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## SECTION 1 INVITATION FOR BID

### 1.1. Introduction

The Santa Clara Valley Transportation Authority (“VTA”) is requesting sealed written bids (“Bids”; “Bid”) from responsive and responsible qualified firms (“Bidders”) for the project titled below (“Project”):

**PAINT GUN CLEANER MAINTENANCE  
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### 1.2. Obtaining the Contract Documents

Contract documents (herein referred to as “Contract Documents”) specifying the requirements of the work to be performed (“Work”), the terms of the contract (“Contract”) between VTA and the successful Bidder, and the details of the bidding procedure can be found at VTA’s website <https://www.vta.org/solicitations>. Click on the name of the solicitation that you are interested in.

To download documents for a solicitation, click "**Register or Log In to Download**" if you are not already logged in, and once you are registered and logged in, click "**Become a Plan Holder**" in order to download the documents. There is no charge for downloading these documents.

Register as a vendor and sign up for notifications for your North American Industry Classification System (“NAICS”) business codes at <https://www.vta.org/user/register?type=vendor>. By registering as a VTA vendor, Bidder will automatically receive notifications by email of upcoming VTA bidding opportunities. You can reset your password at <https://www.vta.org/user/password>.

**It is highly recommended that prospective Bidders acquire the Contract Documents directly from VTA’s website in order to bid on this project and be assured that their Bids include all addenda. Bids that do not acknowledge receipt of addenda may be considered nonresponsive.**

### 1.3. Description of Work

For purposes of this Contract, the Work consists of providing to VTA (i) all personnel, transportation, equipment, materials, tools, supervision, and other items and services necessary for the maintenance of VTA-owned paint system equipment and (ii) the appropriate solvents as necessary to ensure (a) proper operation of the paint system equipment, (b) maintenance of the paint system equipment in proper operating condition, and (c) repair of the paint system equipment in compliance with manufacturer, state, and federal standards.

The Engineer’s Estimate for this Work ranges from to \$240,000 - \$350,000. Refer to **Section 6.4 Time for Performance** for the time limit to complete all Work.

### 1.4. Submittal Location and Deadline

Bids must be submitted on (“Bid Opening”) or before:

**March 10, 2020 at 10:00 AM**

Bids received after the date and time stated above will be rejected as nonresponsive. It is highly recommended that Bids be hand-delivered.

All Bids shall be enclosed in a sealed envelope bearing the Contract number, the title of the Project, the date and hour of the opening, and the name of the Bidder.

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Bids will be received, publicly opened and read aloud at the location set forth below:

Santa Clara Valley Transportation Authority  
Procurement, Contracts and Materials Management  
Attention: Kiet Vu  
3331 North First Street, Building A  
San José, California 95134

### 1.5. Licenses

The Bidder to whom the Contract will be awarded (“Contractor”) must, at the time of Bid Opening, possess current licenses in the following classifications issued by the California Department of Consumer Affairs, Contractors State License Board:

**License:** Class A (General Engineering) and/or HAZ (Hazardous Substance Removal) Certification

A Bidder may fulfill these license requirements either by itself or in conjunction with licenses held by subcontractors of any tier. A combination of prime contractor and subcontractor licenses is acceptable only when (a) each such subcontractor’s scope of work is identified in Bid Form #3 (regardless of the subcontractor’s tier or subcontract amount); and (b) each such subcontractor possesses the identified license at the time stated above.

Regardless of whether a subcontractor must be identified at the time of Bid, each subcontractor must also be properly licensed to perform its scope of work.

### 1.6. Bidding and Contract Information

Detailed instructions for the submittal of Bids are provided in **Section 3 Instructions to Bidders** and **Section 4 Bid Forms** of these Contract Documents. Items to especially note are listed in the table below:

Bid Forms to Submit	Refer to <b>Section 4 Bid Forms</b> for a list of required forms and certifications to submit at time of bid opening.
Bid Security	Each Bid must be accompanied by a certified check, a cashier’s check or a bidder’s bond in the sum of not less than 5% of the Total Bid Price. Refer to <b>Section 3.10.2 Bid Security Form/ Bidder’s Bond</b> .
Prevailing Wages	This project is a “public work” as defined in Sections 1720 through 1720.6 of the California Labor Code. This Contract is subject to the prevailing wages as described in <b>Section 3.5 Prevailing Wage Requirements</b> .
Department of Industrial Relations Registration	<b>Contractor and all subcontractors used for the Contract shall be registered, pursuant to Section 1725.5 of the California Labor Code, at the time of Bid Opening.</b> This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (“DIR”). Refer to <b>Section 3.5 Prevailing Wage Requirements</b> .



Contract Forms to Submit Refer to **Section 5 Contract Forms** for a list of required forms and certifications to submit at time of award. These forms are for reference only and are not to be submitted with the Bid Forms.

Additional Information This project is locally funded.

### **1.7. Business Diversity Program**

VTA has not established a specific Small Business Enterprises (“SBE”) goal for this Contract. However, Bidder agrees to cooperate with VTA in meeting VTA’s overall goal of 19% annual utilization of SBE firms. Refer to **Section 3.8 Business Diversity** and **Appendix C Business Diversity Policy and Requirements** for additional information.

### **1.8. Federal Requirements**

Federal Requirements do not apply.

### **1.9. Reserved**

### **1.10. Pre-Bid Meeting and Project Site Tour**

A Pre-Bid Meeting will be held at the following location and time:

**Santa Clara Valley Transportation Authority**  
**3331 North First Street, Building A**  
**San José, California 95134**  
on

**February 25, 2020 at 10:00 AM**

A site tour will be held promptly following the pre-Bid meeting at:

**Cerone VTA**  
**3990 Zanker Road**  
**San José, California 95134**

### **1.11. Communication Protocol**

Please direct inquiries concerning the Contract Documents, bidding procedure and legal requirements to the designated Contract Administrator for this project:

Contract Administrator: Kiet Vu  
Email: Kiet.Vu@vta.org

The deadline for submitting inquiries will be 10:00 AM, five (5) working days before Bid Opening date.

Bidders may not communicate with VTA Directors, Officers, staff or consultants. All requests for clarification, objections to or questions about the structure, content or distribution of this Invitation for Bids (“IFB”), or other inquiries during the procurement process must be submitted via email to the Contract Administrator. Communicating with any VTA representative(s) about this IFB other than as specifically permitted herein is grounds for disqualification.

Questions and/or objections must be as specific as possible and must identify the name of the project and the IFB section number and title at issue. Any party submitting a question or objection must be as specific as possible in their description.

Bidders shall only rely on information contained in this IFB, and any subsequent written supplement issued by the VTA through VTA's bid process. Bidders shall not rely on any other written or oral statements of the VTA or its officers, directors, employees, or agents regarding the Work, including statements made during site tours or otherwise.

### **1.12. Confidentiality**

All information submitted to VTA under this IFB process becomes the exclusive property of VTA but, if not otherwise a public record under the California Public Records Act (California Government Code Section 6250 et seq.), shall not be open to public inspection. VTA has a substantial interest in not disclosing submissions during the evaluation process. For this reason, VTA will not disclose any part of the Bids before issuance of the Notice of Recommended Award, after which time all submissions will be subject to public disclosure to the extent such information constitutes a public record under the California Public Records Act.

### **1.13. Reservations of Rights of VTA**

VTA reserves, holds and may exercise, at its sole discretion, the following rights and conditions with regard to this IFB, and by responding to this IFB, Bidders acknowledge and consent to the following rights and conditions:

- VTA reserves the right to issue addenda to amend this IFB or any related forms or document, or any reference information provided to Bidders.
- VTA reserves the right to respond to inquiries after the deadline for submitting inquiries.
- VTA reserves the right to cancel the procurement, to reject any and all Bids, or to negotiate separately in any manner necessary to serve the best interests of VTA, in accordance with applicable law.
- VTA reserves the right to waive any informality or immaterial irregularity in any Bid and/or accept or reject any items of a Bid.
- This IFB does not obligate VTA to procure or to contract for any services.
- VTA reserves the right to change or alter the schedule for any events associated with this IFB upon notice to all potential Bidders.
- VTA reserves the right to eliminate any Bidder who submits incomplete or inadequate responses or is not responsive to the requirements of this IFB.
- VTA reserves the right to interview any or all Bidder references and to clarify the information provided pursuant to this IFB.

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**By order of the Santa Clara Valley Transportation Authority, State of California.**

**Approved for posting:**



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Daren Gee, PE  
Construction Contracts Administration Manager  
VTA Procurement, Contracts and Materials Management

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2/12/2020

Date

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## SECTION 2 FOREWORD

### 2.1. Overview of Santa Clara Valley Transportation Authority

Santa Clara County is comprised of 15 cities and has a total population of 1.6 million people. The Santa Clara Valley Transportation Authority provides transit services in this area, including approximately 326 square miles in the urbanized portion of Santa Clara County. VTA currently operates 75 bus routes and the Guadalupe, Tasman, Vasona and Capitol Corridor Light Rail Transit (“LRT”) lines. It also funds inter-regional commuter rail and express bus service, paratransit services, and light rail shuttle bus services to enhance the core transit system.

Working under a 17-member Board of Directors, VTA has a \$420 million annual budget and its currently approved capital program is approximately \$2.3 billion. It owns a fleet of 495 buses and 99 rail cars as well as 3 historic trolleys. VTA employs approximately 2,100 people.

VTA offers 42.2 miles of light rail extending from the Silicon Valley industrial and residential areas of Milpitas, Mountain View, Sunnyvale and Santa Clara to residential areas in South and East San José. The Light Rail System has 61 stations and multi-modal connections with CalTrain at the Mountain View and Tamien Station. This light rail system is one of the longest to be built in the U.S. in 50 years.

### 2.2. Equal Opportunity Employer

VTA is an Equal Opportunity employer. Contractors shall comply with the Equal Opportunity requirements as set forth in these Contract Documents. In the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, gender, gender identity, gender expression, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), genetic information, marital status, age (over 40), sexual orientation, or military and veteran status. In addition, Contractors and subcontractors shall not unlawfully deny any of their employees family care leave or discriminate against them on the basis of having to use family care leave.

VTA affirms that disadvantaged and small business enterprises will be afforded full opportunity to submit Bids. Refer to **Appendix C Business Diversity Policy and Requirements** for business diversity requirements.

### 2.3. Description of the Contracting Process

#### 2.3.1. General Process

The period between issuance of the Invitation for Bid and issuance of a Notice to Proceed consists of the steps listed below:

##### Bid Process

- Invitation for Bid posted and Pre-Bid Meeting
- Bid opening and submittal of Bid Forms
- VTA determines successful Bidder and issues a Notice of Recommended Award

Award Process

- Upon VTA's approval of the award of the Contract, VTA issues Notice of Award and Successful Bidder provides Contract forms and documents to VTA (see **Section 2.3.2 Notice of Award**)
- VTA reviews submitted forms and approves Payment Bond, Insurance Certificates, and other documents as requested by VTA.

Contract Execution and Notice to Proceed

- Execution of Contract by VTA

**2.3.2. Notice of Award**

After Bids are opened at the time and place stipulated, the Contract will be awarded to the lowest responsive and responsible Bidder ("Successful Bidder"), based on the "Total Bid Price" (as defined in **Section 2.5 Definitions**) subject to VTA's right to reject any or all Bids. No Bidder may withdraw its Bid for the period of days stipulated on the Bid Form after the date set for the Bid Opening. The Bid shall be subject to acceptance by VTA during this period.

Promptly upon VTA's approval of the award of the Contract, the Contracts Office will issue a "Notice of Award" letter to the Successful Bidder. Included with the NOA will be two (2) originals of the **Maintenance Agreement** and one (1) original **Payment Bond**.

Within **six (6) working days** from the date of NOA, the Successful Bidder shall return the following documents:

Documents

For additional information, reference the following:

- |   |   |
|---|---|
| • Executed copies of the Contract                         |   |
| • Payment Bond  | Section 6.3                             |
| • Listing of Subcontractors, Suppliers and Subconsultants | Section 4                               |
| • Certificates of Insurance                               | Appendix A                              |
| • Tax Forms   | Section 2.4 State and Federal Tax Forms |
| • Other documents as requested by VTA                     |   |

Refer to **Section 3 Instructions to Bidders** and **Section 6 Special Conditions** for additional information about each of the requirements listed above.

**2.3.3. Bid Security**

- (a) **Forfeiture of Bid Security.** Failure of the Successful Bidder to whom the NOA was issued to sign the Maintenance Agreement and submit all of the documents required within **six (6) working days** will be just cause for the annulment of the award and forfeiture of Bidder's security.
- (b) **Return of Bid Security.** If the Bid is not accepted by VTA within the period of days stipulated on the Bid Form after the date set for Bid Opening, or if the Successful Bidder executes and delivers to VTA the required documents, then any certified or cashier's check shall be returned to all Bidders.

### 2.3.4. Executed Contract

- (a) After delivery by the Successful Bidder of two (2) signed original Maintenance Agreements and all required submissions as stipulated above, VTA will sign the Maintenance Agreement. No agreement between VTA and Contractor is in effect until VTA executes the Maintenance Agreement.
- (b) Contractor shall commence performance of the Work for the Base Year (as defined in **Section 6.4 Time for Performance**) after execution of the Contract, and shall continuously and diligently prosecute the Work to completion on or before the time or times set forth in **Section 6 Special Conditions** herein. Contractor shall commence performance of the Work for any Option Year (as defined in **Section 6.4 Time for Performance**) exercised by VTA after receipt of the relevant Option Notice Letter (as defined in **Section 6.4 Time for Performance**).

Contractor shall neither enter upon nor occupy VTA property or commence any materials fabrication prior to receiving executed Contract or Work Order (as defined in **Section 2.5 Definitions**) or Option Notice Letter, as applicable. Any Work performed or expenses incurred by Contractor prior to Contractor's receipt of the executed Contract or Work Order or Option Notice Letter, as applicable shall be entirely at Contractor's risk.

### 2.4. State and Federal Tax Forms

Federal tax form W-9 and California state tax forms, either FTB Form 587 or Form 590, are required to be submitted annually. If the Successful Bidder has submitted these forms within the last 12 months, please so indicate when returning the Contract forms and other documents for execution by VTA.

### 2.5. Definitions

Certain terms used in this IFB have the meaning set forth below.

**"Bid Add Alternates"** are additional items of Work that may be awarded as part of the Contract if the Bids come within the budget specified in the Contract.

**"Bidder(s)"** means the respondent submitting a Bid in response to the Invitation for Bid.

**"Maintenance Agreement"** has the meaning as specified in Contract Form 1.

**"Contract Documents"** means documents for this project that specify the requirements of the Work to be performed inclusive of addenda, the terms of the contract between VTA and the successful Bidder inclusive of addenda, and the details of the bidding procedure.

**"Contracts Office" or "PCMM Office"** refers to the Procurement, Contracts and Materials Management offices of VTA, located at 3331 N. First Street, Building A, in San José, CA

**"Day", "working day" and "holiday"** have the meaning as specified in **Section 6.22 References to Days**.

**"DIR"** means California Department of Industrial Relations

**"IFB"** means Invitation for Bids

**"NOA"** means Notice of Award

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**“Pre-Qualification”** means the review and scoring of qualifications of potential Bidders in which such factors as financial capability, reputation, and management are considered in order to develop a list of qualified firms who may then be allowed to submit a Bid.

**“Preventive Maintenance (PM)”** means recurring work scheduled on a continuous and regular basis required to provide continuing operation and preclude unnecessary breakdowns of a VTA equipment or facilities.

**“Successful Bidder”** means the Bidder that has submitted the lowest responsible and responsive bid, including holding the appropriate licenses as required by the Invitation for Bids.

**“Total Base-Bid Price”** is the amount of the Bidder’s Total Base Bid price only. In another words, it is the total amount of bidder’s year 1 proposed fee.

**“Total Bid Price”** is the sum of the Bidder’s Total Base Bid and all Bid Add Alternates (if applicable). In the case of Multiple Year Contracts, the Total Bid Price represents the sum of the Bid amount for each year of the Contract.

**“Total Contract Price”** is the value of the awarded Contract, as determined by adding Contractor’s Total Base Bid and accepted Bid Add Alternates (if applicable). In the case of Multiple Year Contracts, the Total Contract Price represents the sum of the Bid amount for each year of the Contract.

**“Track Zone”** means an area within six (6) feet of the closer rail on both sides of the track

**“VTA”** means Santa Clara Valley Transportation Authority

**“Work”** means the work to be performed as specified in these Contract Documents.

**“Work Order”** means written authorization from VTA to perform certain On-Call Work (as defined in **Section 8 Technical Specifications**) as described in such written authorization.

**“Worksite”** means the site(s) upon which the Work will be performed or an area to be occupied by the Work and all adjacent and other related areas occupied or used by Contractor or his subcontractors. For maintenance contracts, this includes storage areas, buildings, staging areas, and areas for the production, procurement, storage, and disposal of materials and related equipment. The use of the word **“job site”** or **“site”** in these Contract Documents is synonymous with **“Worksite.”**



## SECTION 3 INSTRUCTIONS TO BIDDERS

### 3.1. Pre-Bid Meeting

A pre-Bid meeting will be held at the time and place set out in **Section 1.10 Pre-Bid Meeting and Project Site Tour**. The purpose of this meeting is to inform prospective Bidders and potential subcontractors of subcontracting and material supply opportunities and to receive comments and questions regarding the Work and the Contract Documents from attendees. Representatives of VTA will be present to discuss:

- Participation of minority, women, disabled veterans, LGBT owned businesses, small businesses and/or disadvantaged businesses.
- Equal Employment Opportunity requirements.
- Coordination of the Work.
- Community relations.
- Other subjects as appropriate.

If participation goals are stipulated in this Contract, attendance of prospective Bidders at this meeting may be one consideration of the reasonable good-faith efforts made to obtain the specified participation goal. Refer to **Appendix C Business Diversity Policy and Requirements** for additional information.

### 3.2. Examination of the Contract Documents

Each Bidder shall carefully examine the Contract Documents and become thoroughly familiar with the terms and conditions contained therein prior to the Bid Opening date. The Bid submitted shall include a sum to cover the cost of all items necessary to perform the Work. No allowance of any kind will be made to any Bidder because of lack of such examination or knowledge. The submittal of a Bid is conclusive evidence that the Bidder has made such an examination.

### 3.3. Examination of Site and Existing Conditions

In addition to examination of the Contract Documents, each Bidder shall, prior to the Bid Opening, become fully informed regarding all existing and expected site conditions which might in any way affect the cost or the time of performance of the Work. Any failure of the Bidder to fully investigate the Worksite and inform itself of existing and anticipated site conditions does not relieve such Bidder from responsibility for estimating properly the cost or difficulty of performing the Work.

A tour may be conducted in order to familiarize Bidders with the Worksite. Refer to **Section 1.10 Pre-Bid Meeting and Project Site Tour**.

### 3.4. Addenda to Contract Documents

VTA reserves the right to make changes in the Contract Documents as it may deem appropriate up to the time set for Bid Opening. Any and all changes in the Contract Documents shall be made by one or more written addenda, which shall be issued by VTA to all prospective Bidders who have registered and downloaded the Contract Documents at VTA's website.

If such addenda require changes in quantities or might affect the prices bid, or both, the date set for Bid Opening may be postponed by such number of days as in the opinion of VTA shall enable Bidders to revise their Bids. In any case, Bid Opening will be at least **5 working days** after the issue date of the last addendum and that addendum shall include an announcement of the new date, if applicable, for the Bid Opening.

Failure to acknowledge receipt of all addenda may cause the Bid to be considered non-responsive to the Contract Documents. Bidder certifies that the Contract Documents and addenda thereto have been thoroughly read and that there are no misunderstandings as to the meaning, purpose, or intent of any provision in the Contract Documents as modified by those addenda.

### **3.5. Prevailing Wage Requirements**

**All Bidders bidding on this Work (and any listed subcontractors carrying out covered work) must be registered with the DIR as further set forth at Section 7.8 Labor Provisions.** Listing of subcontractors is as follows:

- Bid Form 4 and Bid Form 5, in accordance with the instructions provided in those bid forms.
- All subcontractors of every tier, for any dollar amount, must be listed on Contract Form 4 "Listing of Subcontractors, Suppliers and Subconsultants" prior to execution of the Contract.
- Any subcontractors, for any dollar amount, added to the project after execution of the Contract requires notification to VTA.

Pursuant to appropriate sections of the Labor Code of the State of California, the Director of the DIR has ascertained the general prevailing rate of wages (which rate includes employer payments for health and welfare, vacation, pension, and similar purposes) applicable to the Work for straight time, overtime, Saturday, Sunday and holiday work. Contractor shall post a copy of the prevailing wage rates at the Worksite or material staging area.

Workers employed in the Work must be paid at the rates at least equal to the prevailing wage rates adopted by VTA. 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.

In the performance of the Work, Contractor and all subcontractors **carrying out covered work** shall be responsible for compliance with California Labor Code Sections 1776 (Payroll records, retention, inspection, noncompliance penalties, rules and regulations) and 1777.5 (Employment of registered apprentices, wages, standards, number, apprenticeable craft or trade, exemptions, contributions).

### **3.6. Workers Compensation**

In addition to the bid forms described in this Section 3 Instructions to Bidders, by signing and submitting this Bid, the Bidder is providing the certification set out below.

Bidder hereby certifies that it is aware of the provisions of California Labor Code §3700, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and that Bidder will comply with such provisions before commencing the performance of the Work.

### **3.7. Reserved**

### **3.8. Business Diversity**

#### **3.8.1. Goal**

VTA has not established a specific Small Business Enterprise (SBE) goal for this Contract.

However, Bidder agrees to cooperate with VTA in meeting VTA's overall goal of 19% annual utilization of SBE firms.

### **3.8.2. Business Diversity Policy and Requirements**

Contractor will use best efforts to ensure that SBE firms have an equitable opportunity to compete for subcontract work under this Contract. Refer to **Appendix C Business Diversity Policy and Requirements**.

Please note that in order for VTA to determine responsiveness, all Bidders must submit Bid Form 4, Bid Form 5 and other documentation as set out in in accordance with this Section 3.8 Business Diversity and Section 3.10 Bid Forms.

In order to be counted for SBE credit, all firms must be identified on Bid Form 4 as certified by VTA's Office of Business Diversity Program (OBDP) or DBE firms certified with the California Unified Certification Program (CUCP), or accepted by OBDP at the time of Bid.

It is the Bidder's sole responsibility to verify each subcontractor's certification as a SBE to VTA.

Bidders may search a list of VTA's certified SBE firm at <http://www.vta.org/about-us/doing-business-with-vta-search-for-sbes>. VTA's SBE application is available at <http://www.vta.org/About-Us/Inside-VTA/Small-Business-Enterprise-Program>.

### **3.9. Preparation of Bid**

The Bidder shall prepare its Bid in strict accordance with all of the requirements of the Contract Documents and any addenda thereto. In order to receive consideration, all Bids shall comply with the following instructions:

#### **3.9.1. Submit Bid on Form Provided**

Bids shall be submitted on the forms provided in these Contract Documents in signed original. Bids submitted in any other form may be considered nonresponsive and rejected.

Blank spaces in each Bid form shall be properly filled in by indelible means, and the phraseology thereof shall not be changed. Any conditions or limitations made to the items mentioned therein may be cause for rejection. Alterations by erasure or interlineation must be explained or noted in the Bid over the signature of the Bidder.

No modification of a Bid Form will be considered.

#### **3.9.2. Prices, Taxes and Applicable Fees in the Bid**

Bids shall include full compensation for furnishing all labor, material, tools, and equipment and doing all the Work complete in place in accordance with the requirements of the Contract. Bid prices shall include all applicable taxes, freight charges and other applicable fees of any kind.

Contractor shall be responsible for assessing any and all applicable taxes related to the purchase of or installation of materials used on a VTA project and shall, for purposes of determining transaction or use tax liability, use the Worksite as the place where "engaged in business".

#### **3.9.3. Sealed Envelope**

All Bids shall be enclosed in a sealed envelope bearing the Contract number, the title of the Project, the date and hour of the opening, and the name of the Bidder. Bids shall be addressed to the name and

location as specified in **Section 1.4. Submittal Location and Deadline**. It is the sole responsibility of the Bidder to see that its Bid is received in a timely manner.

### **3.10. Bid Forms**

Bids shall include the Bid Forms as outlined in the cover page of Section 4 Bid Forms. The sections that follow provide specific requirements for the Bid Forms to be submitted.

#### **3.10.1. Bid Form 1 and Schedule of Quantities and Prices**

The Bidder must complete and submit **Bid Form 1** in its entirety as instructed in **Bid Form 1**.

The quantities given in the Schedule of Quantities and Prices for which unit prices are asked to be Bid are approximate only, being given as a basis for the comparison of Bids, and VTA does not, expressly or by implication, represent that the actual quantities required will correspond therewith, but reserves the right to increase or decrease or omit entirely the quantity of any class or portion of the Work, or materials required for all or any portion of the Work, as VTA may deem necessary or advisable.

On all Bid items for which Bids are to be received on a unit price basis, the unit price for all items must be shown, as well as the extended price (unit price multiplied by the number of units shown on **Bid Form 1**) for each Bid item. If there is a discrepancy between unit prices and extended price for any Bid item, the unit price multiplied by the number of units shall prevail. In the event of a discrepancy between the sum of the extended prices for all Bid items and the Total Bid Price, the sum of the extended prices of all items shall prevail. The sum of extended prices on all Bid items and the Total Bid Price must be calculated to two (2) decimal places.

#### **3.10.2. Bid Form 2 - Bid Security Form/Bidder's Bond**

Each Bidder must submit at the time of Bid Submittal one of the following types of bid security: (1) a fully executed and unmodified copy of **Bid Form 2**; (2) a bidder's bond in the sum of not less than **5% of the Total Base Bid** (as Total Base Bid is defined in **Section 2.5 Definitions**) and that provides VTA with rights and privileges at least as broad as those provided by **Bid Form 2**; or (3) cash, a certified check, or cashier's check in the sum of not less than **5% of the Total Base Bid** (as Total Base Bid is defined in **Section 2.5 Definitions**). If a Bidder elects to provide a certified check or cashier's check as its form of bid security then the Bidder's submittal of a Bid constitutes an enforceable promise by the Bidder to be bound by the provisions of **Bid Form 2** that are applicable to both the Principal and the Surety as those terms are used in **Bid Form 2**.

#### **3.10.3. Bid Form 3 - Designation of Subcontractors**

At the Bid Opening, each Bid shall be accompanied by **Bid Form 3**. If there are no subcontractors, Bidder shall write "No Subcontractors" on the form. If there are subcontractors, follow the instructions on **Bid Form 3**.

#### **3.10.4. Bid Form 4: Listing of SBE Contractor or Subcontractors**

At the Bid Opening, the Bidder must complete and submit **Bid Form 4** in its entirety as instructed in **Bid Form 4**.

#### **3.10.5. Bid Form 5: Supplemental Contractor and Subcontractor Information**

**Bid Form 5** is to be submitted **no later than 5 PM on the 2<sup>nd</sup> working day after the Bid Opening**. The Bidder must complete and submit **Bid Form 5** in its entirety as instructed in **Bid Form 5**.

### **3.10.6. Bid Forms 6 to 7 and 10**

At the Bid Opening, each Bid shall be accompanied by the following Bid Forms:

- (a) Bid Form 6 – Litigation Disclosure
- (b) Bid Form 7 – Certificate of Bidder – Safety and Health
- (c) Bid Form 10 – References and Previous Experiences. Bidder shall provide the requested information in **Bid Form 10** for the last three completed projects of similar scope, size and dollar value.

### **3.10.7. Bid Forms 8 to 9**

At the Bid Opening, each Bid shall be accompanied by the following Bid Forms:

- (a) Bid Form 8 – Non-Collusion Declaration
- (b) Bid Form 9 – Public Contract Code Statements

## **3.11. Bids and Bid Opening**

Bids will be opened and publicly read aloud by the Contract Administrator at the Bid Opening. The following conditions may apply to the bids.

### **3.11.1. Late Bids**

Bids received after the Bid Opening will not be considered. Late Bids will be returned unopened.

### **3.11.2. Withdrawal of Bid**

Any Bidder may withdraw its Bid, either personally or by a written request by a duly authorized representative, at any time prior to the scheduled time for Bid Opening. However, no Bidder may withdraw its Bid for a period of **120 calendar days** after the Bid Opening. Bidder's attention is directed to the provisions of the Public Contract Code Sections 5100 to 5110 regarding relief of Bidders.

### **3.11.3. Conditional Bids**

Conditional Bids, or those which take exception to the Contract Documents, will be considered non-responsive and will be rejected.

### **3.11.4. Bidders Interested in More than One Bid**

No entity shall be allowed to make or file or be interested as a principal in more than one Bid for the same Work, unless alternate Bids are called for. However, a person, firm or corporation submitting a sub-bid to a Bidder, or who has quoted prices on materials to a Bidder, is not thereby disqualified from submitting a sub-bid or quoting prices to other Bidders or from being a principal Bidder for the same Work.

### **3.11.5. Single Bid Response**

If only one Bid is received in response to the Invitation for Bid, a detailed cost proposal will be required of the single Bidder. A cost/price analysis and evaluation and/or audit will be performed of the cost proposal in order to determine if the price is fair and reasonable.

### **3.12. Award or Rejection of Bids**

#### **3.12.1. Award Process**

Award of the Contract to the Successful Bidder will be made within **120 calendar days** after the Bid Opening (“Initial Execution”).

If the first Bidder selected as a Successful Bidder refuses or fails to execute the Contract within the Initial Execution period, VTA may award the Contract to the second-ranked Successful Bidder selected as provided herein and such an award, if made, will be made within **30 calendar days** after VTA notifies the second-ranked Successful Bidder of the first-ranked Successful Bidder’s failure to execute the Contract (“Secondary Execution”).

If the second-ranked Successful Bidder refuses or fails to execute the Contract within the Secondary Execution period, VTA may award the Contract to the third-ranked Successful Bidder selected as above provided and such an award, if made, will be made within **30 additional calendar days**.

If necessary, the same procedure may be utilized by VTA for awarding the Contract to subsequent Successful Bidders. The periods of time specified above within which the award of Contract may be made will be subject to an extension for such further period as may be agreed in writing between VTA and the Bidder concerned. VTA reserves the right to reject any or all Bids and to waive any informality in the Bids or in the Bid process. Obvious cases of Bid imbalancing may be cause for rejection.

### **3.13. Basis of Award**

The criteria for determining the Successful Bidder will include the Bidder’s responsiveness to the requirements of the Contract Documents, Bidder’s responsibility, and price. Any Bidder may be required to furnish evidence satisfactory to VTA that it and its proposed subcontractors have sufficient means and experience in the type of work called for in the Contract Documents to assure completion of the Contract in a satisfactory manner.

### **3.14. Responsibility Hearing**

Before being declared non-responsible, a Bidder shall be notified of the proposed determination of non-responsibility, served with a summary of the information upon which VTA is relying and provided with an opportunity to be heard in accordance with applicable law. At the responsibility hearing, the Bidder will be allowed to rebut adverse information and to present evidence that it has the necessary quality, fitness and capacity to perform the Work.

The Bidder must exercise its right to request a hearing within **5 calendar days** after receipt of such notice. Failure to submit a written request for a hearing within the time frame set forth in this Section, will be deemed a waiver of the right to such a hearing and the awarding authority may proceed to determine whether or not the award of the contract should be made to another Bidder or whether or not the Bidder is non-responsible for this and future contracts.

The determination by VTA that the Bidder is non-responsible shall be final and constitute exhaustion of the Bidder’s administrative remedies.

### **3.15. Bidder Review and Protest Procedures**

The following procedures must be used by Bidders seeking review of the Contract Documents or the contracting process:

### 3.15.1. General Information

A Bidder may discuss the Contract Documents with VTA. Such discussions do not, however, relieve Bidders from the responsibility of submitting written, documented requests as required by these procedures. Bidder requests and protests shall be addressed to the Contracts Office, Santa Clara Valley Transportation Authority, 3331 North First Street, San José, CA 95134-1927, Attention: Procurement, Contracts & Materials Manager, and clearly marked "Bid Protest" on the outside of the envelope. VTA will decide the merits of the request or protest and render a determination. The protest resolution record will be provided to the protesting Bidder upon request.

### 3.15.2. Pre-Bid Opening Protests

Prior to Bid Opening, a Bidder may submit to VTA protests regarding the procurement process or items in the Contract Documents. Any such protest shall be received by VTA, in writing, not fewer than **ten (10) working days** before the date of scheduled Bid Opening. Any protest shall be fully supported with technical data, test results, or other pertinent information as evidence that the protest should be upheld.

VTA will make a determination of the merits of each Bidder protest. That written determination will be mailed or otherwise furnished to all Bidders.

### 3.15.3. Post Bid Opening Protests

Protests based upon alleged improprieties in the procurement process that can only be apparent after Bid Opening or the closing date for receipt of additional post Bid Opening documentation, shall be filed no later than **five (5) working days** following the issuance of a Notice of Recommended Award. Protests shall contain a statement of the grounds for protests and supporting documentation. Final VTA decision on the protest will be mailed or otherwise furnished to both the Successful Bidder and protesting Bidder prior to award of the Contract.

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## SECTION 4 BID FORMS

These forms are designed to contain essential information concerning the Bidder and the Bid, and must be completed such that they can be read. If any of the completed forms are illegible, VTA may, at its option, declare the entire Bid unresponsive.

**Bid Form 1** Bid Form, Schedule of Quantities and Prices, Contractor Information

**Bid Form 2** Bidder's Bond

Note: Form must be acknowledged by a notary

**Bid Form 3** Designation of Subcontractors

**Bid Form 4** Listing of SBE Contractor or Subcontractor(s)

**Bid Form 5** Supplemental Contractor and Subcontractor Information

**Bid Form 6** Litigation Disclosure

**Bid Form 7** Certificate of Bidder – Occupational Safety and Health

**Bid Form 8** Non-Collusion Declaration

**Bid Form 9** Public Contract Code Statements

**Bid Form 10** References and Previous Experiences

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**BID FORM 1**  
**BID FOR CONTRACT M19147**

This form must be submitted with the Bid.

FROM: \_\_\_\_\_  
(BIDDER'S NAME)

TO: THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
STATE OF CALIFORNIA

In compliance with your Invitation for Bid for this project, the undersigned Bidder, being thoroughly familiar with the terms and conditions of the Contract Documents, hereby proposes and agrees to perform fully the Work within the time stated and in strict accordance with the Contract Documents.

The Bidder hereby acknowledges receipt of the following addenda to the Contract Documents:

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

FAILURE TO ACKNOWLEDGE RECEIPT OF ALL ADDENDA MAY CAUSE THE BID TO BE CONSIDERED NON-RESPONSIVE. BIDDER CERTIFIES THAT IT HAS READ AND UNDERSTANDS THE CONTRACT DOCUMENTS AND ADDENDA AND THE MEANING, PURPOSE AND INTENT OF EVERY PROVISION THEREIN.

Bidder hereby incorporates by reference all provisions of the Contract Documents.

**CONTINUED ON NEXT PAGE →**

**BID FORM 1 (continued)**

**Schedule of Quantities and Prices**

The prices quoted below include all applicable taxes, fees, permits, delivery and other charges as required.

If the Contract includes cleanup, please note that there is no separate payment item for "Cleanup"; therefore Bidder shall consider and include this in the various items of Work on the Schedule of Quantities and Prices.

**BIDDER'S NAME:** \_\_\_\_\_

ITEM	REFERENCE	DESCRIPTION	EST. QTY.	UNIT PRICE	TOTAL
<b>BASE YEAR 1</b>					
<b>A. MONTHLY SERVICE</b>					
A	See Equipment	All labor, equipment, and services necessary for <b>Monthly</b> preventive maintenance and clean-up services including all items described in the Contract.	Billed for Monthly Services		
1A	41 34 23.33	Monthly Maintenance at Cerone Division	12	\$	\$
2A	41 34 23.33	Monthly Maintenance at North Division	12	\$	\$
3A	41 34 23.33	Monthly Maintenance at Guadalupe Light Rail Division	12	\$	\$
<b>B. MATERIALS AND LABOR</b>					
B	Technical Specifications	Materials – All repair materials for all facilities. Dollar amount is estimate only including current Santa Clara County sales tax.			
1B	41 34 23.33	Materials	Allowance (Mark-up will not Exceed 15% Fixed Price)		\$
2B	41 34 23.33	Unscheduled Labor – Standard working hours from 6:00 AM to 5:00 PM (PST) (Monday – Friday)	100 Hours	\$	\$
3B	Appendix D	Track allocation – training allowance – background checks	Allowance		\$ 8,500
4B	Special Conditions	Bonding & Insurance	Minimum Bid of \$2,000		\$

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<b>TOTAL BASE YEAR – YEAR 1</b>	<b>\$</b>
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ITEM	REFERENCE	DESCRIPTION	EST. QTY.	UNIT PRICE	TOTAL
<b>OPTION YEAR 1 – YEAR 2</b>					
<b>C. MONTHLY SERVICE</b>					
A	See Equipment	All labor, equipment, and services necessary for <b>Monthly</b> preventive maintenance and clean-up services including all items described in the Contract.	Billed for Monthly Services		
1A	41 34 23.33	Monthly Maintenance at Cerone Division	12	\$	\$
2A	41 34 23.33	Monthly Maintenance at North Division	12	\$	\$
3A	41 34 23.33	Monthly Maintenance at Guadalupe Light Rail Division	12	\$	\$
<b>D. MATERIALS AND LABOR</b>					
B	Technical Specifications	Materials – All repair materials for all facilities. Dollar amount is estimate only including current Santa Clara County sales tax.			
1B	41 34 23.33	Materials	Allowance (Mark-up will not Exceed 15% Fixed Price)		\$
2B	41 34 23.33	Unscheduled Labor – Standard working hours from 6:00 AM to 5:00 PM (PST) (Monday – Friday)	100 Hours	\$	\$
3B	Appendix D	Track allocation – training allowance – background checks	Allowance		\$ 8,500
4B	Special Conditions	Bonding & Insurance	Minimum Bid of \$2,000		\$
<b>TOTAL OPTION YEAR 1 – YEAR 2</b>					<b>\$</b>

ITEM	REFERENCE	DESCRIPTION	EST. QTY.	UNIT PRICE	TOTAL
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OPTION YEAR 2 – YEAR 3					
<b>E. MONTHLY SERVICE</b>					
A	See Equipment	All labor, equipment, and services necessary for <b>Monthly</b> preventive maintenance and clean-up services including all items described in the Contract.	Billed for Monthly Services		
1A	41 34 23.33	Monthly Maintenance at Cerone Division	12	\$	\$
2A	41 34 23.33	Monthly Maintenance at North Division	12	\$	\$
3A	41 34 23.33	Monthly Maintenance at Guadalupe Light Rail Division	12	\$	\$
<b>F. MATERIALS AND LABOR</b>					
B	Technical Specifications	Materials – All repair materials for all facilities. Dollar amount is estimate only including current Santa Clara County sales tax.			
1B	41 34 23.33	Materials	Allowance (Mark-up will not Exceed 15% Fixed Price)		\$
2B	41 34 23.33	Unscheduled Labor – Standard working hours from 6:00 AM to 5:00 PM (PST) (Monday – Friday)	100 Hours	\$	\$
3B	Appendix D	Track allocation – training allowance – background checks	Allowance		\$ 8,500
4B	Special Conditions	Bonding & Insurance	Minimum Bid of \$2,000		\$
<b>TOTAL OPTION YEAR 2 – YEAR 3</b>					<b>\$</b>

ITEM	REFERENCE	DESCRIPTION	EST. QTY.	UNIT PRICE	TOTAL
<b>OPTION YEAR 3 – YEAR 4</b>					
<b>G. MONTHLY SERVICE</b>					
A	See Equipment	All labor, equipment, and services necessary for <b>Monthly</b> preventive maintenance and clean-up services	Billed for Monthly Services		

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		including all items described in the Contract.			
1A	41 34 23.33	Monthly Maintenance at Cerone Division	12	\$	\$
2A	41 34 23.33	Monthly Maintenance at North Division	12	\$	\$
3A	41 34 23.33	Monthly Maintenance at Guadalupe Light Rail Division	12	\$	\$
<b>H. MATERIALS AND LABOR</b>					
B	Technical Specifications	Materials – All repair materials for all facilities. Dollar amount is estimate only including current Santa Clara County sales tax.			
1B	41 34 23.33	Materials	Allowance (Mark-up will not Exceed 15% Fixed Price)		\$
2B	41 34 23.33	Unscheduled Labor – Standard working hours from 6:00 AM to 5:00 PM (PST) (Monday – Friday)	100 Hours	\$	\$
3B	Appendix D	Track allocation – training allowance – background checks	Allowance		\$ 8,500
4B	Special Conditions	Bonding & Insurance	Minimum Bid of \$2,000		\$
<b>TOTAL OPTION YEAR 3 – YEAR 4</b>					<b>\$</b>

ITEM	REFERENCE	DESCRIPTION	EST. QTY.	UNIT PRICE	TOTAL
<b>OPTION YEAR 4 – YEAR 5</b>					
<b>I. MONTHLY SERVICE</b>					
A	See Equipment	All labor, equipment, and services necessary for <b>Monthly</b> preventive maintenance and clean-up services including all items described in the Contract.	Billed for Monthly Services		
1A	41 34 23.33	Monthly Maintenance at Cerone Division	12	\$	\$
2A	41 34 23.33	Monthly Maintenance at North Division	12	\$	\$

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3A	41 34 23.33	Monthly Maintenance at Guadalupe Light Rail Division	12	\$	\$
<b>J. MATERIALS AND LABOR</b>					
B	Technical Specifications	Materials – All repair materials for all facilities. Dollar amount is estimate only including current Santa Clara County sales tax.			
1B	41 34 23.33	Materials	Allowance (Mark-up will not Exceed 15% Fixed Price)		\$
2B	41 34 23.33	Unscheduled Labor – Standard working hours from 6:00 AM to 5:00 PM (PST) (Monday – Friday)	100 Hours	\$	\$
3B	Appendix D	Track allocation – training allowance – background checks	Allowance		\$ 8,500
4B	Special Conditions	Bonding & Insurance	Minimum Bid of \$2,000		\$
<b>TOTAL OPTION YEAR 4 – YEAR 5</b>					\$
<b>TOTAL BID PRICE</b>					\$
Base Year 1 + Option Year 1 + Option Year 2 + Option Year 3 + Option Year 4					

CONTINUED ON NEXT PAGE →



**BID FORM 1 (continued)**

**Signature Page**

**A. ENTER FULL AND CORRECT NAME OF BIDDER:**

Firm Name: \_\_\_\_\_

**B. ENTER BUSINESS ADDRESS**

Street Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Phone #: \_\_\_\_\_ Email: \_\_\_\_\_

**C. CALIFORNIA CONTRACTOR'S LICENSE**

Number: \_\_\_\_\_

Class: \_\_\_\_\_

Expires: \_\_\_\_\_

**D. BIDDER INFORMATION**

Is this firm at least 51% owned by minorities or women?	<input type="checkbox"/> Yes <input type="checkbox"/> No (check one)
If yes, check the following primary ownership group:	<input type="checkbox"/> Asian Pacific <input type="checkbox"/> Asian Indian <input type="checkbox"/> Native American
	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Caucasian <input type="checkbox"/> Other _____
Check gender of owner(s):	<input type="checkbox"/> Male <input type="checkbox"/> Female

**E. LIST PRINCIPALS**

The names of all persons as principals interested in the foregoing bid are as follows:

(IMPORTANT NOTICE: If Bidder or other interested person is a corporation, give legal name of corporation, and names of the President and Secretary thereof; if a partnership, give name of the firm, also names of all individual partners composing firm; if Bidder or other interested person is an individual, give first and last names in full. If a Bidder is a joint venture, supply the above information for each joint venture partner.) Attach additional pages if needed.

\_\_\_\_\_  
\_\_\_\_\_

**F. SIGN AND DATE**

The person signing this Bid Form for the Bidder certifies that he or she is authorized by the Bidder to do so and that the Bidder is bound contractually by that signature.

Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*[This Page Intentionally Left Blank]*

## BID FORM 2 BIDDER'S BOND

KNOW ALL PEOPLE BY THESE PRESENTS: That

**WHEREAS** the undersigned, \_\_\_\_\_  
as Principal and \_\_\_\_\_

as Surety, are held and firmly bound unto the Santa Clara Valley Transportation Authority, a political subdivision of the State of California (hereinafter called "VTA") in the penal sum of **10% of the Total Bid Price** (as defined in **Section 2.5 Definitions**) of the Principal above named, submitted by said Principal to VTA for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that a bid to VTA for performance of that certain construction described as

### PAINT GUN CLEANER MAINTENANCE CONTRACT M19147

("Bid") has been submitted by Principal to VTA.

**NOW THEREFORE**, if the aforesaid Principal shall not withdraw said Bid within **120 calendar days** after said opening, and shall within the period specified therefore, or if no period be specified, within **six (6) working days** after the prescribed forms are presented to Principal for signature, enter into a written contract with VTA in the prescribed form in accordance with the Bid as accepted ("Contract"), submit the required insurance certificates and a **Payment Bond in the amount of 100% of the Total Contract Price** to guarantee payment for labor and materials, as required by law, or in the event of the withdrawal of said Bid within the period specified or the failure to enter into such Contract and give such bonds and insurance within the time specified, if the Principal shall pay VTA the difference between the amount specified in said Bid and the amount for which VTA may procure the required work, if the latter amount be in excess of the former, together with all costs incurred by VTA in again calling for bids, should that become necessary, then the above obligation shall be void and of no effect, otherwise to remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract on the call for Bids, or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation under this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said Contract or the call for bids, or to the work, or to the specifications.

In the event suit is brought upon this bond by VTA and judgment is recovered, the Surety shall pay all costs incurred by VTA in such suit, including a reasonable attorney's fee to be fixed by the court in accordance with applicable statutory law.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**PRINCIPAL**

**SURETY**

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name – Please Print)

\_\_\_\_\_  
(Name – Please Print)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

**NOTE: Signatures of those executing for Surety must be acknowledged by a Notary.**

**NOTE TO SURETY COMPANY:**

The following form of acknowledgement should be used. If any other form of acknowledgement is used, there must be submitted a certified copy of unrevoked resolution of authority for the attorney-in-fact.

**SURETY COMPANY ATTORNEY-IN-FACT**

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, the undersigned, a Notary Public in and for

the State, personally appeared \_\_\_\_\_,  
known

to me to be the duly authorized attorney-in-fact of the corporate Surety named in the within instrument, known to me to be authorized to execute that instrument on behalf of said corporation, known to me to be the person whose name is subscribed to such instrument as the attorney-in-fact of said corporation, and acknowledged to me that he (she) subscribed the name of said corporation thereto as Surety, and his (her) own name as attorney-in-fact and that said corporation executed the same.

(SEAL)

WITNESS MY HAND AND OFFICIAL SEAL:

\_\_\_\_\_  
Notary Public for the State of California

Acknowledgement by attorney-in-fact must be attached.  
Corporate seals of Principal and Surety must be attached.

## BID FORM 3 DESIGNATION OF SUBCONTRACTORS

**IMPORTANT INFORMATION**

Bidder shall completely fill in the form below for each proposed subcontract in excess of one-half of 1 percent of Bidder's Total Bid Price, or in Bids for the construction of streets, highways, including bridges, in excess of one-half of 1 percent of the Bidder's Total Bid Price or \$10,000, whichever is greater, in compliance with the Public Contract Code of the State of California, Sections 4100-4114.

Additionally, Bidder must list below all subcontractors (regardless of the subcontractor's tier or subcontract amount) needed to show compliance to **Section 1.5 Licenses**.

**A. ENTER PRIME BIDDER INFORMATION**

1. Bidder Name: \_\_\_\_\_
2. Total Amount to be Subcontracted: \$ \_\_\_\_\_
3. Total Percentage to be Subcontracted: \_\_\_\_\_%

**B. ENTER NAMES OF SUBCONTRACTORS OR LOWER-TIER SUBCONTRACTORS AS REQUIRED ABOVE**

SUBCONTRACTOR NAME	SUBCONTRACTOR'S ADDRESS	CONTRACTOR'S STATE LICENSE NUMBER	CONTRACTOR'S DIR REGISTRATION NUMBER	BID ITEM(S) & DESCRIPTION OF WORK
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

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SUBCONTRACTOR NAME	SUBCONTRACTOR'S ADDRESS	CONTRACTOR'S STATE LICENSE NUMBER	CONTRACTOR'S DIR REGISTRATION NUMBER	BID ITEM(S) & DESCRIPTION OF WORK
<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>
<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>
<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>
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## BID FORM 4 LISTING OF SBE/DBE CONTRACTOR OR SUBCONTRACTORS

This form must be submitted with the Bid. Refer to instructions on Page 2 of this form when filling out this form.

**A. ENTER PRIME BIDDER INFORMATION**

1. Bidder Name: _____	6. Email: _____
2. Street Address: _____	7. Preparer's Name: _____
3. City, State, ZIP: _____	8. Preparer's Title: _____
4. Phone #: _____	9. Signature: _____
5. Fax #: _____	10. Date: _____

**B. LIST SBE/DBE CONTRACTOR AND SUBCONTRACTORS:**

ENTERPRISE NAME (Column1)	ENTERPRISE NAICS CODE (Column2)	SBE/DBE (Column3)	CERTIFICATION NUMBER (Column4)	SUBCONTRACT /PO \$ AMOUNT (Column5)
_____ _____	____-____-____ ____-____-____ ____-____-____	<input type="checkbox"/> SBE <input type="checkbox"/> DBE	_____	\$ _____
_____ _____	____-____-____ ____-____-____ ____-____-____	<input type="checkbox"/> SBE <input type="checkbox"/> DBE	_____	\$ _____
_____ _____	____-____-____ ____-____-____ ____-____-____	<input type="checkbox"/> SBE <input type="checkbox"/> DBE	_____	\$ _____
_____ _____	____-____-____ ____-____-____ ____-____-____	<input type="checkbox"/> SBE <input type="checkbox"/> DBE	_____	\$ _____
_____ _____	____-____-____ ____-____-____ ____-____-____	<input type="checkbox"/> SBE <input type="checkbox"/> DBE	_____	\$ _____

11. Bidder  has ,  has not (check one box) met SBE/DBE Participation Goal.

**C. SUBMISSION OF GOOD FAITH EFFORT (GFE) DOCUMENTATION:**

GFE documentation is required if Bidder's Goal Achieved is less than Participation Goal. Refer to the **Section 13.7 Good Faith Effort for documentation** to provide.

**FOR VTA USE ONLY – BIDDER SHOULD NOT COMPLETE THIS SECTION**

VTA OBDP certifies that all Business Enterprise certifications are valid and information on this form is complete and accurate.

Signature: \_\_\_\_\_  
 Printed Name/Title: \_\_\_\_\_  
 Phone #: \_\_\_\_\_  
 Date Signed: \_\_\_\_\_

**INSTRUCTIONS FOR BID FORM 4**

Refer to these instructions when filling out Bid Form 4 or the Bid may be rejected.

**IMPORTANT:** Identify all SBE/DBE firms being claimed for credit, regardless of tier. The preparer indicated in Part A is providing written confirmation of each listed SBE/DBE.

**PART A: ENTER CONTRACTOR INFORMATION**

- Line 1: Name of Bidder.
- Line 2 and 3: Address of Bidder.
- Line 4 and 5: Phone and Fax numbers of Bidder.
- Line 6: Email of Bidder.
- Line 7, 8 and 9: Printed name, title and signature of Bidder's Authorized Representative.
- Line 10: Date when the Form is signed

**PART B: LIST CONTRACTOR AND SUBCONTRACTORS**

- Column 1: Enter name and address of the certified SBE/DBE subcontractor, or enter Bidder's name if Bidder is an SBE/DBE.
- Columns 2: Enter subcontractor/vender North America Industry Classification System ("NAICS") code(s). Ref. <https://www.census.gov/eos/www/naics/>.
- Columns 3: Check one of the choices offered. The firm must be certified through an approved certifying agency.
- Columns 4: Enter SBE (or BDE) certification number. An SBE/DBE must, at the time of Bid, be certified by VTA's Office of Business Diversity Program (OBDP) or SBEs/DBEs certified with the California Unified Certification Program (CUCP), or accepted by OBDP
- Column 5: Enter SBE/DBE subcontract or purchase order amount of the work to be performed or service to be provided. See **Appendix C Business Diversity Policy and Requirements** to determine how to count the participation credit amount of SBE/DBE firms. A summary of that information is provided below:

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

**CREDIT FOR SBE/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 SBE/DBE to non-SBE/non-DBE firms, towards the SBE/DBE Goal Achieved.

**CREDIT FOR SBE/DBE TRUCKING FIRMS** is limited to amount performed by the SBE/DBE own trucks and drivers and by certified SBE/DBE trucking subhaulers. An SBE/DBE trucking firm must itself own and operate at least one fully licensed, insured and operational truck used on the Contract.

- Line 11: Calculate the SBE(or DBE) Goal Achieved as per above formula, and check whether Bidder's has met SBE/DBE Participation Goal. This percentage must equal or exceed the SBE or (DBE) Participation Goal or else Bidder must

Formula to calculate Goal Achieved:

$$\text{SBE/DBE Goal Achieved} = \frac{\text{Sum [SBE/DBE Credit Amount]}}{\text{Total Bid Price}} \times 100$$

demonstrate Good Faith Efforts to achieve the goal. VTA will utilize the values provided herein to calculate Bidder's SBE/DBE Goal Achieved. Such values must be consistent with the values found elsewhere in the Bid Documents, otherwise **Bidder may be considered nonresponsive**. The Successful Bidder's SBE/DBE Goal Achieved becomes the Contractor's committed SBE/DBE goal.



**CONTRACT FORM 5**  
**SUPPLEMENTAL CONTRACTOR and SUBCONTRACTOR INFORMATION**

1. INSTRUCTION TO CONTRACTOR: This form must be filled out by the Contractor and their subcontractors. Contractors, please copy this form distribute to all your subcontractors. Contractor must complete and sign all the forms, including subcontractor forms in Section D below and submit the information to the VTA Contract Administrator for this contract.

**A. ENTER CONTRACTOR/SUBCONTRACTOR INFORMATION**

1. Firm Name: \_\_\_\_\_
2. Street Address: \_\_\_\_\_
3. City, State, ZIP: \_\_\_\_\_
4. Phone #: (    ) \_\_\_\_\_ 5. Email: \_\_\_\_\_

**B. FIRM DEMOGRAPHICS**

6. Check all that apply:  
 DBE       SBE       Non-SBE/Non-DBE       MWBE       DVBE       LGBTBE
- 
7. Ethnicity       Asian       Subcontinent Asian       Native American       Black  
                     Hispanic       Caucasian       Other \_\_\_\_\_
- 
8. Age of Firm: \_\_\_\_\_ 9. Gender       Male       Female
- 
10. Firm Annual Gross Receipts       Below \$500K       \$500K to \$1M       \$1M to \$4M  
(indicate bracket of income):       \$4M to \$6M       \$6M to \$13M       Above \$13M
- 

**C. FORM COMPLETED BY:**

11. Form Completed by  
(print name and sign) \_\_\_\_\_
12. Date Signed \_\_\_\_\_

**D. TO BE COMPLETED BY CONTRACTOR**

13. CONTRACTOR: \_\_\_\_\_
14. If firm listed in section A is a subcontractor, was subcontractor selected for a subcontract or purchase for this Contract?       Yes       No
15. If yes, enter the dollar value of this subcontract or purchase:      \$ \_\_\_\_\_

**INSTRUCTIONS FOR BID FORM 5**

This form is for data collection purposes, required by federal regulation 49 CFR 26.11.

ENTER CONTRACTOR/SUBCONTRACTOR INFORMATION:

Contractor will fill out Parts A -D.

Contractor needs to make copies for their subcontractors. Subcontractors will fill out Parts A – C and return to this contractor. Contractor will fill out Part D on the subcontractor’s form and submit to VTA.

**PART A: ENTER CONTRACTOR/ SUBCONTRACTOR INFORMATION**

Line 1 to Line 5: Enter contractor/subcontractor name, address, phone number, and email.

**PART B: FIRM DEMOGRAPHICS**

- Line 6: Check all that apply. Make sure that firm is certified by an approved agency: California Unified Certification Program, VTA for SBE only (Small Business Enterprise), or DGS (Department of General Services)
- Line 7: Enter firm owner’s ethnicity
- Line 8: # of years firm has been in business
- Line 9: Select firm owner’s gender
- Line 10: Select firm’s annual gross receipts bracket.

**PART C: FORM COMPLETED BY:**

- Line 11: Print and sign the name of the person filling out this form
- Line 12: Enter date signed.

**PART D: TO BE COMPLETED BY CONTRACTOR**

- Line 13: Enter contractor’s name
- Line 14: If firm is a subcontractor that will be used on the contract, select Yes, otherwise select No
- Line 15: If firm is being used on the contract, enter subcontract value

**BID FORM 6  
LITIGATION DISCLOSURE**

Bidder shall list and describe in detail all pending litigation, any litigation that has been closed in the past five years, and any pending investigations by the California Department of Industrial Relations in which Bidder's firm is or has been a party.

Include the following information:

- If your firm, or any of its owners or officers been convicted of a crime involving the awarding of a contract of a government construction project, or the bidding or performance of a government contract.
- If your firm or any of its owners, officers or partners ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity.
- If your firm or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction.
- If your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty.

**Pending Litigation**

**Litigation settled in the last five years**

**Pending DIR Investigations**

(Use additional sheets if necessary)

**SIGN AND DATE**

The person signing this Bid Form 6 for the Bidder certifies that he or she is authorized by the Bidder to do so and that the Bidder is bound contractually by that signature.

Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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**BID FORM 7**  
**CERTIFICATE OF BIDDER OCCUPATIONAL SAFETY AND HEALTH (OSH)**

Bidder certifies the following:

1. Bidder does not have serious and willful violations of Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, during the past five-year period  
- or -  
Bidder is taking appropriate corrective action to prevent further violations of Part 1 of Division 5 of the Labor Code.
  
2. Bidder's workers' compensation experience modification ("ex-mod") factor is below 1.25  
- or -  
Bidder's ex-mod factor is 1.25 to 1.75 and Bidder is taking all appropriate action to reduce employee workplace injuries, illnesses and workers' compensation losses.
  
3. Bidder has an injury prevention program instituted pursuant to Section 3201.5 or 6401.7 of the Labor Code.

**SIGN AND DATE**

The person signing this Bid Form 7 for the Bidder certifies that he or she is authorized by the Bidder to do so and that the Bidder is bound contractually by that signature.

Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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**BID FORM 8  
NON-COLLUSION DECLARATION**

State of California )  
 )  
County of \_\_\_\_\_ ) ss.

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the  
foregoing Bid. (TITLE) (COMPANY)

The Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Bid is genuine and not collusive or sham. The Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid price of the Bidder or any other bidder, or to fix any overhead, profit, or cost element of the Bid price, or of that of any other bidder. All statements contained in the Bid are true. The Bidder has not, directly or indirectly, submitted his or her Bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct and that this declaration is executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

at \_\_\_\_\_,  
(CITY) (STATE)

**SIGN AND DATE**

Signature of Declarant: \_\_\_\_\_

Name (print): \_\_\_\_\_

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**BID FORM 09**  
**PUBLIC CONTRACT CODE STATEMENTS**

There are three parts to this Bid Form. Complete the information in each part and sign the last page of this Bid Form.

**A. Public Contract Code Section 10285.1 Statement**

In accordance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the Bidder hereby declares under penalty of perjury under the laws of the State of California that the Bidder

has       has not

been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "Bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

Note: The Bidder must place a check mark after "has" or "has not" in one of the blank spaces provided.

The above Statement is part of the Bid. Signing this Bid Form on the signature portion thereof shall also constitute signature of this Statement. Proposers are cautioned that making a false certification may subject the certifier to criminal prosecution.

**B. Public Contract Code Section 10162 Questionnaire**

In accordance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the Bidder, any officer of the Bidder, or any employee of the Bidder who has a proprietary interest in the Bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes       No

Note: Bidder must place a check mark after "Yes" or "No".

If the answer is Yes, explain the circumstances in the following space:

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**C. Public Contract Code 10232 Statement**

In accordance with Public Contract Code Section 10232, Bidder, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against Bidder within the immediately preceding two-year period because of Bidder's failure to comply with an order of a federal court which orders Bidder to comply with an order of the National Labor Relations Board.

Note: The above Statement and Questionnaire are part of the Bid. Signing this Bid Form on the signature portion thereof shall also constitute signature of this Statement and Questionnaire. Contractors are cautioned that making a false certification may subject the certifier to criminal prosecution.

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By my signature on this Bid Form, I certify, under penalty of perjury under the laws of the State of California, that the foregoing questionnaire and statements of the Public Contract Code Sections 10285.1, 10162, AND 10232 are true and correct.

**SIGN AND DATE**

Signature: \_\_\_\_\_  
Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**BID FORM 10**  
**REFERENCES AND PREVIOUS EXPERIENCES**

**A. ENTER PROJECT AND BIDDER INFORMATION**

Contract Name Paint Gun Cleaner Maintenance  
Contract Number M19147  
Bidder Name \_\_\_\_\_

**B. PROJECT EXPERIENCE**

**IMPORTANT INFORMATION**

Each Bidder must have the following minimum experience:

1. Contractor must have minimum of three years of experience as an established business performing the type outlined in this Contract.
2. Contractor must have 3 years public works experience with an emphasis on medium or heavy industrial work.
3. Contractor must have been employed on at least two public works projects in the last five years.

A Bidder can demonstrate this experience through either its subcontractor, key personnel or the entity as a whole.

**Does Bidder meet the experience requirements indicated ABOVE?**

Yes     No (please check one)

**NOTE:** A "No" response will render the Bid non-responsive.

**CONTINUED ON NEXT PAGE →**

**BID FORM 10 (continued)**  
**REFERENCES AND PREVIOUS EXPERIENCES**

**C. ENTER REFERENCE INFORMATION**

Bidder shall completely fill in this form **three completed projects** of experiences detailed above. "Owner" refers to the public or private agency for which services were provided. Use additional sheets, if necessary.

**REFERENCE 1**

Owner Agency/Firm Name \_\_\_\_\_

Address \_\_\_\_\_ Phone Number \_\_\_\_\_

Contact Name for Owner \_\_\_\_\_ Email for Contact \_\_\_\_\_

Dollar Value of Project \$ \_\_\_\_\_ Date Started \_\_\_\_\_ Date Completed \_\_\_\_\_

Detailed Scope of Work \_\_\_\_\_

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**REFERENCE 2**

Owner Agency/Firm Name \_\_\_\_\_

Address \_\_\_\_\_ Phone Number \_\_\_\_\_

Contact Name for Owner \_\_\_\_\_ Email for Contact \_\_\_\_\_

Dollar Value of Project \$ \_\_\_\_\_ Date Started \_\_\_\_\_ Date Completed \_\_\_\_\_

Detailed Scope of Work \_\_\_\_\_

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**CONTINUED ON NEXT PAGE →**

**BID FORM 10 (continued)**  
**REFERENCES AND PREVIOUS EXPERIENCES**

**REFERENCE 3**

Owner Agency/Firm  
Name \_\_\_\_\_

Address \_\_\_\_\_ Phone  
Number \_\_\_\_\_

Contact Name for Owner \_\_\_\_\_ Email for Contact \_\_\_\_\_

Dollar Value of Project \$ \_\_\_\_\_ Date  
Started \_\_\_\_\_ Date Completed \_\_\_\_\_

Detailed Scope of Work \_\_\_\_\_

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## SECTION 5 CONTRACT FORMS

It is not necessary to complete these Contract Forms to bid on this project. The Successful Bidder will be required to execute all the following Contract Forms if the Contract is awarded:

- Contract Form 1** Maintenance Agreement  
Note: Form must be acknowledged by a notary
- Contract Form 2** Not Used
- Contract Form 3** Payment Bond  
Note: Form must be acknowledged by a notary
- Contract Form 4** Listing of Subcontractors, Suppliers, and Subconsultants
- Contract Form 5** Designation of Authorized Representative

These Contract Forms will be returned to:

Santa Clara Valley Transportation Authority  
Procurement, Contracts and Materials Management  
Attention: Kiet Vu  
3331 North First Street, Building A  
San José, California 95134

PAINT GUN CLEANER MAINTENANCE  
CONTRACT M19147  
ISSUED FOR BID

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## CONTRACT FORM 1 MAINTENANCE AGREEMENT

This Maintenance Agreement (“Agreement”) is entered into between the Santa Clara Valley Transportation Authority (“VTA”) and

**INSERT SUCCESSFUL BIDDER’S COMPANY NAME**

(“Contractor”) as of the date set out below. VTA and Contractor agree as follows:

- 1. Scope of Work.** Contractor shall perform the Work as described in

**PAINT GUN CLEANER MAINTENANCE  
CONTRACT M19147**

in a satisfactory and workmanlike manner and in accordance with the provisions of the Contract Documents.

- 2. Compensation.** Full compensation to Contractor for the complete and satisfactory performance of the Work under the Contract and all provisions of the Contract Documents, and for Contractor’s payment of all obligations incurred to others in performance of the Work, is the Total Contract Price (as defined in Contract **Section 2.5 Definitions**) of **\$ Insert Total Contract Price**, as this amount may be adjusted in accordance with other provisions of the Contract. All costs for Work shown or indicated in the Contract Documents, even if not specifically provided for by a Bid item in the Schedule of Quantities and Prices shall be included in the Total Contract Price per Contract **Section 7.59 Progress Payments**.

- 3. Contract Documents – Order of Precedence.** The following sections of the Contract Documents are incorporated by reference into this Maintenance Agreement:

Section 5.0	Contract Forms
Section 4.0	Bid Forms
Section 1.0 –3.0	Invitation for Bid, Foreword, and Instructions to Bidders including Appendices referenced therein except Appendix C
Section 6.0	Special Conditions, including Appendices referenced therein except Appendix C
Section 7.0	General Conditions including Appendices referenced therein except Appendix C
Appendix C	Business Diversity Policy and Requirements
Section 8.0	Technical Specifications
Section 9.0	Contract Drawings and Plans

These documents are essential parts of the Contract between the parties and are intended to be complementary and to describe and provide for the entirety of the Work. In the event of conflict among the documents, precedence shall be given in the order listed above. In the event of any discrepancy between any drawing and the dimensions written thereon, the dimensions shall be taken as correct. Detail drawings shall prevail over general drawings.

- 4. Quality of Work.** Where the plans and specifications describe portions of the Work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be provided.

5. **Time for Performance.** The term of this Agreement will commence on the date this Agreement is executed by VTA and will continue for one year. At VTA's sole option, this Agreement may be extended by up to four (4) years (four Option Years) for a maximum total period of five (5) years. Contractor shall commence the Work at the times set forth under PM Schedule of Work (Section 01 22 16, Unit Price Payments, subsection 1.04 of the Technical Specifications) or upon issuance of a Work Order, whichever is applicable. Contractor shall complete all of the Work by the dates specified in the PM Schedule of Work or the Work Order, as applicable. Contractor must submit the proper insurance certificates, payment bond, Listing of Subcontractors, Suppliers and Subconsultants, Federal and State Tax Forms, Erosion and Sediment Control Action Plan Element (ESCAPE), , and executed Maintenance Agreement no later than **six (6) working days** following the date of VTA's Notice of Award.
6. **Entire Contract.** The Contract constitutes the entire agreement between VTA and Contractor respecting the subject matter hereof. All other agreements, understandings and communications between the parties hereto are deemed to be merged into and superseded by the provisions of the Contract. No modification or change to the Contract shall have any force or effect unless it is in writing and expressly referred to as being a change order to the Contract. If any provision of the Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way.
7. **Responsible Conduct.** Contractor shall at all times deal in good faith and truthfully with VTA. Contractor shall submit documentation to VTA, including reports, claims, requests for change orders, equitable adjustment, Contract modifications or requests of any kind seeking increased compensation or decreases of an obligation on the Contract only in good faith and upon an honest evaluation of the underlying circumstances and an honest calculation of any amount being sought. A violation of this standard of conduct will subject Contractor to being deemed "non-responsible" pursuant to SCVTA Administrative Code, Chapter 9, Article III and potentially ineligible for future contracts with VTA, regardless of whether VTA relied on or responded to the submission.

**IN WITNESS WHEREOF** two identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by VTA and Contractor respectively, on the dates set out below.

**INSERT NAME OF CONTRACTOR**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Contractor's License No.: \_\_\_\_\_

Class: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

**SANTA CLARA VALLEY  
TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_

Thor Vue  
PCMM Manager

By: \_\_\_\_\_

Nuria I. Fernandez  
General Manager / CEO

Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_

Legal Counsel

**CONTRACT FORM 3  
PAYMENT BOND FOR PUBLIC WORKS**

KNOW ALL PEOPLE BY THESE PRESENTS: That

**WHEREAS**, the Santa Clara Valley Transportation Authority (“VTA”) has awarded to

**INSERT SUCCESSFUL BIDDER’S COMPANY NAME**

(“Principal”) a Construction Agreement (“Contract”) for the furnishing of all materials, labor, services and transportation necessary, convenient and proper to the performance of

**PAINT GUN CLEANER MAINTENANCE  
CONTRACT M19147, and**

**WHEREAS**, said Principal is required by the California Civil Code Section 9550 to furnish a bond executed by an admitted surety insurer in connection with said Contract;

**NOW THEREFORE**, we, the Principal and

**INSERT SURETY COMPANY**

as Surety, are held and firmly bound unto VTA, in the penal sum of **\$ INSERT TOTAL CONTRACT PRICE**, in lawful money of the United States of America for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that if said Principal, its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named in Section 9100 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under this Contract by any such claimant, the Surety will pay for the same, in an amount not exceeding the sum hereinabove specified, and also, in case suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the California Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described or pertaining to or relating to the furnishing of labor, materials, or equipment therefor, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement hereinabove described, nor by any rescission or attempted rescission of any such Contract or agreement or the bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of

recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between VTA and original Contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 8400 or 8402 of the California Civil Code, and has not been paid the full amount of its claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

If VTA brings suit upon this bond and judgment is recovered, the Surety shall pay all litigation expenses incurred by VTA in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

**IN WITNESS WHEREOF** this instrument has been duly executed by Principal and Surety under their several seals on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the names and corporate seals of the corporate parties being hereto affixed and those presents duly signed by their undersigned representatives, pursuant to authority of their governing bodies.

**PRINCIPAL**

\_\_\_\_\_  
(Company)  
  
\_\_\_\_\_  
(Signature)  
  
\_\_\_\_\_  
(Name – Please Print)  
  
\_\_\_\_\_  
(Title)

**SURETY**

\_\_\_\_\_  
(Company)  
  
\_\_\_\_\_  
(Signature)  
  
\_\_\_\_\_  
(Name – Please Print)  
  
\_\_\_\_\_  
(Title)

**CORPORATE SEAL**

**CORPORATE SEAL**

NOTE: Attach the following:

- 1) a copy of authorization for signatory for Principal, and
- 2) original or certified copy of unrevoked appointment, power of attorney, bylaws or other instrument entitling or authorizing person executing bond on behalf of surety to do so.

**CONTRACT FORM 4**  
**LISTING OF SUBCONTRACTORS, SUPPLIERS, AND SUBCONSULTANTS**

Contractor shall complete the form below for each subcontract for all subcontractors, suppliers of materials, and subconsultants. Include all firms.

IMPORTANT INFORMATION

- The form is to be completed and submitted with the other Contract Forms. Contract Forms are required no later than 6 (six) working days after receipt of the Notice of Award.
- All tiers of subcontractors are to be listed on this form and must be registered with the California Department of Industrial Relations (“DIR”) as further set forth at Section 7.8, Labor Provisions

**A. ENTER PROJECT AND CONTRACTOR INFORMATION**

Contractor Name \_\_\_\_\_

Total Contract Price: \$ \_\_\_\_\_

Amount to be Subcontracted: \$ \_\_\_\_\_

Percentage to be Subcontracted: \_\_\_\_\_ %

**B. ENTER NAMES OF SUBCONTRACTORS, SUPPLIERS, AND SUBCONSULTANTS**

Name of Subcontractor, Supplier, Subconsultant	City and State	Bid Item or Portion of Work	Ethnicity (see code Below)	Email Address	DIR Registration Number	Estimated Dollar Amount of Subcontract

**NOTE**

1. For Ethnicity, enter one of the following codes: A=Asian, SA=Subcontinent Asian, B=Black, C=Caucasian, H=Hispanic, NA=Native American, O=Other
2. DIR Registration is for SUBCONTRACTOR ONLY
3. Copy and add additional pages if necessary

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**CONTRACT FORM 5  
DESIGNATION OF AUTHORIZED REPRESENTATIVE**

In accordance with Sections 7.24, Authorized Representatives and 7.25, Notices and Communications, Contractor hereby designates as its Authorized Representative the person listed below. Contractor's Authorized Representative shall have full authority to act on Contractor's behalf in all matters within the scope of this Contract.

Name of Authorized Representative: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Phone: \_\_\_\_\_

Business Email: \_\_\_\_\_

24-Hour Emergency Phone: \_\_\_\_\_

Designated Alternate: \_\_\_\_\_

Alternate's 24-Hour Emergency Phone: \_\_\_\_\_

The person signing this Designation of Authorized Representative for the Bidder certifies that he or she is authorized by the Bidder to do so and that the Bidder shall be bound contractually by that signature.

Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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## SECTION 6 SPECIAL CONDITIONS

### 6.1. Indemnity and Defense of Claims

#### 6.1.1. Indemnify and Hold Harmless

Contractor must indemnify and hold harmless VTA, any public agencies within whose jurisdiction, on whose behalf, or on whose property the Work is being performed, any party VTA is contractually obligated to identify in this Contract as an indemnitee, and each of their respective Board of Directors, Board of Supervisors, Councils, individual board members, officers, agents, employees, and consultants (each, an "Indemnitee"; collectively, the "Indemnitees") from any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys' and experts' fees and costs) arising out of, pertaining to, or caused by, or in any way relating to the Work, including the performance of this Contract or any subcontract hereunder, by Contractor and/or its agents, employees, or subcontractors, whether such claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys' and experts' fees and costs) are based upon a contract, or for personal injury, death or property damage or upon any other legal or equitable theory whatsoever.

#### 6.1.2. Limitation on Indemnity

Notwithstanding any language in this Contract to the contrary, Contractor is not obliged to indemnify and/or hold harmless the Indemnitees from any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys' and experts' fees and costs) arising from the sole or active negligence or willful misconduct of VTA or its agents, servants or independent contractors who are directly responsible to VTA, or from damages for defects in designs furnished by those persons.

#### 6.1.3. Duty to Defend

Contractor agrees, at its own expense, and upon written request by VTA or any individual Indemnitee, to immediately defend any suit, action, claim, or demand brought against any Indemnitee founded upon, alleging, or implicating any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys' and experts' fees and costs) covered by Contractor's indemnity obligation set forth in this **Section 6.1.1**, and regardless of whether Contractor and/or any of its agents, employees, or subcontractors, was, in fact, liable. In the event a court of competent jurisdiction determines that any suit, action, claim, or demand brought against any Indemnitee was caused by the sole or active negligence or willful misconduct by VTA or its agents, servants or independent contractors who are directly responsible to VTA, VTA shall promptly reimburse Contractor for costs of defending the Indemnitees in such action incurred by Contractor, but only in proportion to the sole or active negligence or willful misconduct of VTA or its agents, servants or independent contractors who are directly responsible to VTA.

#### 6.1.4. Survive Expiration or Termination

The indemnity and defense of claims terms set forth in this Section 6.1 will survive the expiration or termination of the Contract and remain in full force and effect.

## 6.2. Insurance

Contractor's attention is directed to **Appendix A Insurance Requirements** of this Contract.

It is highly recommended that proposers confer with their insurance carriers or brokers in advance of bid submission to determine the availability of insurance certificates and endorsements prescribed in **Appendix A Insurance Requirements**.

## 6.3. Contract Bonds and Surety Requirements

Prior to execution of the Contract, Successful Bidder shall file with VTA on the forms provided herein, surety bonds in the amounts and for the purposes noted below, duly executed by an admitted surety insurer satisfactory to VTA; *provided, however*, that no bonds are required on Bids of \$25,000 or less. Successful Bidder shall pay all premiums and costs relating to required bonds, whether direct or incidental thereto. Each bond shall be signed by both Successful Bidder and surety.

### 6.3.1. Payment Bond

The Payment Bond shall be **100% of the Base Year** (as defined in **Section 6.4 Time for Performance**) or **Option Year** (as defined in **Section 6.4 Time for Performance**) **Bid price, as applicable**, and shall inure to the benefit of persons performing labor or furnishing materials in connection with the Work. **For any Option Year that VTA exercises, Contractor must renew this bond for the Option Year exercised.** This bond shall be maintained in full force and effect until all Work under the Contract is completed and accepted by VTA, and until all claims for materials and labor have been paid. See the form of the Payment Bond in Section 5 Contract Forms.

### 6.3.2. Reserved

### 6.3.3. Surety Requirements

Sureties for necessary bonds must:

- Be an admitted surety insurer.
- Have an AM Best's rating of no less than A VII.
- Comply with the provisions of Code of Civil Procedure Section 995.660.
- If Federal requirements apply (refer to **Section 1.8**), be a current Treasury Listed Surety (Federal Register).

Should any surety or sureties be deemed unsatisfactory at any time by VTA, notice will be given to Contractor to that effect, and Contractor shall forthwith substitute a new surety or sureties satisfactory to VTA; *provided, however*, that the time set out in the Notice of Award for submitting bonds will not be extended thereby. No further payment will be due or will be made under the Contract until the new sureties qualify and are accepted by VTA.

All alterations, time extensions, extra and additional Work, and other changes authorized by the specifications, or any part of the Contract, may be made without securing consent of the surety or sureties on the Contract bonds.

## 6.4. Time for Performance

The base term of the Contract is one year (the "Base Year"). The first day of the Base Year will commence on the date the Contract is executed.

VTA may, at its sole option and in its sole discretion, extend the term of the Contract for up to four (4) total one (1)-year periods (each individually an “Option Year”). VTA may exercise these Option Years by issuing written notice to Contractor prior to the expiration of the then-current term, informing Contractor of VTA’s decision to exercise any Option Year (“Option Notice Letter”).

The total term of the Contract, including all Option Years, will not exceed five (5) years.

## **6.5. Reserved**

## **6.6. Contract Data Requirements**

### **6.6.1. Contract Data Requirements**

Contractor shall submit to VTA the items shown in **Table B-1 Contract Data List** (“Contract Data List”) and **Table B-2 Technical Submittals List** (“Technical Submittals List”) of **Appendix B Contract Data Requirements**. The Contract Data List and Technical Submittals List is intended to summarize the requirements for submittals as specified in the Contract Documents. If conflicts exist between the lists in **Appendix B** and the referenced paragraph, the referenced paragraph will take precedence.

VTA may withhold amounts from any payments otherwise due as it determines necessary for Contractor’s failure to provide submittals as required. This amount may be up to 10% of the payment or \$10,000.00, whichever is greater for each item. Failure of Contractor to submit any item within 30 days of its due date may result in forfeiture of any or all of the withholding per **Section 7.59.6 Special Withholding**.

### **6.6.2. Submittal**

Contractor shall submit to VTA the items shown on the Contract Data List and the Technical Submittals List in compliance with the times and the number of copies specified therein. Requirements and procedures for preparing and transmitting submittals must conform to the provisions of **Section 7.43 Submittal of Shop Drawings, Product Data and Samples** and this **Section 6.6**.

All submittals must be accompanied by a **Submittal Cover Letter** provided by VTA. Contractor shall:

- a. Submit drawings, schedules and samples as required in the Technical Submittals List.
- b. Coordinate preparation and processing of submittals with performance of maintenance activities;
- c. Coordinate each submittal with fabrication, purchasing, testing, delivery, other submittals, and related activities that require sequential activity; and
- d. Coordinate transmittal of different submittals for related parts of the Work so that processing will not be delayed because of the need to review submittals concurrently for coordination.
- e. Submit any supporting data, such as manufacturer’s literature and/or calculations, in the same manner and number as the drawings, schedules and samples required.

Given **Section 6.4 Time for Performance**, Contractor shall allow adequate time for an Initial Review or Concurrent Review (as defined below), whichever is applicable, including time for resubmittals.

- a. Initial Review: Contractor shall allow twenty (20) working days for initial review and appropriate action by VTA on each submittal. Contractor shall allow additional time if processing must be delayed to permit coordination with subsequent submittals. VTA will advise Contractor when a submittal being processed must be delayed for coordination.

- b. Concurrent Review: Where concurrent review of submittals by VTA and other parties is required, Contractor shall allow thirty (30) working days for initial review and appropriate action by VTA of each submittal.

The time period for review (whether Initial Review or Concurrent Review) will commence on the day of VTA's receipt of submittal. If the submittal is received by VTA after 3PM, time period for review will commence on the following working day.

VTA's acceptance of submittals will be general and shall not be construed as (i) permitting any deviation from Contract requirements, (ii) offering relief of responsibility for any errors or omissions, or (iii) approving any deviation from details furnished by VTA except as provided otherwise in **Section 8 Technical Specifications**. If submittals show variations from Contract requirements for any reason, such variations shall be described in the submittal cover letter.

If variations result in an adjustment to the Contract price or time for performance, the adjustment will be subject to approval by VTA. Failure to describe variations will not relieve Contractor from the responsibility of executing the Work according to the terms of the Contract, even though such submittals have been accepted by VTA.

Contractor shall submit documents such as certificates, reports and test results not shown in the Technical Submittals List, but specified in **Section 8 Technical Specifications**. Three (3) copies of each item are required unless specified otherwise. Notice of completion of work to hold points specified in the encroachment permit must be provided ten (10) working days before estimated completion of that portion of the Work.

If VTA determines that substantial corrections are required, each submitted item will be marked AMEND AND RESUBMIT (A/R). The required corrections will be explained. In these instances, VTA will not be deemed to have accepted the submittal and it must be corrected and resubmitted. One copy will be returned for correction.

Resubmittals will be handled in the same manner as the initial submittal, and Initial Review and Concurrent Review period, whichever is applicable, will begin again. Contractor must direct specific attention to revisions other than those requested by VTA on previous submittals either by an accompanying letter or on the resubmitted drawings.

If accepted by VTA each submittal will be stamped NO EXCEPTIONS TAKEN (NET) and dated indicating acceptance.

Work included in submittals marked as MAKE CORRECTIONS NOTED (MCN) may be carried out provided that VTA's request has been properly addressed and resolved, and Contractor complies with all required corrections or modifications. Contractor shall make corrections to the resubmittals and resubmit to VTA within 5 working days. Working and shop drawings will be redlined by VTA and the Work will be carried out only using submittals that (i) are stamped either MAKE CORRECTIONS NOTED (MCN) or NO EXCEPTIONS TAKEN (NET), and (ii) which bear VTA's signature. No changes may be made thereon except by written direction from VTA.

Contractor is responsible for and will bear all cost of damages that may result from ordering material or from proceeding with Work before VTA acceptance.

Contractor shall submit six (6) legible copies of complete and detailed working and shop drawings as required for the performance of the Work, which must be suitable for electronic scanning. In addition, drawings must be prepared on a reproducible sheet measuring 22 inches by 34 inches unless approved

otherwise. Each full size drawing sheet must have a blank area five inches by five inches minimum, located above the title block, for VTA's acceptance stamp. The title block must display the following:

- Contract Number and Name
- Number and Title of Drawing
- Date of Drawing or Revision
- Name of Firm originating Drawing
- Clear identification of contents
- Location of work
- Referenced Technical Specifications

Also, Contractor shall furnish detail drawings for any temporary work and the method of proposed maintenance for the safe and successful completion of such Work.

All submittals for electrical equipment shall conform to the provisions of the appropriate technical specifications of the Contract. All electrical materials shall be tagged in conformance with the provisions of **Section 7.49 Certificates of Compliance and Testing**, before delivery to the Worksite. VTA will reject untagged electrical materials.

Contractor shall furnish samples as specified and requested by VTA as soon as possible after the request. Unless indicated otherwise, no less than two (2) identical samples of each type required shall be submitted. Shipping charges shall be prepaid by Contractor. Products for which samples are requested shall not be used until accepted in writing by VTA. Each sample shall be labeled to indicate:

- Name of Project
- Contract Number
- Name of Contractor
- Name of subcontractor or supplier, if applicable
- Material or equipment represented
- Source
- Name of producer and brand, if any
- References to applicable plans and specifications
- Location of the Work

Contractor shall test samples as specified. Accepted samples not destroyed in testing may be retained by VTA. Samples not approved by VTA will be returned at Contractor's expense, if so requested at the time of submittal. Contractor shall mail a letter under separate cover submitting each shipment of samples detailing the information required in the preceding paragraph. Contractor shall enclose a copy of the letter with the shipment.

#### **6.7. Permits, Fees and Inspections**

Contractor shall obtain and pay all jurisdictional charges required for all necessary building, electrical, plumbing, mechanical or encroachment permits and will include the cost of the required permits in the Bid price.

#### **6.8. Payment of Fines and Fees**

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

### **6.9. VTA Furnished Materials**

Any materials to be furnished by VTA will be at locations designated herein or they will be delivered to the Worksite. Such VTA furnished materials shall be hauled to and properly stored at the place of use by Contractor at Contractor's expense including all necessary loading and unloading that may be involved. All costs of storing, handling, and installing VTA-furnished material shall be considered as included in the Contract price paid for the Bid item involving VTA-furnished material.

Contractor shall be held responsible for all materials furnished to Contractor, and shall pay all demurrage and storage charges. If any VTA-furnished materials are lost or damaged from any cause whatsoever after receipt by Contractor, Contractor shall be liable to VTA for the cost of replacing or repairing such VTA furnished material and the cost thereof may be deducted from any monies due or to become due Contractor.

In addition, VTA will furnish to Contractor, upon request, a maximum of ten (10) sets of conformed contract documents or bid documents including all addenda if conformed documents are not available. Contractor shall be responsible for making available to its subcontractors and suppliers all documents required to complete their Work. Upon Contractor's request, VTA will provide electronic copies of the conformed Contract Documents.

### **6.10. Delivery, Unloading and Storage**

Contractor is completely responsible for all delivery, unloading and storage activities required for the completion of Work.

### **6.11. Work Sequence and Constraints**

Contractor shall cooperate with and coordinate its Work with any private development work, utility relocation work or any other contractor that may be performing work in the immediate area of the Worksite.

Contractor is responsible for the coordination of all electric utility shutdowns required. Contractor shall give the applicable utility at least thirty (30) days' notice of the requirement for such a shutdown unless a greater time period is specified in the Technical Specifications.

The Work will be performed on an active facility with ongoing 24-hours/day operations and maintenance activities. All Contract activities are subordinate to the ongoing function of these facilities. It is Contractor's responsibility to coordinate, phase, schedule and perform its Work without disruption to these activities.

### **6.12. Reserved**

### **6.13. Sound Control Requirements**

Contractor shall comply with all local sound control and noise level rules, regulations and ordinances that apply to any of the Work. If no maximum noise levels exist in local jurisdictions, the noise level from Contractor's operations, between the hours of 9:00 PM and 6:00 AM, shall not exceed 86 dbA at a distance of fifty (50) feet from the Work activity. Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. Noise level requirements apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers or transit equipment that may or may not be owned by Contractor. The use of loud sound

signals must be avoided in favor of light warnings except those required by safety laws for the protection of personnel.

#### **6.14. Safety Precautions, Programs and First Aid Requirements**

Contractor must promptly and fully comply with, carry out, and must, without separate charge to VTA, enforce compliance with the safety and first aid requirements stated herein, prescribed by applicable laws and regulations and those prescribed by an official or representative charged with the enforcement thereof. Contractor must take such other measures as may be necessary to the end that Work must be done in a safe manner and that the safety and health of employees and the people of local communities is safeguarded. Compliance with the provisions of this Special Condition by subcontractors must be the responsibility of Contractor.

##### **6.14.1. Safety Supervision**

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

- (1) Identify a competent individual, i.e.: a superintendent or foreperson, who must be assigned to work at the Worksite and must be responsible for Worksite safety,
- (2) Contractor must submit a site-specific work plan which addresses the scope of work to be performed and certify that the designated safety representative has received competent person training in all aspects of the site-specific work plan, and
- (3) Contractor agrees to comply with all state, federal and local regulations with regards to safety. Contractor will provide a copy of its Injury Illness Prevention Program for review and approval from VTA prior to beginning the Work.

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

##### **6.14.2. Hazardous Substances**

If Contractor encounters Worksite material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or other Hazardous Substance (as defined below) that has not been rendered harmless, Contractor must immediately stop Work in that affected area and report the condition through VTA's current Hazard Management Program (HMP). That portion of the Work in the affected area must not thereafter be resumed except by written agreement of VTA and Contractor if in fact the material is asbestos or PCB or other Hazardous Substance and has not been rendered harmless. That portion of the Work in the affected area must be resumed in the absence of asbestos or PCB or other Hazardous Substance, or when it has been rendered harmless, by written agreement of VTA and Contractor, or in accordance with a final determination by an environmental consultant employed or retained by VTA.

Contractor will not be required pursuant to **Section 7.9 Hazardous Materials or Unusual Conditions** to perform without consent, any portion of the Work relating to asbestos, PCB or other Hazardous Substances.

For purposes of the Contract Documents, “Hazardous Substance” must have the meaning set forth in California Health and Safety Code, Chapter 6.6, (and all regulations enacted pursuant thereto) and must also include (to the extent not set forth in the Health and Safety Code) any additional substance or material that has been determined or during the time of performance of the Work is determined to be capable of posing a risk of injury to health, safety, property or the environment by any federal, state or local governmental authority.

#### **6.14.3. Safety Data Sheets and Hazardous Substances**

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

#### **6.14.4. Hazardous Substances Controls and Storage**

Contractor must not permit any Hazardous Substances to be brought onto or stored at the Worksite or used in connection with the Work, except for specified materials and commonly used materials for which there is no reasonable substitute. All such materials must be handled, stored and disposed of in accordance with all manufacturer’s guidelines, warnings and recommendations and in full compliance with all applicable laws. All notices required to be given with respect to such materials must be given by Contractor.

Contractor must not intentionally release or dispose any Hazardous Substance at the Worksite or into the soil, drains, surface or ground water, or air, nor may Contractor allow any subcontractor, or supplier or any other person for whose acts Contractor or any subcontractor, sub-subcontractor or supplier may be liable, to do so.

Hazardous Substances controls must conform to the applicable federal, state and local rules and regulations. All Hazardous Substances and waste must be stored in double walled containers in accordance with all applicable federal, state and local Hazardous Substances (sometimes also referred to as “hazardous materials”), in addition to any permit or VTA specific requirements. If volatile and/or noxious substances are being used in spaces that are not naturally ventilated Contractor must provide adequate artificial ventilation.

#### **6.14.5. Written Safety Precautions**

Contractor must set forth in writing its safety precautions and programs in connection with the Work, which meets or exceeds any and all applicable laws, ordinances, rules, regulations, and orders of any public, quasi-public, or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to the following:

- (1) Federal Occupational Safety and Health Act of 1970, as amended,
- (2) The California Occupational Safety and Health Act of 1973, as amended and
- (3) The California Labor Code.

**In the event of conflicting requirements, the more stringent requirement governs.**



All Work, whether performed by Contractor, or its subcontractors of all tiers or anyone directly or indirectly employed by any of them, and all equipment, machinery, materials, tools and like items incorporated or used in the Work, must be in compliance with and conform to:

- (1) All applicable laws, ordinances, rules, regulations, and orders of any public, quasi-public, or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the above listed acts and associated standards and all rules and regulations now or hereafter in effect pursuant to said acts; and
- (2) Contractor must provide, or cause to be provided, to each worker on the Worksite the proper safety equipment for the duties performed by that worker and will not permit any worker on the Worksite who fails or refuses to use the same. VTA has the right, but not the obligation, to order Contractor to send a worker off the Worksite for the day or to discharge a worker for their failure to comply with safety practices.
- (3) VTA's Procedure, Reflective Safety Vests, Document Number 600.009, which is referenced in **Appendix P VTA's Policy on Reflective Safety Vests.**

#### **6.14.6. Protection of Work and Property; Responsibility for Loss**

Contractor must, throughout the performance of the Work, maintain adequate and continuous protection of all Work and temporary facilities against loss or damage from whatever cause, protect the property of VTA and third parties from loss or damage from whatever cause arising out of the performance of Work and comply with the requirements of VTA and its insurance carriers, and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to property as a result of fire or other hazards to:

- (1) Employees on the Work and other persons who may be affected thereby;
- (2) The Work, materials and equipment to be incorporated therein, whether in storage on or off of the Worksite, under care, custody or control of Contractor and/or its sub-subcontractors;
- (3) Other property at the Worksite or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of maintenance; and
- (4) Solvents, oils and any other substance that may be harmful to plant life must be disposed of in containers and removed from the Worksite. At completion of the Work, any contaminated soil must be removed and replaced with soil of equal quality prior to contamination by Contractor at no additional cost to VTA.

#### **6.14.7. VTA Patrols**

VTA may, but is not required to, make periodic patrols of the Worksite as a part of its normal security and safety program. In such event, however, Contractor is not relieved of its aforesaid responsibilities and VTA does not assume same, nor will it be deemed to have assumed, any responsibility otherwise imposed upon Contractor.

#### **6.14.8. Notice in Writing Before Breaking Ground**

Contractor must give notice in writing, at least forty-eight (48) hours before breaking ground, to all persons having interests on or near the Worksite, including public utility companies, owners of property having structures or improvements in proximity to the Worksite, superintendents, inspectors, or those

otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise who may be affected by Contractor's operation, in order that they may remove any obstruction for which they are responsible and have a representative on the Worksite to see that their property is properly protected. Such notice does not relieve Contractor of responsibility for any damages, claims, and defense of all actions against VTA, resulting from performance of such Work.

#### **6.14.9. Safeguards for Safety and Protection**

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

#### **6.14.10. Job Safety Compliance**

Contractor is responsible for job safety in compliance with the following standards:

- National Electrical Code
- All CPUC General Orders including but not limited to 143 B, 164 E, 172 and 175A
- Cal – OSHA Title 8
- Fed OSHA Standard 29 CFR

#### **6.14.11. Damage to the Work**

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

#### **6.14.12. Dangerous Conditions**

Contractor must designate the project superintendent, or such other qualified member of Contractor's organization at the Worksite as may be approved by VTA, to be responsible for the prevention of injuries and illnesses.

If VTA or any public agency with jurisdiction notifies Contractor of any claimed dangerous condition at the Worksite which is within Contractor's care, custody or control, Contractor must take immediate action to rectify the condition at no additional cost to VTA. Contractor is responsible for the payment of all fines levied against VTA for deficiencies relating to Contractor's supervision or conduct of the Work.

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

Contractor must not permit open fires on the Worksite.

Use or storage of explosives is prohibited.

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

#### **6.14.13. Emergencies**

In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any Federal or State safety or health law or regulation, arising out of or in any way connected with the Work or its performance, Contractor must ensure that at least one of Contractor's employees with authority is on duty during working hours, and act immediately to prevent threatened damage, injury or loss or to remedy said violation, whichever is applicable, failing which VTA may immediately take whatever action it deems necessary, including, but not limited to, suspending the Work as provided in **Section 7.69 Suspension of the Work**. Contractor must also establish and maintain adequate First Aid facilities at locations close to work areas, and mark such locations with signs of adequate size and composition. Contractor must also ensure that at least one of Contractor's employees qualified by a recognized authority to perform First Aid is on duty while Work is being performed

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

#### **6.15. Contractor Safety and Light Rail Transit Operations**

This Section includes requirements to control and reduce potential hazards of light rail traction power and moving trains in any environment where Contractors and outside parties have access to right-of-way and/or facilities of VTA's Light Rail Transit ("LRT") system. These requirements and procedures are designed to add an extra measure of safety for the public, passengers and employees of VTA and VTA's Contractors. These procedures do not supersede existing CPUC, Cal OSHA, Workers Comp. or any other Federal, State or local safety regulations.

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

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

#### **6.15.1. Definition of Terms**

The following definitions apply to this Section 6.15:

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

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Contractor: Any company, each of its principals, subcontractors, employees and any lower tier services employees whether or not actually under contract with VTA who are working on or in the LRT right-of-way or rail transit facilities of VTA.

CPUC: California Public Utilities Commission

FRA: Federal Railroad Administration

Certification Card: VTA-issued certification card identifying successful completion of required Contractor safety training.

Lockout and Tagout Procedure: The objective of this procedure is to ensure that machines or equipment are isolated from all potentially hazardous energy, and locked out/tagged out or blocked out before employees perform any servicing or maintenance activities where the unexpected energization, start-up or release of stored energy could cause injury.

OCC: Operation Control Center

OCS: Overhead Catenary System

Restricted Area, (or Restricted Access Work Area): Any area including electrical substations, overhead catenary system (OCS), signal or communications facilities, Operations Control Center (OCC), tracks, stations and any area where moving trains or light rail traction power are present or may be affected.

Restricted Access Permit (or Permit): any area including electrical substations, overhead catenary system (OCS), signal or communications facilities, Operations Control Center (OCC), tracks, stations and any area where moving trains or light rail traction power are present or may be affected.

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

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

Safety Training: Required Safety Training applicable to the work tasks Contractor employees will be performing when working on, in or near the LRT right-of-way and/or rail transit facilities of VTA.

Job Briefing: Required safety briefing before Contractor performs any work on, in or near the LRT right-of-way and/or rail transit facilities of VTA.

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

Substation (or Traction Power Substation): Any facility, including power feed and power distribution cabling for delivery of commercial electrical power and delivery of that power to the LRT OCS.

Train: One or more than one light rail vehicle, or any on-track equipment, railborne or Hi-rail vehicle that is set on the track.

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

Track Zone: An area within 6-feet of the closest rail on both sides of the track.

### **6.15.2. Use of Electronic Devices**

In compliance with the California Public Utilities Commission (CPUC) requirements, the use of personal electronic devices is prohibited at all times when within the Track Zone. This includes, but is not limited to, scanners, cellular telephones, personal audio devices, or watches or headsets associated with those devices and any Personal Digital Assistant (PDA) with the following exceptions:

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

Contractor's Safety Officer will be responsible in implementing these requirements and must be part of the required safety briefings. Any Contractor employee violating these rules will be immediately removed from the Worksite and permanently banned from the Work. The CPUC on behalf of the Federal Railroad Administration (FRA) may impose or levy fines and penalties against Contractor for violation of these requirements.

Contractor must further comply with all the requirements in VTA's policy "Use of Personal Electronic Devices by Bus and Light Rail Employees and Contractor Staff" and included in **Appendix E** and incorporated herein by this reference.

### **6.15.3. Restricted Access Permit**

At any time or location Contractor requires access to enter on, cross over or cross under the right-of-way, tracks or overhead contact system of VTA or to enter into facilities including yard, maintenance buildings, stations, substations, operations control center or signal and communications equipment or facilities and any work is to be performed within six (6) feet of the nearest rail of any track, a Restricted Access Permit application must be submitted by Contractor who will perform the Work.

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

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

### **6.15.4. Site Specific Work Plan**

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

A SSWP must describe each of the activities or tasks to perform a work operation and must include a detailed schedule of the Work items that have a duration of one (1) hour or more, which indicates the

hourly progress of each activity. The SSWP must include staffing, materials and equipment that will be used to complete the work. The schedule must include a time for which all activities planned under the SSWP will be completed.

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

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

The SSWP must be submitted by Contractor not less than fourteen (14) days prior to the date and time of the proposed start of work or fourteen (14) days prior to the scheduled Track Allocation Meeting, whichever is earlier. No Work may begin until the SSWP has been reviewed by VTA, approved, or approved with changes noted and returned to Contractor. VTA may request additional explanation, request changes or require Contractor to revise and resubmit the SSWP. If the plan is not acceptable, Contractor must revise and resubmit the SSWP and obtain approval before proceeding with the Work.

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

#### **6.15.5. Required Safety Training Records and Reports**

Contractor must maintain and submit not less than on a monthly basis, a current list of all employees safety-trained by VTA and Contractor. The reported information must include a description of the successfully completed training including the expiration dates of those training certifications. Contractor must forward Safety Seminar records on a monthly basis to VTA's Resident Engineer or Resident Inspector, or designated Safety Coordinator, and to the representative of VTA's Railroad Liability Insurance Program.

#### **6.15.6. General Contractor Safety Seminar**

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

Each and every employee, foreman, superintendent, office personnel and manager, any and all subcontractors as well as any third tier services personnel who will enter, work on, or have the ability to foul VTA's Track Zone, within the Limited Approach Boundary of ten (10) feet of the traction power

system, any substation and any communications and signal facilities or equipment must be required to attend Safety Training applicable to the work that is to be performed.

A Contractor Safety Training classes will be provided at a location and time to be established by VTA.

If at any time Contractor intends to bring new employees onto the project site, each employee must first attend and successfully complete any required safety training classes. Contractor is responsible for scheduling their employees for any training with VTA Resident Inspector. Additionally, Contractor is also responsible for ensuring that all employee's required certifications are maintained and valid. Contractor will pay training fees for each employee attending safety training.

Contractor employees who have successfully attended Safety Training classes will be provided with proof of successful completion of the training required for their work tasks. This proof of successful completion of the required Safety Training if requested, must be presented along with a picture ID such as a driver's license.

Contractor must monitor adherence to this requirement by their employees, subcontractors and third tier service personnel. Contractor employees not in possession of the proper proof of training may be subject to being removed from the Worksite.

#### **6.15.7. Roadway Worker Protection Compliance Inspection**

Individual responsibility is the basis for and a necessary key to any safety program. VTA or its designated representative(s) may conduct compliance inspections as deemed reasonably necessary. The purpose of the compliance inspections is to ensure that each Contractor employee granted permission to work on the right-of-way is familiar with VTA's safety rules and understands the Work area and time limits and can identify Contractor and VTA-representative in charge of safety at the Work location or Employee In Charge (EIC) when applicable. The compliance inspections may also include verification that an approved copy of the Restricted Access Permit is being maintained at the Worksite and that it has been read and understood by all personnel working at the Worksite.

#### **6.15.8. Restricted Access Work Rules**

This permit provides access for the physical presence on or in any light rail restricted access area including electrical substations, overhead catenary system (OCS), signal or communications facilities, Operations Control Center (OCC), tracks, stations and any area where moving trains or light rail traction power are present or may be affected.

Unless specifically authorized in the Permit, the Restricted Access Permit does not authorize work within 6-feet of the nearest rail of any track, does not authorize operations of any equipment on the track and does not authorize any access or equipment within 10 feet of any OCS, signal cabinet or within any traction power substation. Restricted Access Work Rules are provided as part of the Restricted Access Permit Form.

#### **6.15.9. Track Allocation Procedures**

Prior to occupying any light rail restricted access area including electrical substations, overhead catenary system (OCS), signal or communications facilities, Operations Control Center (OCC), tracks, stations and any area where moving trains or light rail traction power are present or may be affected.

Contractor must submit a Restricted Access Permit Application to the Track Allocation Coordinator not later than 24 hours prior to the scheduled Track Allocation Meeting.

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

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

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

As identified at the Track Allocation Meetings, the requirements herein are for VTA and for all Contractors working on the Worksite beginning from the first date of the earlier occurrence of either of the following two events:

- (1) Electrical power is installed in any substation or any portion of the traction power system is capable of being energized, and/or
- (2) VTA LRV, hi-rail or on-track equipment is operated on any portion of the track.

Track Allocation Meetings must be held weekly and requires the attendance of a representative of all Contractors and their subcontractors managing their own track access permits. When required, VTA Resident Inspectors, a representative of VTA's Construction Manager and/or the Project Principal Inspector and representatives of the Track Allocation and Operations Testing personnel will attend.

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

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

Contractor's responsibilities include the following:

- All Contractors must confirm that all of their scheduled work is included on the Restricted Access Permit application. Contractor must identify days, times, tracks, access point(s), personnel requirements and equipment to be used in the work.
- Where any conflict may exist with other contractors at or near the Worksite, Contractor must coordinate a mutually agreeable resolution to allow the maximum productive track access for all parties.
- Contractors must be responsible for assuring that all of its employees, as well as all of its subcontractors and its lower tier service personnel, are aware of any scheduled safety-critical items and that they actively respond to the safety requirements of the Restricted Access Permit and Track Allocation Schedule, if granted.



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

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

#### **6.15.10. Lockout/Tagout/Blockout Procedures**

Application of Lockout /Tagout/Blockout Procedures must be coordinated with VTA's resident inspector.

Lockout /Tagout/Blockout Procedures provide protection for personnel against the inadvertent release of hazardous energy. If removal of traction power is required by the contractor in addition to the removal of traction power, the installation of VTA approved lockout devices including Power Removal tags approved by Cal-OSHA, the installation of grounds straps and applicable warning signs, flags and/or markers must be installed. This procedure is required with an approved Restricted Access Permit for work within the Limited Approach Boundary of ten feet (10') of the OCS or any traction power equipment or facilities. This procedure may also be required through the Restricted Access Permit process for work on elevated structures, within a tunnel or when it is deemed necessary for the safety of personnel when performing working that requires protection from hazardous energies.

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

- (1) Electrical power is installed in any substation or any portion of the traction power system is capable of being energized; and/or
- (2) VTA LRV, hi-rail or on-track equipment is operated on any portion of the track.

Prior to implementing Lockout/ Tagout/Blockout Procedures at any work location, the VTA representative in charge of Worksite safety must identify and confirm the following with Contractor and with VTA's Operations Control Center:

- (1) All details as approved on the Restricted Access Permit, the Site-Specific Work Plan (if used) and the VTA Light Rail Power Removal Form, including work limits, locations of track or OCS access and specific tracks and substations affected;
- (2) Scope of work, specific Contractor activities and equipment to be used must be only those specifically approved by VTA; and
- (3) Expected duration of work and time for restoration of track and OCS to VTA Operations Control.

The VTA OCC supervisor and Power employee on site must then secure all power, install required lockout devices, issue lockout tags, install required traction power system ground(s) and place markers, cones and/or signs as required to secure the work area.

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

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

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

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

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

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

#### **6.15.11. On-Track Safety**

Contractor must provide On-Track Safety for each work group as required in the **Restricted Access Procedures and VTA's Roadway Worker Protection Program**, and these specifications. A work group is one or more persons performing work. "Work" is any activity within or that has the potential to foul the Track Zone or the Limited Approach Boundary of ten feet (10') of the OCS or any traction power equipment or facilities. This includes equipment that is greater than 10 feet high or has devices which can extend more than 10 feet in length, such as, cranes, fork lifts, boom trucks, performing work.

All work performed within Track Zone will require On-Track Safety by means of taking the tracks Out-Of-Service or the establishment of a Work Zone. Each Work Zone, at a minimum, will consist of an Employee-In-Charge and a designated Lookout to watch for approaching trains or on-track equipment. The designated Lookout will provide a train approaching warning to the workers such that they move to the predetermined place of safety. Workers must be in the place of safety fifteen (15) seconds prior to the train or on-track equipment's arrival travelling at maximum authorized speed for the area. The Employee-In-Charge shall provide a "proceed" hand signal to the operator of the train or on-track equipment. Work that is not identified as a minor task is any activity the takes place within Track Zone or has the potential

to foul Track Zone. Minor Tasks are limited to removing an item from Track Zone, inspecting a fixed location, aligning a track switch including the use of a switch bar, taking photographs with a VTA approved camera, and placing or removing markers and signs.

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

Contractor must furnish any required Employee-In-Charge and Lookouts for the Contract. Full compensation for On-Track Safety must be included in the Contract price for the items of Work requiring the use of an Employee-In-Charge and Lookout and no separate payment will be made therefore.

#### **6.15.12. Restricted Access Permit Fees**

VTA will deduct the following amounts charged to Contractor for the below mentioned services provided by VTA Operations staff as required for the Project:

- (1) Restricted Access Permit \$3,050 per location, per year
- (2) General Contractor Safety Seminar (also known as, Roadway Worker Protection Training) - \$85 per class for each participant;
- (3) Power Shutdown - \$1,300 each;
- (4) Bus Bridging: \$177 per hour for each bus;
- (5) Modified Bus and/or Light Rail Services:
  - a. Hourly cost for each additional Bus required for service (regular or bus bridge): \$177 per hour for each bus;
  - b. Hourly cost for a one-car Train; \$537;
  - c. Hourly cost for a Train with 2 cars; \$620;
  - d. Hourly cost for a Train with 3 cars: \$703.
- (6) Background Security Checks for VTA Permittees. The permit applicant will be required to have their employees undergo a background security check through a process determined by VTA at the permittee's cost. VTA reserves the right to decide all aspects of the background security check process, including, but not limited to all costs. Currently the cost to permit applicant is estimated to be \$100.00 per person.

**Full compensation for Restricted Access Permit Fees must be included in the Contract price for items of Work requiring permit and no separate payment will be made therefore. Contractor must pay all Restricted Access Permit fees directly to the Track Allocation Coordinator.**

**Or**

**Full compensation for items 1-6 above is included in the Permit Allowance Bid Item. Contractor must pay all fees directly to the Track Allocation Coordinator.**

#### **6.16. Access and Working Hours**

This facility is owned and operated by VTA seven (7) days per week. Contractor shall endeavor to minimize disruption to VTA personnel and will carefully schedule its Work operation with VTA's Authorized Representative.

For bidding purposes, Contractor should assume the following working hours as permissible for Contractor to work:

- Monday through Friday: 0600-1430 Hours
- Saturday and Sunday: Closed

**6.17. Reserved**

**6.18. Reserved**

**6.19. Reserved**

**6.20. Reserved**

**6.21. Reserved**

**6.22. References to Days**

A “**working day**” is defined to mean any day not a Saturday, Sunday, or **holiday**, unless otherwise indicated. All references to “**days**” herein are references to “**calendar days**”, unless otherwise indicated.

For the purposes of this contract document, recognized **holidays** shall be:

- New Year's Day (January 1),
- Martin Luther King, Jr. Day (3rd Monday in January),
- President's Day (the third Monday of February),
- Cesar Chavez Day (March 31),
- Memorial Day (the last Monday in May),
- Independence Day (July 4),
- Labor Day (the first Monday of September) (triple time)
- Veterans Day (November 11)
- Thanksgiving Day (the 4th Thursday in November)
- The day after Thanksgiving (Friday)
- Christmas Day (December 25)

If a holiday falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. If a holiday falls upon a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed.

**6.23. Reserved**

**6.24. Reserved**

**6.25. Reserved**

**6.26. Reserved**

**6.27. Environmental Coordination and Cooperation**

Attention is directed to **Appendix G Environmental Coordination and Cooperation** of these Contract Documents for a complete listing of environmental requirements applicable to the project. Contractor is advised to become thoroughly familiar with the information, processes and forms, submittal requirements, and compliance requirements in **Appendix G Environmental Coordination and Cooperation**.

## SECTION 7 GENERAL CONDITIONS

### LEGAL RESPONSIBILITIES AND RELATIONSHIPS

#### **7.1. Applicable Law and Jurisdiction**

This Contract incorporates provisions required by the laws of the State of California and the Federal Government. It shall be Contractor's responsibility to determine the applicability of State and Federal laws, rules and regulations to the Work.

This Contract shall be governed by California law. Any lawsuit or legal action arising from this Contract shall be commenced and prosecuted in the courts of Santa Clara County, California.

#### **7.2. Compliance with Laws and Regulations**

Contractor shall keep itself informed of, comply with, and shall cause all of its agents, employees, suppliers and subcontractors of any tier, to observe and comply with all applicable Federal, State, and local laws, regulations, and policies, including, but not limited to, all applicable terms and conditions prescribed for third party contracts by the U.S. Department of Transportation ("DOT"). Contractor shall indemnify, defend, and hold harmless VTA or any entity within whose jurisdiction or on whose property the Work is being performed, and (as applicable) their Board of Supervisors, Board of Directors or Councils as well as their officers, agents, consultants and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, the performance of this Contract by Contractor and/or its agents, employees, suppliers or subcontractors of any tier, excepting only loss, injury or damage caused by the active or sole negligence or willful misconduct of personnel employed by the indemnitees.

#### **7.3. Contractor Licensing Requirements**

Contractors are required by law to be licensed in the State of California and are regulated by the Contractors State License Board. Frequently asked questions are posted at the CSLB website at <http://www.cslb.ca.gov/>. Any other questions related thereto may be referred to the Registrar of the Board whose address and contact information may be found at the CSLB website or use this address

Contractor's State License Board  
9821 Business Park Drive  
Sacramento, CA 95827

#### **7.4. Independent Contractor**

Contractor represents that it is fully experienced and properly qualified to perform the class of work provided for herein, and that it is properly licensed, equipped, organized and financed to perform such work. Contractor shall act as an independent Contractor and not as the agent or employee of VTA in performing the Contract, maintaining complete control over its employees. Nothing contained in this Contract or any subcontract awarded by Contractor shall create any contractual relationship between any such subcontractor and VTA, and Contractor shall perform all Work in accordance with its own methods subject to compliance with the Contract.

## **7.5. Permits, Licenses, Fees and Notices**

As specified in **Section 6 Special Conditions**, or as otherwise required by law, Contractor shall, before beginning any work which requires a permit or similar authorization, secure and pay for all necessary licenses, fees, bonds, charges, inspections, customs or import duties, permits, and similar authorizations from all governmental authorities required to fulfill the Contract requirements and Contractor's obligations.

## **7.6. Nondiscrimination**

Contractor shall comply with Section 1735 of the California Labor Code, which reads as follows:

*"A Contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every Contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter."*

In the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, gender, gender identity, gender expression, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), genetic information, marital status, age (over 40), sexual orientation, military and veteran status, and the denial of family care leave. Contractor and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code §12900 *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12290 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Contract. Contractor and its subcontractors shall permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of investigation to ascertain compliance with this clause.

## **7.7. Prohibited Interests**

No VTA board member, officer, employee, or agent shall have any direct or indirect interest in this Contract or its proceeds during, or within one year after, that person's tenure with VTA.

## **7.8. Labor Provisions**

### **7.8.1. Register with DIR**

Contractor and its subcontractors must be registered with the Department of Industrial Relations (DIR). The registration form may be found at: [www.dir.ca.gov/Public-Works/PublicWorks.html/](http://www.dir.ca.gov/Public-Works/PublicWorks.html/).

### **7.8.2. Safety**

Pursuant to Section 107 of the Contract Work Hours and Safety Standards Act and Department of Labor Regulations at 29 CFR Part 1926, no laborer or mechanic working on this Contract shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to their health and safety as determined under applicable health standards promulgated by the Secretary of Labor.

In addition to Contractor's own safety procedures, and any safety procedures required under federal, state, or local laws or regulations, including compliance with the provisions of the California Occupational Safety and Health Act of 1973 and any additional safety requirements contained in this **Section 6 Special Conditions**, Contractor shall implement and enforce all safety requirements that are determined by VTA's Safety Coordinator to be applicable to the performance of any Work under this Contract.

### **7.8.3. Overtime Requirements**

Neither Contractor nor any subcontractor of any tier shall require or permit any worker to work in excess of eight hours in any single calendar day or in excess of 40 hours in any single calendar work week (defined as seven sequential calendar days) unless such worker 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 eight hours in any single calendar day or in excess of 40 hours in any single calendar work week, whichever is greater. Failure to comply with the preceding requirements shall subject Contractor or any subcontractor of any tier to the penalties specified in Labor Code §1813.

### **7.8.4. Prevailing Wage Rates**

Pursuant to appropriate Sections of the Labor Code of the State of California, the Director of the California Department of Industrial Relations has ascertained the general prevailing rate of wages (which rate includes employer payments for health and welfare, vacation, pension, and similar purposes) applicable to the Work to be performed under this Contract, for straight time, overtime, Saturday, Sunday and holiday work. Said prevailing wage rates are incorporated herein by reference. These wage rates are on file and will be made available to any interested party on request in the Procurement, Contracts and Materials Management Office of VTA, Building A, First Floor, 3331 N. First Street, San José, CA 95134. These wage rates are also available through the California State Department of Industrial Relations at <http://www.dir.ca.gov>. Contractor shall post a copy of the prevailing wage rates at the jobsite or material staging area. The Work is subject to compliance, monitoring and enforcement by the California Department of Industrial Relations.

Workers employed in the Work 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.

Failure to pay such prevailing wages shall subject the employer to the penalties set forth in Labor Code §1775.

If **Section 1.8** and **Section 3.7** identify this project as a recipient of Federal Assistance, then this Contract is also subject to Federal requirements for payment of prevailing wages as determined by the Secretary of Labor. Where there are differences in the rates, the higher shall apply.

#### **7.8.5. Liability for Unpaid Wages**

In the event of any violation of the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5, Contractor and any subcontractor responsible hereunder shall be liable for the unpaid wages.

#### **7.8.6. Withholding for Unpaid Wages and Liquidated Damages**

The U.S. DOT or VTA may 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 monies payable on account of Work performed by Contractor or subcontractor under this Contract or any other Federal contract with Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by 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 subparagraph (b) (2) of 29 CFR Section 5.

#### **7.8.7. Travel and Subsistence Payments**

Pursuant to Labor Code §1773.8, Contractor shall be liable for travel and subsistence payments to each workman needed to execute the Work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with the provisions of Labor Code §1773.8.

#### **7.8.8. Retention of Labor Records**

In the performance of the Work, Contractor shall be responsible for compliance with California Labor Code Section 1776 pertaining to payroll records. Contractor and all of its subcontractors of any tier shall maintain all payrolls and basic payroll records during the course of the Work and shall preserve them for a period of three years from the completion of the Contract. Such records shall contain the name, address, social security number, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by Contractor and all of its subcontractors of any tier in connection with the Work. These records shall be made available by Contractor or any of its subcontractors of any tier for inspection, copying, or transcription by authorized representatives of DOT, VTA or the Department of Industrial Relations, and Contractor or any of its subcontractors of any tier shall permit such representatives to interview employees during working hours on the job.

#### **7.8.9. Employment of Apprentices**

In the performance of the Work, Contractor shall be responsible for compliance with California Labor Code Section 1777.5, pertaining to the employment of registered apprentices.

#### **7.8.10. Subcontracts**

Contractor shall insert in all of its subcontracts the clauses set forth in this **Section 7.8 Labor Provisions** and also a clause requiring its subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this **Section 7.8 Labor Provisions**. Contractor is prohibited from performing the Work with a subcontractor who is ineligible to perform work on a public works project pursuant to Sections 1777.1 or 1777.7 of the California Labor Code.



### **7.9. Hazardous Materials or Unusual Conditions**

In the event underground tanks, vaults, materials or unusual conditions as specified in Public Contract Code §7104(a) are encountered during prosecution of the Work, Contractor shall immediately, and before disturbing such conditions, notify VTA in writing of any:

- Material that Contractor believes may be material that is hazardous waste as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, II or III disposal site in accordance with the provisions of existing law.
- Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to Bidders prior to Bid Opening.
- Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

VTA shall promptly investigate the conditions, and if it finds the conditions to be materially different or to involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a change order under the procedures described in **Section 7.65 Change Requests and Change Notices** and **Section 7.66 Change Order**. Any suspension of Work shall be administered in accordance with the provisions of **Section 7.69 Suspension of the Work**. If a dispute arises between VTA and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work, Contractor shall not be excused from any scheduled completion date provided for by this Contract, but shall proceed with all Work; *provided, however*, Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

### **7.10. Reserved**

### **7.11. Reserved**

### **7.12. Patent Rights**

Any discovery or invention which is an integral part of the items being furnished under this Contract, as well as all information, design, specifications, data and findings which arise or is developed in the course of performing the Work under this Contract, shall become the property of VTA (and if federally funded, the property of FTA or FHWA).

### **7.13. Intellectual Property, Copyright and Patent Infringement**

Contractor, upon VTA's request, shall defend VTA against any claim against VTA for patent, copyright, trademark, trade secret, or other intellectual property infringement based upon VTA's use of any work, goods, or services provided by Contractor pursuant to this Contract. If VTA requests Contractor to defend against such claim, Contractor shall hold VTA harmless from, and indemnify VTA for, any liability arising from the claim. This obligation shall not apply when the alleged infringement arises entirely from modification of the Work, goods, or services by VTA without Contractor's approval.

### **7.14. Rights in Technical Data**

VTA shall have the right to use, duplicate or disclose, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to use: (a) any manuals, instructional materials

prepared for installation, operation, maintenance or training purposes and (b) technical data pertaining to end items, components or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawing). The term Technical Data as used herein means technical writing, sound records, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this Contract. The term does not include financial reports, costs analyses, and other information incidental to contract administration.

For copyrighted material, Contractor agrees to and does hereby grant to VTA and the FTA (if applicable), and to their officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license for VTA and FTA (if applicable) to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to use, all Technical Data now or hereafter covered by copyright.

No such copyrighted matter shall be included in Technical Data furnished hereunder without written notice of the copyright owner granting VTA and FTA (if applicable) consent to use such copyrighted matter in the manner above described.

Contractor shall report to VTA promptly and in reasonable written detail each notice or claim of copyright infringement received by Contractor with respect to any Technical Data delivered hereunder.

VTA reserves the right to use the design and the tooling developed for the furnishing of equipment under this Contract in future contracts based on this specification. Contractor shall maintain design data, including drawings, layouts, and any relevant engineering data, and all necessary tooling in good order for a minimum of four years after final acceptance of the last items furnished under this Contract, and shall transfer that data, including tooling, to VTA upon request at no cost to VTA. All plans, drawings, diagrams, schematics, and specifications shall become the property of VTA and the FTA (if applicable), unless otherwise designated by VTA.

#### **7.15. Ownership of Work and Material**

VTA shall own all materials, work in progress, and finished goods produced by Contractor pursuant to this Contract, for which progress payments have been made and which have been satisfactorily delivered to a designated area. Such ownership shall be free of all encumbrances, or, if it is not, VTA may obtain a priority lien secured pursuant to appropriate sections of the Uniform Commercial Code and other applicable state laws or local ordinances to secure its title rights. Nevertheless, Contractor shall be responsible for risk of loss for those items of Work for which Contractor has care, custody and control, until Final Acceptance.

Unless otherwise specifically provided in this Contract, Contractor shall provide and pay for materials, equipment, tools, utilities, transportation, and other facilities and services (including all taxes thereon) necessary for the prosecution of the Work.

Contractor will submit to VTA a "Final Release of All Liens and Claims" as a condition precedent to receiving final payment under this Contract.

#### **7.16. Title and Risk of Loss**

Unless otherwise provided for, title to the Work and risk of loss shall pass to VTA upon final acceptance of the Work, and Contractor shall furnish or execute all necessary documents of title at that time.

### **7.17. Assignment and Delegation**

Contractor shall not assign any of its rights or delegate any of its responsibilities under this Contract without the prior written consent of VTA.

### **7.18. Subcontracts**

Contractor shall be fully responsible and liable for the products and actions of all subcontractors and suppliers of any tier, and shall include in each subcontract any provisions necessary to make all of the provisions of this Contract fully effective. Contractor shall provide all necessary plans, specifications, schedules, and instructions to its suppliers and subcontractors to enable them to properly perform their work. Contractor shall submit executed copies of all subcontracts entered into pursuant to this Contract to VTA within **7 calendar days** of such execution but no later than **15 calendar days** prior to the start of subcontractor's work.

In accordance with Public Contract Code Sections 4100 – 4114, **Subletting and Subcontracting Fair Practices Act**, Contractor shall not substitute any subcontractor listed on the Bid Forms or Contract Forms without the express written approval of VTA. Further, any substitution of any subcontractor shall be subject to the requirements of **Appendix C Business Diversity Policy and Requirements**.

### **7.19. Waiver and Non-waiver**

A waiver by one party of a right to a remedy for breach of this Contract by the other party shall not be deemed to waive the right to a remedy for a subsequent breach by the other party. VTA's acceptance of goods, services or payment under this Contract shall not preclude VTA from recovering against Contractor or Contractor's surety for damages due to Contractor's failure to comply with this Contract.

### **7.20. Antitrust Claims**

In entering into a public works contract, or a subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor agrees to assign to the awarding body all rights and title to, and all interest in all causes of action it may have under Section 4 of the Clayton Act, or under the Cartwright Act, arising from the purchases of goods, services, or materials pursuant to the public works contracts or subcontracts. This assignment shall be made and become effective at the time the awarding body tenders final payment to Contractor, without further acknowledgement by the parties.

### **7.21. Stop Notices**

VTA will withhold payments otherwise due Contractor in order to satisfy Stop Notices which have been properly filed, in accordance with the requirements of California Civil Code Division 3, Part 4, Title 15, Chapter 4, regarding Stop Notices. Contractor shall include this **Section 7.21 Stop Notices** in all subcontracts and similar documents entered into by Contractor for the performance of Work under this Contract.

All Stop Notices, including Preliminary Notices, shall include a reference to the VTA contract number and the title of the Contract.

### **7.22. Reserved**

### **7.23. Reserved**

**AUTHORIZED REPRESENTATIVES AND COMMUNICATIONS**

**7.24. Authorized Representatives**

Contractor shall designate, in writing, before starting any Work, an Authorized Representative who, during performance of the Contract, shall have full authority to act on Contractor's behalf in all matters within the scope of this Contract.

When Contractor is comprised of two or more persons, firms, partnerships, or corporations functioning on a joint venture basis, said Authorized Representative shall have the authority to represent and act for the joint venture.

Said Authorized Representative shall be present at the Worksite at all times while Work is actually in progress. When Work is not in progress and during periods when Work is suspended, arrangements acceptable to VTA shall be made for any emergency Work which may be required.

Whenever said Authorized Representative is not present on any particular part of the Work where VTA may desire to give direction, orders will be given by VTA, which shall be received and obeyed by the superintendent or foremen who may have charge of the particular Work in reference to which the orders are given.

Except as hereinafter provided, all orders by VTA shall be given in writing. Those not so given are invalid and not binding. Emergency conditions dealing with safety of persons and protection of property are excepted and such oral directions will be confirmed in writing as soon as possible, but shall be immediately complied with by Contractor.

VTA will similarly designate, in writing, a VTA Authorized Representative to be its formal contact between VTA and Contractor. Said VTA Authorized Representative will be responsible for all matters relating to the execution of Work within the scope of this Contract and will decide all questions which may arise as to the quality or acceptability of the Work and as to the manner of performance and rate of progress of the Work; all questions which may arise as to the interpretation of plans and specifications; all questions as to the acceptable fulfillment of the Contract on the part of Contractor; and all questions as to compensation for Work performed.

Matters regarding the terms and conditions of this Contract shall be the responsibility of VTA's Procurement, Contracts and Materials Management Office.

Written notification to the other party shall be provided, in advance, of changes in the name or address or the scope of authority vested in such Authorized Representative.

Each Authorized Representative may, from time to time, delegate to other named individuals certain authority and responsibilities. The names of such individuals, the scope of their authority and responsibility, and the designation of their titles will be communicated to the other party in writing.

The designation of Authorized Representatives of the parties and their delegates as outlined above shall take place at the pre-maintenance meeting as specified in **Section 7.26 Pre-Maintenance Meeting**.

**7.25. Notices and Communications**

**7.25.1. Notices**

All notices and other communications concerning this Contract shall be written in English, shall bear the number assigned to this Contract by VTA and shall follow VTA's correspondence format and reference

system. Notices and other communications may be delivered personally, by private package delivery, by regular, certified, or registered mail, or any electronic means acceptable to VTA.

The names of the individuals for each of the parties and their addresses to which other communications and correspondence should be delivered will be established and made known to the other party at the pre-maintenance meeting as specified in **Section 7.26 Pre-Maintenance Meeting**.

A notice to VTA will be effective only if it is delivered to VTA's Authorized Representative at the address to be made known to Contractor at the pre-maintenance meeting as specified in **Section 7.26 Pre-Maintenance Meeting**.

### **7.26. Pre-Maintenance Meeting**

After the execution of the Contract, a pre-maintenance meeting will be held at a time and place to be designated by notice from VTA. At this meeting, detailed procedures will be discussed for handling the following items:

- Authorized Representative
- Correspondence
- Notices
- Invoice payments
- Schedules
- Community relations
- Other pertinent agenda items

### **7.27. Project Meetings**

VTA will schedule and preside over all meetings (including, but not limited to, weekly, pre-production, periodic, and special meetings) throughout the progress of the Work. Agendas for the meetings may include, but are not necessarily limited to, discussions of performance observations, problems, conflicts, schedules, delivery schedules, supplier fabrication, quality standards, Contract modifications, and any other topics that VTA determines to be relevant to the project. Contractor attendance at these meetings is mandatory.

### **7.28. Publicity Releases**

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this Contract or the Work hereunder which Contractor or any of its subcontractors desires to make shall be subject to approval by VTA prior to release.

TIME FOR PERFORMANCE OF WORK

**7.29. Authorization to Proceed**

Contractor shall commence performance of Work under this Contract immediately after receipt of the executed Contract issued by VTA, and shall continuously and diligently prosecute the Work to completion on or before the time or times set forth in **Section 6 Special Conditions** of this Contract. Any work performed or expenses incurred by Contractor prior to Contractor's receipt of the executed Contract is entirely at Contractor's risk.

**7.30. Time of Completion**

Time is of the essence in this Contract. Contractor's failure to perform Work, deliver goods, or provide services on time and in accordance with the approved progress schedule shall be a material breach of this Contract.

Refer to **Section 6.22 References to Days** for definitions of days and recognized holidays.

Time periods measured in days will be computed by excluding the day upon which the period begins to run and including the last day of the period unless the last day is Saturday, Sunday, or a holiday, in which case the period shall run until, and shall include, the next day that is not a Saturday, Sunday, or holiday.

All time periods measured in days shall be based upon calendar days unless specified otherwise.

**7.31. Reserved**

**7.32. Excusable Delays and Extensions of Time**

Except with respect to defaults of Subcontractors, neither Contractor nor VTA shall be considered in default by reason of any failure to perform in accordance with the Contract schedule if such failure arises out of causes beyond the control and without the fault or negligence of the defaulting party. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the defaulting party. If the failure to perform of either Contractor or VTA is caused by the default of a subcontractor or a third party Contractor to VTA, and if such default arises out of causes beyond the control of all the parties, and without the fault or negligence of any of them, neither Contractor nor VTA shall be in default by reason of any such failure to perform. As used herein, the terms "Subcontractor" and "Subcontractors" mean subcontractor(s) or supplier(s) to Contractor at any tier.

Should Contractor suffer delay because of cause(s) as described herein, VTA may, upon receiving Contractor's fully documented and supported written request timely made, make an equitable revision in the Contract schedule or other terms of the Contract as appropriate.

**7.33. Reserved**

PERFORMANCE OF WORK

**7.34. Contractor's Work Area**

Contractor shall be responsible for all security, utilities and upkeep of Work and laydown areas and for their restoration to a condition equal to that which existed when Contractor began using such areas. Such

restoration shall be complete before final payment is made to Contractor. If VTA areas are not available to Contractor, Contractor shall be responsible for furnishing whatever areas it deems necessary to perform Work under this Contract, at no additional cost to VTA.

Contractor shall confine its equipment, storage of materials, and maintenance operations to such limits as may be directed by VTA and shall not unreasonably encumber the Worksite and roads with its materials and equipment. Contractor shall enforce the instructions of VTA regarding signs, advertising, fires, danger signals, barricades, and smoking, and shall require all persons employed on the Work to comply with all building or institutional regulations, vehicle, street and highway codes while on the premises and roads.

### **7.35. Reserved**

### **7.36. Character of Workmen**

If any Subcontractor or person employed by Contractor shall appear to VTA to be incompetent or to act in a disorderly, improper or unsafe manner, such person shall be discharged immediately on the request of VTA, and such person shall not again be employed on the Work.

### **7.37. Working Environment**

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

### **7.38. Public Convenience and Safety**

Contractor shall so conduct its operations as to offer the least possible obstruction and inconvenience to the public and shall have under maintenance no greater length or amount of work than can be prosecuted properly with due regard to the rights of the public. Unless otherwise provided in the Contract, all public traffic shall be permitted to pass through the Work with as little inconvenience or delay as possible. Where possible, such traffic shall be routed on new or existing paved surfaces. Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by Contractor at its expense. Existing traffic signal and highway lighting systems shall be kept in operation for the benefit of the traveling public during progress of the Work, and other forces will continue routine maintenance of existing systems.

Contractor shall install signs, lights, flares, barricades, and other facilities for the sole convenience and direction of public traffic and shall furnish competent flaggers or a uniformed police officer, if required, whose sole duties shall consist of directing the movement of public traffic through or around the Work.

Work shall be performed in such a manner as to eliminate unnecessary noise, obstructions and other annoyances to occupants. Contractor will not encumber premises with materials, equipment, and/or parking of cars; Contractor shall store materials, equipment and park cars in designated areas.

See **Section 8 Technical Specifications** for additional traffic control requirements, if any.

### **7.39. Cooperation/Coordination and Work by Others**

Contractor shall coordinate its Work with all other contractors and subcontractors performing Work on the site. Contractor shall schedule its Work so as to avoid conflicts with other contractors and to avoid damage to completed or incomplete Work. Contractor shall be responsible for any damage to the Work

of other contractors or subcontractors if Contractor's actions resulted in such damage and are a) willful or b) negligent and the proximate cause. Contractor shall take immediate action to remedy such damage so as to not delay the immediate prosecution of the Work.

#### **7.40. Security**

Contractor shall provide and be responsible for all security at the Worksite which is required to protect its material and equipment and all Work in place. Contractor shall also be responsible for providing all security and traffic control required by any city having jurisdiction in the area where Work is being performed.

#### **7.41. Product Options, Supplier Approval and Substitutions**

For products specified in this Contract or in Contractor's submittals by brand name or manufacturer, whether or not followed by the words "or approved equal," Contractor shall select any product or manufacturer named, or shall submit a request to substitute an equal product or manufacturer. As required by the California Public Contracts Code §3400, such request shall be made within **35 calendar days** from date of the Notice of Award in order to receive consideration, unless later submission of a request is agreed to by VTA. Contractor shall submit a separate request for each substitution. The burden of proof as to the equality of any material, process or article shall rest with Contractor. VTA's determination of the equality or superiority of an article proposed for substitution shall be based upon but need not be limited to consideration of such factors as are specified in the Technical Specifications; dimensional compatibility with other materials with which it combines to produce a unified design system; all aspects of finished appearance including form, texture, and color, as it affects other design elements. In the event an approved substitution is more expensive than the specified materials, process or article, the difference in cost of such material, process or article so furnished shall be borne by Contractor. Contractor may not make a substitution without VTA's prior written approval. If applicable, specific requirements for the submittal of such requests, if any, will be contained in **Section 8 Technical Specifications**.

VTA shall approve or disapprove Contractor's request for substitution of suppliers or products within 30 days of VTA's receipt of all information required by VTA for such determination.

#### **7.42. Source of Materials**

Contractor shall be completely responsible for locating, identifying, and furnishing all materials required to be furnished under this Contract, except for VTA furnished materials specified in **Section 8 Technical Specifications**. VTA shall perform or cause to be performed all tests required to demonstrate to VTA's satisfaction that the proposed materials satisfy the requirements of the Contract.

#### **7.43. Reserved**

#### **7.44. Reserved**

#### **7.45. Protection and Restoration of Property**

In addition to any other requirements imposed by law, Contractor shall shore up, brace, underpin, and protect as may be necessary, all foundations and other parts of all existing structures adjacent to and adjoining the Worksite which are in any way affected by Contractor's operations. Whenever any notice is required to be given by VTA or Contractor to any adjoining or adjacent landowner or other party before beginning any Work under this Contract, such notice shall be given by Contractor.



Any damage arising from or in consequence of the performance of the Contract, to improvements or property, whether above or below ground, private or public, within or adjacent to the project limits, shall be repaired at once by Contractor. If the best interests of VTA requires such repair to be made prior to the execution of any part of the Work included in this Contract, VTA will so notify Contractor who shall delay or discontinue the performance of that part of the Work until the necessary repair has been made. Such delay shall not be considered unavoidable, and no extension of time for completion of the contract will be made.

When ordered by VTA to make any such repair, Contractor shall start work thereon within four hours and shall prosecute the same with diligence to completion. Upon failure of Contractor to so comply with such order, or upon Contractor's failure to make immediate emergency repairs which are necessary in the best interests of VTA or of the Public, VTA shall have the authority to cause such repair to be made and to deduct the costs thereof from any money due, or which may become due Contractor.

In any emergency affecting the safety of life or property including adjoining property, Contractor, without special instructions or authorization from VTA, is authorized to act at Contractor's discretion to prevent such threatened loss or injury, and Contractor shall so act whether or not it is instructed to do so by VTA.

**7.46. Reserved**

**7.47. Reserved**

**7.48. Inspection**

At all times, Contractor must give VTA access to the Work during maintenance and furnish VTA with every reasonable facility for verifying that the materials and workmanship conform to the requirements of the Contract. All work done and all materials furnished are subject to VTA's on-site and off-site inspection and approval. VTA may, but is not obligated to, test and inspect, either at Contractor's, its subcontractor's, or its supplier's facility, all components, subsystems or workmanship prior to incorporation of such components into the Work and prior to acceptance of the Work by VTA. Following such testing and inspection, VTA will issue a deficiency list to Contractor listing those items which fail to comply with the Contract. VTA may either reject or require correction of defective material, workmanship, or nonconformity to this Contract. Contractor shall, at its own expense, make available tools, pits, hoists, scaffolds, platforms, other equipment, facilities, drawings, and assistance as may be necessary for inspections or tests.

VTA's performance of, or the election not to perform, any such inspections does not relieve Contractor of any responsibility for complete Contract performance.

Where shop inspection is required by the terms of the Contract, Contractor must not ship materials until VTA releases such materials for shipment.

Contractor must not cover any work until either VTA has inspected it or given Contractor written notice that VTA has elected not to inspect it. Re-examination of covered and questioned work may be ordered by the Authorized Representative at any time prior to final acceptance. If so ordered, Contractor must uncover the work.

VTA will bear the costs its inspectors; such costs are not a part of the Contract Price. However, VTA will backcharge to Contractor any costs of re-inspection. Except as otherwise expressly provided in this Section 7.48, all Contractor must bear all costs for Contractor's compliance with this Section 7.48.

## **7.49. Certificates of Compliance and Testing**

### **7.49.1. Certificates of Compliance**

When so authorized in the Contract or when permitted by VTA, the use of certain materials or assemblies will be allowed if accompanied by a Certificate of Compliance. VTA reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance. If such use is permitted, the form of the Certificate of Compliance and its disposition shall be as directed by VTA. The certificate shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall be furnished with each lot of material delivered to the Work and the lot so certified must be clearly identified in the Certificate.

All materials used on the basis of a Certificate of Compliance may be sampled and tested by VTA at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve Contractor of responsibility for incorporating material in the Work which conforms to the requirements of the Contract and any such material not conforming to such requirements will be subject to rejection whether in place or not.

### **7.49.2. Testing**

Contractor must, at Contractor's sole cost, obtain the services of an independent testing company to perform all testing of materials and work in accordance with the Contract Documents.

**VTA may, at its discretion, perform or cause to be performed test of materials and work independent of Contractor's responsibility above.** When VTA exercises its discretion, Contractor must furnish without cost to VTA, adequate samples of all materials necessary for testing, and must also designate the source of such material where appropriate.

### **7.49.3. Furnish without Charge**

When requested by VTA, Contractor must furnish, without charge, samples of all materials entering into the Work, and no material will be used prior to approval by VTA, except as provided in this **Section 7.49 Certificates of Compliance and Testing**. Samples of material from local sources must be taken by or in the presence of VTA, otherwise the samples will not be considered for testing.

## **7.50. Removal of Rejected or Unauthorized Work**

Contractor must remedy or remove and replace in a manner acceptable to VTA all work that has been rejected. No compensation will be made for such removal, replacement or remedial work.

Any work performed outside of the limits of Work shown on the drawings or established by VTA, or any extra work done without written authorization of VTA will not be paid for. Upon order of VTA, Contractor must remedy or remove and replace such unauthorized at Contractor's expense.

If Contractor fails to comply within a period of seven days (or such longer period as VTA may authorize in writing) after receipt of notice from VTA specifying such failure, VTA may cause the rejected or unauthorized work to be removed, replaced, or remedied, and to deduct the costs thereof from any moneys due to Contractor.

## **7.51. Disposal of Materials**

Except for materials generated pursuant to **Section 7.9 Hazardous Materials or Unusual Conditions**, Contractor must dispose of all excess materials generated during the performance of this Contract. When any material is to be disposed of outside the project area, other than a public dump, Contractor must first

obtain a written permit from the property owner on whose property the disposal is to be made and Contractor must file with VTA said permit or a certified copy thereof together with a written release from the property owner absolving VTA from any and all responsibility in connection with the disposal of material and said property, and before any material is disposed of on said property, Contractor must obtain written permission from VTA to dispose of the material at the location designated in said permit.

#### **7.52. Protection of Completed Portions of Work**

Contractor must protect completed portions of the Work until final acceptance of the Work by VTA. Contractor must take prompt action to remedy or repair any and all damage sustained to Work that is partially or wholly complete and has not yet been accepted by VTA.

#### **7.53. Clean-up**

In addition to any requirements which may be included in **Section 8 Technical Specifications**, Contractor must at all times during performance of the Work, keep the site clean from all rubbish and debris. Before final inspection of the Work, Contractor shall clean the material sites and all ground occupied by it in connection with the Work of all rubbish, excess materials, falsework, forms, temporary structures, and equipment. All parts of the Work shall be left in a neat and presentable condition.

#### **7.54. Reserved**

#### **7.55. Final Inspection and Acceptance of All or a Portion of the Work**

##### **7.55.1. Final Inspection and Acceptance of all the Work**

When Contractor considers that all of the Work covered under this Contract has reached final completion, Contractor must so inform VTA in writing. If necessary and required, acceptance tests on the Work will be performed as set forth in **Section 8 Technical Specifications**. VTA will prepare a punchlist covering the Work that fails to pass the acceptance tests or is otherwise unacceptable and will reject such Work. Contractor must proceed immediately to correct or replace unsatisfactory, incomplete or unacceptable work. For items of Work not completed by Contractor VTA may proceed to have the items corrected or completed using VTA or third-party forces in accordance with **Section 7.50 Removal of Rejected or Unauthorized Work**. VTA will deduct the costs of such corrections from compensation otherwise due Contractor.

Unless otherwise stipulated, title to such rejected Work and risk of loss will remain with Contractor, and Contractor must correct all defects or damage at Contractor's cost. All acceptance testing of Work which has been rejected previously will be at Contractor's expense; costs incurred by VTA to perform such re-tests will be deducted and withheld by VTA from payments otherwise due to Contractor.

Final acceptance of all of the Work deemed complete will occur after successful completion of all testing and deficiency and punchlist items, and VTA's determination that the Work conforms in all respects to all the Contract requirements. VTA will inform Contractor of such acceptance of the Work by issuing a written notification stating that the Work has been completed in accordance with the Contract requirements and is accepted under the terms and conditions thereof. After VTA has formally accepted the Work, Contractor will be relieved of the duty of maintaining and protecting the accepted Work and will not be required to perform any further Work thereon; Contractor will be relieved of its responsibility for injury to persons or property or damage to the Work which occurs after formal acceptance by VTA. Acceptance of the Work does not relieve Contractor from responsibility for errors, improper fabrication, non-conformance to a Contract requirement, latent defects, or for deficiencies within Contractor's control. Unless otherwise

stipulated, all warranties begin with the date of such acceptance of all of the Work. Coincident with such acceptance, VTA may record a Notice of Completion.

#### **7.55.2. Final Inspection and Acceptance of a Portion of the Work**

VTA may at its discretion accept a discrete portion of the Work covered under this contract. When VTA considers that a discrete portion of the Work covered under this Contract has reached final completion, VTA will inform Contractor in writing. If necessary and required, acceptance tests on the discrete portion of Work will be performed as set forth in **Section 8.0 - Technical Specifications**. VTA will prepare a punchlist covering any part of the discrete portion of Work that fails to pass the acceptance tests or is otherwise unacceptable and will reject such Work. Contractor must proceed immediately to correct or replace unsatisfactory, incomplete or unacceptable Work. For items of Work not completed by Contractor, VTA may proceed to have the items corrected or completed using VTA or third-party forces in accordance with **Section 7.50 Removal of Rejected or Unauthorized Work**. VTA will deduct the costs of such corrections from compensation due Contractor.

Unless otherwise stipulated, title to such rejected Work and risk of loss remains with Contractor, and Contractor must correct all defects or damage at Contractor's cost. All acceptance testing of Work which has been rejected previously will be at Contractor's expense and costs incurred by VTA to perform such re-tests will be deducted and withheld by VTA from payments otherwise due to Contractor.

Final acceptance of a discrete portion of Work deemed complete will occur after successful completion of all testing and deficiency and punchlist items, and VTA's determination that the Work conforms in all respects to all the Contract requirements. VTA will inform Contractor of such acceptance of the Work by issuing a written notification stating that the Work has been completed in accordance with the Contract requirements and is accepted under the terms and conditions thereof. After VTA has accepted the Work, Contractor will be relieved of the duty of maintaining and protecting the accepted Work and will not be required to perform any further Work thereon; Contractor will be relieved of its responsibility for injury to persons or property or damage to the Work which occurs after formal acceptance by VTA. Acceptance of a discrete portion of the Work does not relieve Contractor from responsibility for errors, improper fabrication, non-conformance to a Contract requirement, latent defects, or for deficiencies within Contractor's control. Unless otherwise stipulated, all warranties begin with the date of such acceptance of the particular discrete portion of the Work.

### **COMPENSATION, PAYMENTS, RECORDS AND AUDIT**

#### **7.56. Compensation**

Contractor accepts the compensation set out in the Contract as full payment for the Work.

No compensation will be made in any case for the loss of anticipated profits.

Contractor shall submit invoices in duplicate, and invoices must contain the following information:

- Maintenance Agreement number
- Item number(s)
- Description of items
- Description of work performed
- Unit prices, identifying taxable from non-taxable
- Extended prices

Invoice payment terms will be computed from date of receipt of a correct and proper invoice prepared in accordance with terms of this Contract. VTA will pay Contractor within 30 days after receipt by VTA of a proper, fully documented, undisputed invoice.

Payment is deemed to have been made when VTA mails or electronically transferred the payment.

**7.57. Reserved**

**7.58. Certified Payrolls**

**7.58.1. Submit Certified Copies**

Contractor shall submit weekly for each week in which any Contract Work is performed a certified copy of all payrolls for its employees and a certified copy of all of its subcontractor's payrolls directly to the California State Labor Commissioner, Department of Industrial Relations and VTA within one week following the week when work was performed. The payrolls shall conform to the requirements of the **California Labor Code Section 1776** and shall be in a form acceptable to VTA. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

**7.58.2. Form of Certified Copies**

Unless otherwise specified in **Section 6 Special Conditions**, Contractor and all lower-tier subcontractors and suppliers (if performing covered work) shall be required to submit certified payrolls and labor compliance documentation electronically.

Electronic submittal will be a web-based system, accessed on the internet at the address(es) provided by VTA. The web-based system is LCPtracker. Contractor and each subcontractor will be given a Log On identification and password to access the reporting system. Contractor is responsible for managing and certifying all lower tier subcontractors certified payroll submittals.

Use of the system requires data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid, and Apprenticeship Certifications. Additionally, documents such as Apprenticeship Certifications, etc., will be electronically uploaded into the system.

Contractor will incorporate into every lower-tier subcontract and purchase order these instructions where labor compliance documentation is required.

In the event of a failure of the web based electronic system, Contractor shall be required to submit paper copies of certified payrolls and other required labor compliance documents.

Upon written request of Contractor, and at the sole discretion of VTA, any subcontractor may be permitted to submit paper copies of certified payrolls and other required labor compliance documentation in lieu of electronic copies.

**7.59. Reserved**

**7.60. Force Account Payment**

If work is directed by VTA to be performed on a force account basis, compensation shall be made as set forth in this provision. Such payment shall constitute full compensation to Contractor for work directed to be performed on force account and no additional compensation will be allowed therefore. Labor, materials and equipment used in the performance of work on a force account basis shall be approved daily by VTA.

### **7.60.1. Work Performed by Contractor**

Contractor will be paid the direct costs for labor, materials and equipment used in performing the Work as hereinafter provided except where agreement has been reached to pay in accordance with **Section 7.60.7 Work Performed by Special Forces**. A markup may be added to the total of the direct costs computed as provided in **Section 7.60.2 Labor**, **Section 7.60.3 Materials**, and **Section 7.60.4 Equipment Rental**. The added markup shall not exceed twenty percent (20%) of the cost of labor, fifteen percent (15%) of the cost of material, fifteen percent (15%) of equipment rental and five percent (5%) of the cost of subcontractors, including trucking.

The above markups shall constitute full compensation for all overhead costs (general overhead, bonding, supervision, office expenses, field office facilities, utilities, and transportation) and profit which shall be deemed to include all items of expense not specifically designated as cost or equipment rental in accordance with **Section 7.60.2 Labor**, **Section 7.60.3 Materials**, and **Section 7.60.4 Equipment Rental**.

When work paid for on a force account basis is performed by forces other than Contractor's organization, Contractor shall reach agreement with such other forces as to the distribution of the payment made by VTA for such work. No additional payment therefore will be made by VTA by reason of the performance of the Work by a subcontractor or other forces.

### **7.60.2. Labor**

Contractor will be paid the cost of labor for the workmen (including foremen when authorized by VTA) used in the actual and direct performance of the Work. The cost of labor, whether the employer is Contractor, subcontractor, or other forces, will be the sum of the following:

- **Actual Wages.** The actual wages paid shall include any employer payments to or on behalf of the workmen for health and welfare, pension, vacation, insurance, overtime, plus other additives in accordance with collective bargaining agreements
- **Labor Surcharge.** To the actual wages, as defined above, will be added a Labor Surcharge as set forth in the State of California Department of Transportation publication entitled *Labor Surcharge & Equipment Rental Rates*, which was in effect on the date upon which the Work was accomplished. Said labor surcharge shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workmen, other than actual wages as defined above and the actual subsistence and travel allowance.

### **7.60.3. Materials**

VTA reserves the right to furnish such materials as it deems advisable, and Contractor shall have no claims for costs and markup on such materials.

Only materials furnished by Contractor and necessarily used in the performance of the Work will be paid for by VTA. The cost of such materials will be the cost to the purchaser, whether Contractor, subcontractor or other forces, from the supplier thereof, except as the following are applicable:

- (a) If a cash or trade discount by the actual supplier is offered or available to the purchaser, it shall be credited to VTA notwithstanding the fact that such discount may not have been taken.
- (b) If materials are procured by the purchaser by any method which is not a direct purchase from and a direct billing by the actual supplier to such purchaser, the cost of such materials shall

be deemed to be the price paid to the actual supplier as determined by VTA. No markup except for actual costs incurred in the handling of such materials will be permitted.

- (c) If the materials are obtained from a supply or source owned wholly or in part by the purchaser, payment for these materials will not exceed the price paid by the purchaser for similar materials furnished from said source on contract items or the current wholesale price for such materials delivered to the jobsite, whichever price is lower.
- (d) If the cost of such materials is, in the opinion of VTA, excessive, then the cost of such material shall be deemed to be the lowest current wholesale price at which such materials are available in quantities concerned delivered to the jobsite, less any discounts as provided above.

#### **7.60.4. Equipment Rental**

Compensation for equipment used on force account work shall be determined from the latest schedule of equipment rental rates listed in the State of California, Business, Transportation and Housing Agency, Department of Transportation, Division of Construction Publication entitled *Labor Surcharge & Equipment Rental Rates* and in use at the time the equipment is used. The equipment rental rates listed in said publication shall be used regardless of ownership and any rental or other agreement, if such may exist for the use of such equipment entered into by Contractor. If it is deemed necessary by VTA to use equipment not listed in the publication, a suitable rental rate for such equipment will be established by VTA prior to the work being done. Contractor shall furnish any cost data which might assist VTA in the establishment of such rental rate.

The rental rate paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals.

Any delay or overtime for equipment agreed to by VTA will be paid for in accordance with factors stated in the above referenced publication.

Operators of rental equipment will be paid for as provided in **Section 7.60.2 Labor**.

All equipment shall, in the opinion of VTA, be in good working condition and suitable for the purpose for which the equipment is to be used.

Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

Individual pieces of equipment or tools having a replacement value of \$250 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefore.

Rental time will not be allowed while equipment is inoperative due to breakdowns.

#### **7.60.5. Equipment at the Worksite**

The rental time to be paid for equipment on the Work shall be the time the equipment is in operation on the Work being performed, and in addition, shall include the time required to move the equipment to the location of the Work and return it to the original location or to another location requiring no more time than that required to return it to its original location, except that moving time will not be paid for if the equipment is used at the Worksite on other than such work. Loading and transporting costs will be

allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made if the equipment is used at the Worksite on other than such Work.

The following shall be used in computing the rental time of equipment on the Work:

- When hourly rates are listed, less than 30 minutes of operation shall be considered to be one-half hour of operation.
- When daily rates are listed, less than 4 hours of operation shall be considered to be one-half day of operation.

**7.60.6. Equipment Not at the Worksite**

For the use of equipment moved onto the Worksite and used exclusively for work paid for on a force account basis Contractor will be paid the rental rates as determined in **Section 7.60.4 Equipment Rental**, and for the cost of transporting the equipment to the location of the Work and its return to its original location, all in accordance with the following provisions:

- The original location of the equipment to be hauled to the location of the Work shall be agreed to by VTA in advance.
- VTA will pay the cost of loading and unloading such equipment.
- The cost of transporting equipment in low bed trailers shall not exceed the hourly rates listed in the State of California Department of Transportation publication entitled Labor Surcharge & Equipment Rental Rates.
- The cost of transporting equipment shall not exceed the applicable minimum established rates of the Public Utilities Commission.

The rental period shall begin at the time the equipment is unloaded at the site of the Work, shall include each day that the equipment is at the site of the Work, excluding Saturdays, Sundays, and VTA holidays unless the equipment is used to perform the Work on such days, and shall terminate at the end of the day on which VTA directs Contractor to discontinue the use of such equipment. The rental time to be paid per day will be in accordance with the following:

Hours of Operation	Hours to be paid
0.....	4
0.5.....	4.25
1.....	4.5
1.5.....	4.75
2.....	5
2.5.....	5.25
3.....	5.5
3.5.....	5.75
4.....	6
4.5.....	6.25
5.....	6.5
5.5.....	6.75
6.....	7
6.5.....	7.25



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7.....	7.5
7.5.....	7.75
8.....	8
Over 8.....	Actual hours in operation

The hours to be paid for equipment which is operated less than 8 hours due to breakdowns, shall not exceed 8 less the number of hours the equipment is inoperative due to breakdowns.

When hourly rates are listed, less than 30 minutes of operation shall be considered to be one-half hour of operation. When daily rates are listed, payment for one-half day will be made if the equipment is not used. If the equipment is used, payment will be made for one day. The minimum rental time to be paid for the entire rental period on an hourly basis shall not be less than 8 hours or if on a daily basis shall not be less than one day.

Should Contractor desire the return of the equipment to a location other than its original location, VTA will pay the cost of transportation in accordance with the above provisions, provided such payment shall not exceed the cost of moving the equipment to the Work.

Payment for transporting, and loading and unloading equipment, as provided above, will not be made if the equipment is used on the Work in any other way than upon Work paid for on a force account basis

When work, other than work specifically designated as Work in the Contract Documents, is to be paid for on a force account basis and VTA determines that such work requires Contractor to move equipment onto the Worksite which could not reasonably have been expected to be needed in the performance of the Contract, payment for the use of such equipment at equipment rental rates in excess of those listed as applicable for the use of such equipment will be made subject to the following additional conditions:

- VTA shall specifically approve the necessity for the use of particular equipment on such Work.
- Contractor shall establish to the satisfaction of VTA that such equipment cannot be obtained from its normal equipment source or sources and those of its subcontractors.
- Contractor shall establish to the satisfaction of VTA that the proposed equipment rental rate for such equipment from its proposed source is reasonable and appropriate for the expected period of use.
- VTA shall approve the equipment source and the equipment rental rate to be paid by VTA before Contractor begins work involving the use of said equipment.

**7.60.7. Work Performed by Special Forces or Other Special Services**

When VTA and Contractor, by mutual agreement, determine that a special service or an item of work cannot be performed by the forces of Contractor, or those of any of its subcontractors, such service or work item may be performed by a specialist. Payment for such service or item of work, performed by a specialist on the basis of the current market price thereof, may be accepted without complete itemization of labor, material, and equipment rental costs when it is impracticable and not in accordance with the established practice of the special service industry to provide such complete itemization.

In those instances wherein a Contractor is required to perform work necessitating a fabrication or machining process in a fabrication or machine shop facility away from the jobsite, the charges for that portion of the Work performed in such a facility, may, by mutual agreement, be accepted as a specialist billing.

In lieu of the percent markups provided above in **Section 7.60.1 Work Performed by Contractor**, a markup not to exceed fifteen percent (15%) will be added to the specialist price, less a credit to VTA for any cash or trade discount offered or available, whether or not such discount may have been taken.

#### **7.60.8. Owner-Operated Equipment**

When "Owner-Operated Equipment" is used to perform work to be paid on a force account basis, Contractor will be paid for the equipment and operator, as follows:

- Payment for the Equipment will be made in accordance with **Section 7.60.4 Equipment Rental**.
- Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by Contractor to other workmen operating similar equipment already on the project or, in the absence of such other workmen, at the rates for such labor established by collective bargaining agreements for the type of workmen and location of the Work, whether or not the "Owner-Operator" is actually covered by such an agreement. A labor surcharge will be added to the cost of labor described herein, in accordance with the provisions of Subsection entitled "Labor Surcharge."
- To the direct cost of equipment rental and labor, computed as provided herein, will be added the markups for labor and equipment rental as provided in **Section 7.60.1 Work Performed by Contractor**.

If, at any time after Contractor commences the force account work, a method of compensation other than that specified in this **Section 7.60** has been agreed upon for the force account work or a portion of such work, such compensation shall be made in accordance with such agreement.

Contractor shall keep accurate daily records of the actual cost to Contractor for all work performed pursuant to this **Section 7.60** and shall make them available to VTA upon reasonable notice and request. Such records shall be maintained in such a manner so as to be completely discernible from records associated with the basic Contract scope.

### **7.61. Prompt Payment**

#### **7.61.1. Prompt Payment to Contractor**

**Public Contract Code Section 20104.50** requiring prompt payment to Contractors is applicable to this Contract. Undisputed and properly submitted payment requests shall be paid within thirty (30) days of receipt by VTA. Any undisputed and properly submitted payment request not paid within thirty (30) days shall accrue interest at the legal rate set forth in **Code of Civil Procedure Section 685.010**.

#### **7.61.2. Payment to Subcontractors**

Contractor shall adhere to all federal and California prompt payment laws and regulations including **Business and Professions Code Section 7108.5** requiring Contractor to pay subcontractors within seven (7) days of receipt of each progress payment to the extent of each subcontractor's interest therein, unless otherwise agreed to in writing between Contractor and the subcontractor.

Any violation of this provision shall subject Contractor or subcontractor to the penalties, sanctions and other remedies specified in **Section 7108.5 of the California Business and Professions Code**. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies

otherwise available to Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by Contractor or deficient subcontract performance, or noncompliance by a subcontractor.

This provision applies to all contractors and subcontractors.

Contractor must include in its subcontract language a provision that it will use appropriate alternative dispute resolution mechanisms to resolve any payment disputes with subcontractors or suppliers.

Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.

**7.62. Reserved**

**7.63. Reserved**

**CONTRACT MODIFICATIONS, DISPUTES AND CLAIMS**

**7.64. Reserved**

**7.65. Change Requests and Change Notices**

**7.65.1. Change Request**

Contractor may make a written request to VTA to modify the Contract (Change Request) based upon the receipt of, or the discovery of information that changes the scope, price, schedule, level of performance, or other facet of the Contract.

Contractor shall deliver a document entitled "Change Request" to VTA within thirty (30) days after receipt of, or the discovery of, information (other than receipt of a "Change Notice") that Contractor believes will cause a change to the scope, price, schedule, level of performance, or other facet of the Contract. Upon receipt of a Change Notice, Contractor shall follow the procedures of **Section 7.65.2 Change Notice**. All Change Requests, and any Claims based thereon including any request or claim for cumulative impact costs shall be deemed waived unless a Change Request is delivered to VTA within the thirty (30) calendar days specified herein.

The Change Request shall include information necessary to substantiate the effect of the change and any impacts to the Work, including any change in schedule or Contract Price, and shall include all existing documentation or a description of anticipated documentation. In addition, the Change Request shall contain a detailed description of the proposed adjustment to the Contract Price or currently approved progress schedule, or both, and shall reference any other provisions of the Contract that will require modification because of the change. If a Change Request proposes an adjustment in the Contract Price, upon request of VTA, Contractor shall submit a complete breakdown of costs including detailed pricing and back up information for all work and any impacts thereto contemplated by the change.

The unavailability of all information necessary to quantify the change shall not excuse the timely submission of the Change Request. Contractor shall supplement the Change Request with additional information or documentation, as it becomes available. If VTA has not received sufficient substantiating documentation or information within a reasonable time after receipt of the Change Request, such insufficiency may be grounds to deny the Change Request.

If a Change Request or portions thereof are acceptable to VTA, VTA will issue a Contract Change Order consistent therewith. If a Change Request or portions thereof are not acceptable to VTA, VTA shall notify Contractor in writing.

Any request by Contractor to modify the Contract must first be submitted to VTA and proceed as a Change Request pursuant to these provisions. Contractor may submit the matter as a Claim pursuant to **Section 7.68 Claims and Claim Resolution** only if: (i) the Change Request has been denied by VTA in whole or in part; or (ii) the Change Request has not been resolved within ninety (90) days after receipt by VTA.

In the event of a dispute, Contractor shall proceed with the Work without delay, as directed by VTA.

#### **7.65.2. Change Notices**

VTA may, at any time during performance of the Contract notify Contractor of changes to the Contract by issuing a **Change Notice** to that effect. Contractor shall, within fifteen (15) days after receipt of such Change Notice, provide to VTA a written response identifying any proposed adjustment in Contract Price, including any adjustment for cumulative impact costs and schedule to perform the changes identified in the Change Notice, unless another time period for response is specified in the Change Notice. Upon request of VTA, Contractor shall submit a complete breakdown of costs including detailed pricing information and backup for all work and any impacts thereto caused by the change. VTA shall then issue an appropriate change order.

If VTA directs Contractor to perform additional work, the basis for compensation for such work shall be either: 1) increase in quantity of a Contract Item(s), 2) negotiated lump sum price, 3) unit prices mutually agreed upon under the Schedule of Values, or 4) force account, as determined by VTA. The markups described in **Section 7.60.1 Work Performed by Contractor** shall be the maximum allowed for all additional work directed by VTA.

VTA retains the right to direct Contractor to complete a portion of the Work at a time different than that specified in the Contract or reflected in the currently approved progress schedule. Such direction will be in writing and will provide for an equitable adjustment in the compensation to be paid to Contractor, if any. If such direction modifies the amount of compensation or time required for the completion of the Work, an appropriate change order will be issued.

If Contractor and VTA cannot agree on the appropriate adjustment to the Contract Price or schedule, Contractor may either accept VTA's determination or identify and submit the matter as a Claim pursuant to the provisions of **Section 7.68 Claims and Claim Resolution**. In the event of a dispute, Contractor shall proceed with the Work without delay as directed by VTA.

#### **7.66. Change Order**

A change order is a written document issued by VTA, that:

- Changes the Total Contract Price, as modified by any previously executed change orders, or
- Alters the scope of Work under the Contract, or
- Alters the schedule for performance of the Work under the Contract as set forth in the currently approved schedule, or
- Makes any other change to the Contract, or makes a combination of any of the aforementioned Contract changes.

#### **7.67. Reserved**

#### **7.68. Claims and Claim Resolution**

As required by law, VTA sets forth the provisions of **Public Contract Code section 9204**, which apply to all claims by a contractor in connection with a public works project.

### **7.68.1. Claim Defined**

“Claim” means a separate demand by Contractor, sent by registered mail or certified mail with return receipt requested for:

- A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a VTA under a contract for a public works project;
- Payment by VTA of money or damages arising from work done by, or on behalf of, Contractor pursuant to the Contract and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled to; or
- Payment of an amount that is disputed by VTA.

### **7.68.2. Claim Requirements**

Claim requirements are as follows:

- (a) Any submittal intended by Contractor to be evaluated by VTA as a Claim shall be entitled “Claim”
- (b) All Claims must be submitted by Contractor within thirty (30) days after the date of the event giving rise to the Claim, such as, for example, the denial by VTA of a Change Request, the failure of VTA to respond to a Change Request within ninety (90) days after receipt of required substantiating information and documentation, or the issuance by VTA of a disputed Change Order. Any Claim not submitted within the specified thirty (30) days is waived.
- (c) Claims must be in writing and must be submitted with all documents reasonably necessary to substantiate the Claim. A Claim must state in as much detail as possible the basis for the Claim and the additional compensation or extra time to which Contractor believes it is entitled. If the Claim is silent regarding entitlement to extra time, Contractor is not entitled to any extra time in connection with the Claim. If the Claim is silent regarding additional compensation, Contractor is not entitled to any additional compensation in connection with the Claim.
- (d) Contractor must notify VTA promptly in writing of any changes in its estimates of additional compensation or extra time, and the notification must state the reasons for the changes.
- (e) All Claims and any amendments thereto shall include the fully executed certification set forth below. Any Claim submitted without a fully executed certification shall be rejected by VTA and returned to Contractor.

I, \_\_\_\_\_, BEING THE \_\_\_\_\_ (MUST BE AN OFFICER) OF \_\_\_\_\_ (CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH CONTRACTOR BELIEVES THE OWNER IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTION 12650 ET SEQ,

PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT, AND/OR OTHER SEVERE LEGAL CONSEQUENCES.

By \_\_\_\_\_

- (f) Contractor may not file any Claims after the date of final payment.

### **7.68.3. Claim Review**

VTA will conduct a reasonable review of the claim and respond in writing to Contractor's Claim within forty-five (45) calendar days after VTA's receipt of the Claim.

VTA's written response will identify what portion of the Claim is disputed and what portion is undisputed.

VTA and Contractor may, by mutual agreement extend the time period for VTA's review and response to the Claim.

If VTA needs approval from its governing body to provide Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

### **7.68.4. Payment of Undisputed Portion**

Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after VTA issues its written statement. If VTA fails to issue a written statement within the time specified or agreed, **Section 7.68.5 Meet and Confer** will apply.

### **7.68.5. Meet and Confer**

If Contractor disputes VTA's written response, or if VTA fails to respond to a Claim within the time prescribed, Contractor may so notify VTA, in writing, either within fifteen (15) days of receipt of VTA's response or within fifteen (15) days of VTA's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, VTA shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

Within 10 working days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, VTA shall provide Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed.

Any payment due on the undisputed portion of the Claim following the meet-and-confer conference shall be processed and made within 60 days after VTA issues its written statement.

Any disputed portion of the Claim, as identified by Contractor in writing, shall be submitted to nonbinding mediation, with VTA and Contractor sharing the associated costs equally. VTA and Contractor shall mutually agree to a mediator within 10 working days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion

of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to all other applicable contractual and legal provisions.

For purposes of this **Section 7.68.5**, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this **Section 7.68.5**.

Following the meet and confer conference, if the Claim or any portion remains in dispute, Contractor may file a Government Code claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a Government Code claim must be filed shall be tolled from the time Contractor submits its written Claim pursuant to the above provisions until the time the Claim is denied as a result of the meet-and-confer process, including any period of time utilized by the meet-and-confer process.

The above procedures do not apply to Government Code claims for tort damages and are not intended, and shall not be construed, to change the time for filing such claims.

#### **7.68.6. Inaction Deemed Rejection**

Failure by VTA to respond to a Claim within the time periods described in this **Section 7.68** or to otherwise meet the time requirements of **Public Contract Code Section 9204** shall result in the claim being deemed rejected in its entirety. A Claim that is denied by reason of VTA's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of Public Contract Code section 9204, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

#### **7.68.7. Subcontractor Claims**

If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against VTA because privity of contract does not exist, Contractor may present to VTA a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that Contractor present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to VTA shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, Contractor shall notify the subcontractor in writing as to whether Contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

#### **7.68.8. Waivers of Rights under Public Contract Code Section 9204**

A waiver of the rights granted by **Public Contract Code Section 9204** is void and contrary to public policy, provided, however, that (1) upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) VTA may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

### **7.68.9. Procedures for Civil Actions**

As required by law VTA sets forth below the provisions of **Public Contract Code Section 20104.4**, which applies to civil actions filed to resolve claims of \$375,000 or less:

- (a) Within 60 days, but no earlier than 30 days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.*
- (b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 commencing with Section 2016.0103 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.*
  - (2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.*
  - (3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.*
- (c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.*

However, unless otherwise agreed to by VTA and Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

The above claims procedures are also subject to **Public Contract Code § 20104.6**, which provides:

- (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the Contract.*
- (b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.*



**SUSPENSION OF WORK, CONTRACT TERMINATION**

**7.69. Suspension of Work**

In addition to the right of VTA to suspend Work under any other provision of this Contract, VTA may require Contractor to suspend all or part of the Work called for by this Contract at any time for up to **ninety (90) days** after a written Suspension Order is delivered to Contractor, and for any further period to which the parties may agree. The Suspension Order shall include the following:

- A clear description of the Work to be suspended;
- Guidance as to the action to be taken on subcontracts; and
- Other requests for minimizing costs.

Upon receipt of a Suspension Order, Contractor shall comply with its terms immediately and take all reasonable steps to minimize cost allocable to the Work covered by the Order during the period of work stoppage. Within the period specified by the Order, or within any extension of that period to which the parties may agree, VTA may:

- Terminate the Work covered by the Order as set forth in this section.
- Cancel the Suspension Order; or
- Allow the period of the Suspension Order to expire.

Contractor shall resume work upon the cancellation or expiration of a Suspension Order. An equitable adjustment shall be made in the Work scope, Contract Price, or Contract time, as appropriate, and the Contract shall be modified in writing in accordance with this section and **Section 7.32 Excusable Delays and Extensions of Time** if:

- The Suspension Order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this Contract; and
- Contractor asserts a claim for an adjustment within thirty (30) days after the end of the period of work stoppage; and
- The Suspension Order was not caused by Contractor's default or other act or omission within the control or responsibility of Contractor.

In preparation for and during suspensions of work, Contractor shall take every reasonable precaution to prevent damage to or deterioration of the Work. Contractor shall repair or replace, at no cost to VTA, Work that is damaged or deteriorated during a work suspension due to Contractor's failure to comply with this duty. If VTA determines that Contractor is not taking reasonable precautions and Contractor fails to take the corrective action within five days after written notice from VTA, VTA may cause such action to be taken and recover the reasonable cost thereof from Contractor.

**7.70. Termination for Convenience or in the Public Interest**

VTA may terminate the performance of Work in whole or in part at any time by written notice to Contractor if VTA determines that termination is in the best interest of VTA or the public. If performance of Work is so terminated, Contractor shall be entitled to payment for all Work performed acceptably and to payment for all acceptable goods or services ordered by and delivered to Contractor before termination, provided that Contractor provides a final itemized invoice, including all necessary documentation to substantiate all costs incurred, for the above amounts within thirty (30) days after receiving the termination notice.

## **7.71. Termination for Default**

### **7.71.1. Events or Conditions**

Contractor is in default under the Contract upon the occurrence of any one or more of the following events or conditions:

- (a) Contractor does not promptly begin the Work under the Contract Documents; or
- (b) Contractor does not perform the Work in accordance with the Contract Documents, including:
  - (i) conforming to applicable standards set forth therein in designing and/or constructing the Project, (ii) providing schedules or other documentation required by the Contract Documents, or (iii) refuses to remove and replace rejected materials or unacceptable Work; or
- (c) Contractor discontinues the prosecution of the Work (exclusive of work stoppage due to termination or suspension of the Work by VTA), does not prosecute the Work within the schedule, or prosecutes the Work so as to endanger the performance of this Contract in accordance with its terms; or
- (d) Contractor does not resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from VTA to do so or (if applicable) after cessation of the event preventing performance; or
- (e) Contractor becomes insolvent, or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts or makes an assignment for the benefit of creditors; or
- (f) Insolvency, receivership, reorganization or bankruptcy proceedings are commenced by or against Contractor; or
- (g) Any representation or warranty made by Contractor in the Contract Documents or any certificate, schedule, instrument or other document delivered by Contractor pursuant to the Contract Documents is false or materially misleading when made; or
- (h) Contractor breaches any agreement, representation or warranty contained in the Contract Documents; or
- (i) Contractor assigns or transfers the Contract Documents or any right or interest herein, except as expressly permitted by the Contract Documents; or
- (j) Contractor does not discharge or obtain a stay of any final judgment(s) or order for the payment of money against it in excess of \$25,000 in the aggregate arising out of the prosecution of the Work (provided that for purposes hereof posting of a bond in the amount of 125 percent of such judgment or order shall be deemed an effective stay); or
- (k) Contractor does not, absent a valid dispute, make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable law; or
- (l) Contractor fails reasonably to comply with any instructions of VTA consistent with the Contract Documents; or
- (m) Contractor violates any laws, regulations and ordinances, or order of any government entity applicable to Contractor, the Work, or the Contract; or

- (n) Contractor does not provide and maintain the Performance and Payment Bonds and insurance as required hereunder; or
- (o) Contractor or one of its subcontractors causes, through its negligence, gross negligence, recklessness, or willful misconduct, death or grievous bodily injury to any person or property damage in excess of \$25,000; or
- (p) Contractor does not defend or indemnify any party that Contractor is obligated to defend or indemnify under the Contract Documents; or
- (q) Contractor offers or gives any improper consideration, in any form, either directly or through an intermediary, to any VTA director, officer, employee, contractor, or authorized representative, with the intent of securing the Contract or the making of any determination with respect to Contractor's performance of the Work; or
- (r) Contractor is placed on the California State Labor Commissioner's list of debarred contractors pursuant to **Labor Code §1771.1 or §1771.7**; or
- (s) Contractor or any of its directors, members, officers, partners, principals, employees, or any Contractor's representative is convicted for a violation of any Law related to Contractor's obligations under the Contract, including without limitation, in connection with the Work, goods supplied, payments to be made, or Claims submitted.

#### **7.71.2. Notice and Procedures**

Contractor and its Surety are entitled to seven (7) days' notice and opportunity to cure any breach described in **Sections 7.71.1 (a) through (d) and (i) through (l), and any non-material breach described in Sections 7.71.1 (h) or (m)**. Contractor and its Surety are entitled to three (3) days' notice and opportunity to cure any breach described **Sections 7.71.1 (n) and (p)**. Except as specified above, Contractor and its Surety have no right to notice or opportunity to cure with respect to any breach described in **Sections 7.71.1 (e), (f), (g), (h) (m), (o), or (q) through (s)**. If Contractor is unable to cure the applicable default within the time period specified, but in VTA's reasonable determination (i) Contractor has diligently and continuously undertaken efforts to cure such default, and (ii) such failure to cure is beyond the control of Contractor, VTA may extend the cure period in accordance with its discretion.

If any breach described in **Sections 7.71.1 (a) through (s)** is not subject to cure or is not cured within the period (if any) specified, VTA may declare that an "Event of Default" has occurred and notify Contractor to discontinue the Work. The declaration of an Event of Default must be in writing and given to Contractor and Surety. In addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the Contract, VTA may assume any of Contractor's subcontracts, appropriate any or all materials and equipment on the Worksite and any or all work product, including plans and specifications, as may be suitable and acceptable, and may direct the Surety to complete the Contract or may enter into an agreement for the completion of the Contract according to the terms and provisions hereof with another contractor or the Surety, or use such other methods as may be required for the completion of the Contract, including completion of the Work by VTA. Upon completion of such work, Contractor is entitled to return of all unused materials and its equipment, tools and appliances, except that there shall be no claim on account of usual and ordinary depreciation, loss, or wear and tear.

If Contractor's right to proceed is so terminated, Contractor shall not be entitled to receive any further payment until the Work is completed. Contractor and its surety(s) shall be liable to VTA for any additional

costs of completion of the Work, including compensation for additional managerial and administrative services, plus liquidated damages accruing under the terms of this Contract from the Contract completion date, as extended by authorized time extensions, to the date of final completion.

If, after termination for failure to fulfill contract obligations, it is determined that 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.

#### **7.72. Contractor's Duties Upon Termination**

Immediately after receipt of a notice of termination, either for default or convenience (Notice of Termination), Contractor shall:

- Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
- Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
- Assign to VTA in a manner, at the times, and to the extent directed by VTA, all of the right, title, and interest of Contractor under the orders and subcontracts as designated by VTA;
- Terminate all other orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination; and
- Assign to VTA in a manner, at the times, and to the extent directed by VTA, all of the remaining right, title, and interest of Contractor under the orders and subcontracts so terminated.

### WARRANTY PROVISIONS

#### **7.73. Warranty**

It is a condition of this Contract that the equipment, materials or design furnished, and workmanship performed by Contractor or any subcontractor or supplier at any tier, shall conform to the requirements of this Contract and shall be free of any defect. Neither inspection, testing and acceptance by VTA of such equipment, materials, design or work performed, partial or final payment, nor any provisions of the Contract relieves Contractor from responsibility for any latent defect, gross mistakes or fraud. Contractor and its surety(s) warrant all equipment, materials, design and workmanship for a period of one (1) year from the date of final acceptance by VTA of all, or, in VTA's sole discretion, a discrete portion of the Work. Contractor shall extend to VTA any warranty from a subcontractor or supplier that exceeds the above warranty period. If additional or varying guarantees are required, they will be specified in **Section 6 Special Conditions** of this Contract. VTA retains the right, at its sole discretion, to assign to a third Party any warranty received under this Contract.

#### **7.74. Warranty Work**

Contractor is responsible for all warranty-covered repair work during the warranty period as specified above. Contractor shall provide at its own expense all spare parts and tools required for repairs. To the extent practicable, VTA will allow Contractor or its Authorized Representative to perform such work. When warranty repairs are required, VTA and Contractor's Authorized Representative must confer on the most appropriate remedy to be performed within a reasonable time. If Contractor fails to remedy any failure or defect within a reasonable time, VTA shall have the right to replace, repair, or otherwise remedy

the failure or defect at Contractor's expense. At its discretion, VTA may also perform such work if it deems necessary to do so to meet its operational commitments or other requirements. Contractor shall reimburse VTA for all expenses for such work including materials and labor. The hourly shop labor rates shall be based on VTA's current labor cost accounting system. Contractor shall reimburse VTA for such work within sixty (60) days of receipt of warranty claim.

**7.75. Warranty on Repaired or Replaced Parts**

Contractor warrants any materials, parts or components which are used for replacement under the initial warranty period again for the total original warranty period of the replaced particular material, part or component.

**7.76. Systematic Failures**

In the event that, during the warranty period, repairs or modifications necessitated by defective design, material, or workmanship occur to an extent in excess of ten percent (10%) of the components used for the same function in the same assembly or subsystem purchased under this Contract, Contractor shall promptly furnish all necessary labor and material to effect such repairs and modifications for every system delivered under the Contract under the terms and conditions outlined, including systems in which the item has not yet failed. When requested by VTA, Contractor will be required to provide a written failure analysis report for defective products supplied under this Contract and which occurred during the warranty period. The report shall be received by VTA within forty-five (45) days from the date of request.

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## SECTION 8 TECHNICAL SPECIFICATIONS

### DIVISION 01 – GENERAL REQUIREMENTS

#### 01 11 00 - SUMMARY OF WORK

##### 1.01 DESCRIPTION

- A. The Work is defined in Section 1.3 of the Contract Documents and is more fully described in these Technical Specifications.
- B. Contractor will perform ongoing maintenance and repair services at the VTA facilities. Certain portions of the Work will be regularly-scheduled preventive maintenance (“PM”) services, and certain portions of the Work will be performed on an on-call basis (“On-Call”), meaning that VTA may request unscheduled maintenance or repair/replacement services to remedy an unexpected WWTS issue or emergency.
- C. For any PM Work performed under this Contract, Contractor must submit a PM schedule as described in these Technical Specifications and prosecute its PM Work according to that schedule. Contractor shall provide flat rates for PM tasks on Bid Form #1.
- D. Any On-Call type Work performed under this Contract will be authorized by VTA via the issuance of a written Work Order.

##### 1.02 PROTECTING EXISTING FACILITIES AND LANDSCAPING

- A. Contractor shall adequately protect all existing facilities, structures, materials, landscape, piping, supply, and electrical systems. Any facility, asset, structure, utility, and/or landscaping damaged by any operation of Contractor or its subcontractors of any tier, as determined by VTA, must be replaced or repaired by Contractor at Contractor’s sole expense. As necessary for particular types of work, Contractor shall supply a Traffic & Pedestrian Safety Plan (“Safety Plan”) that will encompass all appropriate items from paragraphs C & D of this Section 1.03. Work will not begin until the Safety Plan is approved by the VTA Authorized Representative (as defined **Section 7.24, Authorized Representatives**).
- B. For Work that occurs at the Guadalupe Light Rail Transit facility, Contractor must ensure that all of its workers comply with VTA Railway Worker Protection training guidelines and requirements set forth in the Contract.

Contractor may charge (on an hourly basis as indicated on Bid Form 1) for the time required to meet the aforementioned regulatory requirements. Contractor’s Allowance (as defined in **Section 01 22 16 Unit Price Payments, paragraph 1.02 Allowances**) for meeting these regulatory requirements is limited in the following ways:

- Except for the Contractor’s Authorized Representative, for each worker attending RWP training, Contractor will be paid for the number of hours each employee spends in the RWP training class, not to exceed 5 hours of time per employee per year.
- Contractor’s Authorized Representative may charge up to two (2) hours of time per year for Track Allocation Meetings.

- If Work requires permitting outside of the standard annual permits described in the Contract Documents, Contractor will submit direct costs incurred by Contractor for such permits to VTA for reimbursement.
  - Notwithstanding the foregoing, Contractor's total Allowance for RWP training and Track Allocation Meetings for all employees will not exceed the maximum amount indicated on Bid Form 1.
- C. During performance of Work, Contractor must assure safe operation of VTA functions and prevent unnecessary downtime. Contractor must check in and out with VTA's on-site designated contacts. Contractor is responsible for coordinating safety while conducting Work to minimize risk of injury or damage to property, personnel, and/or equipment.
- D. All demolished materials, unclaimed leftover materials, or any debris manufactured by Contractor during performance of repair Work must be removed and disposed of in a manner permitted by the State of California. All debris or materials unclaimed by VTA will be the sole responsibility of Contractor.

### **1.03 WORK ORDER PROCEDURES DESCRIPTION**

- E. If, during the course of performing any Work (whether On-Call or PM), Contractor discovers any safety or operating deficiency issues relating to this Contract, Contractor will notify the VTA Designated Contact in writing of such so that VTA can determine whether a Work Order is needed. In such written notice, Contractor will provide a cost estimate of the needed repairs. The VTA Authorized Representative or Designated Contact must approve, pursuant to the Work Order procedures set forth herein, the course of action to be taken, if any.
- F. The only persons authorized to issue Work Orders on behalf of VTA, and the only persons from whom Contractor may accept Work Orders, are the VTA Authorized Representative or persons designated in writing as an approved contact by VTA's Authorized Representative (each a "Designated Contact").
- G. If VTA determines that On-Call type Work is needed, VTA will first assess the estimated cost of the needed On-Call type Work. The VTA Authorized Representative or Designated Contact may, in his or her sole discretion, confer with Contractor to assess the required scope of work for On-Call Work before a Work Order is issued to complete the underlying On-Call Work. Contractor must not proceed with On-Call Work until VTA authorizes such On-Call Work via a Work Order.
- H. VTA will issue a Work Order to Contractor describing the specific scope of work to be performed, and Contractor will perform the work described therein pursuant to the time and materials pricing terms and conditions of this Contract.
- I. VTA reserves the right to competitively bid any On-Call type Work in excess of \$2,500.00.
- J. VTA does not guarantee a minimum number of Work Orders to be issued hereunder for On-Call type Work, and any quantities of On-Call type Work set forth in the Contract are estimates only. On-Call type Work will be billed either on a (i) fixed price basis or (ii) time and materials basis, as agreed to in writing by both parties in the relevant Work Order.
- K. All On-Call type Work must be performed pursuant to the schedule agreed to in the relevant Work Order.



- L. Most VTA facilities operate 24 hours per day, 7 days per week. Following receipt of a Work Order, unless a different schedule is agreed upon between the parties in the Work Order or a more prompt response is required (i.e., emergency), Contractor will give a minimum of 2 working days' notice to VTA before any On-Call Work may begin in order to allow for logistical preparations and notifications at said facilities.
- M. For any equipment replaced during On-Call type Work, Contractor must supply VTA with the applicable Original Equipment Manufacturer ("OEM") Manuals for the replacement equipment upon completion of the equipment replacement.

#### **1.04 SPECIFICATIONS**

All Work and materials must be performed in full accordance with applicable provisions of the American Society for Testing and Materials ("ASTM"), American National Standards Institute ("ANSI"), the relevant manufacturer's application specifications, and all applicable California State and Santa Clara County Building, Fire, Health and Safety Codes, except as may be specifically modified by the Contract Documents.

#### **1.05 TRAFFIC CONTROL**

- A. Traffic control will consist of providing, posting, and maintaining signs; erecting barricades or any other necessary equipment required to safely control all types of traffic through the Worksite. Contractor will perform traffic control in compliance with all applicable standards, including but not limited to, the **State of California Manual of Traffic Controls for Construction and Maintenance Work Sites**.
- B. Contractor will not receive separate payments from VTA for complying with these requirements. Contractor must include such costs in the Total Contract Price or individual Work Order, as applicable.

**END OF SECTION 01 11 00**

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## 01 22 16 - UNIT PRICE PAYMENT(S)

### 1.01 DESCRIPTION

- A. Except as otherwise specified in these Contract Documents, all Work will be paid for at a Contract price per unit measurement, as indicated in the Schedule of Quantities and Prices.
- B. In addition to other applicable terms set forth in the Contract, all Work performed under this Contract will be billed according to the procedures described in this Section.

### 1.02 ALLOWANCES

An "Allowance" means a Work item that will be paid by VTA to Contractor **for (i) the actual cost for the performance of the Work item, (ii) a mutually agreed upon lump sum amount, or (iii) on a time and materials basis (based on the rates indicated in Bid Form 1)**, up to the maximum value specified in the Contract Documents (see Bid Form 1). A Work item will be treated as an Allowance only if specifically designated as such in these Contract Documents or in a specific Work Order.

### 1.03 BILLING

- A. All pricing per unit will be a fixed dollar per unit as listed on Bid Form 1, Schedule of Quantities and Prices. Contractor must bill all PM as a flat rate service. All On-Call type Work will be billed pursuant to the underlying Work Order.
- B. In addition to the other invoicing requirements set forth in these Contract Documents, all invoices submitted under this Contract must comply with the following:
  - a. Invoices must be sent via email only to the VTA Accounts Payable Department at: [VTA.AccountsPayable@vta.org](mailto:VTA.AccountsPayable@vta.org).
  - b. Each invoice must be a separate PDF document, no combined files will be accepted, and each invoice must be in the format of the sample invoices attached hereto.
  - c. Contractor must label invoices with the proper (i) VTA Authorized Representative or VTA Designated Contact and (ii) facility location.
  - d. Invoices must contain the following information:
    - (1) The Work Order number (if applicable),
    - (2) The labor rate and number of hours worked per employee assigned to the Work Order (if applicable), and
    - (3) Any materials purchased by Contractor to perform the Work. Contractor will list individually by line item the type of material purchased, identifying each part by part/model number and the price charged to VTA for said part. Incidentals such as gloves, tape, sandpaper, etc. may be listed in aggregate, unless VTA determines that the aggregate amount is large enough to cause significant costs under incidentals, in which case Contractor will provide an itemized list of incidentals upon VTA's request.
- C. Charges for Work performed under a Work Order may begin only when Contractor arrives at the Worksite and must end when Contractor leaves the Worksite. Charges for anything other than (i) labor hours expended to complete the Work Order, (ii) the materials used

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to complete the Work Order, and (iii) appropriate and pre-approved disposal fees will not be accepted.

- D. A sample invoice has been included on the following page:

**SAMPLE PREVENTIVE MAINTENANCE INVOICE**

Due Date	Date	Invoice No.
XX/XX/20XX	XX/XX/20XX	XXXX

Customer
Santa Clara Valley Transportation Authority 3331 North First Street San José, CA 95134 Attn: Accounts Payable

Project Location
Santa Clara Valley Transportation Authority Division Title Preventive Maintenance Division Facility Representative

Customer PO/Contract Number	Terms	Work Order Number	PM Designation	
M19147	Net 30	N/A	Type of PM – Quarterly, Etc.	
Description	Date	Worker Qty.	Man Hours	Total
Preventive Maintenance – <i>Quarterly, Semi-Annual, or Annual</i> at River Oaks (or the appropriate division descriptor.)	3/15/20XX	2	84	16
	3/16/20XX	1		4
<b>Total Man Hours</b>				<b>20</b>

Invoice Total \$ Flat Rate

Payments/Credits	\$ XXX.XX
Balance Due	\$ Flat Rate

**SAMPLE ON-CALL INVOICE**

Due Date	Date	Invoice No.
XX/XX/20XX	XX/XX/20XX	XXXX

Customer
Santa Clara Valley Transportation Authority 3331 North First Street San José, CA 95134 Attn: Accounts Payable

Project Location
Santa Clara Valley Transportation Authority Division Title/Building Designation Area of Work Requestor's Name

Customer PO/Contract Number	Terms	Work Order Number	Project		
M19147	Net 30	XXXXXX	Building # and Area of Work		
Description	Date	Worker Qty.	Man Hours	Total	
Replace HP-4A – River Oaks Building A	3/15/20XX	2	8	16	
	3/16/20XX	1	4	4	
Total Man Hours				20	

Invoice Total \$ XXXX.XX

Payments/Credits	\$ XXX.XX
Balance Due	\$ XXXX.XX

**END OF SECTION 01 22 16**

## **01 31 14 - FACILITY SERVICES COORDINATION**

### **1.01 PM SCHEDULE OF WORK**

- A. PM will be conducted on the first week of each calendar month or at some other time as directed by the VTA Authorized Representative or VTA Designated Contact. Contractor will contact the VTA Authorized Representative or individual VTA Designated Contact to set up a yearly PM cycle to start with the first monthly inspection.
- B. A check-off list must be signed and dated by Contractor's technician upon completion of the PM and must be signed off by the VTA Authorized Representative or Designated Contact.
- C. Hours of work: PM and on-call work must be done at times authorized by the VTA Authorized Representative or Designated Contact at all locations to minimize disruption to VTA's Bus and Light Rail services and support functions. If an equipment problem occurs, the time and date time of repairs must be organized with the VTA Authorized Representative or Designated Contact. No repairs or other work will begin without the express authorization of the VTA Authorized Representative or Designated Contact.

### **1.02 ON-CALL REPAIRS**

For purposes of this Contract, On-Call means repairs outside of the scope of the annual PM inspection that do not exceed \$ 1,000.00 in total. Contractor will give a written estimate to the VTA Authorized Representative for any necessary Minor Repairs it identifies. Contractor may not begin any Minor Repairs until receiving written approval from the VTA Authorized Representative. For any equipment replaced pursuant to Minor Repairs, Contractor must supply OEM Manuals to the VTA Authorized Representative or appropriate Designated Contact upon completion of the equipment replacement.

### **1.03 UNSCHEDULED REPAIRS**

Unexpected issues will occur and "Unscheduled Repairs" of any VTA owned or operated properties will be a requirement of this Contract. The VTA Authorized Representative or Designated Contact will inform Contractor which properties have issues and need work or repair. The VTA Authorized Representative or VTA Designated Contact will also have the right to determine the cost-benefit analysis of and refuse repair on any property after receiving a written or oral estimate from Contractor.

For any Unscheduled Repairs estimated by VTA to exceed \$2,500.00, VTA reserves the right to obtain such repairs through a competitive procurement process. Any unscheduled repair approved by VTA in writing to be undertaken by Contractor will not exceed \$2,500.00 unless otherwise approved in writing by the VTA Authorized Representative or VTA Designated Contact. For any equipment replaced pursuant to Unscheduled Repairs, Contractor must supply OEM Manuals to the VTA Authorized Representative or appropriate VTA Designated Contact upon completion of the equipment replacement.

### **1.04 ON-CALL REQUEST RESPONSE TIMES**

- A. Non-Emergency On-Call Service Requests: When an On-Call service request is designated as a non-emergency by the VTA Authorized Representative or Designated Contact, Contractor must be prepared to respond during the agreed upon time period specified by VTA in the

applicable Work Order. If no time period is specified in the Work Order, or if VTA notifies Contractor of the service request via means other than a Work Order, Contractor will respond within the following time periods:

1. For On-Call service requests made before 10:00 AM PT, Contractor must report to the appropriate VTA Worksite within 4 hours of VTA notification to Contractor.
  2. For On-Call service requests made between 10:00 AM PT and 12:00 PM PT, Contractor must report to the relevant VTA Worksite before 5:30 PM PT on that same day.
  3. For On-Call service requests made after 12:00 PM PT, Contractor must arrange a mutually agreeable response time with the VTA Authorized Representative, to be documented in the applicable Work Order.
- B. Emergency On-Call Service Requests: Contractor must have a Designated Representative on call twenty-four (24) hours a day, seven days a week, to provide emergency On-Call repair services needed by VTA. An On-Call service request will be designated as an emergency by VTA when appropriate, including but not limited to instances where (i) units fail to operate, (ii) a hazardous condition exists, (iii) an unsafe condition exists, (iv) an unsafe environmental condition exists, or (v) execution of operational requirements are severely limited or prohibited due to safety conditions. VTA reserves the right to determine in its sole discretion what constitutes an emergency On-Call service request. When an On-Call service request is designated as an emergency by the VTA Authorized Representative or VTA Designated Contact, Contractor must report to the relevant VTA Worksite within two (2) hours of VTA notification to Contractor. Contractor must provide a contact phone number that will be continually monitored in order to respond as required by this Section 1.05. VTA reserves the right to contact an alternate vendor of its choosing in the event that Contractor for any reason is unable or refuses to provide such emergency service on any particular occasion

**END OF SECTION 01 31 14**



## **01 42 00 - REFERENCE STANDARDS**

### **1.01 REQUIREMENTS INCLUDED**

- A. This section includes abbreviations and acronyms of various industrial associations, trade associations, societies, organizations, and regulatory agencies and their meanings as used in these Contract Documents.
- B. The requirements specified herein are in addition to the requirements specified in the 2016 California Standard Building Codes (Title 24 of the California Code of Regulations).

### **1.02 REFERENCES**

- A. The Contract Documents contain references to various standard specifications, codes, practices, and requirements for materials, Work quality, installation, inspections, and tests. Such references are hereby incorporated into and made a part of the Contract Documents, and copies of such references may be provided to Contractor upon request to VTA.
- B. All specifications and standards of the American Society for Testing and Materials (ASTM) and the American National Standards Institute (ANSI) are identified in the various sections by abbreviation and number only (not by title). They are not further identified, because it is assumed that Contractor is familiar with, and has ready access to, specified ASTM and ANSI specifications and standards.
- C. When the effective date of a reference standard is not given, the most current edition or latest revision thereof and any amendments or supplements thereto in effect on the date of issue of these Contract Documents, as indicated on the cover, will govern the Work.
- D. Reference standards are not furnished with the Contract Documents because Contractor and its subcontractors, manufacturers, suppliers, and the trades involved are assumed to be familiar with their requirements.
- E. Contractor shall obtain, at its own cost, copies of the referenced standards direct from publication sources as needed for proper performance and completion of the Work. The VTA Authorized Representative will furnish, upon request, information as to how copies of the specified standards may be obtained.
- F. Bay Area Air Quality Management District (BAAQMD)
- G. National Fire Protection Association (NFPA):
  - 1. NFPA 30: Flammable Combustible Liquids
  - 2. NFPA 70: National Electric Code
- H. Underwriters Laboratories, Inc. (UL):

Contractor will provide and maintain referenced standards at the Worksite field office as needed for proper performance and completion of the Work.

The VTA Authorized Representative may require Contractor to support its Work by providing a reference to applicable standards. Upon request, Contractor must make all applicable standards available to the VTA Authorized Representative immediately and without charge.

**END OF SECTION 01 42 00**

## **01 45 00 - QUALITY CONTROL**

### **1.01 REQUIREMENTS INCLUDED**

This Section includes the general requirements for quality control for the Work. The requirements specified herein are in addition to quality control requirements specified elsewhere in these Contract Documents.

### **1.02 WORKMANSHIP**

- A. Contractor will comply with industry standards except where this Contract or applicable local, state, or federal laws or regulations prescribe more rigid standards or more precise workmanship.
- B. Upon request, Contractor will present to VTA the manufacturer's certification that the parts used by Contractor are appropriate for the equipment being repaired.

### **1.03 MANUFACTURER'S INSTRUCTIONS**

Contractor must comply with all applicable manufacturer instructions in full detail, including performance of each step in sequence. If the manufacturer instructions conflict with the Contract Documents, Contractor must request clarification from VTA's Authorized Representative or Designated Contact before proceeding with the applicable Work.

### **1.04 MANUFACTURER'S CERTIFICATE**

When required by these Technical Specifications or when requested by the VTA Authorized Representative or Designated Contact, Contractor will submit the manufacturer's certificate, in duplicate, to verify that all products meet or exceed the manufacturer's specified requirements.

### **1.05 FIELD MEASUREMENTS AND TEMPLATES**

- A. Contractor shall obtain all field measurements required for the accurate fabrication and application of the Work included in this Contract. Exact measurements are Contractor's responsibility.
- B. Contractor shall also furnish or obtain templates, patterns, and setting instructions as required for the Work.

### **1.06 MANUFACTURER'S SPECIFICATIONS AND INSTRUCTIONS**

- A. Unless otherwise indicated or specified by VTA or these Contract Documents, all manufactured materials, products, processes or the like will be supplied by a manufacturer specializing in the manufacture of all appropriate materials. All materials will be applied in accordance with the manufacturer's instructions, directions, or specifications. Said application will be in accordance with printed instructions furnished by the manufacturer of the materials concerned for the use under conditions similar to those at the Worksite.
- B. Any deviation from the manufacturer's printed recommendations must be explained and acknowledged in writing by the particular manufacturer as correct and appropriate for the circumstances. Contractor will be held responsible for applications contrary to the manufacturer's recommendations.

### **1.07 WORK QUALITY**

- A. Craftsmen or skilled workers with experience in the fabrication and application of the Work must be involved in shop or fieldwork. All Work hereunder must be performed in accordance with the best and accepted commercial practices of the trades involved.
- B. Finished Work must be free from defects or damage.
- C. VTA reserves the right to reject any materials and Work quality that is not considered to be up to the highest standards of the various trades involved. Such inferior material or Work quality shall be repaired or replaced by Contractor, as directed by VTA, at no additional cost to VTA.

### **1.08 QUALITY ASSURANCE**

- A. Qualifications of Technicians: Contractor will **use only qualified Journeyman Mechanics under local Union guidelines for apprentices.** All Work will follow Union standards for Journeymen and Apprenticeship rates for all Work performed on all VTA assets. The rejection by the VTA Authorized Representative of any portion of the Work will allow no tolerances for the lack of skill on the part of the Mechanic.
- B. "Mechanic" as used here defines all employees of Contractor involved in maintenance, repair, or replacement of any VTA owned or leased electrical equipment or materials.
- C. Single Source Responsibility: Contractor will provide only parts and supplies that are approved by the manufacturer for use in each piece of equipment, regardless of the brand or manufacturer.

### **1.09 WARRANTY/GUARANTEE**

The following provisions apply in addition to the warranty provisions found elsewhere in these Contract Documents:

- A. Upon completion of each particular task and acceptance by the VTA Authorized Representative or Designated Contact, Contractor will warranty the Work for a period of one (1) year.
- B. Defects noticed during the aforementioned warranty period will be repaired or replaced by Contractor at no cost to VTA.
- C. Included along with the warranty will be the name, address, and phone number of each manufacturer's representative.

**END OF SECTION 01 45 00**

**DIVISION 41 – MATERIAL PROCESSING AND HANDLING EQUIPMENT**

**41 34 23.33 - SPRAY PAINTING BOOTH**

**PART 1 - GENERAL**

**1.01 DESCRIPTION**

This section 41 34 23.33 describes the requirements for acquisition and delivery of paint solvents, maintenance, and repair of VTA owned paint gun washers and solvent distilling equipment.

NOTE: Solvent and paint debris removal is not part of this Contract and will be handled by others.

**PART 2 - MATERIALS**

**2.01 PAINT SOLVENTS**

- A. Contractor shall provide and add paint solvents as necessary to keep the paint systems equipment in proper operating condition. Existing solvents from the distilling equipment will be reused according to best management practices, industry standards, and manufacturer’s recommendations before being stored for removal by others.
- B. Contractor will supply new solvents only as necessary to meet the needs of the paint gun cleaning equipment.
- C. Contractor will manage all solvents in accordance with all State and Federal regulations applicable to each type of solvent used.

**2.02 EQUIPMENT PARTS AND MATERIALS**

Contractor will supply parts and materials to maintain the proper operation of the paint systems equipment, and such parts and materials must be supplied by the manufacturer or by a third party approved by the manufacturer to supply such parts and materials.

**2.03 EQUIPMENT INVENTORY**

The table below identifies the equipment covered as part of this Contract in addition to the location, model, and service interval requirement for each piece of equipment.

SITE	EQUIPMENT	MODEL	SERVICE INTERVAL
Cerone Overhaul & Repair	Paint Gun Cleaner	Safety Kleen 1077	Monthly
	220v Waste Minimizer	Safety Kleen 710.2Minimizer III	Monthly
North Division	Paint Gun Cleaner	Safety Kleen 1077	Monthly

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SITE	EQUIPMENT	MODEL	SERVICE INTERVAL
	220v Waste Minimizer	Safety Kleen 710.2Minimizer III	Monthly
Guadalupe Light Rail Division	Auto Gun Cleaner	Safety Kleen 1055	Monthly
	Paint Gun Cleaner	Safety Kleen 1077	Monthly
	220v Waste Minimizer	Safety Kleen 710.2Minimizer III	Monthly

**PART 3 – EXECUTION**

**3.01 CONTRACTOR REQUIREMENTS:**

- A. Contractors onsite representative (worker) must notify the site-specific VTA Designated Contact of Contractor’s arrival to the site and departure from the site unless previously arranged with that VTA Designated Contact.
- B. Contractor must use the proper equipment to prosecute the Work without negatively impacting operations at each VTA location.
- C. Contractor must have knowledge of proper procedures relating to maintenance and handling of solvents as described in this Contract.
- D. Contractor must obtain all necessary permits, licenses, and other federal, state, or local authorizations required for performing the Work prior to commencement of such Work.

**3.02 CONTRACTORS RESPONSIBILITIES**

- A. Contractor must follow all VTA procedures in the event of any emergency or emergency drill that may occur while Contractor is working on the premises. If during the Contractor’s presence on-site visit an emergency drill or actual emergency occurs, Contractor is required to take part in the drill or any other evacuation order that may occur. All Contractor’s personnel on-site during an emergency drill or actual emergency must be accounted for during the event by the VTA Authorized Representative, Designated Contact, or other authorized designees.
- B. The VTA Designated Contact will inform Contractor of the appropriate evacuation route and gathering point to insure compliance.
- C. Contractor will receive a list of VTA contacts upon award of the Contract.

**3.03 LOCATIONS OF PERFORMANCE:**

Contractor will perform Work at the following locations during the term of the Contract:

1. Cerone Bus Division  
3990 Zanker Road  
San Jose, CA 95134
2. North Bus Division  
1235 LaAvenida St.  
Mountain View, CA 94040
3. Guadalupe Light Rail Division  
101 West Younger Ave.  
San Jose, CA 95110

### **3.04 PM OF PAINT GUN CLEANERS**

- A. To guarantee safe maintenance on the spray-gun washer, Contractor must comply with the following procedures during its performance of Work related to the paint gun cleaner:
  1. Disconnect the air when making repairs or maintenance.
  2. Periodically check the efficiency and the state of the safety devices.
  3. Safety devices must never be tampered with or removed.
  4. The maintenance must be carried out by skilled or qualified individuals, according to the instructions given in this manual.
  5. The labels (pictograms) on the spray-gun washer provide information to the operator to avoid accidents. These labels must be kept clean and must be replaced if even partially damaged or detached. Use of the spray-gun washer is forbidden if even only one of the labels is missing from the point where it was placed by the manufacturer.
  6. Use only original or manufacturer-approved spare parts during repair work and maintenance.
  7. Make sure the machine is always connected to the ground wire.
  8. Lubricate the compressed air system 3-4 times per year as follows: Disconnect the air supply at the air inlet fitting and pour approx. 2-3 spoonful of oil for atomizers into the same fitting.
  9. Connect the air and set the timer.
  10. Clean or replace the dry filter depending on condition and manufacturers recommendation for replacement.
  11. Clean the air and vapor conveyer.
  12. Clean the collecting basin.
  13. Clean solvent inlet filter.
  14. Inspect and clean from time to time the air inlet filter inside the fitting if possible without disassembling the fitting.
  15. Check that the solvent level in the containers is not too high to prevent overflowing.

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16. Check that hoses are not bent, worn or broken and are well inserted into the containers.
  17. Check that the pump strokes are the manufacturers recommended strokes per minute.
  18. Dismantle and clean the pump silencer with compressed air or replace it as per manufacturers recommendations.
  19. Make sure that the discharge hose is always positioned down and the end of the tube is not immersed in the solvent.
  20. When removing the dirty solvent from the drum, clean and rinse the bottom of the drum.
- B. Contractor must clean the nebulizer as follows:
1. Ensure that the discharge hose IS NOT obstructed.
  2. Unscrew the fastening device(s).
  3. Dismantle the hose(s).
  4. Dismantle the fitting(s).
  5. Clean the nozzle(s)with an iron thread.
- C. Contractor must service the Membrane Pump as follows:
1. Make sure incoming air pressure is at the manufacturer's suggested level.
  2. Disconnect the pump air feeding hose and with the timer activated, and check that the compressed air is exiting.
  3. In case air continues to escape from the vent and there are no pump strokes, remove valve 54 from the pump and thoroughly clean the middle shutter.
  4. Ensure that the pump rotates steadily at manufacturer's specified strokes per minute. If not, adjust the adjustment screw(s) as necessary.
  5. If the pump does not prime and no solvent is delivered, check and clean the filter(s) and ensure that the drum contain at least the manufacturer's minimum amount of solvent.
  6. If the pump speed is normal and no solvent is delivered, check that the inlet ball is not stuck to its seat. If so, gently hit the inlet valve body with a small hammer while the pump is in operation. If the ball does not move from its seat, dismantle from this pump the hose and blow inside with air after you have closed the washer door or blow and hit simultaneously.
  7. If solvent comes out of the valve silencer then the membrane(s) are broken. Replace the membranes and the complete oscillator.
- D. Contractor must check for Insufficient Vapor Exhaust and repair as follows:
1. Check that the inlet air pressure is at least 6 bars.



2. Check that the exhaust tube is perfectly vertical for at least 1 meter and that there are no reductions in diameter or junctions or obstructions badly constructed.
3. Dismantle and clean the air inlet filter placed inside the connection fitting.
4. Clean or replace the dry filter.
5. Dismantle the nozzle and check that all the holes are not obstructed.

### **3.05 MAINTENANCE OF SOLVENT DISTILLERS**

- A. To guarantee safe maintenance on the solvent distiller, Contractor must comply with the following procedures during its performance of Work related to the solvent distiller:
  1. Make a general inspection of the unit for defects or unusual conditions.
  2. Remove any slop or build-up within the heating vessel.
  3. Lubricate the metal to metal seal of the heating vessel and lid with petroleum jelly.
  4. Check that debris is picked up and not allowed to accumulate around the unit.
  5. Ensure that debris is not allowed to restrict air flow through the condenser fins.
  6. Use a short, low pressure blast (25 psi) of compressed air into one of the clean solvent outlet tubes, while the unit is empty and the lid is off and air is restricted through the other clean solvent outlet. There should be no restriction of air flow between the clean solvent outlet tube and the hole(s) on the walls inside the heating vessel. Repeat with the other clean solvent outlet tube. Do not use the unit if there are any obstructions.
  7. Check the safety relief valve. Use a short, low pressure blast (5 psi) of compressed air into one of the clean solvent outlet tubes, while the unit is empty and the lid is in place and while air is restricted through the other clean solvent outlet tube, it should relieve pressure at less than 5 psi. If not, remove and clean or replace the safety relief valve. Be careful excess pressure can cause damage.
  8. Clean the condenser fins using a wire brush and a blast of compressed air.
  9. Make a general inspection of the unit for defects or unusual conditions. Do not use the unit with any defects or if in doubt about any conditions.
  10. Disconnect from power, remove the access panel, and carefully wipe any accumulation of dirt and debris that may have accumulated on the fan blades.
  11. Check solvent to make sure the unit is working properly and no water is in the system.
  12. Position the clean solvent outlet tubes above the clean solvent full line or upon cool down it can vacuum a bit of clean solvent back up the tubes into the heating vessel.
  13. Check the clean solvent outlet tubes and keep free of any accumulated build-up or obstructions.

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**VTA OWNED PAINT GUN CLEANER (TYPICAL)**



**VTA OWNED SOLVENT DISTILLER (TYPICAL)**



**SOLVENT DISTILLER (TYPICAL)**



**END OF SECTION 41 34 23.33**

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## **APPENDICES**

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PAINT GUN CLEANER MAINTENANCE  
CONTRACT M19147  
ISSUED FOR BID

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## **APPENDIX A INSURANCE REQUIREMENTS**

Without limiting Contractor's indemnification and defense of claims obligations to VTA, 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 pricing. 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. Completed Operations coverage must be continuously maintained in force for at least two (2) years after completion of the work under this Contract.
- 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 Employer's Liability insurance.

#### **2. Minimum Limits of Insurance**

Contractor must maintain limits no less than:

- a. General Liability (including umbrella/excess 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. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella insurance, but in no event may the General Liability primary policy limit per occurrence be less than \$2,000,000, unless Umbrella/Excess policies feature inception and expiration dates concurrent with the underlying policy, "Follow Form" coverage, and a "Drop Down" provision.
- b. Automobile Liability: \$1,000,000 limit per accident for bodily injury and property damage.
- c. Workers' Compensation and Employer's Liability: Statutory Workers' Compensation limits and Employer's Liability limits of \$1,000,000 per accident.

### **B. Self-Insured Retention**

The certificate of insurance must disclose the actual amount of any deductible or self-insured retention, or lack thereof, for all coverages required herein. 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 or deductible in excess of \$50,000, Contractor must provide a current financial report including balance sheets and income statements for the past three years, so that VTA can assess Contractor's ability to pay claims falling within the self-insured retention or deductible. Upon review of the financial report, if deemed necessary by VTA in its sole discretion, VTA may elect one of the following options: to accept the existing self-insured retention or deductible; require the insurer to reduce or eliminate the self-insured retention or deductible as respects VTA, its directors, officers, officials, employees and volunteers; or to require Contractor to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Applicable costs resulting therefrom will be borne solely by Contractor. Contractor may request execution of a nondisclosure agreement prior to submission of financial reports.

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

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

1. The policy 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, 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 cover at least two (2) years.
3. No prior acts exclusion may be added to the policy during the contract period.
4. The policy must allow for reporting of circumstances or incidents that might give rise to future claims.

**D. Other Provisions**

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

1. General Liability and Automobile Liability
  - a. VTA, its directors, officers, officials, employees, and volunteers must be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor, including VTA's general supervision of Contractor; products and completed operations of Contractor or subcontractors; premises owned, occupied, or used by Contractor; or automobiles owned, leased, hired, or borrowed by Contractor. The coverage must contain no special limitations on the scope of protection afforded to VTA, its directors, 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. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its directors, officers, officials, employees, or volunteers.

- c. 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.
  - d. The General Liability General Aggregate limit must apply per project, not per policy
  - e. The General Liability policy must be endorsed to remove the exclusion for railroad liabilities, with coverage at least as broad as that afforded by ISO CG 24 17.
2. All Coverages
- a. The insurer must agree to waive all rights of subrogation against VTA, its directors, officers, officials, employees, and volunteers for losses arising from work performed by Contractor and its subcontractors for VTA.
  - b. Contractor's insurance coverage must be primary insurance as respects VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by VTA, its directors, officers, officials, employees, or volunteers may apply only as excess to Contractor's insurance. Contractor's insurance must not seek contribution from VTA's insurance program.
3. Other Insurance Provisions
- a. The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.
  - b. If any coverage forms or endorsements required by this Contract are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Contract, VTA reserves the rights to require Contractor to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

#### **E. 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.

#### **F. Certificates of Insurance**

Contractor must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy must be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. Contractor must instruct its 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). All endorsements must be attached to the ACORD certificate in a single PDF document.

The certificates will:

- 1. identify the insurers, the types of insurance, the insurance limits, the deductibles, and the policy term,
- 2. include copies of all the actual policy endorsements required above, and
- 3. in the "Certificate Holder" box include:

**Santa Clara Valley Transportation Authority  
3331 North First Street  
San José, CA 95134-1906  
Contract No. M19147**

In the Description of Operations/Locations/Vehicles/Special Items Box:

1. the VTA Contract number must appear,
2. the list of policies scheduled as underlying on the Umbrella/Excess policy must be listed,
3. Certificate Holder must be named as additional insured, and
4. Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Contract documents.

It is a condition precedent to award of this Contract that all insurance certificates and endorsements be received and approved by VTA before Contract execution. No work may be performed until insurance is in full compliance. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

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

**G. Maintenance of Insurance**

If Contractor fails to maintain insurance as required herein, VTA, at its option, may suspend payment for work performed and/or may order Contractor to suspend work at Contractor's expense until a new policy of insurance is in effect.

**H. Renewal of Insurance**

Contractor will provide VTA with a current Certificate of Insurance and endorsements within ten (10) business days from the expiration of insurance.

Contractor shall instruct its insurance broker/agent to:

1. Submit all renewals of insurance certificates and required notices electronically in PDF format to [Insurance.Certificates@vta.org](mailto:Insurance.Certificates@vta.org).
2. Provide the following information in the "Certificate Holder" box:

**Santa Clara Valley Transportation Authority  
3331 North First Street  
San José, CA 95134-1906  
Contract No. M19147**

## APPENDIX B CONTRACT DATA REQUIREMENTS

Table B-1 represents only a partial listing of submittal requirements. The table is a reminder to Contractor of his responsibility to submit submittals in a timely manner.

Table B-2 Technical Submittals List follows Table B-1. The Technical Submittal List is intended to summarize the requirements for submittals as specified in the Contract Documents

Other submittals shall be required in accordance with the Technical Specifications. If conflicts exist between the lists and the referenced paragraph, the referenced paragraph will take precedence. Refer to Contract Section 6.6 for additional information and requirements for contract data submittals and technical submittals.

**Table B-1 Contract Data List**

	Description	Reference Section	Due Date/Frequency
50001	Maintenance Agreement	Section 5	Within 6 working days following Notice of Award
50002	Payment Bond	6.3.1	"
50003	Certificate of Insurance	6.2	"
50004	Listing of Subcontractors, Suppliers and Subconsultants	Section 4	"
50005	IRS Form W-9	2.4	"
50006	FTB Form 587 or 590	2.4	"
50007	Personnel to sign Change Orders	7.24	"
50008	Emergency Contacts	7.24	"
50009	Safety Officer – Name and title.	6.14	"
50010	Prevailing Wages List	7.8	"
50011	Certified Payrolls	7.58	With Invoice for Work
50012	SBE Utilization Report	Appendix C	End of Contact Year

For technical documents, refer to Technical Submittals List below.

**Table B-2 Technical Submittals List**

	<b>Item</b>	<b>Reference</b>	<b>Due Date/ Frequency</b>	<b>Comments</b>
51001	Schedule of Values	7.59	Within 10 days following Notice of Award	6 copies
51002	Illness & Injury Prevention Plan	6.14	Within 6 working days following Notice of Award	1copy
51003	Operations and Maintenance (O&M) Manuals	—	Before Final Acceptance	Copies As Specified
51004	Warranties	7.73	Before Final Acceptance	As Specified

**APPENDIX C**  
**BUSINESS DIVERSITY POLICY AND REQUIREMENTS**  
*(Ref SBE NG)*

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**1.1 Policy**

It is the policy of Santa Clara Valley Transportation Authority (VTA) to ensure that Small Business Enterprises (SBE) as defined in federal regulations at 13 CFR Part 121 have the opportunity to participate in the performance of contracts and subcontracts financed with local funds.

Any certified DBE is eligible to participate as a SBE toward the SBE participation goal.

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

<http://www.vta.org/About-Us/Inside-VTA/Small-Business-Enterprise-Program>

## **1.2 SBE Aspirational Goal**

There is no specific goal established for this Contract. However, Contractor is encouraged to make every effort to meet VTA's overall annual utilization goal as stated in the Invitation for Bid and the Bid Forms for this Contract.

## **1.3 Counting SBE Participation toward the Goal**

SBE firms may perform as prime contractors, subcontractors to a prime (1st tier), or subcontractor to subcontractor (2nd tier). Only the value of the work actually performed by the SBE, including materials and supplies, will be counted toward the SBE participation goal.

A SBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work. If a SBE does not perform or exercise responsibility of at least 30% of the total cost of its contract with its own work force, or if the SBE subcontracts a greater portion of work of a contract than would be expected on the basis of normal industry practice, then it will be presumed that the SBE is not performing a commercially useful function.

Credit for a SBE vendor of materials or supplies is limited to 60% of the amount to be paid to the vendor for the materials or supplies unless the vendor manufactures or substantially alters the goods. Credit for SBE brokers is limited to only the fees and commissions portion of the amount paid. All other firms receive 100% credit, less work subcontracted by the SBE to non-SBE firms, toward the SBE goal.

Credit for SBE trucking firms is limited to the amount performed by the SBE's own trucks and drivers and by certified SBE trucking subhauleders. A SBE trucking firm must itself own and operate at least one fully licensed, insured and operational truck used on the contract.

In a joint venture, only the portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the Work of the Contract that the SBE performs with its own forces will be counted toward the SBE goal.

Bidders are encouraged to utilize services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in VTA's community and marketplace.

## **1.4 Certification**

### **1.4.1 Firms Certified**

All SBE firms listed on the Bid Forms must be certified by at the time of Bid to be counted toward the VTA annual utilization goal. Contractor shall utilize the following sources for identifying certified SBE firms for solicitation: California Unified Certification Program (CUCP) database; California Department of General Services Small Business database; VTA SBE database.

### **1.4.2 Expired Certification**

During the life of a contract, work performed by SBE firms whose certification has expired will not continue to be counted toward the VTA annual utilization goal. Only work performed by a certified SBE firm will be counted toward the goal when the SBE firm has been paid.



## **1.5 Bid Submittals**

### **1.5.1 Bid Form 4**

Bid Form 4 lists SBE Bidder plus the subcontractor(s) or supplier(s) Bidder intends to use and count toward the SBE participation goal, with a complete description of services or supplies to be provided by each, work which the SBE further subcontracts to non-SBE firms, and the dollar value of each such subcontracting or supplies transaction. Instructions for completing the form are provided on the form.

### **1.5.2 Bid Form 5**

Bid Form 5 is Supplemental Contractor and Subcontractor information. Instructions for completing the form are provided on the form.

## **1.6 Award of the Contract**

VTA will award this Contract to the lowest responsible and responsive bidder as required by federal and California laws and VTA SBE policy.

Following the bid opening and submittal of all documentation, VTA will evaluate all bids and required information submitted by bidders to formulate a recommendation for award of the Contract.

## **1.7 Compliance**

VTA will advise Bidder of its ability to meet VTA's overall annual utilization goal.

## **1.8 Reserved**

## **1.9 Commitment**

The SBE Goal Achieved in the approved Bid Form 4 equates to a commitment from Contractor. Contractor must meet this commitment ("SBE Commitment") regardless of the participation goal stated during Contract advertisement.

## **1.10 Non-Discrimination**

Contractor shall make VTA's contracting requirements known to subcontractors, vendors and suppliers who are certified or accepted as certifiable as a SBE firm, as well as to non-SBE firms, and shall provide a practical opportunity for all firms to participate in this Contract.

## **1.11 Substitution of SBE Subcontractors by non-SBE Contractor**

### **1.11.1 Prior Written Consent**

A SBE subcontractor or supplier shall not be replaced without the prior written consent of VTA.

### **1.11.2 Substitution Process**

Contractor shall make good faith efforts to find another SBE subcontractor or supplier to substitute for the original SBE that is unwilling or unable to perform the Work. The efforts employed by the Contractor shall be those that one could reasonably expect a Contractor to take if the Contractor were actively and aggressively trying to engage a certified SBE firm to substitute for a SBE firm that has to be replaced and shall include the following:

- (a) Contractor shall immediately notify VTA in writing of its intent to replace a SBE firm, and of the reasons therefore, prior to any solicitation or advertisement for replacement firms. A copy of the notice shall be provided to the VTA Office of Business Diversity Program (OBDP).
- (b) VTA will provide written notice to the SBE firm of Contractor's request for substitution and of the reasons therefore and they will be requested to provide any written objections within five working days.
- (c) Contractor shall utilize the following sources for identifying certified SBE firms for solicitation: California SBE Uniform Certification Program database.
- (d) Contractor shall provide written notice to at least five firms in each work or material/supply category to be substituted. If Contractor provides written notice to less than five firms Contractor shall explain to OBDP in writing why the number of firms solicited was sufficient. Written notice shall be sent first to firms located in the County of Santa Clara and its contiguous counties as well as Sacramento and San Joaquin counties ("local firms") and then, where appropriate, to out-of-area SBE firms.
- (e) Contractor shall contact the SBE firms solicited to determine with certainty whether the firms are interested in bidding on the project. This follow-up shall be documented with telephone logs, fax logs or other written documentation and submitted to OBDP.
- (f) Contractor shall provide OBDP with the following information:
  - A list and copies of all SBE and non-SBE responses to the solicitation, including all bids received;
  - If a bid is rejected by Contractor, the reasons for the rejection;
  - If Contractor rejected a SBE firm as unqualified, a description of the qualification assessment conducted by Contractor and the factors considered.

### **1.11.3 Penalty**

A Contractor who fails to use good faith efforts to replace a SBE firm with another SBE firm may be subject to the imposition of a penalty of up to 15% of the value of the work of the subcontractor or supplier replaced.

## **1.12 Reports**

### **1.12.1 Monthly SBE Utilization Report**

Contractor must submit monthly SBE Utilization Reports electronically to the SBE Administrator, VTA Office of Business Diversity Program. These monthly reports shall be submitted electronically and the Contractor will document the dollar value of payments to SBE firms, and the percentage of the Contract completed. VTA will monitor the Contract for compliance with SBE requirements.

This system is web-based, accessible from any computer via the internet at: <https://vta.sbdbe.com>.

Contractor and each subcontractor will receive an email providing them with Log On identification, and a temporary password and instructions on how to use the system. Classroom training will also be provided. Other assistance will be provided upon request.

Contractor will include this requirement in all of its subcontracts and purchase orders when required to provide or verify SBE utilization documentation.

If the SBE Utilization Reports indicate potential problems, such as a failure to meet the SBE Commitment, the Contractor shall meet with the appropriate VTA representative(s) to address any deficiencies and discuss appropriate corrective actions. When the Contract completion reaches 50% and the SBE utilization percentage participation goal completed is less than 50% of the SBE Commitment, a detailed report of the reasons why must be submitted to VTA stating a plan to reach the SBE Commitment by Contract completion.

#### **1.12.2 Final SBE Utilization Report**

Prior to final payment, Contractor will be required to submit a final SBE Utilization Report. In addition to payments to the SBEs, the final report must include payments to and other information about all other businesses, including non-SBE subcontractors, suppliers of materials, trucking firms, consultants and others.

#### **1.12.3 Failure to Submit Reports**

Failure by Contractor to submit required reports as described above may be considered grounds for a determination by VTA of non-responsibility in consideration of Contractor's eligibility to bid on or be awarded future work.

#### **1.13 Change Orders, Extra Work and Allowances**

Including all change or extra work and allowances, Contractor shall maintain the contractual SBE goal throughout the life of the Contract or make good faith efforts to meet the SBE participation goal.

#### **1.14 Prompt Payment**

Contractor must adhere to all Federal and California prompt payment laws and regulations. See also 7.61, Prompt Payment. If Contractor does not adhere to prompt payment requirements, penalties may apply.

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## **APPENDIX E**

### **POLICY ON THE USE OF PERSONAL ELECTRONIC DEVICES**

Refer to Contract Special Conditions Section 6.15.2 Use of Electronic Devices regarding compliance with the California Public Utilities Commission (CPUC) requirements, including the notice that the use of personal electronic devices is prohibited at all times when within 6 feet of the Track Zone (an area within 6 feet of the closest rail on both sides of the track).

Refer to the attached VTA policy “Use of Personal Electronic Devices by Bus and Light Rail Employees and Contractor Staff”.

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<b>POLICY</b>  <b>USE OF PERSONAL ELECTRONIC DEVICES BY BUS AND LIGHT RAIL EMPLOYEES AND CONTRACTOR STAFF (AFSCME)</b>	<b>Document Number:</b>	OPS-PL-0001(c)
	<b>Version Number:</b>	03
	<b>Date:</b>	04/10/2017

**1.0 Purpose:**

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

**2.0 Scope:**

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

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

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

**3.0 Responsibilities:**

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

**4.0 Policy:**

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



<b>Original Date:</b>	<b>Supersede Date:</b>	<b>Revision Date:</b>	Page 1 of 6
06/12/2009	03/05/2012	04/10/2017	

<b>POLICY</b>  <b>USE OF PERSONAL ELECTRONIC DEVICES BY BUS AND LIGHT RAIL EMPLOYEES AND CONTRACTOR STAFF (AFSCME)</b>	<b>Document Number:</b>	OPS-PL-0001(c)
	<b>Version Number:</b>	03
	<b>Date:</b>	04/10/2017

#### 4.1 Restrictions and Storage:

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

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

All PEDs shall be Turned Off and Stowed Away while operating a bus or LRV, or while sitting in the Operator’s Area, as defined in Section 5. The bag that the PED is stowed away in must conceal the device so that it is not visible without opening the bag. Employees acting in a management or supervisory role and who are not operating a bus or LRV, or otherwise functioning in an Operator capacity, may keep their cell phone on their persons while in the Operator’s Area as long as it is on vibrate or silent. The supervisor must leave the Operator’s Area before using the cell phone, with the exception of the Operator’s Area on a bus where a bona fide emergency exists or the supervisor is on the bus for the purposes of training or testing. Supervisors who must operate a bus or LRV, or otherwise function in an Operator capacity, may stow their PED in the Operator pouch.

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

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

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



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<b>POLICY</b>  <b>USE OF PERSONAL ELECTRONIC DEVICES BY BUS AND LIGHT RAIL EMPLOYEES AND CONTRACTOR STAFF (AFSCME)</b>	<b>Document Number:</b>	OPS-PL-0001(c)
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engine, and clear the Operator’s Area. The PED must be Turned Off and Stowed Away prior to returning to the Operator’s Area or restarting the engine.

Use of cell phone communication is allowed to safely direct the movement of pushing a dead-car train only when no other means of communication is available and prior approval has been obtained from the Operations Control Center.

- 4.1.3 Personnel who are directing, flagging, or otherwise controlling the movement of rail transit vehicles, or performing any task while Fouling the Tracks may keep the PED in their possession and powered on but must proceed to a safe area outside the Safety Envelope (minimum 6 feet from the nearest light rail) to use their PED. Rail Controllers in the Operations Control Center must unplug and step away from their console before using their PED.

**4.2 Discipline:**

Failure to adhere to this Policy may constitute a serious safety violation. Violations of this policy will be considered a disciplinary action under Article 20 of the AFSCME Collective Bargaining Agreement (CBA). VTA employees who violate this policy will be subject to disciplinary action as listed below subject to the underlying circumstances and the individual employee. Talking on a PED, texting, playing video games or other violations that distract the Operator and pose the greatest risk will result in the highest levels of discipline.

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

(The discipline table is located on the next page).

*\*Discipline is mitigated if the employee is acting in a management or supervisory role and the violation occurred during an emergency.*



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	<b>VIOLATION</b>	<b>1<sup>st</sup> Offense</b>	<b>2<sup>nd</sup> Offense</b>	<b>3<sup>rd</sup> Offense</b>
4.2.1	Any violation of this policy where the employee is involved in an accident (preventable or non-preventable).  <i>*Discipline issued for preventable accidents only.</i>	Termination  <i>*10-15 days</i>	<i>*20 - 30 days</i>	<i>*Termination</i>
4.2.1(a)	<i>*If the accident results in a fatality and the employee was using a PED, then discipline will be issued whether the accident is preventable or non-preventable.</i>	<i>*20 days – Termination</i>	<i>*Termination</i>	
4.2.2	Use of PED while operating a bus, LRV, hi-rail vehicle or on-track equipment.	20 – 30 days  <i>*5-10 days</i>	Termination  <i>*10 - 15 days</i>	<i>*Termination</i>
4.2.3	Use of PED in the Operator’s Area, but not while operating a bus or LRV.	10 – 20 days	20 – 30 days	Termination
4.2.4	Use of PED while directing, flagging, acting as the EIC, or otherwise controlling the movement of rail transit vehicles, or performing any task while Fouling the Tracks.	10 – 20 days	20 – 30 days	Termination
4.2.5	Failure to Turn Off and properly Stow Away PED while operating a bus or LRV, or while in the Operator’s Area.	Up to 10 days  <i>*Written Warning</i>	10 – 30 days  <i>*Up to 5 days</i>	Termination  <i>*10-30 days</i>

4.2.6 Any contractor staff violating this Policy will be removed from the job and will not be allowed to return to the project. The contractor may be made responsible for any fines levied on VTA for the violation. Repeat



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violations from the same contractor’s staff may result in the contract being cancelled.

**5.0 Definitions:**

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



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5.7 Stowed Away: Not on one's person; must be completely concealed, so that it is not visible, in a backpack or bag and out of reach.

5.8 Turned Off: The power is off.

**6.0 Summary of Changes:**

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

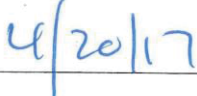
**7.0 Approval Information:**


<i>Prepared by</i>	<i>Reviewed by</i>	<i>Approved by</i>
 George Sandoval Operations Manager	 Inez Evans Chief Operating Officer	 Nuria I. Fernández General Manager/CEO

Concurrence by American Federation of State County and Municipal Employees, Local 101:

  
 Tina Acree  
 Business Agent, AFSCME

  
 Steve Jovel  
 President, AFSCME

  
 Date

  
 Date

Date Approved: 04/20/2017



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## **APPENDIX F VTA RESTRICTED ACCESS**

Refer to Contract Special Conditions, Section 6.15.3 Restricted Access Permit regarding requirements and the use of the Restricted Access Permit form

The Restricted Access Permit Form is provided in the following pages.

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# RESTRICTED ACCESS PERMIT

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

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

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

General Contractor Name:			Main Office Phone Number	VTA PERMIT NUMBER
Address:			After hours Phone Number	SION
City:	State	Zip	On Site Wireless Number	VTA Project / Contract Number

Sub Contractor's:		Requester's Name:		Safety Critical Item Check List Completed: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Number of Work Sites	Number Of Employees	Security Background:	Site Specific Work Plan:	RWP Training:	

Scope of Work to be Performed:

Equipment to be Used:

EXACT LOCATION OF WORK			
Direction: (Check Appropriate Boxes) <input type="checkbox"/> North <input type="checkbox"/> South <input type="checkbox"/> East <input type="checkbox"/> West			
At:	Between:	And:	
Start Date:	(General) Start Time:	End Date:	(General) End Time:

THE FOLLOWING PROTECTION OR CONDITIONS ARE REQUIRED WHEN APPLICABLE					
Power Down / Lock & Tag	Train Operation	Reduced Speed Zone	Supervised Access		
# Tags required	Platform Work	Maint.Bay/TrainWashPowerDown	Non Supervised Access		
# of Locks required	Track Closure	Watchman Required	Hardhats Required		

Special Requirements: (See Back of Permit for NORMAL Rules)

**CONTRACTOR AGREEMENT**

I have read and Understand the rules and requirements detailed above and on the reverse side of this form, and will abide by them. This permit may be suspended and or revoked at any time for any violation of the listed rules and requirements or as deemed necessary for the safety of personnel and equipment. It is further understood I will comply with all material contained in the "Roadway Worker Protection" training book and the "Roadway Worker On-Track Safety Manual" received during roadway worker training.

Signature of Contractor's Representative:	Title:	Date:
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VTA AUTHORIZATION (Note: Not all signatures are required, only required signature is Track Allocation Representative)			
WP&S Power Department:	WP&S Track Department:	WP&S Signal Department:	Light Rail Station Maint. Supervisor:
Superintendent Vehicle Maintenance:	VTA System Safety Department:	VTA Construction & Engineering:	WP&S Signal Department:
VTA Technology Department	VTA Construction Inspector	VTA Security Department	VTA Project Manager

RESTRICTED ACCESS OFFICE			
Approved <input type="checkbox"/>		Denied <input type="checkbox"/>	
VTA Track Allocation Representative:	Date:	Superintendent Way Power & Signal:	Date:

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

Distribution: Original-Restricted Access Permit Off  
 Way Power and Signal Superintendent

Copy: Contractor  
 OCC

Revised: 12-01-2017

## RESTRICTED ACCESS WORK RULES

1. **PERMIT REQUIREMENTS-** Any access to enter or cross the track as well as all work performed on any VTA property designed for the operation of the Light Rail System shall require a permit. Permits are available through the Light Rail Restricted Access Permit Office. Unless the Track Allocation Chairperson makes an exception, all permit and training fees must be paid prior to issuance of a permit or attendance in a safety training class. In other cases such as urgent work or emergencies, by signing this document, the contractor agrees to pay all associated permit and training fees.
2. **CLEARANCE FROM TRAINS-** Based on California Public Utilities Commission (CPUC) General Order 175-A, all work performed within six (6) feet of the nearest rail shall require a Lookout/Watchperson to watch for approaching trains. This Lookout/Watchperson shall instruct workers to take equipment and move to the predetermined place of safety at least six (6) feet from the track fifteen (15) seconds prior to the approach of a train. When workers are clear, ONLY the EIC or SEIC shall give the train a "PROCEED" hand signal. If workers or equipment fail to clear, the train must be given a "STOP" hand signal. When clear the train will be given a "PROCEED" Signal.
3. **CLEARANCE FROM ENERGIZED OVERHEAD POWER LINES-** The overhead contact system is energized with 600 to 900 volts of direct current at all times, in accordance with CAL-OSHA Title 8, all work (including metal ladders, metal handle extensions, or equipment) shall remain ten (10) feet from any overhead wire unless a ground strap has been installed and is visible to the workers and VTA's Lock Out / Tag Out Procedures have been approved and completed.
4. **PERMIT AVAILABILITY-** A double sided copy of this permit must be available at the work site. Permits must be shown to any VTA, CPUC or FRA representative as well as any other authorized person when requested.
5. **SAFETY TRAINING-** Prior to commencement of work all workers must attend and complete VTA's "Basic Roadway Worker Protection" training class. This class trains persons working on VTA's right-of-way to work safely in a railroad environment. Every work crew must have an "Employee In Charge" referred to as the E.I.C. The E.I.C must successfully complete the VTA "Advanced Roadway Worker Protection" training class and must be at the work site at all times. The E.I.C. Must have the ability to read, write and speak english in order to communicate with VTA's Operation Control Center (OCC) to document and relay instructions. Once training fees have been paid, you may schedule training classes by calling The Light Rail Technical Training Department at (408) 952-6800. Training fees are \$85.00 per person. An estimate for training costs will be provided, a control number will be issued and must be provided when making training reservations.
6. **SAFETY EQUIPMENT-** Proper safety equipment must be worn at all times as specified in the VTA Roadway Worker Protection training manual.
7. **CONES AND FLAGS-** Work zone cones and flags shall be posted when working within six (6) feet of the nearest rail. The work zones shall be established as described in the "Roadway Worker Protection" training manual. VTA requires workers to establish a safe work area for workers and to provide advance warning to train operators allowing them to slow to a safe speed or stop prior to reaching workers. VTA may require a work zone when outside the safety envelope when tools or equipment is used that may have the potential to foul the trackway. Cones and flags left longer than thirty (30) minutes without the obvious presence of workers (unless approved by OCC) shall be removed and become the property of VTA. Cost and procurement of cones and flags shall be the responsibility of the contractor. Cones and flags may be purchased at local safety suppliers. Twenty-two (22) inch reflective cones illuminated from within shall be used during times of limited visibility. Cones and flags must be no closer than eighteen (18) inches from the rail and placed to allow a clear unobstructed view by train operators.
8. **NOTIFICATION TO OCC-**The Employee In Charge (E.I.C.) shall call the Operations Control Center (OCC) at (408) 546-7688 prior to establishing work zones and again at the end of the work shift when the work zone is to be removed.
9. **OVERHEAD POWER REMOVAL-** Power removal, when necessary shall be done in accordance with VTA's Lock Out / Tag Out procedures under the direction of VTA's Way Power and Signals Department and VTA's Operation Control Center. All request must be coordinated through the Track Allocation Meeting.
10. **SAFETY ADHERENCE / PERMIT EXPIRATION / DURATION-** Contractors shall be strictly confined to the time and location restrictions of their permit. When performing work on or about the right-of-way, contractors must adhere to all rules and procedures contained in the "Light Rail Restricted Access Procedures Manual". Work sites will be monitored; any deviation from or violation of these rules may be cause for immediate eviction of the contractor from the work site at the expense of the contractor.
11. **COST / CLAIMS-** Any cost to VTA resulting from this permit, the level of protection required (such as power removal, Lookout/Watchmen, EIC, Bus Bridge, etc.) or any unscheduled disruption to train or bus service caused by the contractors actions or inaction will be the responsibility of the contractor. In consideration of issuance of this permit, the contractor shall indemnify and hold harmless the Valley transportation Authority (VTA), its employees and agents from any demands, claims or judgments arising as a result of any act or omission of the contractor, or the contractor's employees or agents.
12. **SIGNALS-** Hand signals used by EIC/SEIC shall be as described in VTA's "Roadway Worker Protection" training manual and as instructed in the Roadway Worker Protection safety training class. On the Vasona Freight track Roadway Worker Protection rules shall apply. Caution must be used as Union Pacific freight trains may not observe VTA hand signals.
13. **GENERAL CONDITIONS- LEGAL RESPONSIBILITIES AND RELATIONSHIPS**

**Character of Workmen:** If any sub-contractor or person employed by the contractor shall appear to VTA to be incompetent or to act in a disorderly, improper or unsafe manner, such person shall be discharged immediately on at the request of VTA, and such person shall not be allowed to be employed on any current or future VTA project.

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









## RESTRICTED ACCESS PERMIT APPLICATION

CONSTRUCTION ACCESS PERMIT (CAP)
  RESTRICTED ACCESS PERMIT

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

**WORK BEING PERFORMED FOR:**

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

**SUB CONTRACTOR'S PERFORMING WORK:**

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

**PROJECT LOCATION**

Location:

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

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

Submit Completed Application Package To: Santa Clara Valley Transportation Authority  
 Restricted Access Permit Office  
 101 West Younger Ave. Build. A-3  
 San Jose, CA. 95110

Phone: (408) 546-7608  
 Fax: (408) 993-2174

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

Authorized Signature:	Print Name:	Date:	Phone Number:
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# RESTRICTED ACCESS PERMIT (RAP) TERMS AND CONDITIONS

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

- a. Completed and sign Restricted Access Permit Form.  
All applicants must adhere to the VTA Background Security Screening process prior to applying for a Restricted Access Permit.
- b. Minimum Application Fee of \$3,050.00 and Roadway Worker Protection (RWP) Safety Training Fee of \$85.00 per person. The final permit fee will be determined after review of the plans. Payment may be made by cash or check, (ONLY) payable to Valley Transportation Authority (VTA). For further information regarding permit fees call (408) 546-7608. Permit Applicant agrees to reimburse VTA for all actual and direct costs expended by VTA, including costs to process this application and inspect the permit work.
- c. No work to be conducted when events at Levi Stadium exceed 20,000 in attendance.
- d. Liability Insurance Certificate from primary Contractor. The certificate must be received **prior to issuance of the Permit** and must

Type	Projects Over \$1,000,000	Projects Over \$1,000,000
General Liability	\$1,000,000	\$5,000,000
Automobile Liability	\$1,000,000	\$5,000,000
Worker's Compensation	\$1,000,000	\$1,000,000
Employer Liability	\$1,000,000	\$1,000,000
Railroad Liability Insurance (see item II, e Below)	\$1,000,000	\$5,000,000

Best's Rating of No Less Than B=, VIII

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

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

- a. VTA's Background Security screening Contractor is IPROVEIT.com.
- b. When workers or their equipment are working within or have the potential of working within the dynamic envelope of the Light Rail Tracks/System, or over/under any catenary system, the Contractor is required to obtain a Restricted Access Permit. For further information call (408) 546-7608. All workers are required to complete RWP Safety Training, call VTA's Light Rail Technical Training at (408) 952-6800 for further information. Safety Training fee is \$85.00 per person.
- c. When workers or their equipment are working within or have the potential of working within 15' of Cal train's (JPB) tracks or 25' of Union Pacific Railroad's (UPRR) tracks, within VTA property, all workers are required to complete the appropriate RWP Safety Training.
- d. Work within the Silicon Valley Rapid Transit (SVRT/BART) Corridor requires a permit or written authorization from UPRR. For UPRR permit information, contact Patrick Kerr, Manager of Public Projects, Union Pacific Railroad, 10031 Foothills Blvd., Roseville, California 95747, or call (916) 789-6334. A copy of UPRR's permit or written authorization will be required prior to VTA issuing a Permit. The UPRR's website address is www.uprr.com. All workers are required to complete RWP Safety Training. Call the SVRT Rail Access Coordinator for further information: James Mendez (408) 715-8279.
- e. Traffic Control Plan. Site Specific Work Plan (SSWP). (If applicable)
- f. Work within 50 feet of the Light Rail Tracks/System or over/under any Catenary System or within 50 feet of Heavy Rail Tracks requires Railroad Protective Liability Insurance.
- g. A copy of the Prime/General Contractors State of California Contractors License.
- h. Applicants needing to install a utility or a facility on property owned in fee by VTA must submit a copy of a document such as a License Agreement or Recorded Easement, that allows applicant to enter, construct, install, maintain or operate within VTA property. If no such document exists, applicant must enter into an applicable Agreement with VTA prior to receiving a Construction Access Permit. Due to the fact that license fees are based on property values and other factors, fee information will be provided after the application has been reviewed and approved by VTA.
- i. As stated in Government Code 4216.9. (a), "No permit to excavate ...shall be valid unless the applicant has been provided with an initial inquiry identification number..." Permit Applicant or its Contractor shall notify VTA's Permit & Utility Services Unit of the USA Ticket Number prior to start of work.

**NOTE:** VTA requires a safe work area for workers and equipment and to provide advance warning to train operators allowing them to slow to a safe speed or stop prior to reaching workers. VTA may require a work zone when outside the safety envelope when tools or equipment is used that may have the potential to foul the trackway.

## III. POWER SHUTDOWN:

VTA will make an assessment to determine if a power shutdown of the Overhead Catenary System is required. In your opinion, will this job require the Light Rail Overhead Catenary System (OCS) power to be shut down in order to safely perform this work?

Yes  No Required for all work above or within 10' of OCS

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

## IV. BUS STOP AND/OR SERVICE INTERRUPTION:

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

Yes  No

Revised: 12-07-2017

Authorized Signature:	Print Name:	Date:	Phone Number:
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## VTA RESTRICTED ACCESS PERMIT APPLICATION

**Permit Applicant:** \_\_\_\_\_ Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_  
 E-Mail Address: \_\_\_\_\_  
 Emergency Contact Person: \_\_\_\_\_ 24/HR Emergency Phone #: \_\_\_\_\_

**Work Being Performed for:**

Company/Agency Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 E-Mail Address: \_\_\_\_\_ Contractor's CA License #: \_\_\_\_\_

**Work being performed by:** (List all General Contractor's and Subcontractor's – See attached page):

Company Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_  
 E-Mail Address: \_\_\_\_\_ Contractor's CA License #: \_\_\_\_\_  
 Project Location: \_\_\_\_\_ Start Date: \_\_\_\_\_ Completion Date: \_\_\_\_\_  
 Estimated # of Regular Work Days: \_\_\_\_\_ Estimated # of Overtime/Weekend or Holiday Days: \_\_\_\_\_

The permit evaluation process usually takes 7- 14 working days from the date that all Permit requirements are completed and received by VTA.

**SUBMIT APPLICATION PACKAGE TO:**  
**Santa Clara Valley Transportation Authority (VTA) Restricted Access Permit Office**  
**101 West Younger Ave.**  
**Bldg. A-3**  
**San Jose, California 95110**  
**(408) 546-7608**

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

Authorized Signature: \_\_\_\_\_ DATE: \_\_\_\_\_  
 Name: \_\_\_\_\_ Phone#: \_\_\_\_\_



## TERMS AND CONDITIONS OF VTA RESTRICTED ACCESS PERMIT

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

- a. All interested applicants, except for governmental agencies or workers working under a VTA contract, must adhere to the attached background security screening process, prior to applying for a Construction Access Permit. All workers except for government agencies workers on this VTA permits must have a Background Security Check clearance/badge prior to a VTA permit being issued.
- b. Completed and signed Application Form with the Permit Application fee to initiate the permit process. The final permit fee will be determined after review and approval of the application and/or plans. Payment may be made by cash or check payable to Valley Transportation Authority, (VTA). For further information regarding permit fees call (408) 321-5856. Applicant agrees to reimburse VTA for all actual and direct costs expended by VTA, including costs to process this application and inspect the permit work "
- c. Applicant to provide below a detailed description of the work to be performed on VTA's property. Applicant's description of the work, at a minimum, must include the items below. If applicant wishes to include additional information, please enclose additional sheet.

- |                        |                    |  |
|------------------------|--------------------|--|
| 1. Type of Project     | 2. Traffic Plan    | 3. Distance from the Nearest Tracks    |
| 4. Contractor Schedule | 5. Cost of Project | 6. Impact on VTA Operations (If Known) |
| 7. Work Plan           |                    |  |

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d. One (1) electronic copy of the Plans and Specifications for construction projects. All plans submitted to VTA must include the APN number, VTA property lines, tracks, stations, facilities and all known underground utilities.

e. Do you have a cooperative or other agreement with VTA concerning this project? YES  
If so please provide a copy of the agreement with your application.

f. Prior to final approval of the permit, Applicant must provide VTA with evidence of the following

Insurance Coverage: All limits are subject to review by VTA and will be adjusted based on risk of project.

<b>Coverage:</b>	<b>Under \$250,000</b>	<b>\$250,000 - \$1,000,000</b>	<b>Over \$1,000,000</b>
• General Liability	\$1,000,000	\$2,000,000	\$5,000,000
• Automobile Liability	\$1,000,000	\$2,000,000	\$5,000,000
• Employer Liability	Statutory Limits	Statutory Limits	Statutory Limits
• Contractor Pollution Liability	\$1,000,000	\$1,000,000	\$1,000,000
• Railroad Protective Liability Ins.	\$1,000,000	\$2,000,000	\$3,000,000
(See Item II Below)	\$3,000,000 /	\$3,000,000 /	\$5,000,000 /
• Contractor Pollution Liability	\$6,000,000	\$6,000,000	\$10,000,000

- VTA Shown as Additional Insured on all coverage's except RRPLI where VTA must be listed as Insured.
- Best's Rating of No Less Than B+, VIII

All public agencies that are self-insured must provide to VTA evidence of self-insurance prior to issuance of the permit

Authorized Signature: \_\_\_\_\_ DATE: \_\_\_\_\_  
Name: \_\_\_\_\_ Phone#: \_\_\_\_\_



## TERMS AND CONDITIONS OF VTA RESTRICTED ACCESS PERMIT

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

- a) A restricted access permit must be obtained prior to commencing any underground, overhead, or surface work on any VTA property designed for the operation of the Light Rail System.
- b) When workers or their equipment are working within or have the potential of working within the dynamic envelope of the Light Rail Tracks/System, or over/under any catenary system, the Contractor is required to obtain a Light Rail Restricted Access Permit, in addition to a VTA Construction permit. Call (408) 546-7608 for further information.
- c) All workers, on VTA's light rail property, are required to complete VTA's Railroad Worker Protection and Safety (RWP) training class prior to beginning any work on the project. Call VTA's Light Rail Technical Training Center at (408) 952-6800 for further information.
- d) When workers or their equipment working within or have the potential of working within 15' of Cal train's tracks or 25' of Union Pacific Railroad's (UPRR) tracks, within VTA property, all workers are required to complete a Heavy Rail Safety Training Class.
- e) Submission of an approval Traffic Control Plan.
- f) Construction work within 50 feet of the Light Rail Tracks/System or over/under any Catenary System or within 25 feet of any freight railroad track on VTA property requires the applicant to provide Railroad Protective Liability Insurance. VTA must be listed as Insured on all RRPLI policies.
- g) The Contractor/Applicant is responsible for arranging and paying for all costs for railroad
- h) For construction work, a copy of the Prime Contractor's State of California Contractors License must be Submitted.
- i) Applicants wishing to install a utility or a facility on property owned by VTA must submit a copy of a document such as a License or Recorded Easement that allows Applicant to enter, construct, install, maintain or operate upon VTA property. If no such document exists, Applicant must enter into such an Agreement with VTA prior to receiving a Permit. Applicant shall submit a site plan together with either a 8 1/2 "x 11" or 11" x 17" size exhibit that illustrates the location of the proposed encroachment, dimensions, depth and width of utility installation and/or the location of any existing utilities, plus nearest public cross street. Because License fees are based on property values and other factors, fee information will be provided after the
- j) As stated in Government Code 4216.9. (a): "No permit to excavate ...shall be valid unless the applicant has been provided with an initial inquiry identification number ..." Applicant or its Contractor shall notify VTA's Permit & Utility Services Unit of the USA Ticket Number prior to start of work.

**III. POWER SHUT DOWN:**

- a) In your opinion, will this job require the Light Rail Overhead Catenary System (OCS) power to be shut down in order to safely perform this work? (Required for all work above or within 10' of OCS) **YES**  
**NO**

If VTA determines that a Light Rail power shutdown is required, any actual costs incurred by VTA will be bore by Applicant or its Contractor. VTA will make an assessment to determine if a power shutdown of

**IV. BUS STOP AND/OR SERVICE INTERRUPTION:**

- a) In your opinion, if you feel that this project will require a Bus Stop and/or Service Interruption, please contact the VTA General Bus Stop Hotline at (408) 321-5800. **YES** **NO**  
If so, provide the estimated Number of Work Days:  
VTA will make an assessment to determine if a Bus Stop and/or Service Interruption are required.

Authorized Signature: \_\_\_\_\_ DATE: \_\_\_\_\_  
Name: \_\_\_\_\_ Phone#: \_\_\_\_\_



To VTA Restricted Access Permit Applicant:

Santa Clara Valley Transportation Authority (VTA) is committed to providing a safe and secure workplace for all Employees, Permittees and Permittee's employees and subcontractors. This commitment is extended to all that may or may not work under the authorization of a VTA Access Permit. In an effort to better protect VTA interests and ensure that all Permittees and their employees and subcontractors accessing or working at VTA properties/facilities/systems are in a safe and secure environment, VTA has adopted a Background Security Check Program that will require the following:

- Criminal and Identity background screening
- VTA authorized access badge with photo that must be displayed on the work site

Effective August 1, 2010, Access Permit Applicants that apply for VTA Access Permits to perform work or other activities authorized by VTA Construction Access Permits or Restricted Access Permits are required to comply with the Background Security Check (BSC) Program Standards. Applicants and their employees and subcontractors can be denied access to or near VTA properties/facilities/systems if they have:

1. A felony conviction within the last 7 years or a misdemeanor conviction within 1 year.
2. An active warrant.
3. A falsification or failure to disclose any and all related information.
4. On parole, probation or other court required supervision.
5. Registered sex, narcotics or arson offender.

This Program will be administered by [improveit.com](http://improveit.com), referred to hereafter as the Investigator. To initiate the BSC Program, please contact [Iproveit](http://improveit.com) at (678) 775-6720. Their website is as follows: [www.improveit.com](http://www.improveit.com). A onetime enrollment fee will be required.

These standards have been set for those Permittees and their employees and subcontractors who will be allowed to access or encroach upon VTA's properties/facilities/systems and/or near the VTA's properties/facilities/systems to perform permit work. VTA reserves the right, at its sole discretion, to bar any person from accessing, encroaching upon or working on or near VTA properties/facilities/systems.

All charges incurred in the use of the Investigator services are solely the responsibility of the respective Permittee. Background investigations that a Permittee may have secured outside of this Program from companies other than the Investigator are not applicable to this Program. Your dealings with regard to the services of the Investigator will be directly with the Investigator and not with VTA.

Permittees and any of their employees and subcontractors that are not in compliance with the Background Security Check Program will be denied access to work on a VTA Construction Access Permit or Restricted Access Permit or on any VTA properties/facilities/systems.

If you have any questions concerning the above, contact the VTA Restricted Access Permits Office, Cheryl D. Gonzales, Assistant Superintendent, at (408) 546-7608 or Kathy Bardley at (408) 321-5815. Your cooperation is greatly appreciated. Sincerely,

Kathy Bradley  
Real Estate & Project Admin Manager  
(408)321-5815



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**Work being performed by:**

**General Contractor:**

Company Name: \_\_\_\_\_ Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone#: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_ Contractors CA License#: \_\_\_\_\_

**1. Subcontractor:**

Company Name: \_\_\_\_\_ Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone#: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_ Contractors CA License#: \_\_\_\_\_

**2. Subcontractor:**

Company Name: \_\_\_\_\_ Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone#: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_ Contractors CA License#: \_\_\_\_\_

**3. Subcontractor:**

Company Name: \_\_\_\_\_ Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone#: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_ Contractors CA License#: \_\_\_\_\_

**4. Subcontractor:**

Company Name: \_\_\_\_\_ Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone#: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_ Contractors CA License#: \_\_\_\_\_  
Company Name: \_\_\_\_\_ Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone#: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_ Contractors CA License#: \_\_\_\_\_

**5. Subcontractor:**

Company Name: \_\_\_\_\_ Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone#: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_ Contractors CA License#: \_\_\_\_\_

**6. Subcontractor:**

Company Name: \_\_\_\_\_ Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone#: \_\_\_\_\_  
E-Mail Address: \_\_\_\_\_ Contractors CA License#: \_\_\_\_\_

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Solutions that move you

**RESTRICTED ACCESS / RAIL ACTIVATION  
PERMIT AND TRAINING FEE ASSESSMENT FORM**

RESTRICTED ACCESS PERMIT NUMBER	SCION	VTA Project / Contract Number
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Permit Applicant Name / Company: \_\_\_\_\_

Insurance Certificate Received:  Yes  No      Contractor's License Received:  Yes  No

Permit Application Fee (\$3,050.00)	<input style="width:100%;" type="text"/>
<b>Training Fees</b>	
Regular VTA Classes <input style="width:50px;" type="text"/> X \$85.00	<input style="width:100%;" type="text"/> OP0505
Special Training SION: <input style="width:100px;" type="text"/>	<input style="width:100%;" type="text"/> Special Training Charged At actual Cost
<b>ADDITIONAL FEES AND DESCRIPTION</b>	
<b>Power Department Fees</b>	
Power Department Fee SION: <input style="width:100px;" type="text"/>	<input style="width:100%;" type="text"/>
Signal Department Fee SION: <input style="width:100px;" type="text"/>	<input style="width:100%;" type="text"/>
Track Department Fee SION: <input style="width:100px;" type="text"/>	<input style="width:100%;" type="text"/>
Operations Fee SION: <input style="width:100px;" type="text"/>	<input style="width:100%;" type="text"/> Bus Bridge, Field Response etc.
Inspection Fee SION: <input style="width:100px;" type="text"/>	<input style="width:100%;" type="text"/>
Total Fees:	<input style="width:100%; border: 2px solid black;" type="text"/>

Authorized Signature:	Print Name:	Date:	Phone Number:
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Track Allocation Chairperson	Date
Way Power and Signal	Date
Light Rail Technical Training	Date
Central Permit Office	Date

Valley Transportation Authority Central Permit Office 3331 North First Street, Bldg. B, 2nd Floor San Jose, California 95123 (408) 321-5856	Valley Transportation Authority Restricted Access Permit Office 101 West Younger Avenue, Bldg A, 2nd Floor San Jose, California 95110 (408) 546-7608
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## **APPENDIX P VTA'S PROCEDURE ON REFLECTIVE SAFETY VESTS**

Refer to Contract **Section 6.14.5 Written Safety Precautions** as an introduction to this Appendix P.

Document Number 600.009 is provided in the following pages.

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<b>PROCEDURE</b> <b>REFLECTIVE SAFETY VESTS</b>	<b>Document Number:</b>	600.009
	<b>Version Number:</b>	01
	<b>Date:</b>	01/10/2019

**1. Purpose:**

To outline when reflective safety vests are required to be worn by employees, contractors and visitors on VTA property and in the field. This procedure also summarizes the required safety vest standards, procurement process, record-keeping practices for their distribution, and relevant training.

This policy is being written to comply with the California Division of Industrial Safety (Cal/OSHA) Title 8 3380, 20 Code of Federal Regulations (CFR) 1910.132 and American National Standard Institute/International Safety Equipment Association (ANSI/ISEA) 107- as well as VTA's Injury and Illness Prevention Program, Personal Protective Equipment Procedure.

**2. Scope:**

This procedure applies to all VTA employees, contractors and visitors working at operational divisions or in the field that require additional reflective wear to reduce the risk of hazards and injury due to lack of visibility.

**3. Responsibilities:**

**3.1. Safety and Compliance Department**

- 3.1.1. Provide safety vest guidelines to all employees that are exposed to low visibility hazards outlined in section 4.1 of this procedure.
- 3.1.2. Procure Performance Class 3 vests for employees with potential exposure to low visibility hazards in the workplace as part of their job description.
- 3.1.3. Maintain loaner Performance Class 3 vests for staff and visitors for temporarily use in situations where a low visibility hazard is present.

**3.2. Superintendents and Supervisors**

- 3.2.1. Provide awareness of low visibility hazards associated with the tasks of their employees.
- 3.2.2. Ensure that the sizes needed for their staff are available and coordinate with the Safety and Compliance Department to procure adequate supply of vests for their respective department.
- 3.2.3. Ensure that staff are wearing proper vests under necessary circumstances.
- 3.2.4. Take appropriate action if when safety vests are not being used in accordance with this procedure. Appropriate action includes providing additional training and/or imposing progressive discipline to ensure future compliance.

**3.3. Employees**

- 3.3.1. Use the reflective safety vest as instructed to eliminate the hazards associated with a lack of visibility.



<b>PROCEDURE</b> <b>REFLECTIVE SAFETY VESTS</b>	<b>Document Number:</b>	600.009
	<b>Version Number:</b>	01
	<b>Date:</b>	01/10/2019

- 3.3.2. Maintain safety vests in a safe and sanitary condition and replace when lost, damaged, worn and/or no longer reflective.
- 3.3.3. Inspect the safety vest before use and notify their supervisor if the vest is found to be damaged. Defective vests shall not be worn.
- 3.3.4. Report any violations of this policy to their supervisor in accordance with SSS-SAF-IIPP-0100 and SSS-SAF-IIPP-0600.

#### **4. Procedure:**

- 4.1. VTA employees, contractors and visitors on, whether at operating divisions or in the field, are required to always wear a high-visibility, reflective safety vest in the following conditions:
  - 4.1.1. Within ten (10) feet of the rail right-of-way.
  - 4.1.2. In low light / low visibility conditions that include rain, night, dusk and dawn.
  - 4.1.3. Near congested traffic areas and/or conditions where there is a potential hazard of being hit by a moving vehicle.
  - 4.1.4. In or near construction zones.
- 4.2. VTA Safety Vest Standards
  - 4.2.1. Garments must meet the Performance Class 3 requirements. The safety vest manufacturers label must also state that the garment meets the aforementioned standard.
  - 4.2.2. High visibility vests must be fluorescent yellow-green.
  - 4.2.3. Employees working outside must wear safety vests on the outside of their gear unless Class 3 reflective foul weather gear is worn.
  - 4.2.4. Reflective high visibility vests must have the company logo or name on the front and the back of the garment.
  - 4.2.5. All vests that require flame-resistant or arc protection need to be Class 3 and labeled accordingly.
  - 4.2.6. Alterations and modifications are prohibited with the exception of labelling with name and badge number.
  - 4.2.7. VTA high visibility vests must have a reflective chevron or an "X" on the back.
- 4.3. VTA Safety Vest Procurement
  - 4.3.1. VTA's Safety and Compliance Department will only procure Performance Class 3 vests for employees exposed to the hazards outlines in section 4.1.
  - 4.3.2. VTA's Safety and Compliance Department reserves the right to charge the appropriate cost center of the party requesting permanent safety vests in the event where vests are lost, quickly damaged (beyond the reasonable expectation of wear

<b>PROCEDURE</b> <b>REFLECTIVE SAFETY VESTS</b>	<b>Document Number:</b>	600.009
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and tear for specific job classifications), ordered in excess, and/or not required for the job hazards of the requesting party or the intended user.

- 4.3.3. If department employees are equipped with Type E rated pants, vests meeting the Performance Class 2 rating may be purchased by department heads from their associated cost center, once approved by Safety and Compliance. Performance Class 2 safety vests paired with Class E rated pants, in combination, create a Class 3 rated ensemble.

**5. Definitions:**

- 5.1. American National Standard Institute/International Safety Equipment Association 107 (ANSI/ISEA 107): Industry standard for high visibility apparel for workers exposed to the occupational hazards associated with low visibility.
- 5.2. Personal Protective Equipment (PPE): Includes all clothing and other work accessories designed to protect against work place hazards.
- 5.3. Performance Class 2 or 3 Reflective Safety Vest (“Performance Class 2” or “Performance Class 3”): A rating that designates the visibility of a garment based on the amount of background and retroreflective material in ANSI/ISEA 107.
- 5.4. Type E: A rating for pants that is based on the amount of background and retroreflective material in ANSI/ISEA 107.

**6. Records:**

- 6.1. Safety Vest Logs
  - 6.1.1. When Safety and Compliance issues reflective vests, a log indicating the date, badge number and size of vest issued will be maintained.
  - 6.1.2. When supervisors request vests from the Safety and Compliance Department, a signature of receipt will be required once the vests are delivered or picked up.
  - 6.1.3. Once vests are in the possession of the supervisor, the Safety and Compliance Department recommends internal tracking when safety vests are issued to specific employees.
  - 6.1.4. Loaner vests issued to staff and visitors for temporary use will be tracked with a separate Loaner Vest Log.
  - 6.1.5. The Safety and Compliance Safety Vest logs will be maintained in accordance to the Safety and Compliance Department’s record retention schedule.

**7. Appendices:**

NA.



<b>Original Date:</b> 01/10/2019	<b>Revision Date:</b> NA.	Page 3 of 4
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<b>PROCEDURE</b>  <b>REFLECTIVE SAFETY VESTS</b>	<b>Document Number:</b>	600.009
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	<b>Date:</b>	01/10/2019

**8. Training Requirements:**

- 8.1. Training for the Reflective Safety Vest Procedure will occur alongside PPE tailgates and through the use of an Operations Notice annually.
- 8.2. PPE Tailgates are prepared by the Environmental Health and Safety Unit and are delivered by department supervisors in accordance with SSS-SAF-IIPP-0401.
- 8.3. The department issuing vests to staff, contractors and visitors shall ensure review of this procedure each time a vest is issued. The signing of the log will also signify that training has been completed.

**9. Summary of Changes:**

NA.

**10. Approval Information:**

<i>Prepared by</i>	<i>Reviewed by</i>	<i>Approved by</i>
DocuSigned by:  85108B4D547C4C5...  Karly Hutchinson Environmental Health and Safety Specialist	DocuSigned by:  FFF7F2333043470...  Angelique Gaeta VTA's Chief of Staff/Interim Director of Safety and Compliance	DocuSigned by:  E4CE93FA2C8C410...  Nuria I. Fernández General Manager/CEO

Date Approved: 3/6/2019