          |              |      | 1.                   |                        |              |                        |
|           |          |              |      | 2.                   |                        |              |                        |
|           |          |              |      | 3.                   |                        |              |                        |

Note:

\* List all projects and current workload for each project. Add additional rows as needed.



**FORM 11. RESOURCE PLAN (Hours)**

**EXCEL File Filename: "Form 11 RESOURCE PLAN (Hours).xls"  
TO BE DOWNLOADED FROM VTA WEBSITE**



**FORM 12. RESOURCE PLAN (Dollars)**

**EXCEL File Filename: "Form 12 RESOURCE PLAN (\$).xls"  
TO BE DOWNLOADED FROM VTA WEBSITE**

**SUBMIT IN A SEPARATELY SEALED ENVELOPE**



**X. EXHIBITS**

EXHIBIT A SAMPLE CONTRACT

EXHIBIT A1 SCOPE OF SERVICES

EXHIBIT A2 COMPENSATION, INVOICING and PAYMENT

EXHIBIT A3 RATE SCHEDULE

EXHIBIT A4 APPROVED SUBCONTRACTORS

EXHIBIT A5 INSURANCE REQUIREMENTS

EXHIBIT A6 DISADVANTAGED BUSINESS ENTERPRISES (DBE) REQUIREMENT

EXHIBIT A7 PREVAILING WAGE REQUIREMENTS

EXHIBIT A8 DESIGN PROFESSIONAL SERVICES SPECIAL TERMS AND  
CONDITIONS

EXHIBIT A9 REQUIRED FHWA CLAUSES PART 1

EXHIBIT A10 REQUIRED FHWA CLAUSES PART 2



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**EXHIBIT A SAMPLE CONTRACT**  
BETWEEN  
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
AND  
CONTNAME  
FOR  
[SERVICES]

CONTRACT NO. S19199

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 Exhibit A2 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



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Services other than to those subcontractors that may be identified herein **or** in Exhibit A4. 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,





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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.



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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](mailto: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



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San Jose, CA 95134-1927  
[norman.david@vta.org](mailto: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 A5.

**N. 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 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.

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

**O. BUSINESS DIVERSITY PROGRAM REQUIREMENTS:** Contractor shall adhere to the Disadvantaged Business Enterprise requirements set forth in Exhibit A6.

**P. 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 A10.
- 2. **PREVAILING WAGE REQUIREMENTS:** Contractor shall adhere to the prevailing wage requirements set forth in Exhibit A7.
- 3. **HIGHWAY PROJECT REQUIREMENTS:** All files and drawings shall comply with the CALTRANS current CADD User's Manual and current Drafting and Plans Manuals.

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



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**EXHIBIT A1 SCOPE OF SERVICES**

[TO BE INSERTED AT TIME OF CONTRACT AWARD]



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

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

**A. COMPENSATION:** This is a cost plus fixed-fee Contract with a maximum value of [\$\$X,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](http://www.gsa.gov). The



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meals and incidental expenses shall not exceed the per diem rates, as stated on GSA website [www.gsa.gov/mie](http://www.gsa.gov/mie). At no time shall alcohol, travel upgrades, fines, memberships, loss of personal property or cash, “no shows,” or personal itinerary changes be subject to reimbursement by VTA.

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

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

## **B. INVOICING:**

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

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



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

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



**EXHIBIT A3 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 |
|----------------|-------------------|---------------------------|----------------------------|------------|---------------------------------|----------------------------------|
|                |                   |                           |                            |            |                                 |                                  |
|                |                   |                           |                            |            |                                 |                                  |
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**EXHIBIT A4 APPROVED SUBCONTRACTORS**

[TO BE INSERTED AT TIME OF CONTRACT AWARD]



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## EXHIBIT A5 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 projectProject, and on that portion of the work performed within 50 feet of the VTA rail Right of Way, measured from the nearest rail.



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- f. 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



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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.





- 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](mailto:Insurance.certificates@vta.org).

The certificates will (1) identify the underwriters, the types of insurance, the insurance limits, the deductibles and the policy term, (2) include copies of all the actual policy endorsements required 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. S19199

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



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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.



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## EXHIBIT A6 DISADVANTAGED BUSINESS ENTERPRISES (DBE) REQUIREMENT

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

In connection with its performance under this Contract, Contractor agrees to cooperate with VTA in meeting the 4.28% 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](mailto:OSDB.OSDB@VTA.org) by indicating a final audit where requested in the B2Gnow system. This final report will document when payments to subcontractors were made, the dollar value of payments to DBE firms, and the percentage of the Services completed.
- 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 recipient<sup>1</sup> 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.

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<sup>1</sup> "Recipient" is VTA.



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## EXHIBIT A7 PREVAILING WAGE REQUIREMENTS

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



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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](http://www.dir.ca.gov).

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

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

**G. CERTIFIED PAYROLLS:**

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

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



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## EXHIBIT A8 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.



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**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 **[TO BE DEFINED FOR EACH CONTRACT]**.

## **B. INTELLECTUAL PROPERTY RIGHTS:**

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



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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.



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## EXHIBIT A9 REQUIRED FHWA CLAUSES PART 1

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

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



## EXHIBIT A10 REQUIRED FHWA CLAUSES PART 2

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

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

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

- 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 FHWA 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 FHWA and its contractors access to the sites of performance under the Contract as reasonably may be required.





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**B. BUY AMERICA REQUIREMENTS: OMITTED.**

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

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

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

**E. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:**

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



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

- 3. Withholding for Unpaid Wages and Liquidated Damages:** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.
  - 4. Subcontracts:** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.
- F. ENERGY CONSERVATION:** Contractor will at all times comply with the following requirements and will include these requirements in each subcontract entered into as part of the Contract:
- 1. Flow Down:** The requirements of this Section F apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section F.
  - 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.
- G. 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 FHWA 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.

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



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1. **Flow Down:** The requirements of this Section H apply to Contractor and its Contract subcontractors at every tier if such subcontract has a total value of \$100,000 or more. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section H.
  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.
- I. NO GOVERNMENT OBLIGATION TO THIRD PARTIES:** Contractor will at all times comply with the following requirements:
1. **Flow Down:** The requirements of this Section I apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section I.
  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.
- J. PATENT RIGHTS AND RIGHTS IN DATA:** If the Contract is for the performance of experimental, developmental, or research work, Contractor will comply with the following:
1. **Flow Down:** The requirements of this Section J apply to Contractor and its Contract subcontractors at every tier if the relevant subcontract meets the definition of a research-type project under 37 U.S.C. § 401.2. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section J.
  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 FHWA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of the Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any



manner or form, nor may Contractor authorize others to do so, without the written consent of FHWA, until such time as FHWA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of the Contract, the term “subject data” means recorded information, whether or not copyrighted, that is delivered or specified to be delivered by the Contract.

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 FHWA.
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 FHWA determines otherwise, Contractor will permit FHWA to make available to the public, either FHWA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the federal government may direct.
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.



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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.
- K. PROCUREMENT OF RECOVERED MATERIALS:** If (i) the Contract is for the purchase of items designated in guidelines of the U.S. Environmental Protection Agency (“EPA”) at 40 C.F.R. Part 247 and (ii) the purchase price of the relevant item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000, Contractor will comply with the following:
1. **Flow Down:** The requirements of this Section K apply to Contractor and its Contract subcontractors at every tier if the subcontract involves the purchase of EPA-selected items valued at \$10,000 or more. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section K.
  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.
- L. TERMINATION:** Contractor will comply with the termination provisions set forth elsewhere in the Contract. The requirements of this Section L apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section L.
- M. VIOLATION AND BREACH OF CONTRACT:** If the Contract has a total value exceeding the simplified acquisition threshold as defined by 48 C.F.R. 2.101(b) (“Simplified Acquisition Threshold”), Contractor will comply with the following:
1. **Flow Down:** The requirements of this Section M apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section M.



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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.
- N. SPECIAL U.S. DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS:** If the Contract has a total value of \$10,000 or more and is for construction work as defined in 41 C.F.R. §60-1.3, Contractor will comply with the following:
1. **Flow Down:** The requirements of this Section N apply to Contractor and its Contract subcontractors performing construction work at every tier. Contractor is responsible for ensuring that all applicable lower tier contractors and subcontractors are in compliance with this Section N.
  
  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. § 2000e *et seq.*
  
  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).



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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).





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**XI. APPENDICES**

**ALL APPENDICES ARE AVAILABLE AND DOWNLOADABLE  
FROM VTA WEBSITE**

Appendix A1 – I-280 Soundwalls Project Location Map

Appendix A2 – I-280 Soundwalls Project Location Map

Appendix B – SCL\_EA-44840 Approved NBSSR 1992-04-24

Appendix C – Preliminary Milestones Schedule\_DRAFT 2019-10-03