



CONTRACT
BETWEEN
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND
SOUTHWEST STRATEGIES, LLC
FOR
BART SILICON VALLEY PHASE II (BSVII) STAKEHOLDER ENGAGEMENT AND
COMMUNITY RELATIONS SUPPORT

CONTRACT NO. V25031

THIS CONTRACT for professional services (“Contract”) is entered into as of the last date of signature below (“Effective Date”) between Santa Clara Valley Transportation Authority, a California special district (“VTA”) and Southwest Strategies, LLC, a Delaware Limited Liability Company (“Contractor”), referred to jointly as the “Parties” and individually as a “Party.”

The Parties agree as follows:

A. Services to be Performed.

1. Contractor must furnish all technical and professional labor and materials required to perform the services described in the attached Exhibit A, SCOPE OF SERVICES (“Services”) pursuant to VTA-issued task orders in the format set forth in the attached Exhibit B, SAMPLE TASK ORDER (“Task Order”).
2. Contractor may only perform Services specified in a Task Order signed by the Parties.
3. Contractor’s duties and services under this Contract must not include preparing or assisting VTA with any portion of VTA’s preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with VTA. VTA must at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor’s participation in the planning, discussions, or drawing of project plans or specifications must be limited to conceptual, preliminary, or initial plans or specifications. Contractor must cooperate with VTA to ensure that all proposers/bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Contractor pursuant to this Contract.

B. Term.

The term of this Contract will commence on the Effective Date and continue through December 31, 2030, unless terminated earlier pursuant to these terms and conditions. These terms and conditions will remain in effect and applicable to all Task Orders issued during the Term of this Contract.



VTA may, at its option, extend the term of the Contract for five (5) additional one-year term each an “Option Year”).

VTA may unilaterally exercise its right to extend this Contract for Option Years by sending written notice to Contractor’s Authorized Representative at least 30 days before the end of the then-current Term.

C. Compensation.

VTA will pay Contractor for the Services in accordance with Exhibit C, COMPENSATION, INVOICING, AND PAYMENT and Exhibit D, RATE SCHEDULE.

D. Performance of the Services.

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

E. Assignment and Subcontracts.

1. Contractor must not assign or transfer this Contract, in whole or in part, without VTA’s prior written consent. Additionally, Contractor must not subcontract any part of the Services unless the subcontractor is identified in the attached Exhibit E, APPROVED SUBCONTRACTORS. Any assignment, transfer, change, or subcontract in violation of this Contract will be void.
2. Contractor will be fully responsible and liable for the Services, products, and actions of all subcontractors and suppliers of any tier, and must include in each subcontract any provisions necessary to make all the terms and conditions of this Contract fully effective.

F. Changes.

By written notice from VTA’s Authorized Representative (as defined in Section M.1), VTA may, from time to time, order work suspension or make changes within the general scope of this Contract. If any such changes cause an increase or decrease in Contractor’s cost to perform the Service or in the time required for its performance, Contractor must promptly notify VTA and request an adjustment within ten (10) days after VTA orders the change. Thereafter, the Parties will enter into good faith negotiations to make an equitable adjustment to the Contract.



G. Audit and Records.

1. Contractor must maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records, and data with respect to actual time devoted and costs incurred for the Services. Such documentation must be supported by properly executed payrolls, invoices, contracts, and vouchers evidencing in detail the nature and propriety of any charges. Such documentation must be sufficient to allow a proper audit of the Services. All checks, payrolls, invoices, contracts, and other accounting documents pertaining in whole or in part to the Services must be clearly identified and readily accessible.
2. For the duration of this Contract, and for a period of three (3) years thereafter, VTA, its representatives, and the state auditor will have the right to examine and audit during Contractor's normal business hours the books, accounts, records, data, and other relevant information to the extent required to verify the costs incurred where such costs are the basis for billings under this Contract.
3. Contractor must report indirect costs in accordance with the cost principles contained in 48 CFR Part 31 and follow the uniform administrative requirements set forth in 2 CFR Part 200, as modified by 2 CFR Part 1201.
4. Any subcontract under this Contract must include this **Audit and Records** section.

H. Prohibited Interests.

1. **Solicitation.** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, VTA will have the right to rescind this Contract without liability.
2. **Interest of Public Officials.** No Board Member, officer, or employee of VTA during his or her tenure or for two (2) years thereafter may have any interest, direct or indirect, in this Contract or its proceeds.
3. **Interest of the Contractor.** Contractor covenants that, presently, neither Contractor, nor its officers, directors, or agents, have any interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree (or create an appearance of conflict) with the performance of the Services. Contractor further covenants that in the performance of this Contract no person having any such interest will be knowingly employed.



I. Ethics Hotline.

Contractor acknowledges that it is aware of the availability of VTA's Ethics Hotline, which is available 24/7/365 for VTA employees and those doing business with VTA to report anonymously, securely, and without fear of retribution, suspected unethical behavior, such as fraud, waste, abuse, theft, misconduct, or any violation of company policy, law, or regulation. Reports to the VTA Ethics Hotline are evaluated, investigated, or referred by an independent third party.

Anonymous reports can be submitted via:

Website: vta.ethicaladvocate.com; or

Telephone: (844) 845-0153.

J. Termination and Suspension.

1. VTA may, by giving at least ten (10) business days' written notice to Contractor, terminate this Contract or suspend its performance, in whole or in part, at any time for VTA's convenience. Contractor will be compensated (a) in accordance with the terms of this Contract for the Services satisfactorily performed prior to the date and time of termination or suspension, or (b) the minimum dollar amount stated herein, whichever is applicable. Contractor will have no right to recover lost profits on the balance of the Services.
2. VTA may declare default in Contractor's performance of any term of this Contract by sending a written declaration specifying with particularity the basis for the declaration. Contractor must provide a written response to the declaration within two (2) business days of receipt of the notice, setting forth a reasonable proposal to cure the default. VTA may elect to terminate this Contract for cause by serving written notice of termination to Contractor if Contractor (a) fails to deliver the response on time and/or (b) fails to cure the default within the proposed timeframe (or within such additional time the Parties may agree upon in writing).
3. In the event of such termination for cause, VTA will be relieved of any obligation of further payment to Contractor, including its obligation to procure the minimum dollar amount stated herein (if any), and may complete the remainder of the Services by itself or by using an alternative, third party contractor. The additional cost to VTA for completing the Services will be deducted from any sum due to Contractor, and VTA will pay the balance, if any, to Contractor upon demand. The foregoing will be in addition to any other legal or equitable remedies available to VTA.
4. If, after termination for failure to fulfill Contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the Parties will be the same as if the termination had been issued for the convenience of VTA.



K. Good Faith Requirement.

Contractor must at all times deal in good faith and truthfully with VTA, including in reports, claims, requests for change orders, equitable adjustments, or contract modifications. Further, requests of any kind seeking increased compensation or decreases of an obligation under the Contract must only be in good faith and based upon an honest evaluation of the underlying circumstances and an honest calculation of any amount being sought. Any violation of this standard of conduct will subject Contractor to being deemed non-responsible and potentially ineligible for future contracts with VTA, regardless of whether VTA relied on or responded to the submission.

L. General Provisions.

1. **Days:** For purposes of this Contract, all references to “day” mean calendar day, unless specified otherwise. All references to “calendar day” mean any day, including Saturday, Sunday, and all legal holidays. All references to “working day” or “business day” mean any business day, excluding Saturdays, Sundays and legal holidays.
2. **Ownership of Data.** All drawings, specifications, reports and other data developed by Contractor or its assigned employees or subcontractors pursuant to this Contract will become the property of VTA as prepared, whether delivered to VTA or not. Unless otherwise provided herein, all such data must be delivered to VTA or its designee upon completion of this Contract or at such other times as VTA or its designee may request.
3. **Civil Rights.**
 - a. **Nondiscrimination.** During performance of this Contract, Contractor, its employees, and its subcontractors must not unlawfully discriminate, harass, or allow harassment against any person because of race, religious creed, color, sex, gender, gender identity, gender expression, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), genetic information, marital status, age (over 40), sexual orientation, or military and veteran status. In addition, Contractor and any subcontractor must not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. Contractor must ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment.
 - b. **ADA Accessible Information and Communications.** Any and all deliverables Contractor provides to VTA pursuant to the Contract must be prepared and delivered in a format that is accessible to individuals with disabilities, as required by the following, as amended: (i) the American with Disabilities Act of 1990 (ADA); (ii) 28 CFR Parts 35 and 36; (iii) 49 CFR Part 37; (iv) Section 504 of the Rehabilitation Act of 1973; and (v) California’s Unruh Civil Rights Act.



4. **Governing Law.** The laws of the State of California will govern the terms and conditions of this Contract and any claim that might arise between the Parties without regard to conflict of law provisions.
5. **Forum Selection.** Any lawsuit or legal action arising from this Contract will be commenced and prosecuted in the courts of Santa Clara County, California. Contractor agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.
6. **Confidentiality and Disclosure.** Except as set forth in this paragraph, Contractor must not disclose to third parties any information, data, or materials that Contractor obtains from VTA or otherwise learns of or is exposed to in the course of the performance of this Contract or information developed or obtained by Contractor in the performance of this Contract (“Confidential Information”). In addition, Contractor must not disclose or use any Confidential Information for any purpose other than the performance of the Services. Notwithstanding the foregoing, Contractor may disclose Confidential Information to third parties or use such information for purposes other than performance of the Services if: (a) VTA provides express written consent for such use or disclosure; (b) the information is known to Contractor prior to obtaining such information from VTA or performing Services under this Contract; (c) the information is, at the time of disclosure by Contractor, then in the public domain; (d) the information is obtained by or from a third party who did not receive it, directly or indirectly, from VTA and who has no obligation of confidentiality with respect thereto. In addition, Contractor may disclose Confidential Information if required to do so by court order. However, upon receipt of an order requiring such disclosure, Contractor must inform VTA as soon as practicable in order to allow VTA to challenge the order if it determines that a challenge is appropriate. For purposes of this Section, “third parties” do not include those employees or authorized subcontractors engaged in the performance of the Services.
7. **Nonwaiver.** Neither VTA’s acceptance of, or payment for, any Services nor its delay in, or failure to, insist upon strict performance of this Contract, exercise any rights or remedies provided in this Contract or by law, or properly notify Contractor in the event of breach will release Contractor from the representations or obligations of, or be deemed a waiver of VTA’s rights or remedies under, this Contract.
8. **Severability.** If any provisions of this Contract (or portions or applications of it) are held to be unenforceable or invalid by any court of competent jurisdiction, (a) the Parties will negotiate in good faith to make an equitable adjustment to the Contract provisions with a view toward effecting the Contract’s purpose, and (b) the remaining provisions (or portions or applications of them) will remain valid and enforceable.
9. **Independent Contractor.** In performance of the Services, Contractor will be acting as an independent contractor and not the agent or employee of VTA.



10. Entire Agreement. This Contract constitutes the entire agreement between the Parties relating to the subject matter and supersedes all prior negotiations, contracts, agreements, or understandings, whether oral or written, of the Parties regarding the subject matter.

11. Amendment. Except as expressly provided in this Contract, its provisions cannot be altered, modified, or amended except through the execution of a written amendment executed by the Parties.

12. Compliance with Applicable Law. In the performance of the Services, Contractor and its subcontractors must comply with all applicable requirements of state, federal, and local law. The requirements of this paragraph must be included in any subcontracts under this Contract.

13. Documents and Written Reports. In accordance with California Government Code section 7550(a), any document or written report prepared in whole or in part by nonemployees of VTA will contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of the document or written report if the total cost of the work performed by non-employees of the agency exceeds five thousand dollars (\$5,000.00). The contract and subcontract numbers and dollar amounts must be contained in a separate section of the document or written report.

14. Incorporation of Exhibits and Attachments. All exhibits and attachments referenced in this Contract are incorporated into it by this reference.

15. Counterparts; Electronic Signatures. This Contract may be executed in one or more counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument. An electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Paragraph 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by each of the Parties.

16. Authority. Each signatory who signs below for a Party to this Contract makes a representation of being duly authorized to enter into this Contract on the Party’s behalf.

M. Authorized Representatives, Notices, and Points of Contact.

The Authorized Representatives identified below, or assigned designees, have authority to accept notices per paragraph M.2, below.

1. Authorized Representatives.

VTA:



Nicole Chapman, Chief Procurement Officer
3331 N. First Street, Bldg. B
San Jose, CA 95134-1927

Contractor:

A. Christopher Wahl, CEO & Partner
Southwest Strategies, LLC
12770 El Camino Real, Suite 100
San Diego, CA 92130
858-541-7800



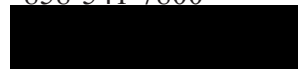
2. **Notices.** Notices must be in writing and addressed to the other Party's Authorized Representative ("Recipient") and will be deemed delivered or received on the date personally delivered to the Recipient or when deposited by registered or certified mail with postage and charges prepaid.
3. **Points of Contact.** The Points of Contact listed below are authorized to communicate regarding contract matters, except where written notice is required.

VTA:

Jessica Rodriguez, Sr. Contracts Administrator
3331 N. First Street, Bldg. B
San Jose, CA 95134-1927
jessica.rodriguez2@vta.org

Contractor:

Hope Reilly, Senior Vice President & Partner
Southwest Strategies, LLC
12770 El Camino Real, Suite 100
San Diego, CA 92130
858-541-7800



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

N. Insurance.

Contractor must adhere to the insurance requirements set forth in the attached Exhibit F, INSURANCE REQUIREMENTS.



O. Indemnity and Defense of Claims.

1. Contractor must indemnify and hold harmless VTA, any public agencies within whose jurisdiction, on whose behalf, or on whose property the Services are being performed, any party VTA is contractually obligated to identify in this Contract as an indemnitee, and each of their respective boards of directors, boards 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, or fees and costs (including attorneys’ and experts’ fees and costs) (each a “Claim” and collectively “Claims”) arising out of, pertaining to, caused by, or in any way relating to the work performed under this Contract, including compliance or non-compliance with the terms of this Contract, by Contractor and/or its agents, employees, or subcontractors, whether such Claims are based upon a contract, personal injury, death, property damage, or any other legal or equitable theory whatsoever.
2. Contractor agrees, at its own expense, and upon written request by VTA or any individual Indemnitee, to immediately defend any suit, action, proceeding, dispute, or demand brought against any Indemnitee founded upon, alleging, or implicating any Claims covered by Contractor’s indemnity obligation set forth above in section O.1, above, 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 acting on behalf of VTA, VTA will promptly reimburse Contractor for costs of defending the Indemnities 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 acting on behalf of VTA.
3. This indemnity and defense of claims provision will survive the expiration or termination of this Contract and remain in full force and effect.

P. Business Development Program Requirements.

Contractor must adhere to the Disadvantaged Business Enterprise requirements set forth in Exhibit G, DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS.

Q. Remote Access.

Upon request, VTA will provide Contractor with the right to establish a remote connection to VTA’s computer(s) for the limited purpose of, and only to the extent necessary for, performing the Services. Contractor must comply with VTA’s IT policies when establishing remote connections to ensure that VTA data and security are not compromised.



R. Cyber Security Incident Notification Requirements.

1. In the event of a Cyber Security Incident (defined below), which is reasonably likely to affect VTA, the Contractor must:
 - a. within 24 hours of discovering the Cyber Security Incident, notify VTA in writing and provide information about the Cyber Security Incident by sending an email to Cyber.security@vta.org and by phone (408) 546-7401.
 - b. if VTA was impacted, within 72 hours, provide details including the nature of the information compromised and the steps being taken to mitigate the Cyber Security Incident; a copy of any communications with law enforcement and/or federal agencies, including a copy of any police report. Report details should include:
 - i. Affected system/facilities, including location.
 - ii. Description of the threat, the earliest date, notifications, actions taken, and any information available, including the source.
 - iii. Description of potential impact on operations systems or data theft.
 - iv. Description of incident responses and plan.
 - v. If the information is not available at the time of reporting, a follow-up is required.

For purposes of this Section R, a “Cyber Security Incident” is the loss or unauthorized destruction, alteration, disclosure of, access to, or control of, any information technology systems, operational technology systems, networks, internet, or cloud enabled applications or devices and the data contained within such systems. This definition includes an event that is under investigation or evaluation by the owner or operator as a possible cybersecurity incident without final determination of the event’s root cause or nature (such as malicious, suspicious, or benign). A Cyber Security Incident is also considered any cyber incident, regardless of cause, including, but not limited to, a compromise of a cloud service provider, managed service provider, or other third-party data hosting provider; a supply chain compromise; a denial-of-service attack; a ransomware attack; or exploitation of a zero-day vulnerability.

2. The requirements of this Section R apply to the Contractor and its subcontractors. The Contractor must ensure compliance with this Section R by all of its subcontractors.

S. Workplace Violence Prevention Requirements. Effective July 1, 2024, VTA must comply with California Senate Bill 553, also known as the Workplace Violence Prevention Act (WVPA). To comply with the WVPA:

1. VTA must train Contractor on VTA’s Workplace Violence Prevention Plan (“WVPP”) and maintain a log of who received training and when; and



2. Contractor must, as of the last date of signature below, provide VTA written notification by sending an email to VTA.Safety.Security@vta.org of the name, title, phone number, and email address of its designated supervisory employee, who will be responsible for doing the following:
 - a. Receive and acknowledge receipt of (i) VTA's WVPP, (ii) a link to additional information about VTA's WVPP, and (iii) VTA's designated email alias for asking questions related to VTA's WVPP;
 - b. Attend training on VTA's WVPP at the time and place, and in the manner, designated by VTA;
 - c. Communicate to employees of Contractor and its subcontractors the reporting requirements under VTA's WVPP;
 - d. Record in a log that complies with California Labor Code section 6401.9(d) any incident of "Workplace Violence," as defined by California Labor Code section 6401.9(a)(6), that occurs within the course and scope of Contractor's or its subcontractors' performance of this Contract; and
 - e. Report in writing pursuant to the WVPP any incident of Workplace Violence that occurs within the course and scope of Contractor's or its subcontractors' performance of this Contract immediately to VTA by providing the information required by California Labor Code section 6401.9(d)(2).

Contractor's failure to meet any of its obligations set forth in this Section S will constitute a material breach of this Contract.

T. Special Provisions.

1. **SAM Unique Entity Identifier.** Contractor must obtain a Unique Entity Identifier ("UEI") from the US government's System for Award Management (SAM) in order to do business with VTA. Contractor can obtain the UEI at the following web address: <https://www.sam.gov/SAM/pages/public/index.jsf>.
2. **Federal Requirements.** Contractor as well as its employees and subcontractors performing the Services must comply with the laws and regulations set forth in Exhibit H, REQUIRED FTA CLAUSES PART I and EXHIBIT H, REQUIRED FTA CLAUSES PART II.

Signatures of parties on following pages



The Parties have caused their undersigned, duly authorized signatories to execute this Contract on the dates set forth below.

***Santa Clara Valley
Transportation Authority***

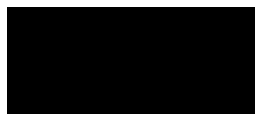
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Carolyn M. Gonot
General Manager/CEO

12/19/2025
Date

Southwest Strategies, LLC



A. Christopher Wahl
CEO & Partner

12/18/2025
Date

Approved as to Form

Signed by:

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Andrew Lee
Assistant Counsel

12/18/2025
Date



EXHIBIT A SCOPE OF SERVICES

VTA is coordinating project related efforts with the Cities of San José, Santa Clara, and other key stakeholders and the community as committed to in the Final Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report (BSVII Planning and Environmental Documents <https://www.vta.org/projects/bart-sv/phase-ii/planning-and-environmental#accordion-vta-s-bart-phase-ii-environmental-documents>) VTA is committed to developing and implementing the Construction Outreach Management Program (COMP), which consists of three plans:

- **Construction Education and Outreach Plan:** The BSVII External Affairs Team developed and is implementing the Construction Education and Outreach Plan (Construction Education and Outreach plan <https://www.vta.org/sites/default/files/2021-12/Construction%20Education%20%26%20Outreach%20Plan.pdf>)
- **Construction Transportation Management Plan and Emergency Services Coordination Plan:** VTA's Program Management Team and its Contractors are developing and implementing these plans for each of the project areas where construction will occur. The BSVII External Affairs Team also plays a key role during the development of the Construction Transportation Management Plans, leading the engagement with the Cities and key stakeholders as well as hosting a public meeting to inform the community about the access plans for all modes during construction.

The Construction Education and Outreach Plan is the framework and guiding document for the services that the BSVII External Affairs Team implements.

Contractor will work under the direction of assigned VTA staff and provide full-time, part-time, and on-call on-site staffing as needed to augment the BSVII External Affairs Team to meet the engagement needs of BSVII in the areas including Third Party Coordination, City Coordination, Planning, Outreach, Communications, Community Relations, Government Relations and Graphic Design

The Services provided will include the activities indicated below.

Proactive broad engagement with stakeholders and community to support advancement of the project to passenger service

1. Communicate project information to stakeholders through a variety of media, including blogs, quarterly newsletters, social media and Project website, to disseminate information as efficiently and effectively as possible; small group and public meetings; and make presentations to community and neighborhood groups.



2. Support the development, approval and implementation of Construction Transportation Management Plans including stakeholder coordination and community outreach and public meetings.
3. Provide information on project-related noise and vibration including environmental mitigations to stakeholders and the community as needed.
4. Provide up to date notification of work hours including regular, extended, night, weekend, and holiday work and engage with stakeholders and the community about changes.
5. Coordinate with Title VI compliance and requirements related to on-going public outreach and integration of BART and VTA services and promotion of future BART service. Support documentation of Triennial FTA Audit.
6. Provide facilitation of tours of the project alignment as well as construction sites as needed. Assist with planning and implementing public events including milestone events to support Tunnel Boring Machine launch and station construction.
7. Prepare materials (including memorandums and PowerPoint presentations) necessary for information or action by VTA Board of Directors, committees, or other internal/external stakeholders.
8. Provide assistance in reporting engagement related environmental compliance activities as requested.
9. Provide support with the identification and implementation of project agreements with other local, regional, and state governmental agencies and jurisdictions, including identification of betterments requested by third parties (Development of third party agreements will be handled by the BSVII Program Management Team).
10. Support coordination and engagement with the three BSVII Community Working Groups (BSVII in the Community <https://vtabart.org/community-activity/>) and their hybrid meetings that occur meet a minimum of four times annually, including implementing directed transparency measures. Additional meetings added as needed when public facing topics (e.g. station design changes, construction access details, etc.) need to be shared in advance of sharing with VTA's Board of Directors. See VTA Board of Directors Packet from September 5, 2024 for more details on Community Working Group Plan (September 5, 2024 Board of Directors Meeting <https://santaclaravta.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=4014&Inline=True>)
11. Support BSV communications through production of graphics, presentation materials, display boards, etc. for effective dissemination of timely, relevant, and factual information accomplished through written, visual and multimedia materials.



12. Coordinate, interpret and effectively present technical information in various areas including, but not limited to access planning, station area planning, and station design and layouts.
13. Provide and relay stakeholder input as the BSVII Team develops concepts, in coordination with internal and external stakeholders, for station access and station area plans.
14. Support communications to the public regarding on-going construction activities along the 6-mile project corridor and station areas, including working closely with businesses impacted due to the construction in the entire project area.
15. Manage Project website portal, including document management, graphics support, technical services. Provide technical assistance on ADA document compliance for VTA website, including tagging, document structure, and screen reading to confirm documents meet VTA ADA policies.
16. Serve as a stakeholder liaison for BSV related to the Diridon Intermodal Station planning and other intermodal planning activities.
17. Station coordinators for each station will serve as technical resource and liaison for BSVII Team and Stakeholders. Station coordinators be responsible for scheduling the meetings with all external stakeholders for the BSVII Team and will work directly with the BSVII team for design of stations and public right-of-way representing and relaying what they have heard from the community and stakeholders and ensuring stakeholder and community commitments are being up held. Station coordinators will also work directly with tunnel and trackwork contractor for early work packages and construction in collaboration with the BSV EAT construction outreach lead (described in Construction Outreach Engagement section below) for that station area.
18. Support overall Project communications related to FFGA including talking points, news releases, blogs, social media in coordination with VTA's Communications Team.
19. Coordinate with VTA departments to represent BSV including Planning, TOD.C, Engineering, IT, Parking, Safety/Security, Communications and Government Affairs.
20. Support coordination of adjacent development review, holding discussions with developers, project stakeholders, to represent project interests. In addition, support establishment of Adjacent Construction Guidelines, including coordination with City of San Jose and BSVII Team and implementation process.
21. Provide professional facilitator services, on an on-call basis, for necessary project services and programs, including but not limited to Community Working Groups, Stakeholders, outside agencies, internal program staff, contractors, as requested by VTA.



22. Represent External Affairs within the BSVII Team with other professional services contracts such as the Program Management Team, the General Engineering Consultant Team, and the Construction Management Services Team.
23. Coordinate third party design review process including City of San Jose, City of Santa Clara, Joint Powers Board, and VTA departments, which includes acting as liaison between BSVII Team and stakeholders, assisting with transmittal of documents for review to stakeholders, coordinating and facilitating meetings, facilitate the process for BSVII Team to identify relevant design criteria to be reviewed by key stakeholders during Project Design Reviews and contract development.
24. Document all Third Party comments on design reviews for contract documents in project controls system Aconex.
25. Review contract specifications to ensure alignment with BSVII Construction Education and Outreach Program and VTA's Project Communications Policy and Procedures.
26. Work with Cities and VTA Grants department and conduct research to identify funding for public art. Assist developing overall Public Art strategy for project when requested by VTA.

Planning & TOD.C Coordination

1. Support integration of VTA's Transit Oriented Development and Communities (TOD.C) long range planning and VTA's Design Development Framework efforts with the BSVII Project.
2. Attend station area planning coordination meetings, including but not limited to Santa Clara Station Area Specific Plan, Five Wounds Urban Village Plan, and the City of San José's Grand Boulevard Study.
3. Support facilitating regular coordination and assist with integration of TOD.C in BSVII Project design development.
4. Assist with grant preparation, including but not limited to providing input from community engagement perspective.

Full Funding Grant Agreement (FFGA) Engagement Activities

1. Coordinate with VTA's lobbyists and support development of advocacy and project supportive collateral to help in securing FFGA.



2. Support all requested stakeholder, community and Community Working Group engagement activities related to refining Project scope including creating presentation materials and participating in meetings as requested by VTA.
3. Serve as conduit repackaging technical project, design and engineering information for public consumption.
4. Support preparations and facilitation of workshops, tours and other on-site visits from FTA and their Project Management Oversight Consultant.
5. Help facilitate preparations for FFGA signing event.
6. Update public facing funding materials.
7. Proactively communicate funding progress, as directed.

Construction Outreach Engagement

1. Construction outreach leads for each station will serve as the main point of contact for the community regarding construction in that area. Service to be provided until VTA positions are filled.
2. Make routine construction updates on BSV website, including updates to the interactive construction map that will display where construction is occurring, lane closures, detours, etc.
3. Manage and support electronic and in-person construction notifications including flyering and emails
4. Support contractor compliance and stakeholder approval of Construction Transportation Management Plans.
5. Coordinate to produce Construction Outreach Project Implementation Plans for major project areas of construction including each station area and portals. Each Construction Outreach Project Implementation Plan is a tool for the BSV EAT to use in engage the community in each of the major project areas and will be developed based on the Construction Education and Outreach Plan and the Construction Transportation Management Plan for that respective area.
6. Attend weekly construction meetings when needed, and support updates of and development of Construction Outreach Project Implementation Plans accordingly.
7. Help facilitate engagement for Historic Building Program.



8. Coordinate to create and distribute communications for Property Protection Program including fact sheets, permits to enter and any outreach to owners and tenants necessary.
9. Manage documentation of communications and actions for the Mitigation and Monitoring Reporting Program and coordinate with the Environmental Team on quarterly updates to FTA.
10. Lead coordination with stakeholders on branded screening around construction staging areas including developing co-branded screening in key locations identified by VTA. Support implementation of Project construction fencing and including branded screening in coordination with BSVII contractors.
11. Coordinate project property concerns from stakeholders or community members with BSVII contractors and VTA Safety and Security.
12. Update Crisis Communications Plan as needed including phone tree notifications.
13. Coordinate with VTA's Environmental and Real Estate teams; support any future engagement related to future environmental documents.
14. Coordinate notification and prepare stakeholders for building demolitions.
15. Support Project environmental team in communicating with stakeholders and noticing for archeological investigations.
16. Update and maintain all slide and graphic libraries.
17. Utilize Salesforce constituent management, or any other constituent management software requested by VTA for the following:
 - a. Document all stakeholder inquiries, concerns and interactions.
 - b. Update and maintain all documentation of stakeholder outreach and community engagement including event participation, public meetings and briefings
 - c. Make routine updates as VTA acquires property for the project and document and implement any communications and outreach terms that are in agreements.
18. Produce graphics and diagrams for presentations.
19. Assist with providing notification of construction activities and associated traffic and VTA service impacts as well as general community impacts.
20. Routinely seek input from stakeholders to proactively address any developing issues or concerns.
21. Support implementation and activities of the Thriving Business Program. (BSVII Thriving Business Program <https://vtabart.org/thriving-business-program/>)



-
- a. Support administration of and activities of the Thriving Business Program including but not limited to creating and issuing business eligibility and participation surveys, creating graphics.
 - b. Support in small business outreach and engaging community-based organizations.
 - c. Assist with coordinating the Small Business Task Force to seek ongoing feedback from small businesses, including meetings, presentations, and notes.
22. Assist with staffing station area field offices during identified hours once construction begins in that area. There will be three field offices – in the 28th Street/Little Portugal area, at the VTA Downtown Customer Service Center (for Downtown and Diridon areas), and at the BSVII Project Office (for Santa Clara/Newhall Yard area).

EXHIBIT B SAMPLE TASK ORDER



Professional Services - Task Order Contract

The Contractor hereby agrees to perform the work authorized herein in accordance with all the terms, conditions, and at the labor rates agreed to in the Contract referenced below. The Contractor will furnish the necessary professional and technical personnel and materials required to complete this work.

Contract No. _____ Task Order No. _____

Contractor: _____ SAP Requisition No. _____

(Attach Purchase Requisition Form)

Description: _____

Term: Effective _____ and continue in effect through _____
Date

Compensation: (check one) ☐ T&M ☐ CPFF ☐ FFP

Task Order value: _____

(To be completed by Contracts Administrator)

Contract value available to authorize this Task Order: _____

Funding Information: (Check funding sources)

_____ Federal Funds: _____ FTA/Transit or _____ FHWA/Highways _____ State Funds

_____ CalTrans Local Assistance Program _____ Measure A _____ Measure B

_____ Other: _____

Scope of Services: (check one)

_____ See details below of Scope

_____ See attached Scope of Services

Key Personnel: List additional Personnel authorized to provide services under this Task Order. (check one)

_____ See details below of Personnel (Name/Classification)

_____ See attached List of Personnel (Name/Classification)



Professional Services - Task Order Contract

Subcontractors: List additional subcontractors authorized to provide services under this Task Order. (check one)

- ☐ See details below of subcontractors (Indicate SBE/DBE status)
☐ See attached list of subcontractors (Indicate SBE/DBE status)

Approvals: Project Manager is required to obtain signature from OBDP and Compliance Manager prior to submitting to Contracts department.

OBDP: SBE/DBE Goal _____ %
 (Specifically established for this Task Order)

 OBDP Manager Date

Contract Compliance Requirements:
 (Specifically established for this Task Order)

Prevailing Wage: ☐ Yes ☐ No

Storm Water Compliance: ☐ Yes ☐ No

 Compliance Manager Date

 Project Manager Date Division Phone No.

 Division Chief/Director Date Capital Projects Group Date

 Reviewed by Contracts Administrator Date

Santa Clara Valley Transportation Authority

Contractor

By: _____
 Date

By: _____
 Date

Name (print): _____

Name (print): _____

Title: _____

Title: _____



EXHIBIT C COMPENSATION, INVOICING and PAYMENT
TASK ORDER CONTRACT

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

A. COMPENSATION: This is a Task Order Contract. Total compensation for the Services provided hereunder must not exceed \$15,488,388.00 for the initial term of the Contract, and with a maximum value of \$22,797,432.00 if all options to extend the term are exercised by VTA. Contractor will be guaranteed a minimum compensation of \$1,000.00 under this Contract. Contractor agrees to complete the Services defined in authorized Task Orders. Contractor is not authorized to provide Services hereunder costing in excess of the maximum value amount stated herein. Task Order compensation may be awarded on either a time and materials (T&M), or firm fixed price (FFP) basis.

1. **BASE LABOR RATES:** The basis for T&M, and FFP Task Order pricing and payment for work performed will be subject to the direct labor, indirect labor, overhead and profit stated in **individual Task Orders**, and in accordance with the respective provisions stated below:
2. **TIME AND MATERIALS.** Payment for work performed on a T&M basis must be in accordance with the following provisions.
 - a. **Exempt Personnel:** VTA will pay for work by exempt personnel (as determined under the Fair Labor Standards Act, 29 U.S.C. § 201-219) at the labor rates as identified in Exhibit A5, which include direct labor, indirect labor, overhead and profit. VTA payment for work by exempt personnel will not include any premium pay.
 - b. **Non-Exempt Personnel:** VTA will pay for overtime work by non-exempt personnel (Time and a Half, Double Time) in accordance with California law, at the labor rates as identified in Exhibit A5. VTA must approve all premium time in advance in writing.
3. **FIRM FIXED PRICE.** Payment for work performed on a firm-fixed price basis will establish the maximum value upon issuance of Task Orders, within which Contractor agrees to complete the Services defined in the Task Order. Said sum will include Contractor's total direct costs, indirect costs, and profit. No additional compensation will be paid without a written amendment to this Contract.
4. **SUBCONTRACTOR COSTS:** VTA will reimburse subcontractor costs at actual cost without mark-up. Subcontractor costs must be supported by invoices, as are prime costs. See paragraph B, Invoicing.
5. **LABOR RATE ADJUSTMENTS (ESCALATION):** Billing Rate adjustments will be as follows:



- i. Contractor may request increases in labor rates. Increases in labor rates may occur only once in a twelve (12) month period per individual. Contractor must make all requests in writing and deliver them to VTA at least thirty (30) days prior to the date the requested new rates are to become effective. VTA will review the request and, at its sole discretion, approve or deny the request in writing. VTA will issue adjustments, if any, prior to the effective date of new labor rates.
- ii. The labor rate paid by Contractor to each employee must not increase more than the annual average of the Consumer Price Index for the San Francisco Bay Area, using the CPI-U, All Urban Consumers index type for the twelve (12) month period preceding a new rate, but no more than 2%. The CPI is a guideline only, and VTA is not obligated to match or increase this rate.

6. OTHER DIRECT COSTS (ODCs):

- a. The following categories of expenses are considered ODCs:
 - i. **Travel Expenses:** Any travel expense (as described below) must be authorized by VTA in writing prior to Contractor incurring the expense of such travel. VTA may deny reimbursement of any travel expense incurred by Contractor prior to VTA's written approval. If VTA approves of the travel expense, VTA will reimburse the following types of travel expenses related to the performance of Services at the following per-diem or lump sum rates:

Car Rental: \$50/day (including all gas and all associated fees)

Flight: The rates set forth as GSA City Pairs Gov't "YCA" Fare
(<https://cpsearch.fas.gsa.gov/cpsearch/search.do>)

Food/Beverage and Hotel: The rates set forth as GSA per diem rates
(<https://www.gsa.gov/travel/plan-book/per-diem-rates>)

Mileage: The rates set forth as GSA mileage allowance
(<https://www.gsa.gov/travel/plan-book/transportation-airfare-pov-etc/private-owned-vehicle-pov-mileage-reimbursement-rates>)

- ii. VTA will reimburse parking, tolls, deliveries, printing, plan reproduction, blue print services, and any other expenses directly associated with the Services at actual cost without markup. Contractor must provide appropriate supporting documentation, including detailed receipts. If any of the ODCs described in this paragraph will exceed \$500.00, Contractor must receive VTA's written approval



prior to incurring such expense. VTA may deny reimbursement of any such ODC expense incurred by Contractor prior to VTA's written approval.

- b. Except as otherwise provided herein, telephone charges, computer costs, CAD machine charges, in-house copying charges, and facsimile charges must be included in overhead and will not be reimbursed as an ODC. Additionally, VTA will not reimburse any of the following types of expenses: alcohol, travel upgrades, fines, memberships, loss of personal property or cash, "no shows," or personal itinerary changes.
- c. No other categories of expenses will be subject to reimbursement as an ODC without the prior written approval of VTA.

B. INVOICING:

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

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

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

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

Contractor's Signature: _____

Contractor's Name: _____

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



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

Email: VTA.AccountsPayable@VTA.org

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

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



EXHIBIT D RATE SCHEDULE

Staff	Not to Exceed Fully Burdened Rate		
High Level			
Mid Level			
Junior Level			



EXHIBIT E APPROVED SUBCONTRACTORS

Firm Name	Address	Area of Responsibility
Winter Consultants	95 S. Market St., San Jose, CA 95113	Public Relations Consulting
Convey	1250 45 th Street # 250, Emeryville, CA 94608	Public Relations Consulting
JCL Consulting Group	3614 Camino de la Cumbre, Los Angeles, CA 91423	Public Relations Consulting
AlphaVu	1100 15 th Street NW, 4 th Floor, Washington, DC 20010	Marketing & Market Research/ Public Opinion Polling Consulting
EPC Consultants	101A Clay Street #110, San Francisco, CA 94111	Construction Management & Engineering Consulting
Kittelson & Associates	155 Grand Avenue, Suite 505 Oakland, CA 94612	Transportation Planning & Engineering Consulting
Studio Percolate	1301 La Loma Ave., Berkeley, CA 94708	Graphic Design and Photography Services
Lazar Translating & Interpreting	22141 Ventura Blvd., Suite 210, Woodland Hills, CA 91364	Translation & Interpretation Services



EXHIBIT F INSURANCE REQUIREMENTS

Without limiting Contractor's obligation to indemnify and hold harmless the Indemnified Parties pursuant to Section O of the Contract, Contractor must procure and maintain insurance for the duration of the Contract against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by Contractor, its agents, representatives, or employees, and its Subcontractors. The cost of such insurance is deemed to be included in the Contract Price. Exhaustion of insurance limits, whether due to payment of covered claims or otherwise, shall not relieve Contractor of its obligations under the Contract. Contractor is responsible for reinstating exhausted limits or procuring replacement insurance policies at its own expense.

In the event of any material change in the Services, VTA reserves the right to change the insurance requirements set forth herein. Contractor and its Subcontractors must furnish complete copies of all insurance policies prior to commencing Services under the Contract, and at any time within ten (10) Business Days of any request for such by VTA.

Contractors must provide the below-listed insurances with regard to all activities performed for the Project. No insurance policy may contain any wrap-up exclusion or wrap-up excess endorsement that would bar or limit available coverage where the Named Insured is not an Enrolled Party.

A. COMMERCIAL GENERAL LIABILITY AND WORKER'S COMPENSATION

1. Minimum Scope of Coverage

Coverage must be at least as broad as:

- a. Commercial General Liability coverage (ISO "occurrence" form CG 00 01), including Products/Completed Operations Liability. Commercial General Liability insurance written on a "claims made" basis is not acceptable. Products/Completed Operations coverage must be maintained for no less than three (3) years following Final Acceptance of the last contract package within the Program.
- b. Business Auto Coverage (ISO form CA 00 01), covering Business Automobile Liability, code 1 "any auto." Business Auto Liability written on a "claims-made" basis is not acceptable.
- c. Contractor-only Errors & Omissions Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of Contractor's Services under the Contract. This coverage must be continuously maintained for a minimum of three (3) years following completion of the relevant Services under the Contract.
- d. Workers' Compensation insurance as required by the Labor Code of the State of California, and Employer's Liability insurance.



- e. Contractor-only Cyber Liability (including privacy liability and network security coverage). Contractor may satisfy this requirement with its corporate practice policy.

2. Minimum Limits of Insurance

Contractors must maintain limits no less than:

- a. Commercial General Liability: \$5,000,000 per occurrence, subject to subsection (h), below. Contractor/Subcontractors may satisfy this requirement with a combination of Commercial General Liability and Excess Liability or Umbrella. Umbrella/Excess Liability policies must feature inception and expiration dates concurrent with the underlying Commercial General Liability policy, be written on a “Follow Form” basis, and include a “Drop Down” provision.
- b. Business Automobile Liability: \$5,000,000 limit per accident for bodily injury and property damage; \$1,000,000 for Subcontractors, subject to subsection (h), below. Contractor/Subcontractors may satisfy this requirement with a combination of Automobile Liability and Excess Liability or Umbrella. Umbrella/Excess Liability policies must feature inception and expiration dates concurrent with the underlying auto liability policy, be written on a “Follow Form” basis, and contain a “Drop Down” provision.
- c. Contractor-only Errors & Omissions Liability: \$5,000,000, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of Contractor’s Services under the Contract. This coverage must be continuously maintained for a minimum of three (3) years following completion of the relevant professional services.
- d. Workers’ Compensation and Employer’s Liability: Statutory Workers’ Compensation limits and Employer’s Liability limits of \$1,000,000 per accident. A Subcontractor with no employees and who will not subcontract any Services must certify in writing that it has no employees and is not legally obligated to carry Worker’s Compensation Insurance; upon such certification, the Subcontractor will be exempt from the requirement to procure Workers’ Compensation and Employer’s Liability insurance.
- e. Contractor-only Cyber Liability (including privacy liability and network security coverage): \$2,000,000 per occurrence and in the aggregate.
- f. Contractor may, at its sole risk, authorize Subcontractors who are qualified as a DBE or SBE to carry limits of insurance lower than the minimum limits stated herein. In no event may such Subcontractors carry insurance limits lower than the following:
 - i. Commercial General Liability Insurance:
 - (i) \$1,000,000 per occurrence and in the aggregate.



- ii. Business Automobile Liability Insurance:
 - (ii) \$0 if working exclusively from a remote location and will not visit the Project Site at any time or if the Subcontractor certifies in writing that it owns no vehicles.
 - (iii) \$300,000 per occurrence and in the aggregate if operating a vehicle at any time, whether owned, leased or rented, within Santa Clara County but not on or adjacent to the Project Site.
 - (iv) No deviation from the Business Automobile Liability insurance requirements set forth in this Exhibit A7 is permitted if the Subcontractor will operate or park a vehicle, whether owned, leased or rented, on or adjacent to the Project Site.
- g. No deviation from the insurance requirements of this Exhibit A7 shall in any way limit Contractor's obligations under the Contract, including, without limitation, its indemnity obligations under Section O thereof.

3. 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 \$1,000,000 must be declared to and approved by VTA. To apply for approval for a level of retention or deductible in excess of \$1,000,000, Contractor/Subcontractor must provide a current financial report including balance sheets and income statements for the past three (3) years, so that VTA can assess Contractor's/Subcontractor's ability to pay claims falling within the self-insured retention or deductible. If the Contractor/Subcontractor is a joint venture, each member of the joint venture must provide the required financial report. Upon review of a financial report, VTA may elect one of the following options: to (i) accept the proposed self-insured retention or deductible; (ii) require the insurer to reduce or eliminate the self-insured retention or deductible as respects the Indemnified Parties; or (iii) require Contractor/Subcontractor to procure a bond guaranteeing payment of the self-insured retention or deductible. Applicable costs resulting from VTA's exercise of any of these options will be borne solely by Contractor.

B. CLAIMS-MADE PROVISIONS

Claims-made coverage is never acceptable for Commercial General Liability or Auto Liability. VTA may consider claims-made coverage for Environmental Impairment/Premises Liability and Contractor's Pollution Liability, 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, any policy written on a claims-made basis must provide that:

1. The policy must be in effect as of the date of the Contract and the retroactive date must be no later than the date of the Contract.



2. If any policy is not renewed or the retroactive date of such policy is to be changed, the Contractor/Subcontractor must obtain the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must cover at least three (3) years following final completion of the Services under the Contract.
3. No prior acts exclusion may be added to the policy during the Term.
4. The policy must allow for reporting of circumstances or incidents that might give rise to future claims.

C. OTHER PROVISIONS

1. Commercial General Liability and Automobile Liability

- a. The Indemnified Parties must be named as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor and its Subcontractors, including: (i) VTA's general oversight and supervision of the Contractor and its Subcontractors; (ii) products and completed operations of the Contractor and its Subcontractors; (iii) premises owned, occupied or used by the Contractor or any of its Subcontractors; and (iv) or automobiles owned, leased, hired or borrowed by the Contractor or any of its Subcontractors. The coverage must not contain any special limitations on the scope of protection afforded to the Indemnified Parties. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO forms CG 20 10 10 01 and CG 20 37 10 01.
- b. Coverage provided to the Indemnified Parties must not be affected by any failure to comply with reporting provisions of the policies.
- c. Contractor's and its Subcontractor'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 Commercial General Liability General Aggregate limit must apply per project, not per policy.
- e. The Commercial General Liability policy must be endorsed to remove the exclusion for railroad liabilities, with coverage at least as broad as afforded by ISO form CG 24 17.

2. All Coverages

- a. Contractor and all Subcontractors and their insurers, whether or not Enrolled Parties or covered by the Ancillary Policies or other VTA-procured insurance, must agree to waive all rights of subrogation against the Indemnified Parties for losses arising from Services



performed by the Contractor and its Subcontractors. The Contractors must agree to waive subrogation rights against all Enrolled Parties, or all projects within the overall BSVII Program where the OCIP, Ancillary Policies, or other VTA-Procured insurance applies, to the extent of such insurance coverage. Nothing in this section shall be construed to prevent Contractors from subrogating or filing cross-action insurance claims against other Subcontractors with respect to insurance not procured by VTA.

- b. Contractor's and its Subcontractor's insurance coverage must be primary insurance as respects the Indemnified Parties. Self-insurance or insurance that may be maintained by the Indemnified Parties applies only as excess to the 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 amounts of all deductibles or self-insured retentions.
- b. If any coverage forms or endorsements required by the Contract are updated by their publishers during the Term, whether they be the insurance carrier(s), the Insurance Services Office, or the American Association of Insurance Services, VTA reserves the right to require the Contractor and its Subcontractors to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

D. ACCEPTABILITY OF INSURERS

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

E. CERTIFICATES OF INSURANCE

Contractor and its Subcontractors must furnish VTA with Certificates 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 and each of its Subcontractors must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to Insurance.certificates@vta.org. All endorsements must be attached to the ACORD certificate in a single PDF document.

The certificates must (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 ("VTA")
3331 North First Street
San Jose, CA 95134-1906



In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA contract number must appear, the list of policies scheduled as underlying on the Umbrella/Excess Liability policy must be listed, Certificate Holder must be named as additional insured, and waiver of subrogation must be indicated as endorsed to all policies.

Neither the Contractor nor its Subcontractors may perform Services until insurance is in full compliance with the requirements of the Contract and this Exhibit F. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

If the Contractor or any of its Subcontractors receive notice that any of the insurance policies required by this Attachment 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 Attachment is canceled or coverage is reduced.

F. MAINTENANCE OF INSURANCE

If Contractor fails to maintain insurance as required herein, VTA may, at its option, suspend payment to the Contractor and/or may order the Contractor to suspend performance of the Services at Contractor's expense until a new policy of insurance is in effect.



EXHIBIT G DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

- A.** It is VTA policy to ensure that DBE firms, as defined in Federal Regulations at 13 CFR Part 121 and 49 CFR Part 26, have the full opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with federal funds.

VTA's Office of Business Development encourages contractors to call (408) 321-5962 for assistance in identifying eligible DBE firms (if applicable).

- B.** In accordance with Applicable Law, this Contract does not include a DBE goal. ("**Contract Goal**" (49 C.F.R. § 26.51(h)) and VTA will not count any DBE participation for this Contract (49 C.F.R. § 26.55(i)). VTA intends to reassess its application of the DBE program to this Contract at such time as the re-evaluation and certification process for DBEs described in 49 C.F.R. § 26.111 is completed.

C. RESERVED

D. RESERVED

E. RESERVED

- F. CONTRACTOR ASSURANCES (as required by 49 C.F.R. 26.13):** The Contractor, subrecipient or subcontractor must not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor must carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient¹ deems appropriate, which may include, but is not limited to:

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

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

¹ "Recipient" is VTA.



EXHIBIT H REQUIRED FTA CLAUSES PART 1

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

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



-
- ☐ HH. DOMESTIC PREFERENCES FOR PROCUREMENTS.
 - ☒ II. INCORPORATION OF FTA TERMS



EXHIBIT H REQUIRED FTA CLAUSES PART 2

These FTA terms and conditions ("FTA Clauses") are required by the FTA pursuant to the Master Agreement between FTA and VTA, Section 16 (a copy of which may be viewed at <https://www.transit.dot.gov/>) and apply to all third party contracts awarded by VTA that are funded in whole or in part with FTA assistance. Unless specifically defined herein, the capitalized terms used in these FTA Clauses have the meanings as defined in the solicitation and/or Contract, as applicable. Contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the applicable FTA clauses. VTA reserves the right to monitor compliance with this requirement, to request and promptly receive copies of subcontracts, and to be provided any additional information through the term of the Contract to ensure subcontractor compliance with federal law.

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

The following definitions apply to these FTA terms and conditions:

1. "Agency" means Santa Clara Valley Transportation Authority or VTA
2. "Bid" means bid, proposal, or offer
3. "Bidder" means bidder, proposer, or offeror
4. "Contract" means the agreement to which these Federal Terms and Conditions apply
5. "Contractor" means the person or entity named in the Purchase Order, Bid, Proposal, or Contract to which these Federal Terms and Conditions apply
6. "FTA" means the Federal Transit Administration
7. "U.S. DOT" means United States Department of Transportation
8. "VTA" means Santa Clara Valley Transportation Authority

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

1. **FLOW DOWN:** The requirements of this Section A apply to Contractor and its subcontractors at every tier. Contractor must ensure compliance with this Section A by all of its subcontractors of every tier.
2. **RECORD RETENTION:** Contractor must retain and require its subcontractors of all tiers to retain complete and readily accessible records related in whole or in part to the Contract including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
3. **RETENTION PERIOD:** Contractor must comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. Contractor must maintain all books, records, accounts, and reports required under this Contract for a period of at not less than three (3) years after



the date of termination or expiration of the Contract, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case records must be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto.

4. ACCESS TO RECORDS: Contractor must provide sufficient access to the FTA and its contractors to inspect and audit records and information related to performance of the Contract as reasonably may be required.

5. ACCESS TO THE SITE OF PERFORMANCE: Contractor must permit FTA and its contractors access to the sites of performance under the Contract as reasonably may be required.

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

C. BUS TESTING: Contractor must comply with all bus testing requirements set forth elsewhere in the Contract.

D. BUY AMERICA REQUIREMENTS: Contractor must comply with the following:

- 1. FLOW DOWN:** The requirements of this Section D apply to Contractor and its subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors comply with this Section D.
- 2. COMPLIANCE WITH FEDERAL LAW:** Contractor must comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.
- 3. CERTIFICATIONS:** Bidder must submit to VTA the appropriate Buy America certification attached to the solicitation or otherwise provided by VTA with its (i) Bid (in the case of a sealed bidding procurement) or (ii) final offer or final revised Proposal (in the case of a negotiated procurement). Bids or Proposals (as applicable) that are not accompanied by a completed Buy America certification will be rejected as nonresponsive and cannot be considered by VTA.

E. CARGO PREFERENCE REQUIREMENTS: Contractor must comply with the following:

- 1. FLOW DOWN:** The requirements of this Section E apply to Contractor and its subcontractors at every tier. Contractor will include the requirements of this Section E in all subcontracts that may involve the transport of equipment, material, or commodities



by ocean vessel. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors comply with this Section E.

2. **UNITED STATES-FLAG COMMERCIAL VESSELS:** Contractor must use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved whenever shipping any equipment, material, or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
3. **BILL-OF-LADING:** Contractor must furnish within 20 business days following the date of loading for shipments originating within the United States or within 30 business days following the date of loading for shipments originating outside the United States a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to VTA (through Contractor in the case of a subcontractor's bill-of-lading).

F. CHARTER SERVICE: Contractor agrees to the following:

1. **FLOW DOWN:** The requirements of this Section F apply to Contractor as the first-tier service contractor. In addition, the provisions of this Section F flow down to subcontractors that perform public transit operations services. Contractor must include the substance of this clause in each subcontract that may involve operating public transit services.
2. **COMPLIANCE WITH FEDERAL LAW:** Contractor must comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service except as permitted under:
 - a. Federal transit laws, specifically 49 U.S.C. § 5323(d);
 - b. FTA regulations, “Charter Service,” 49 C.F.R. Part 604;
 - c. Any other federal Charter Service regulations; or
 - d. Federal guidance, except as FTA determines otherwise in writing.
3. **VIOLATIONS:** If Contractor engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on Contractor. These corrective measures and remedies may include:



- a. Barring Contractor or any subcontractor operating public transportation under its award that has provided prohibited charter service from receiving federal assistance from FTA;
- b. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
- c. Any other appropriate remedy that may apply.

G. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT: Contractor must comply with the following:

1. **FLOW DOWN:** The requirements of this Section G apply to Contractor and its subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors comply with this Section G.
2. Contractor must:
 - a. Not use any violating facilities;
 - b. Report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
 - c. Report violations of use of prohibited facilities to FTA; and
 - d. Comply with the inspection and other requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251-1387).

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

1. **FLOW DOWN:** The requirements of this Section H apply to Contractor and its subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors comply with this Section H.
2. **NONDISCRIMINATION:** In accordance with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000d *et seq.*), U.S. Department of Transportation ("DOT") regulations at 49 C.F.R. Part 21, and federal transit law at 49 U.S.C. § 5332, Contractor must not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age. In addition, Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.



3. **RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX:** In accordance with Title VII of the Civil Rights Act, as amended (42 U.S.C. § 2000e *et seq.*) and federal transit laws at 49 U.S.C. § 5332, Contractor must comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (“U.S. DOL”) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action will include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor must comply with any implementing requirements FTA may issue.
 4. **AGE:** In accordance with the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. §§ 621-634), U.S. Equal Employment Opportunity Commission (“U.S. EEOC”) regulations, “Age Discrimination in Employment Act” (29 C.F.R. Part 1625), the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*), U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance” (45 C.F.R. Part 90), and federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
 5. **DISABILITIES:** In accordance with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 *et seq.*), the Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq.*), and federal transit law at 49 U.S.C. § 5332, Contractor must not discriminate against individuals on the basis of disability. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- I. DISADVANTAGED BUSINESS ENTERPRISE (“DBE”):** Contractor must comply with the DBE requirements set forth elsewhere in the Contract.
- J. EMPLOYEE PROTECTIONS:**
1. **FLOW DOWN:** The requirements of this Section J apply to Contractor and its subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors comply with this Section J.



2. If the Contract is for construction, alteration, or repair in excess of \$2,000, Contractor must comply with the following:
 - a. **Prevailing Wage:** Contractor must comply with the prevailing wage requirements set forth in the Contract.
 - b. **Anti-Kickback:** Contractor must comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by U.S. DOL regulations at 29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
3. If the Contract (i) has a total value of more than \$100,000 and (ii) involves the employment of mechanics or laborers, Contractor must comply with the following:
 - a. **Contract Work Hours and Safety Standards:** Contractor must comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the U.S. DOL regulations at 29 C.F.R. Part 5. Under 40 U.S.C. § 3702 of the Contract Work Hours and Safety Standards Act, Contractor must compute the wages of every mechanic and laborer, including watchmen, guards, and workers performing services in connection with dredging or rock excavation. (40 U.S.C § 3701)
 - i. **Overtime requirements.** No contractor or subcontractor contracting for any part of the Contract work that may require or involve the employment of laborers or mechanics may require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - ii. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subsection (a)(i) of this section, Contractor and any subcontractor responsible therefor will be liable for the unpaid wages. In addition, Contractor and subcontractor will be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages will be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause set forth in [subsection \(a\)\(i\)](#) of this section, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in [subsection \(a\)\(i\)](#) of this section.



- iii. **Withholding for unpaid wages and liquidated damages.** The FTA shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by Contractor or subcontractor under any such 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 Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subsection (a)(ii) of this section.
 - iv. **Subcontracts.** Contractor or subcontractor must insert in any subcontracts the clauses set forth in subsections (a)(i) through (iv) of this section and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. Contractor will be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subsections (a)(i) through (iv) of this section.
- b. **Contract Work Hours and Safety Standards for Awards Not Involving Construction:** Contractor must comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.
 - i. Contractor must maintain payrolls and basic payroll records during the course of the work and must preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records must contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Such records maintained under this paragraph must be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Contractor will permit such representatives to interview employees during working hours on the job.
 - ii. Contractor must require the inclusion of the language of this clause within subcontracts of all tiers.



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

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

L. FLY AMERICA: Contractor must comply with the following:

1. **FLOW DOWN:** The requirements of this Section L apply to Contractor and its subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors comply with this Section L.
2. **DEFINITIONS:**
 - a. **“International air transportation”** means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
 - b. **“United States”** or **“U.S.”** means the 50 States, the District of Columbia, and outlying areas.
 - c. **“U.S.-flag air carrier”** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
3. **USE OF U.S.-FLAG AIR CARRIERS:** Pursuant to Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118; also known as the Fly America Act), Contractor and all of its subcontractors at every tier must use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available. Contractor understands that the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, will disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
4. **STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS:** In the event that Contractor selects a carrier other than a U.S.-flag air carrier for international air



transportation, Contractor must include a statement on vouchers involving such transportation essentially as follows:

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

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

[State reasons]: _____

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

M. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION: Contractor must comply with the following:

1. **FLOW DOWN:** If Contractor and/or any of its subcontractors enter into covered transactions with a participant at the next lower level, Contractor and/or its subcontractor, as applicable, must require that participant to: (a) comply with subpart C of 2 C.F.R. Part 180, as supplemented by 2 C.F.R. Part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. Part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.
2. **COMPLIANCE WITH FEDERAL LAW:** Contractor must comply and facilitate compliance with U.S. DOT regulations set forth in "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. These provisions apply to the Contract and to (i) any subcontract at any tier of \$25,000 or more, and (ii) each contract at any tier for a federally required audit (irrespective of the contract amount), and (iii) each contract at any tier that must be approved by an FTA official irrespective of the contract amount.



3. **CERTIFICATION:** By executing this Contract, Contractor hereby certifies that its principals, affiliates, and subcontractors are eligible to participate in the federally funded Contract and are not presently declared by any federal department or agency to be:
 - a. Debarred from participation in any federally assisted award;
 - b. Suspended from participation in any federally assisted award;
 - c. Proposed for debarment from participation in any federally assisted award;
 - d. Declared ineligible to participate in any federally assisted award;
 - e. Voluntarily excluded from participation in any federally assisted award; or
 - f. Disqualified from participation in any federally assisted award.

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

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

1. **FLOW DOWN:** The requirements of this Section N apply to Contractor and its subcontractors at every tier if such subcontract has a total value of \$100,000 or more. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors comply with this Section N.
2. **CERTIFICATION:** Contractor must file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Contractor must certify that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of VTA, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Contractor must also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant, or award covered by 31 U.S.C. 1352. Such disclosures must be forwarded to VTA. Contractor must ensure that all of its subcontractors under this Contract shall certify the same. VTA is responsible for keeping the certification of the Contractor, who is in turn responsible for keeping the certification forms of subcontractors.



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

1. **FLOW DOWN:** The requirements of this Section O apply to Contractor and its subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors comply with this Section O.
2. **NO OBLIGATION:** Contractor acknowledges that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the federal government, the federal government is not a party to the Contract and will not be subject to any obligations or liabilities of VTA, Contractor, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the underlying Contract. Contractor agrees to include this acknowledgement in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the acknowledgement will not be modified except to identify the subcontractor who will be subject to its provisions.

P. PATENT RIGHTS AND RIGHTS IN DATA: Contractor agrees to the following:

1. **FLOW DOWN:** The requirements of this Section P apply to Contractor and its subcontractors at every tier if the relevant subcontract meets the definition of a research-type project under 37 U.S.C. § 401.2. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors comply with this Section P.
2. **INTELLECTUAL PROPERTY RIGHTS:** Certain Patent Rights and Data Rights apply to all subject data first produced in the performance of the Contract. Contractor grants VTA intellectual property access and licenses deemed necessary for the work performed under the Contract and in accordance with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights must be finalized prior to execution of the Contract and must, at a minimum, include the following restrictions: Except for its own internal use, Contractor may neither publish or reproduce subject data in whole or in part, or in any manner or form, nor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of the Contract, the term "subject data" means recorded information, whether or not copyrighted, that is delivered or specified to be delivered by the Contract.
3. The federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described as follows:



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

Q. PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES: Contractor must comply with the following:



1. **FLOW DOWN:** The requirements of this Section Q apply to Contractor as the first-tier service contractor. The provisions of this Section Q do not flow down to subcontractors.
2. Contractor must comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. Part 663. Contractor must comply with the Buy America certification(s) submitted with its Bid. Contractor will participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. Part 663 and related FTA guidance.
3. For more information about pre-award and post-delivery audit requirements, please go to FTA's Buy America page on its website.

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

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

S. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS: Contractor must comply with the following:



1. **FLOW DOWN:** The requirements of this Section S apply to Contractor and its subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors comply with this Section S.
2. Contractor must comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):
 - a. **U.S. DOL Certification:** Under this Contract or any amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
 - b. **Special Warranty:** U.S. DOL will provide a Special Warranty for the award associated with the Contract. The U.S. DOL Special Warranty is a condition of the Contract.
 - c. **Special Arrangements:** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractor in its provision of public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated into the Contract as required.

T. RECYCLED PRODUCTS: Contractor must comply with the following:

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

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

1. **FLOW DOWN:** The requirements of this Section U apply to Contractor and its subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors comply with this Section U.



2. **SEAT BELT USE:** Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by Contractor or VTA.
3. **DISTRACTED DRIVING:** Contractor must adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer and driving a vehicle the driver (a) owns, leases, or rents; (b) a vehicle Contractor owns, leases, or rents; or (c) a privately-owned vehicle when on official business in connection with the work performed under the Contract.

V. SCHOOL BUS OPERATIONS: Contractor must comply with the following:

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

W. SEISMIC SAFETY: Contractor must comply with the following:



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

X. SUBSTANCE ABUSE REQUIREMENTS: Contractor must comply with the following:

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

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

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

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

Z. DISPUTES, BREACHES, AND DEFAULTS: Contractor must comply with the following:



1. **FLOW DOWN:** The requirements of this Section Z apply to Contractor and its subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors comply with this Section Z.
2. **DISPUTES:** VTA and Contractor intend to resolve all disputes under the Contract to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the VTA's and Contractor's organization. In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Pending final settlement of any dispute, the parties must proceed diligently with the performance of the Contract and in accordance with VTA's direction or decisions made thereof.
3. **PERFORMANCE DURING DISPUTE:** Unless otherwise directed by VTA, Contractor must diligently continue performance under the Contract while matters in dispute are being resolved.
4. **REMEDIES:** The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder will be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by VTA or Contractor will constitute a waiver of any right or duty afforded any of them under the Contract or constitute an approval of or acquiescence in any breach thereunder except as may be specifically agreed in writing.

AA. SPECIAL U.S. DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS:

Contractor agrees to the following:

1. **FLOW DOWN:** The requirements of this Section AA apply to Contractor and its subcontractors performing construction work at every tier. Contractor is responsible for ensuring that all applicable lower tier contractors and subcontractors comply with this Section AA.
2. Contractor must comply with:
 - a. U.S. DOL regulations set forth in 41 C.F.R. Part 60-4; Executive Order 11246 "Equal Employment Opportunity," as amended (including by Executive Order 11375); and 42 U.S.C. § 2000 (e) note;



- b. The equal opportunity clause set forth in 41 C.F.R. § 60-1.4(b), which is incorporated herein by reference pursuant to 41 C.F.R. § 60-1.4(d); and
- c. The “Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)” set forth in 41 C.F.R. § 60-4.3, which specifications are attached hereto (if applicable).

BB. CONFORMANCE WITH I.T.S. NATIONAL ARCHITECTURE: Contractor agrees to the following:

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

CC. ADA ACCESS: Contractor agrees to the following requirements and will include these requirements in each subcontract entered into as part of the Contract:

1. **FLOW DOWN:** The requirements of this Section CC apply to Contractor and its subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors comply with this Section CC.
2. Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended (42 USC § 12101 et seq.); section 504 of the Rehabilitation Act of 1973, as amended; 29 USC § 794; 49 USC § 5301(6); 49 CFR Parts 27, 37, 38, and 39 and any implementing requirements and regulations FTA may issue. These regulations provide that no handicapped individual, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this contract.

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



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

EE. NOTIFICATION REGARDING FALSE CLAIMS, FRAUD, WASTE, ABUSE, AND OTHER LEGAL MATTERS.

Contractor agrees to promptly notify the FTA Chief Counsel and the FTA Regional Counsel for Region IX if it has knowledge of (i) any current or prospective legal matter that may affect the federal government, including but not limited to, a major dispute, breach, default, litigation, or naming the federal government as a party to litigation or a legal disagreement in any forum for any reason, or (ii) any matters that may affect the federal government, including but not limited to, the federal government's interests in the Federal Award supporting this Contract, this Contract and any amendments thereto, or the federal government's administration or enforcement of federal laws, regulations, and requirements.

Contractor further agrees to promptly notify the FTA Chief Counsel, the FTA Regional Counsel for FTA Region IX, and the U.S. DOT Office of Inspector General if it has knowledge of potential fraud, waste, or abuse occurring on a project receiving assistance from FTA, including but not limited to knowledge that a person has or may have (i) submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or (ii) committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation, embezzlement, bribery, gratuity, or similar misconduct involving federal assistance.

Contractor further agrees to promptly notify VTA of any matter described above that relates to this Contract or any other federally assisted agreement between the Contractor and VTA.

"Knowledge," as used in this section includes, but is not limited to, knowledge of a criminal or civil investigation by a federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, probable cause that could support a criminal indictment, or any other credible information in the Contractor's possession.

"Promptly," as used in this section, means to refer information without delay and without change.



Contractor agrees to include the above clause in all subcontracts entered into for the performance of this Contract. It is further agreed that the above clause may not be modified except to identify the subcontractor who will be subject to its provisions..

FF. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT: Contractor represents that neither Contractor nor its subcontractors will provide or use covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system, in accordance with Section 889 of the John S. McCain National Defense Authorization Act, in the performance of this Contract. "Covered telecommunications equipment or services" means any of the following:

1. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
2. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
3. Telecommunications or video surveillance services provided by such entities or using such equipment listed in (1) or (2); or
4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of the People's Republic of China.

"Substantial or essential component" means any component necessary for the proper function or performance of a piece of equipment, system, or service. "Critical technology" includes those critical technologies listed in 48 C.F.R. 52.204–25, subpart (a).

GG. VETERANS PREFERENCE: To the extent practicable, Contractor agrees that it and its subcontractors:

- a. Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the requisite skills and abilities to perform the construction work required under a third-party contract in connection with a capital project supported with funds appropriated or made available for 49 U.S.C. chapter 53; and



- b. Will not be required to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

HH. DOMESTIC PREFERENCES FOR PROCUREMENTS: Pursuant to 2 CFR § 200.322, the Contractor should, to the greatest extent practicable under this Contract and as appropriate and to the extent consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Contractor must include this requirement in agreements with subcontractors, including all contracts and purchase orders for work or products under this Contract.

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

1. **FLOW DOWN:** The requirements of this Section II apply to Contractor and its subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors comply with this Section II.
2. The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth herein. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F and the Master Agreement or any revision thereto, are hereby incorporated by reference and made a part of the Contract, except to the extent FTA determines otherwise in writing. Anything to the contrary herein notwithstanding, all FTA-mandated terms are deemed to control in the event of a conflict with other provisions contained in the Contract. Contractor must not perform any act, fail to perform any act, or refuse to comply with any VTA requests that would cause VTA to be in violation of any FTA terms and conditions.