

Request for Proposals  
RFP P19073

# Bus Driving Simulator, Delivery, Set-Up, and Training

June 17, 2019

Keisha Carnahan, Senior Contracts Administrator



*Solutions that move you*

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

For more information about VTA, log on to [www.VTA.org](http://www.VTA.org).

**ABOUT RFP P19073:** VTA seeks Proposals from qualified firms for the purchase, delivery, set-up, and training of a bus driving simulator. VTA intends to implement a bus driving simulator within the bus training department and integrate it with recruitment and training practices for VTA's new hires, operators returning from long term absences, and operators involved in accidents.

VTA will evaluate and select a bus driving simulator solution that meets its best overall interest that includes, but are not limited to:

- the simulator must be designed to train drivers to drive transit buses safely;
- increased operator safety by applying classroom training before going on the road;
- practice and perfect driving techniques simulating various bus operating scenarios;
- incidents, such as collisions, can be replayed to reinforce learning opportunities;
- practice in traffic, challenging weather conditions, and hazardous situations; and
- safely test Operators who are returning to work.

**NOTICE TO PROPOSERS OF LIMITATION OF FUTURE CONTRACTING:** The Proposer(s) selected under this RFP will be precluded from submitting proposals or bids as a prime contractor or subcontractor for any future procurement with VTA if the specifications, requirements, scope of services, and/or RFPs for such work were developed or influenced by the work performed under the contract resulting from this RFP. Further, if a contractor or subcontractor obtains or has access to nonpublic information related to a future RFP through work performed under this RFP, that contractor or subcontractor may be barred from submitting proposals as a prime contractor or subcontractor on that future RFP.



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

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

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

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



**I. INSTRUCTIONS TO PROPOSERS**

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

**Table 1**

<b>ACTIVITY</b>	<b>DATE/TIME</b>
Issue RFP	June 17, 2019
Pre-Proposal Conference	July 10, 2019 at 10:00 a.m.
Deadline to Submit Questions	July 16, 2019 at 5:00 p.m.
Deadline to Submit Proposal	July 30, 2019 at 2:00 p.m.
Interviews (if, needed)	Week of August 26 – 29, 2019

**B. DESIGNATED POINT OF CONTACT:** All communications with VTA regarding this RFP shall be in writing (US mail/ email) to the Designated Point of Contact identified below. All emails must indicate in the subject line “RFP P19073 for Bus Driving Simulator, Delivery, Set-Up and Training”. No telephone calls will be accepted. Except as otherwise provided herein, no contact will be entertained by the Procurement, Contracts, and Materials Management staff outside of the formal Q&A period, and/or by anyone other than the Designated Point of Contact regarding this RFP.

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

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

Keisha Carnahan, Senior Contracts Administrator  
Santa Clara Valley Transportation Authority  
3331 North First Street, Building A  
San Jose, California 95134  
Email: [Keisha.Carnahan@vta.org](mailto:Keisha.Carnahan@vta.org)

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

Santa Clara Valley Transportation Authority  
3331 North First Street, Building A, Room A108  
San Jose, California 95134



- D. EXAMINATION OF PROPOSAL DOCUMENTS:** By submitting a Proposal, the Proposer represents that it has thoroughly examined and become familiar with the work required under this RFP, and that it is capable of performing quality work to achieve VTA’s objectives.
- E. ADDENDA/CLARIFICATIONS:** VTA reserves the right to make changes to these Request for Proposal documents as it may deem appropriate up until the date for submission of the Proposals (set forth in Table 1). Any and all changes to this RFP will be made by written addendum, which will be issued by VTA to all prospective Proposers who have registered and downloaded the Proposal documents at the VTA website. All addendum and other related materials will be posted to the VTA.org procurement site. Prospective Proposers will be notified by email when information has been posted to the VTA procurement site for this RFP. **NOTHING RELIEVES PROPOSER FROM BEING BOUND BY ADDITIONAL TERMS AND CONDITIONS IN ADDENDA.**

Questions or comments regarding this RFP must be submitted in writing and must be received by VTA no later than the date and time stated in Table 1. Email questions must be submitted to the Designated Point of Contact listed above and shall include “RFP P19073 QUESTIONS” in the subject line.

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

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

The Proposer shall submit six (6) printed copies and one (1) copy of the Proposal in an electronic format in the form of a flash drive.

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

**“RFP P19073 BUS DRIVING SIMULATOR,  
DELIVERY, SET-UP, AND TRAINING”**

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

- G. WITHDRAWAL OF PROPOSALS:** A Proposer may withdraw its Proposal at any time before the expiration of the time for submission of Proposals as provided in this RFP by



delivering to the Designated Point of Contact a written request for withdrawal signed by, or on behalf of, the Proposer.

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

VTA reserves the right to:

- Reject any or all Proposals.
- Issue subsequent Requests for Proposal.
- Postpone opening for its own convenience.
- Remedy technical errors in the Request for Proposal process.
- Approve or disapprove the use of particular subcontractors.
- Solicit best and final offers from none, some, or all of the Proposers.
- Waive informalities and irregularities in Proposals.
- Conduct interviews at its discretion.
- Accept other than the lowest offer.
- Negotiate with any, all or none of the Proposers.

**I. TERM OF CONTRACT:** The term of the contract (“Contract”) awarded to the successful Proposer (herein also referred to as the “Contractor”) shall be five (5) years from date of award by VTA.

**J. CONTRACT TYPE:** It is anticipated that VTA will award a contract (“Contract”). If awarded, the Contract will be firm-fixed price Contract. This RFP does not commit VTA to enter into such Contract nor does it obligate VTA to pay for costs incurred in preparation or submission of Proposals or in anticipation of entry into a Contract.

**K. EXERCISE OPTIONS:** The Contractor will offer VTA options (“Options”) to purchase additional preventative maintenance, repairs, hardware upgrades, software upgrades, additional training, extended warranties, and other options to this Contract so long as VTA provides written notice to the Contractor within thirty (30) days prior to the end of the current Contract term. If any option is exercised, the option items shall be delivered in accordance with the schedule contained in the Notice of Exercise of Option.

The price of all the Options shall be as shown on Price Proposal Form (Form 4).

Except as otherwise specified, all terms of the Request for Proposal and any resulting Contract shall apply to the Options.



**L. FREIGHT TERMS:** All materials shall be FOB Destination, prepaid and allowed, at no additional cost to VTA unless specified otherwise in the Scope of Work, attached hereto. Destination is defined for purposes of this Contract as the VTA locations as specified under Delivery or on the individual purchase orders associated with this Contract. Any exception to this policy may deem the Proposal non-responsive.

**M. DELIVERY ADDRESSES:** The delivery address (within Santa Clara County) will be provided to the successful Proposer.

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

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

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

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

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

## **II. PROPOSER'S MINIMUM QUALIFICATIONS**

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





1. The Proposer must have five (5) years of experience in providing bus driving simulators.
2. The Proposer must have five (5) years of experience in the delivery, set-up, and maintenance of bus driving simulators, and maintenance of the associated software.
3. The Proposer must have successfully implemented the proposed bus driving simulators for at least six (6) clients. VTA will verify when conducting reference checks for each Proposer.

**B. PREFERRED QUALIFICATIONS:**

1. The Proposer has seven (7) years of experience in providing bus driving simulators.
2. The Proposer has seven (7) years of experience in the delivery, set-up and maintenance of bus driving simulators, and maintenance of the associated software.
3. The Proposer has successfully implemented the proposed bus driving simulators for at least six (6) clients, three (3) of which are public transit agencies.

**III. EVALUATION AND SELECTION**

**A. EVALUATION CRITERIA:** The following criteria listed in order of relative importance will be used to evaluate Proposals:

<b>Proposed Solution, Work Plan and Project Understanding</b>	<b>25 Points</b>
<b>Cost Proposal</b>	<b>25 Points</b>
<b>Qualification of the Firm and Past Performance</b>	<b>20 Points</b>
<b>Staffing and Project Organization</b>	<b>20 Points</b>
<b>System Warranty, Maintenance, Support, and Extended Service Warranty Options</b>	<b>10 Points</b>

1. **PROPOSED SOLUTION, WORK PLAN AND PROJECT UNDERSTANDING:** VTA will be evaluating the Proposer’s presentation of the Proposer’s proposed solution, a well-conceived work plan, and overall project understanding. The Proposal shall establish the Proposer’s understanding of VTA’s objectives, work requirements and the Scope of Work section of the RFP, including identifying potential problem areas, and providing an overview of the Proposer’s project approach. Proposer’s project approach and work plan should showcase Proposer’s ability to satisfy those objectives and requirements. The work plan shall describe the work assigned to the prime and each



subconsultant. The work plan shall also include a timetable/schedule for completing all work specified in the Scope of Work.

- 2. COST PROPOSAL:** This section shall include the Proposer's price for providing the product and services discussed in the Scope of Work. The attached Price Proposal Form (Form 4) must be completed and submitted with the proposal. VTA will evaluate the reasonableness of the total price against the competitiveness of this amount with other Proposals received and adequacy of the data submitted supporting the figures quoted. VTA will assign points based on the following formula calculated for each Cost Proposal:  $((\text{Highest Proposed Price} - (\text{Proposed Price} - \text{Lowest Proposed Price})) \div (\text{Highest Proposed Price} \div \text{Criterion Weight})) = \text{Assigned Points for Cost Proposal being evaluated.}$
- 3. QUALIFICATION OF THE FIRM AND PAST PERFORMANCE:** VTA will be evaluating the Proposer's qualifications based on the following: Proposer's profile of their firm, including a brief description of the firm's size, local organizational structure, and number of years in business providing bus driver simulators (including the delivery, set-up, and maintenance of the simulators and software). Proposer must have a minimum of five (5) years of experience in providing bus simulators, delivery, set-up and maintenance of bus simulators and software, however, if the Proposer has seven (7) years of experience they will receive a higher rating. Additionally, there must also be a discussion of the firm's financial stability; capacity and resources; technical experience in performing work of a similar nature; experience working with transit properties or other public agencies; record of completing work on schedule; technical experience and strength and stability of proposed subcontractors; and assessments by client references. This section shall also include a brief description of the Proposer's and subconsultants qualifications and previous experience on similar or related projects. Description of pertinent project experience shall include a summary of the work performed. Proposer must provide the name, title, and phone number of three (3) current clients and three (3) previous clients where the Proposer performed similar work to VTA's requirements, Proposer's will receive higher rankings if three (3) of these references are public transit agencies. VTA will be contacting the references that are provided.

Prior to award of a contract, the successful Proposer may be required to submit the firm's most recent complete financial statements, including footnotes and auditor's opinion or other financial instrument that would establish the firm's ability to complete the obligations of the contract resulting from this solicitation. Additionally, this section shall include a listing of any lawsuit or litigation and the result of that action resulting from (a) any public project undertaken by the Proposer or by its subcontractors where litigation is still pending or has occurred within the last five (5) years or (b) any type of project where claims or settlements were paid by the Proposer or its insurers within the last five (5) years.



- 4. STAFFING AND PROJECT ORGANIZATION:** VTA will be evaluating this section based on the Proposer's staffing and organization of this project. Qualifications of project staff will be considered, particularly key personnel, especially the project manager. Proposer project team members shall be identified by name, location, specific responsibilities on the project and the estimated hours per person of participation. An organizational chart for the project team and resumes for key personnel shall be included. Key personnel will be an important factor considered by the review board. Other factors to be considered include key personnel's level of involvement in performing related work; logic of project organization; adequacy of labor commitment; and concurrence in the restrictions on changes in key personnel. Once the Proposal is submitted, there can be no change of key personnel without the prior approval of VTA.
  
- 5. SYSTEM WARRANTY, MAINTENANCE, SUPPORT, AND EXTENDED SERVICE WARRANTY OPTIONS:** Evaluation will focus on the Proposer's twelve (12) months system warranty, maintenance, and support offered with the purchase of the bus driving simulator, and what the Proposer's extended service warranty options include, as far as the actual coverage and the number of years covered.

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

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

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

**C. BASIS OF AWARD:** When the review board has completed its work, negotiations will be conducted for the extent of services to be rendered.

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

This is a "best value" procurement based on procedures consistent with California public contract code section 20301(a). "Best value" is a selection process where the award is based on a combination of price and qualitative considerations. A best value procurement



requires tradeoffs between price and non-price factors to select the best overall value to VTA.

Subject to VTA's right to reject any or all proposals, or to waive for any informalities or technicalities in any proposal, the Proposer whose Proposal is found to be most advantageous to VTA will be selected based upon consideration of the evaluation criteria.

Thus, VTA will make the award to the responsible Proposer whose Proposal is most advantageous to VTA. Accordingly, VTA may not necessarily make an award to the Proposer with the highest technical ranking nor award to the proposer with the lowest price Proposal if doing so would not be in the overall best interest of VTA.

When the review board has completed its work, negotiations may be conducted for the extent of services to be rendered.

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

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

#### **IV. PROPOSAL FORMAT AND CONTENT**

- A. FORMAT:** Proposals shall be typed, as concise as possible and shall not include any unnecessary promotional material. The nature and form of response are at the discretion of the Proposer but shall include the information listed below.
  
- B. CONTENT:** The Proposer shall include the information described below:
  - 1. PROPOSED SOLUTION, WORK PLAN AND PROJECT UNDERSTANDING:** This section shall include a presentation of a well-conceived work plan. This section of the proposal shall establish the Proposer's understanding of VTA's objectives, work requirements and the Scope of Work section of the RFP, including identifying potential problem areas, and providing an overview of the Proposer's project approach. Proposer's project approach and work plan should showcase Proposer's ability to satisfy those objectives and requirements. The work plan shall describe the work assigned to the prime and each subconsultant. The work plan shall also include a timetable/schedule for completing all work specified in the Scope of Work.
  
  - 2. COST/PRICING INFORMATION:** This section shall include the Proposer's price for providing the product and services discussed in the scope of work. The attached Price Proposal Form (Form 4) must be completed and submitted with the proposal. The



reasonableness of the total price will be evaluated against the competitiveness of this amount with other Proposals received and adequacy of the data submitted supporting the figures quoted.

- 3. QUALIFICATIONS OF THE FIRM AND PAST PERFORMANCE:** This section shall include the following: a profile of the firm, including a brief description of the firm's size, local organization structure, number of years in business providing bus driver simulators (including the delivery, set-up, and maintenance of the simulators and software), "Proposer must have a minimum of five (5) years of experience in providing bus simulators, delivery, set-up and maintenance of bus simulators and software; however, if the Proposer has seven (7) years of experience they will receive a higher rating"; as well as the local organizational structure; it shall also include a discussion of the firm's financial stability, capacity and resources; technical experience in performing work of a similar nature; experience working with transit properties or other public agencies; record of completing work on schedule; technical experience and strength and stability of proposed subcontractors; and assessments by client references. This section shall also include a brief description of the Proposer's and subconsultants qualifications and previous experience on similar or related projects. Description of pertinent project experience shall include a summary of the work performed. Proposer must provide the name, title, and phone number of three (3) current clients and three (3) previous clients where the Proposer performed similar work to VTA's requirements, Proposers will receive higher rankings if three (3) of these references are public transit agencies. VTA will be contacting the references that are provided.

Prior to award of a contract, the successful Proposer may be required to submit the firm's most recent complete financial statements, including footnotes and auditor's opinion or other financial instrument that would establish the firm's ability to complete the obligations of the contract resulting from this solicitation. Additionally, this section shall include a listing of any lawsuit or litigation and the result of that action resulting from (a) any public project undertaken by the Proposer or by its subcontractors where litigation is still pending or has occurred within the last five (5) years or (b) any type of project where claims or settlements were paid by the Proposer or its insurers within the last five (5) years.

- 4. STAFFING AND PROJECT ORGANIZATION:** This section shall discuss how the Proposer would propose to staff this project. Qualifications of project staff will be considered, particularly key personnel, especially the project manager. Proposer project team members shall be identified by name, location, specific responsibilities on the project and the estimated hours per person of participation. An organizational chart for the project team and resumes for key personnel shall be included. Key personnel will be an important factor considered by the review board. Other factors to be considered include key personnel's level of involvement in performing related work; logic of project organization; adequacy of labor commitment; and concurrence in the



restrictions on changes in key personnel. Once the Proposal is submitted, there can be no change of key personnel without the prior approval of VTA.

5. **SYSTEM WARRANTY, MAINTENANCE, SUPPORT, AND EXTENDED SERVICE WARRANTY OPTIONS:** This section should provide an overview of what's included in the Proposer's twelve (12) months system warranty, maintenance, and support, as well as provide overviews of what they offer for extended service warranty options.
6. **RELEVANT CONTRACTUAL PAPERWORK:** The Proposer must provide VTA with all contractual documents related to the offered Bus Driving Simulator, including but not limited to: I. Software Licensing Agreement, II. Service Level Agreement, and III. Product/System Documentation/Specifications.
7. **ADMINISTRATIVE SUBMITTALS:** The Proposer must complete all the forms attached hereto and submit in the Proposal.

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

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

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

1. **DBE WITH NO GOAL REQUIREMENT:** In connection with performance of this Contract, the Office of Business Diversity Programs ("OBDP") has not established a contract specific DBE participation goal for this project. However, the Proposer agrees to cooperate with VTA in attempting to meet its DBE overall goal of 13% for Federal Fiscal Year 2017-2018. In this regard Proposer will use all reasonable efforts to ensure that DBE firms have an equitable opportunity to compete for subcontract work under this Request for Proposals.
2. **CONTRACTOR REGISTRATION:** All DBE firms listed on Form 5, Listing of DBE Prime and Subcontractors, must be certified by the California Unified Certification Program ("CUCP") at the time of Proposal submittal to be counted toward the contract DBE goal. Proposers must comply with VTA's DBE Program Policy and Requirements on utilization of DBE firms.



- a. It is the Proposer's sole responsibility to verify and provide subcontractor's DBE certification to VTA.
- b. The list of certified CUCP DBE firms is available at: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).

The CUCP DBE application is available at the OBDP website at: [www.vta.org/osdb](http://www.vta.org/osdb).

3. **CONTRACTOR REPORTING:** Proposer will be required to submit electronic quarterly DBE utilization reports to the VTA's OBDP through our web-based online system (B2Gnow), accessed from any computer via the internet at the following website: <https://VTA.sdbbe.com>. The monthly reports will document payments to the prime and the prime will report payments made to their sub-contractors. At the end of this Contract, Contractor will be required to submit a Final DBE Utilization Report.

Each Contractor and sub-consultant will receive an email providing information with Log-On identification, password and instructions on how to use the system. Proposer agrees to submit any and all required electronic reports to the OBDP.

4. **FINAL DBE SUBMITTAL:** At the conclusion of this Contract, Contractor will be required to electronically submit a final DBE Utilization Report by indicating a final audit where requested in the B2Gnow system.

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

**VI. INSURANCE REQUIREMENTS:** Contractor shall adhere to the insurance requirements set forth in Exhibit P-6. Proposer's attention is directed to the insurance requirements in the exhibit. It is highly recommended that Proposers confer with their insurance carriers or brokers in advance of Proposal submission to determine the availability of insurance certificates and endorsements that will be required for the Contract awarded through this RFP.

## **VII. PROTESTS**

**A. SOLICITATION PHASE:** Prior to the closing date for submittal of Proposal, Proposer may submit to VTA protests regarding the procurement process, or alleged improprieties in specifications, or alleged restrictive specifications. Any such protests must be filed no later than ten (10) working days prior to the scheduled closing date. If necessary, the closing date of this solicitation may be extended pending a resolution of the protest.

**B. PRE-AWARD:** Protests dealing with alleged improprieties in the procurement or the procurement process that can only be apparent after the closing date for receipt of Proposals



must be filed within five (5) working days after issuance of the Notice of Recommended Award. Protests will contain a statement of the grounds for protests and supporting documentation. Protestor will be notified of VTA's final decision prior to issuance of award.

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

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

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

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

## **VIII. SCOPE OF WORK:**

### **A. GENERAL REQUIREMENTS**

VTA seeks Proposals from qualified firms for the purchase, delivery, set-up, and training of a bus driving simulator. VTA intends to implement a bus driving simulator within the bus training department and integrate it with recruitment and training practices for VTA's new hires, operators returning from long term absences, and operators involved in accidents.

VTA will evaluate and select a bus driving simulator solution that meets its best overall interest that includes, but are not limited to:

- The simulator must be designed to train drivers to drive transit buses safely;
- Increased operator safety by applying classroom training before going on the road;
- Practice and perfect driving techniques simulating various bus operating scenarios;





- Incidents, such as collisions, can be replayed to reinforce learning opportunities;
- Practice in traffic, challenging weather conditions, and hazardous situations; and
- Safely test Operators who are returning to work.

The simulator will be built using actual and/or representative parts and components. The simulator will include the operator's seat, active steering wheel, foot pedals, right side control panel, transmission selector; and appropriate operational controls, gauges, indicators, and switches. Directional signal switches will be located on the floor and will function as in a typical bus. A headlight dimmer switch will be mounted on the floor of the bus driving simulator platform adjacent to the directional switches and will function as in a typical bus.

The most successful proposal needs to meet the requirements set forth in this RFP and provide detailed information for their proposed Bus Driving Simulator based on the following:

- The Contractor shall provide VTA with detailed specifications for all utility and site preparation requirements to set-up, house, and use their proposed Bus Driving Simulator.
- Drawings of the system (including weight and dimensions of the Bus Driving Simulator), utilities connections (including, but not limited to electrical wiring requirements), and other relevant information including, but not limited to Ergonomics.
- The amount of heat generated from the bus simulator (in response to ventilation concerns).
- Air Conditioning requirements.
- The simulator must fit within a 20x20 floor envelope, no higher than eight feet (8') and contractor to provide surge protector, 120V single phase 20A circuit available for simulator.
- Preloaded scenarios, such as general routes or scenarios that target the development of specific skills.
- Bus Training Simulator shall enable the training, development, and testing of the bus driver in the following skills:
  - Situation awareness
  - Judgement skills
  - Decision-making skills
  - Multi-Tasking
  - Skills Assessment for a Safe Environment
  - Maneuvering Skills, Low and High Risk
  - Skill building for individual and team
- Major components of Bus Training Simulator Hardware shall include:
  - Student Training Station
  - Vehicle/Simulation



- Image Generators
- Visual Display System
- Sound System
- Instructor Operation Station
- Student Training Station shall replicate the vehicle driving compartment including all functional switches and shall include the following:
  - Visual Display Unit for accurate Field View
  - Rear view Mirrors with Pillars
  - Floor Pedals
  - Brake Pedal Forces
  - Steering Wheel/Column and horn
  - Steering Forces
  - Driver Seat
  - Seat Belt Indicator
- Dashboard/Instrument Panel
  - Warning Lights Indicator
  - Speedometer
  - Air Circulation
  - Air Brake Pressure Gauge
  - Windshield Wipers
  - Kneeling Switch
  - Fan Switch
  - Wheelchair Ramp Switch
- Left Side Instrument Panel
  - Ignition Switch/Engine Start
  - Headlights
  - Engine Override
  - Parking Brake
  - Hazard Switch
  - Transmission Controls
  - Passenger Doors
- Foot Controlled Switches
  - Turn Signal Switches
  - Headlight Dimmer Switch
- The following vehicle model is part of Santa Clara Valley Transportation Authority's current fleet and include any future purchases of transit buses. The awarded contractor for the simulator will need to take measurements of the layout of the driver's area to duplicate the coach for the simulator.

**Gillig Model/Series; G30D102N4**

- Automatic Transmission
- Vehicle Faults shall include the following:



- Tire Blowout
- Brake Failure
- Rear Left Tire Fire
- Front Left Tire Fire
- Rear Right Tire Fire
- Front Right Tire Fire
- Loose Lug Nut
- Exhaust Failure
- A/C Failure
- Engine Fire
- Engine Failure
- ABS Failure
- Engine Stall
- Alternator Failure
- Check Engine
- Vehicle Sounds shall include the following:
  - Engine Starting
  - Engine Running
  - Moving Sounds
  - Turn Signals
  - Horn
  - Doors Opening and Closing
  - Tire Curb Impact
  - Air Brakes
  - Tire Blowout
  - Emergency Vehicles
- Crash/Collision Detection shall include the following:
  - Vehicles
  - Buildings
  - Pedestrians
- Simulator shall include an Out of Window Visual Scene with Field of View (Display System) to mimic the entire front of the bus. The bus simulator should include a minimum of five (5) 85" rear projection displays for forward and side views, and three (3) LED monitors providing rear view. The Visual Display Unit provides a geometrically accurate Field of View. Slewing of images is not acceptable. Simulator bus should use convex mirrors to include simulated flat and convex mirror images. All mirror images should be remotely adjustable by the operator in real time during any training scenario. The visual system software and the associated visual database (virtual world) are two of the main software components of the driving simulator. Advanced software and algorithms performing state-of-the-art visual computation and database integration should be used to provide a high-performance system and advanced scene management shall be used.



- The graphics computer or image generator should be an open design running a MS Windows operating system. The image generator should be based on commercially available off the shelf computers. The Visual Display Unit characteristics shall include:
  - Display Configuration
  - Diagonal Viewing Area
  - Horizontal Field of View
  - Display Refresh Minimum Rate of 60Hz
  - Standby Moving Image when system is idle
  - Display Resolution
  - Overhead View
- Simulator shall include an Instructor Operation Station. This allows the instructor to control a scenario vehicle in real time. The Instructor Operation Station shall be a PC-based computer, a monitor, keyboard and optical mouse. The monitor shall be an LC flat panel display and will measure at least 20 inches diagonally and shall be capable of displaying at least 1920 x 1080 resolution with 32-bit color and include:
  - Overview
  - IOS Main Features
  - Scripted Scenarios/Lesson Plans
  - Up to 10 Scripted Scenarios/Curriculum
  - Simulator Introduction
  - Acclimation/Adaptation
  - Collision/Adaptation
  - Wireless Instructor Remote
  - Instructor Operation Station
  - CCTV Monitor to view operators' actions
  - Scenario
- Environments Instructor Controls shall include:
  - Time of Day
  - Weather
  - Traffic
  - Wind
  - Road Traction
- Instructor Events shall include:
  - Vehicle Failures
  - Traffic Events
  - Clear Vehicle Damage
  - Passenger Stop Request
- Wireless Instructor Remote Control Keypad shall include:
  - Cab Selected
  - Overhead
  - Pause



- Drive/Re-Drive
- Jump Back
- Replay
- Next All – loads the next exercise
- Run All – initiates lesson
- Speed-Slider Control
- Control of weather
- Instructor Motion Cancelation Button
- Vehicle Options/Vehicle Type shall be menu-selectable
- Scenario Status Monitoring shall include:
  - Scenario Name/Number
  - Vehicle Speed
  - Braking Status
  - Vehicle Type
  - Horn Status
  - Seat Belt in use
  - Scenario Elapsed Time
- Simulator shall include a Student Critique Replay Mode and a Re-Drive Mode:
- Student Performance Evaluation shall include:
  - Following too close
  - Speed Violation
  - Minor Collision
  - Major Collision
  - Stop Sign/Stop Light Violation
  - Curb Strikes
  - Braking Violations
- Dynamic Real Time Monitoring Categories:
  - Following Distance
  - Speed
  - Steering
  - Acceleration
  - Brake Threshold
- Simulator shall include Recordkeeping
- Simulator shall feature a Virtual Driving World
  - Environments and features shall include City/Downtown areas, Suburban/Residential, Light Industrial, Railroad Crossings
  - Roads shall include Downtown areas, Highways, Ramps – Ascending/Descending, Asphalt/Concrete
- Simulator shall include a map display and feature:
  - Driving areas
  - Real Time Positions
  - Opening and Closing Map Display
- Computer Generated Vehicle Rules:



- Observance of Speed Limit
- Observance of Stop Sign
- Observance of Traffic Laws
- Merging at Entrance Ramps
- Following Distance and Passing
- Proper Use of Turn Signals
- Turning decisions at intersections
- Capability for Contractor to create custom scenarios according to our curriculum, and the ability to program scenarios where the driver would react accordingly.
- Simulator shall include a color CCTV monitor to view and record operator's reaction to all scenarios.
- Scenarios shall include:
  - Place Moving Objects
  - Place Static Objects
  - Long Straight-a-way for sleep apnea
  - Curbing the bus at stops with poles or cars
  - Pedestrians walking in front of bus
  - Pillar obstruction
  - Hard right turns with obstacles such as poles, signage, parked vehicles
  - Following Distance
  - Left front accidents
  - Modify weather conditions
  - Trigger Traffic Lights
  - Trigger parked car to open door
  - Trigger special effects
  - Trigger vehicle malfunction
- Capability for the bus simulator display to be duplicated to another external projection screen.
- Potential for upgrade.
- Hardware manuals, maintenance manuals, training materials and any materials necessary to operate the unit.
- Contractor must provide initial on-site training for VTA management and supervisory staff regarding the use of the bus simulator system. This can be facilitated through groups training(s). Contractor must also provide VTA staff optional maintenance training,
- Potential impact on human health, such as dizziness and motion sickness. Contractor must provide a certified independent report of this potential impact or provide a clear disclaimer. Rates of these incidents must be documented as possible,
- Life cycle considerations- upkeep costs and typical frequency; expected life - supported by detailed documentation,
- Software updates, patches, and bug fixes,



- Customer support and response times, and any potential guarantees regarding responsiveness,
- Tools and method for data collection and analysis.

## **B. OPTIONAL WARRANTY, MAINTENANCE, AND UPGRADES**

Proposers should include available optional warranties, maintenance, upgrades, training, and repair service:

- Various service warranty options (annual, multi-year, etc.) and associated costs. Please also note any option for multiple years of the service warranty to be purchased at once, in bulk, with the initial procurement. Please provide details regarding the various options with your proposal and submit these warranty costs on the Price Proposal Form.
- The Price Proposal of this RFP shall indicate software upgrade contract options. Proposers do not have to provide any upgrade option in their proposal; however, the most competitive proposals will provide these options. Details regarding the scope of the software options must be provided. Proposer will enter their upgrade options costs on the Price Proposal Form.
- Proposers must provide VTA option(s) to purchase annual maintenance that would be conducted by vendor staff. A sample maintenance schedule, as well as service provided must be provided. Proposer will enter their annual maintenance cost on the Price Proposal Form.
- Proposers must provide VTA option(s) to purchase additional on-site training for VTA staff. Proposer will enter their hourly cost for the on-site trainer on the Price Proposal Form.
- Proposer must provide VTA with repair options(s); whereas, the Proposer enters the hourly cost for the repair service on the Price Proposal Form.

## **C. CONSTRAINTS**

- The Contractor will install the bus simulator in compliance with all VTA requirements within six (6) months of award of this RFP.
- VTA intends to build a site specifically to house the bus simulator. Contractor must hold equipment prior to delivery until the site is ready or upon notification by VTA.



**IX. ADMINISTRATIVE SUBMITTALS**

**Proposer must submit all forms and as part of the Proposal.**

**FORM 1. GENERAL INFORMATION**

**FORM 2. LEVINE ACT STATEMENT**

**FORM 3. EXCEPTIONS TO THE CONTRACT**

**FORM 4. PRICE PROPOSAL FORM, see excel attachment**

**FORM 5. LISTING OF DBE PRIME AND SUBCONTRACTORS**

**FORM 6. DESIGNATION OF SUBCONTRACTORS AND SUPPLIERS**

**FORM 7. CERTIFICATION OF RESTRICTIONS ON LOBBYING**

**FORM 8. BUY AMERICA CERTIFICATION**





**FORM 1. GENERAL INFORMATION**

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

Company Name \_\_\_\_\_

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

City/State/Zip \_\_\_\_\_

Phone No. \_\_\_\_\_

DUNS No. \_\_\_\_\_

Federal Taxpayer ID No. \_\_\_\_\_

DIR No. \_\_\_\_\_

**POINT(S) OF CONTACT**

**Primary**

Name/Title \_\_\_\_\_

Phone No. \_\_\_\_\_

Cell Phone No. \_\_\_\_\_

E-mail \_\_\_\_\_

**Alternate**

Name/Title \_\_\_\_\_

Phone No. \_\_\_\_\_

Cell Phone No. \_\_\_\_\_

E-mail \_\_\_\_\_

**AUTHORIZED SIGNATORIES:**

**Primary**

Name/Title \_\_\_\_\_

Signature \_\_\_\_\_

E-mail \_\_\_\_\_

**Alternate**

Name/Title \_\_\_\_\_

Signature \_\_\_\_\_

E-mail \_\_\_\_\_



**FORM 2. LEVINE ACT STATEMENT**

Prime Proposer and Subconsultants must submit a signed Levine Act Statement

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

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

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

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

No \_\_\_ Yes \_\_\_ Please identify the Board member or alternate: \_\_\_\_\_



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

No \_\_\_ Yes \_\_\_ Please identify the Board member or alternate: \_\_\_\_\_

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

---

Signature:

---

Firm Name:

---

Date:



**FORM 3. EXCEPTIONS TO THE CONTRACT**

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

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

Proposer takes exception to the following:

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

\*Make copies of this page if necessary

“Proposer takes no exceptions”

Firm Name:

Name

Title

Signature

Date



**FORM 5. LISTING OF DBE PRIME AND SUBCONTRACTORS**

Firm (Prime): \_\_\_\_\_ Phone: \_\_\_\_\_

DBE:            Yes            No           Age of Firm \_\_\_\_\_

Address: \_\_\_\_\_ Name & Title: \_\_\_\_\_

City, State, \_\_\_\_\_ Signature/ \_\_\_\_\_

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

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

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

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

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

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

**Description of Work**

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

**DBE GOALS ARE DETERMINED ON BASE PROPOSAL AMOUNT:**

Total Contract Amount                   \$ \_\_\_\_\_

DBE Contract Amount                       \$ \_\_\_\_\_

DBE Contract Amount	DBE Goal Achieved	DBE Contract Goal
X 100 =	Base Contract	%
	_____ %	_____ %



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

Proposer: \_\_\_\_\_

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

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

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

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

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

Amount to be subcontracted: \$ \_\_\_\_\_

Percent to be subcontracted: \_\_\_\_\_ %



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**FORM 7. CERTIFICATION OF RESTRICTIONS ON LOBBYING**

Proposer hereby certifies as follows:

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

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

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Firm Name:

---

Name

Title

---

Signature

Date



**FORM 8. BUY AMERICA CERTIFICATION**  
(Manufactured Products)

**Certificate of Compliance with Section 165 (a)**

The Proposer hereby certifies that it **will** comply with the requirements of section 165 (a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations in 49 CFR part 661.

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

---

**Certificate for Non-Compliance with Section 165 (a)**

The Proposer hereby certifies that it **cannot** comply with the requirements of section 165 (a) of the Surface Transportation Assistance Act of 1982, as amended, but it may qualify for an exception to the requirement pursuant to section 165 (b) (2) or (b) (4) of the Surface Transportation Assistance Act of 1982 and regulations in 49 CFR 661.7.

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date





**X. EXHIBITS**

EXHIBIT A - SAMPLE CONTRACT

EXHIBIT 1 - VTA General Terms and Conditions

EXHIBIT 1-A - Indemnity and Defense Claims

EXHIBIT 1-B - Insurance Requirements

EXHIBIT 1-C – Compensation, Invoicing, and Payments

EXHIBIT 1-D – Business Diversity Requirements

EXHIBIT 3 - Required FTA Clauses (Part 1 and 2)

EXHIBIT 4 - Quality Assurance Provision

EXHIBIT 5 - Warranty Provision

# **Exhibit A**

## **Sample Contract**

## EXHIBIT A - SAMPLE CONTRACT P19073

THIS CONTRACT (“Contract”) is by and between \_\_\_\_\_ (“Contractor”) and Santa Clara Valley Transportation Authority (“VTA”). This Contract expresses the terms and conditions for the purchase of Bus Driving Simulator, Delivery, Set-Up, and Training. Contractor and VTA, for the consideration hereinafter named, agree as follows:

- A. CONTRACT COMPONENTS:** This Contract and all of the documents listed below, which are attached as exhibits, are collectively known and referenced as “Contract P19073” or “Contract.” The documents below constitute the entire agreement between the parties hereto.

Contract P19073 components:

- A. Exhibit 1 – VTA General Terms and Conditions
- B. Exhibit 1-A – Indemnity and Defense Claims
- C. Exhibit 1-B – Insurance Requirements
- D. Exhibit 1-C – Compensation, Invoicing, and Payments
- E. Attachment 1 to Exhibit 1-C – Price Proposal Form, dated July 30, 2019
- F. Exhibit 1-D – Business Diversity Requirements
- G. Exhibit 2 - Scope of Work
- H. Exhibit 3 - Required FTA Clauses (Part 1 and 2)
- I. Exhibit 4 – Quality Assurance Provision
- J. Exhibit 5 – Warranty Provision

In case of any conflict among these documents where the parties’ intended resolution is not clear, the order of precedence shall be in the order listed above. In the event that any of the language set forth in the Contract is inconsistent or contradictory, then the language that is most favorable to VTA shall control.

- B. SCOPE OF WORK:** Contractor shall provide the services as stated in the Scope of Work (Exhibit 2), which shall include, without limitation, all licensed materials, any and all professional services, and support services (hereinafter “Deliverables”).
- C. TERM OF CONTRACT:** Unless otherwise earlier terminated pursuant to the terms, herein, the term of this Contract will commence on the Effective Date (as defined in the signature block below) for five (5) years.

VTA may choose to exercise the Options to purchase optional preventative maintenance, repair service, software upgrades, additional training, and extended warranties by written notice (“Notice of Exercise of Option”) to the \_\_\_\_\_ (Contractor) within thirty (30) days prior to the end of the Contract term. If any option is exercised, the option items shall be delivered in accordance with the schedule contained in the Notice of Exercise of Option.

- D. CONTRACT PRICE:** VTA shall pay Contractor at the agreed-upon payment structure in the not-to-exceed amount of \$XXXX (including tax) in accordance with the Compensation, Invoicing, and Payment (Exhibit 1-C).
- E. AUTHORIZED REPRESENTATIVES, NOTICES AND POINTS OF CONTACT:** The Authorized Representatives identified below, or assigned designees, have authority to authorize changes to the scope, terms and conditions of this Contract, as set forth herein.

**A. AUTHORIZED REPRESENTATIVES:**

**VTA:**

Thor Vue  
Chief Procurement Officer  
Procurement, Contracts and Materials Management  
3331 N. First Street, Bldg. A  
San Jose, CA 95134-1906  
[thor.vue@vta.org](mailto:thor.vue@vta.org)

**Contname**

Name  
Title  
Address  
Address  
Email

- B. NOTICES:** Notices shall be in writing and addressed to the Authorized Representatives at the address set forth above.

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

**VTA:**

Keisha Carnahan  
Sr. Contract Administrator  
3331 N. First Street, Bldg. A  
San Jose, CA 95134-1906  
[Keisha.Carnahan@vta.org](mailto:Keisha.Carnahan@vta.org)



# **Exhibit 1**

## **VTA General Terms and Conditions**

**EXHIBIT 1**  
**VTA GENERAL TERMS AND CONDITIONS**

**A. ASSIGNMENT AND SUBCONTRACTS:**

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

**B. CHANGES:** By written notice from VTA's Authorized Representative, VTA may, from time to time, make requests for changes within the general scope of this Contract. If any such changes cause an increase or decrease in Contractor's costs to perform the Services or in the time required for its performance, the parties shall agree to a mutually acceptable change order to the Contract.

**C. INDEMNITY AND INSURANCE:** Contractor shall adhere to the indemnity and insurance requirements that are set forth in Exhibit 1-A and Exhibit 1-B, which is attached hereto.

**D. AUDIT AND RECORDS:**

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

#### **E. PROHIBITED INTERESTS:**

- 1. SOLICITATION:** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, VTA shall have the right to rescind this Contract without liability.
- 2. INTEREST OF PUBLIC OFFICIALS:** No Board Member, officer or employee of VTA during his or her tenure or for two years thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof. The foregoing does not include any share purchases made on open markets by such persons in any entity that may own or be related to Contractor.
- 3. INTEREST OF CONTRACTOR:** Contractor covenants that, presently, Contractor, its officers, directors or agents, have no interest and shall not acquire any interest, direct or indirect, which 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 shall be knowingly employed.

#### **F. TERMINATION AND SUSPENSION:**

- 1. TERMINATION FOR CAUSE:** VTA, by written notice given to Contractor, may declare default in Contractor's performance of any term of this Contract, specifying with particularity the basis for such default. Contractor shall deliver a response thereto in writing to VTA within five (5) business days of receipt of the notice, setting forth a reasonable proposal to cure the default. If Contractor fails to deliver the foregoing response on time or fails to cure the default within ten (10) business days after receipt of the notice (or within such additional time the parties may agree upon in writing), VTA may elect to terminate this Contract for cause by serving written notice thereof to Contractor.
  - a)** In the event of such termination for cause, VTA shall be relieved of any obligation of further payment to Contractor and may complete the remainder of the Services by itself or using an alternative, third-party contractor. The reasonable additional cost to VTA for completing the Services shall be deducted from any sum due to Contractor and the balance, if any, shall be paid to Contractor upon demand. If VTA terminates for cause, Contractor shall refund any prepaid fees for Services not yet provided, including support fees (if applicable). The foregoing shall be in addition to any other legal or equitable remedies available to VTA.
  - b)** If, after termination for failure to fulfill Contract obligations, it is determined that Contractor was not in default, the rights and obligations of the parties shall be the same



as if the termination had been issued for the convenience of VTA pursuant to Section F.2. TERMINATION FOR CONVENIENCE, below.

- c) Upon any expiration or termination of this Contract, Contractor will, if requested by VTA, continue to provide the Services to VTA for a period of up to twelve (12) months following the date of termination or expiration of the Contract (the “Transition Period”), provided VTA continues to pay the applicable fees for such period. During the Transition Period, Contractor will also make available to VTA such other services as mutually agreed to by the parties (collectively, "Transition Services"). Contractor will cooperate in good faith with VTA and any new service provider selected by VTA in the performance of its obligations under this Section and Contractor further agrees to work in good faith with VTA and any new service provider in the development and carrying out of a transition plan as part of the Transition Services.

2. **TERMINATION FOR CONVENIENCE:** VTA may terminate this Contract, in whole or in part, at any time by written notice to Contractor when it is in VTA’s best interest.

**G. SERVICE OF NOTICE:** Any notice required or permitted to be given by this Contract shall be deemed given when personally delivered to recipient thereof or mailed by registered or certified mail, return receipt requested, postage prepaid, to the appropriate recipient as stated in the Points of Contact section, or at any other address which either party may subsequently designate in writing to the other party.

#### **H. GENERAL PROVISIONS:**

1. **OWNERSHIP:** Contractor acquires no right, title, or interest from VTA or its users to VTA data, including any intellectual property rights therein (collectively, “VTA Property”). Except for VTA Property, Contractor shall retain ownership rights to any Deliverables provided by Contractor hereunder.
2. **NONDISCRIMINATION:** During performance of this Contract, Contractor, its employees and subcontractors shall not unlawfully discriminate, harass or allow harassment against any person because of race, religious creed, color, sex, gender, gender identity, gender expression, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), genetic information, marital status, age (over 40), sexual orientation or military and veteran status. In addition, Contractor and any subcontractor shall not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. Contractor shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment.
3. **GOVERNING LAW:** The laws of the State of California will govern these terms and conditions, as well as any claim that might arise between Contractor and VTA, without regard to conflict of law provisions.

4. **FORUM SELECTION:** Contractor will resolve any claim, cause of action or dispute (claim) that Contractor has with VTA arising out of or related to this Contract in a state or federal court located in Santa Clara County, California. Contractor agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.
  
5. **CONFIDENTIALITY AND DISCLOSURE:** Except as set forth in this paragraph, neither Party may disclose to third parties any information, data, or materials that one Party (the “Receiving Party”) obtains from the other Party (the “Disclosing Party”) or otherwise learns of or is exposed to in the course of the performance of this Contract or information developed or obtained by the Receiving Party in the performance of this Contract (“**Confidential Information**”). In addition, the Receiving Party must not disclose or use any Confidential Information for any purpose other than the performance of the Services. Notwithstanding the foregoing, either Party may disclose Confidential Information to third parties or use such information for purposes other than performance of the Services if: (1) the Disclosing Party provides express written consent for such use or disclosure; (2) the information is known to the Receiving Party prior to obtaining such information from the Disclosing Party or performing Services under this Contract; (3) the information is, at the time of disclosure by the Disclosing Party, then in the public domain; (4) the information is obtained by or from a third party who did not receive it, directly or indirectly, from the Disclosing Party and who has no obligation of confidentiality with respect thereto. In addition, the Receiving Party may disclose Confidential Information if required to do so under applicable law or by court order. However, upon receipt of an order requiring such disclosure, the Receiving Party must inform the Disclosing Party as soon as practicable in order to allow the Disclosing Party to challenge such order if it determines that such challenge is appropriate. For purposes of this Section, “third parties” do not include those employees or authorized subcontractors engaged in the performance of the Services.

Furthermore, VTA may disclose Confidential Information when compelled to disclose by law (including the California Public Records Act, any other applicable public disclosure laws and/or court orders). If VTA receives a request for a public record (or records) that includes Confidential Information within VTA’s possession or control and VTA reasonably believes it is legally required to disclose such Confidential Information, VTA will provide Contractor with reasonable notice prior to disclosing such public records, it being understood that VTA may have ten (10) or fewer days to respond to such requests. VTA shall not be deemed to breach this Contract if VTA complies with a request for public records (including anything deemed herein to be Confidential Information) if it determines, in its reasonable judgment, that applicable law requires disclosure of the information requested.

6. **NONWAIVER:** The failure of either Party to enforce any provision of this Contract or failure to exercise any right or to prosecute any default shall neither be considered a waiver of that provision/right nor bar prosecution of that default.

- 7. SEVERABILITY:** If any of the provisions of this Contract (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and Contractor shall negotiate an equitable adjustment in the provisions of the Contract with a view toward effecting the purpose of this Contract, and the validity and enforceability of the remaining provisions or portions or applications thereof shall not be affected thereby.
- 8. INDEPENDENT CONTRACTOR:** In its performance of the Services, Contractor will be acting as an independent contractor and not the agent or employee of VTA.
- 9. AMENDMENT:** Except as expressly provided herein, the provisions of this Contract shall not be altered, modified or amended except through the execution of a written amendment executed by VTA and Contractor.
- 10. COMPLIANCE WITH APPLICABLE LAW:** In the performance of the Services, Contractor and its subcontractors shall comply with all applicable requirements of state, federal and local law. The provision of this paragraph shall be included in any subcontracts hereunder.
- 11. DOCUMENTS AND WRITTEN REPORTS:** In accordance with Government Code § 7550(a), any document or written report prepared in whole or in part by nonemployees of VTA shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of the document or written report if the total cost of the work performed by nonemployees of the agency exceeds five thousand dollars (\$5,000.00). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of the document or written report.
- 12. TRAVEL:** Travel expenses related to the performance of Services shall be reimbursed for actual and reasonable costs incurred for mileage, transportation, lodging, meals, and other miscellaneous expenses. Air travel, auto rental, and lodging should be “economy” based and traveler should obtain the lowest price possible. Lodging rates for the Palo Alto, Sunnyvale, and San Jose area are defined by the GSA website [www.gsa.gov](http://www.gsa.gov). The meals and incidental expenses shall not exceed the per diem rates, as stated on GSA website [www.gsa.gov/mie](http://www.gsa.gov/mie). At no time shall alcohol, travel upgrades, fines, memberships, loss of personal property or cash, “no shows,” or personal itinerary changes be subject to reimbursement by VTA. All expenses related to travel shall be verified by legible, itemized receipts attached to a summary that provides the name of traveler, the date(s) traveled, and an itemized a description of each expense. VTA must approve in writing any item estimated to exceed \$500.00 prior to incurring the expense.
- 13. EXCUSABLE DELAYS/FORCE MAJEURE:** If Contractor is delayed at any time during the progress of the Services by the neglect or failure of VTA or by a cause as described below, then the time for completion and/or affected delivery date(s) shall be extended by VTA subject to the following cumulative conditions:

- a) The cause of the delay arises after the Effective Date and neither was nor could have been anticipated by Contractor by reasonable investigation before the Effective Date. Such cause may include force majeure events such as events or circumstances beyond the reasonable control of Contractor, including but not limited to acts of God; earthquake, flood and any other natural disaster; civil disturbance; fires and explosions; war and other hostilities; or embargo;
- b) Contractor demonstrates that the completion of the Services and/or any affected deliveries will be actually and necessarily delayed;
- c) Contractor has taken measures to avoid and/or mitigate the delay by the exercise of all reasonable precautions, efforts, and measures, whether before or after the occurrence of the cause of delay; and
- d) Contractor makes written request and provides other information to VTA as described below.

A delay meeting all of the conditions of this section is an excusable delay. Any concurrent delay that does not constitute an excusable delay will not be the sole basis for denying a request hereunder. VTA reserves the right to rescind or shorten any extension previously granted if subsequently VTA determines that any information provided by Contractor in support of a request for an extension of time was erroneous; provided, however, that such information or facts, if known, would have resulted in a denial of the request for an excusable delay. Notwithstanding the above, VTA will not rescind or shorten any extension previously granted if Contractor acted in reliance upon the granting of such extension and such extension was based on information which, although later found to have been erroneous, was submitted in good faith by Contractor.

No extension or adjustment of time shall be granted unless: (1) written notice of the delay is filed with VTA within fourteen (14) calendar days after the commencement of the delay and (2) a written request, stating in reasonable detail the causes, the effect to date, the probable future effect on the performance of Contractor under the Contract, and the portion or portions of the Services affected, is filed by Contractor with VTA within thirty (30) calendar days after the commencement of the delay. No such extension or adjustment shall be deemed a waiver of the rights of either party under this Contract. VTA shall make its determination within thirty (30) calendar days after receipt of the request. If any failure or delay caused by a force majeure event continues for thirty (30) days or longer, VTA will have the right to terminate this Contract without cost or liability upon notice to Contractor and to receive a refund of all pre-paid fees for any performance not yet delivered.

- 14. ENTIRE AGREEMENT:** This Contract constitutes the complete and entire agreement between VTA and Contractor and supersedes any prior representations, understandings, communications, commitments, agreements or Proposals, oral or written, which are not incorporated as part of the Contract.
- 15. COUNTERPARTS:** This Contract may be executed in any number of counterparts. All such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original thereof.

# **Exhibit 1-A**

## **Indemnity and Defense of Claims**

**EXHIBIT 1-A**  
**INDEMNITY AND DEFENSE OF CLAIMS**

**A. GENERAL INDEMNIFICATION:** Contractor agrees to indemnify, defend, and hold harmless VTA and its respective board members, officers, agents, employees, and consultants (each an “Indemnitee”) from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, costs, or judgments (each, a “Claim” and collectively, the “Claims”), including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, negligence, or misconduct of Contractor and its officers, directors, agents, employees, and subcontractors, during the performance of this Contract, including, without limitation, Claims arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or real property; (b) any payment required to be paid by Contractor to subcontractors, if any; (c) any material misrepresentation or breach of any representation, warranty, covenant or other provision in this Contract; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the acts or omissions of an Indemnitee.

**B. INFRINGEMENT INDEMNIFICATION:**

1. Contractor agrees to indemnify, defend, and hold harmless Indemnitee from and against any and all Claims, including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to any actual or alleged infringement of any intellectual property rights by the Deliverables, Services, or use of any of the aforementioned.
2. To the greatest extent permitted by law, Contractor agrees, at its own expense, and upon written request by VTA, or any individual Indemnitee, to immediately defend any suit, action, claim, or demand brought against any Indemnitee founded upon, alleging, or implicating any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, or fees and costs covered by Contractor’s indemnity obligation set forth in Section (1) immediately above and regardless of whether Contractor and/or any of its agents, employees, or subcontractors did, in fact, infringe any intellectual property rights.
3. If any part of Services or Deliverables is, or in Contractor’s judgment may become, the subject of any infringement claim, or is likely to be, claimed to infringe, misappropriate or otherwise violate any third-party intellectual property right, Contractor will, at its expense and option, do one of the following: (a) procure for VTA the necessary right to continue using the Services or Deliverables; (b) replace or modify the infringing portion of the Services or Deliverables with a functionally equivalent item or portion thereof, or (c) if none of the foregoing are commercially reasonable, Contractor may terminate this Contract

4. upon written notice to VTA and refund to VTA a pro-rated amount of any pre-paid fees (including pre-paid support/maintenance fees).
  5. Contractor shall have no liability or obligation hereunder with respect to any claim to the extent based upon (i) any use of the Services or Deliverables by VTA not strictly in accordance with this Contract or in an application or environment or on a platform or with devices for which it was not reasonably designed or reasonably contemplated, (ii) modifications, alterations, combinations or enhancements of the Services or Deliverables not created or authorized by Contractor, or (iii) VTA's continuing allegedly infringing activity after being notified thereof.
  6. **Infringement Indemnification Procedures:** Contractor's obligations under the Infringement Indemnification sections are expressly conditioned on the following: VTA shall (a) promptly notify Contractor, in writing, of any such Claim of which VTA has actual knowledge (provided that failure to do so will only release Contractor from this indemnity obligation to the extent that such failure led to material prejudice), (b) in writing, grant Contractor sole control of the defense of any such claim and of all negotiations for its settlement or compromise, provided that no such settlement or compromise may impose any liability or other obligations on VTA, and (c) reasonably cooperate with Contractor to facilitate the settlement or defense of the claim. Notwithstanding the foregoing, VTA may participate, at VTA's own expense, in the defense of such Claim.
- C. SURVIVAL:** This indemnity and defense of claims provision will survive the expiration or termination of the Contract and remain in full force and effect.



## **Exhibit 1-B**

# Insurance Requirements

## **EXHIBIT 1-B**

### **EXHIBIT P-6 INSURANCE REQUIREMENTS for INFORMATION TECHNOLOGY CONTRACTS**

**PROPOSER'S ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT PROPOSERS CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS IN ADVANCE OF PROPOSAL SUBMISSION TO DETERMINE THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS REQUIRED BY THIS CONTRACT.**

#### **I. INSURANCE**

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

##### **A. Liability and Workers' Compensation Insurance**

###### **1. Minimum Scope of Coverage**

Coverage must be at least as broad as:

- a. Insurance Services Office General Liability coverage ("occurrence" form CG 0001). General Liability insurance written on a "claims made" basis is not acceptable.
- b. Insurance Services Office Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
- c. Workers' Compensation insurance as required by the Labor Code of the State of California, and Employers Liability insurance.
- d. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of Contractor's services under this Agreement. This coverage must be maintained for a minimum of two (2) years following completion of this Agreement. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section B.
- e. Cyber Liability (including network security coverage, and/or privacy liability coverage, as applicable).

## 2. Minimum Limits of Insurance

Contractor must maintain limits no less than:

- a. General Liability \$2,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If a General Liability or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella, but in no event may the General Liability primary policy limit per occurrence be less than \$2,000,000. Excess policies must feature inception and expiration dates concurrent with the underlying general liability policy, and a “Drop Down” provision.
- b. Automobile Liability (including umbrella/excess liability): \$1,000,000 limit per accident for bodily injury and property damage. This requirement may be satisfied by a combination of Auto with Excess or Umbrella, but in no event may the Automobile Liability primary policy limit per occurrence be less than \$2,000,000. Excess policies must feature inception and expiration dates concurrent with the underlying auto liability policy, and a “Drop Down” provision.
- c. Workers’ Compensation and Employers Liability: Statutory Workers’ Compensation limits and Employers Liability limits of \$1,000,000 per accident.
- d. Professional Liability: \$2,000,000 each occurrence/aggregate minimum limit per claim.
- e. Cyber Liability: \$1,000,000 per occurrence.

## 3. Self-Insured Retention

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

### B. Claims Made Provisions (not applicable to General Liability or Auto Liability)

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must provide that:

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

### **C. Other Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

#### **1. General Liability and Automobile Liability**

- a. VTA, its officers, officials, employees and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor, including VTA's general supervision of the Contractor; products and completed operations of the Contractor and its subcontractors; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage must contain no special limitations on the scope of protection afforded to

VTA, its officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.

- b. The Contractor's insurance coverage must be primary insurance as respects VTA, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by VTA, its officers, officials, employees, or volunteers must be excess of the Contractor's insurance and may not contribute with it.
- c. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its officers, officials, employees, or volunteers.
- d. The Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. The General Liability General Aggregate limit must apply per project, not per policy.

#### **2. All Coverages**

The insurer must agree to waive all rights of subrogation against VTA, its officers, officials, employees, and volunteers for losses arising from work performed by the Contractor and its subcontractors for VTA.

### **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 this Contract are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Contract, VTA reserves the right to require the Contractor to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

### **D. Acceptability of Insurers**

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

### **E. Certificates of Insurance**

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

The certificates will (1) identify the underwriters, the types of insurance, the insurance limits, the deductibles, and the policy term, (2) include copies of all the actual policy endorsements required 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 policy must be listed, Certificate Holder should be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Contract Documents.

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

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



**F. Maintenance of Insurance**

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

Ed. Rev. 7-1-17

## **Exhibit 1-C**

# Compensation, Invoicing, and Payment

**EXHIBIT 1-C  
COMPENSATION, INVOICING, and PAYMENT**

**A. COMPENSATION:** This Contract has a maximum value of \$XX.XX within which Contractor agrees to perform the Services and provide the Deliverables defined above. No additional compensation will be paid without a written amendment to this Contract.

**B. INVOICING:**

**1. INVOICE FORMAT:** VTA shall pay Contractor on the basis of invoices submitted for the total value of the Bus Driving Simulator, Delivery, Set-Up, and Training. Invoices shall be in a form acceptable to VTA and each invoice must include:

- Contract Number
- Description of Services
- Total costs

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

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

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

**C. PROMPT PAYMENT:** Subject to the terms of this Contract, VTA will pay Contractor within (30) days after receipt by VTA of a proper, undisputed, fully supported invoice that satisfies the requirements of the Contract.



# **Exhibit 1-D**

## **Business Diversity Requirements**

## EXHIBIT 1-D

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY AND REQUIREMENTS

1. **POLICY:** It is the policy of the Santa Clara Valley Transportation Authority to ensure that Disadvantaged Business Enterprises (“DBEs”) as defined in federal regulations at 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts and subcontracts financed with federal funds.
  - A. VTA’s Office of Business Diversity Program encourages Contractors to call (408) 321-5962 for assistance in identifying eligible DBE firms. Listings of eligible firms are also available on the internet at the following:  
[http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).
2. **GOAL:** There is no specific goal established for this Contract. However, Contractor is encouraged to make every effort to meet VTA’s overall agency-wide DBE goal of thirteen percent (13%) where possible.
3. **COUNTING TOWARD THE DBE GOAL:** DBEs may perform as contractors, subcontractors (1st tier), or subcontractor to subcontractor (2nd tier). Only the value of the work actually performed by the DBE, including materials and supplies, will be counted toward the DBE goal.
  - A. Credit for a DBE vendor of materials or supplies is limited to sixty percent (60%) of the amount to be paid to the vendor for the materials or supplies unless the vendor manufactures or substantially alters the goods. Credit for DBE brokers is limited to only the fees and commissions portion of the amount paid. All other firms receive one hundred percent (100%) credit, less work subcontracted by the DBE to non-DBE firms, toward the DBE goal.
4. **NONDISCRIMINATION:** The Contractor shall make VTA’s contracting requirements known to subcontractors, vendors and suppliers who are certified or accepted as certifiable as DBE, as well as to non-DBE businesses, and shall provide a practical opportunity for all firms to participate in the Contract.
5. **SUBSTITUTION OF DBE SUBCONTRACTOR WITH NON-DBE SUBCONTRACTOR:** A DBE subcontractor or supplier shall not be replaced without the prior written consent of VTA. Contractor shall make good faith efforts to find another DBE subcontractor or supplier to substitute for the original DBE. The efforts employed by the Contractor shall be those that one could reasonably expect a Contractor to take if the Contractor were actively and aggressively trying to engage a certified DBE firm to substitute for an DBE firm that has to be replaced and shall include the following:

- A.** Contractor shall immediately notify VTA in writing of its intent to replace a DBE firm, and of the reasons therefore, prior to any solicitation or advertisement for replacement firms. A copy of the notice shall be provided to the VTA Office of Business Diversity Program (OBDP).
- B.** VTA will provide written notice to the DBE firm of Contractor's request for substitution and of the reasons therefor and they will be requested to provide any written objections within five (5) working days.
- C.** Contractor shall utilize the following sources for identifying certified DBE firms for solicitation:

  - (1) California DBE Uniform Certification Program (UCP) database.
  - (2) California Department of General Services Small Business database.
  - (3) VTA DBE database.
- D.** Contractor shall provide written notice to at least five (5) firms in each work or material/supply category to be substituted. If Contractor provides written notice to fewer than five (5) firms, Contractor shall explain to OBDP in writing why the number of firms solicited was sufficient. Written notice shall be sent first to firms located in the County of Santa Clara and its contiguous counties ("local firms") and then, where appropriate, to out-of-area DBE firms.
- E.** Contractor shall contact the DBE firms solicited to determine with certainty whether the firms are interested in bidding on the project. This follow-up shall be documented with telephone logs, fax logs or other written documentation and submitted to OBDP.
- F.** Contractor shall provide OBDP with the following information:

  - (1) A list and copies of all DBE and non-DBE responses to the solicitation, including all bids received.
  - (2) If a bid is rejected by Contractor, the reasons for the rejection.
  - (3) If Contractor rejected a DBE firm as unqualified, a description of the qualification assessment conducted by Contractor and the factors considered.
- G.** A Contractor who fails to use good faith efforts to replace a DBE firm with another DBE firm may be subject to the imposition of a penalty of up to fifteen percent (15%) of the value of the work of the subcontractor or supplier replaced.

6. **MONTHLY DBE UTILIZATION REPORT:** Contractors are required to submit a monthly DBE Utilization Report electronically to the DBE Administrator, VTA Office of Business Diversity Program. These monthly reports shall be submitted electronically and the Contractor will document the dollar value of payments to DBE firms, and the percentage of the Contract completed. VTA will monitor the Contract for compliance with DBE requirements.
- A. This system is web-based, accessible from any computer via the internet at <https://vta.sdbde.com>. Each contractor and subcontractor will receive an email providing them with Log On identification, and a temporary password and instructions on how to use the system. Classroom training will also be provided. Other assistance will be provided upon request.
  - B. Contractor will include this requirement in all of its subcontracts and purchase orders when required to provide or verify DBE utilization documentation.
  - C. If the DBE Utilization Reports indicate potential problems, the Contractor shall meet with the appropriate VTA representative(s) to address any deficiencies and discuss appropriate corrective actions.
  - D. Prior to final payment, Contractor will be required to submit a final DBE Utilization Report. In addition to payments to the DBEs, the final report must include payments to and other information about all other businesses including non-DBE subcontractors, suppliers of materials, trucking firms, consultants and others.
7. **PROMPT PAYMENT:** The Contractor must adhere to all federal and California prompt payment laws and regulations. If Contractor does not adhere to prompt payment requirements, penalties may apply.
8. **ENFORCEMENT ACTIONS:** VTA will bring to the attention of U.S DOT any false, fraudulent, or dishonest conduct in connection with its DBE Program so that U.S. DOT can take the steps (i.e., referral to the Department of Justice for criminal prosecution, referral to the U.S. DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Remedies rules) provided in 49 CFR 26.107. VTA will consider similar action under its own legal authority, including responsibility determinations in any future contracts.
9. **CONTRACTOR ASSURANCES (49 CFR 26.13(b)):** The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy<sup>1</sup> deems appropriate, which may include, but is not limited to:

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



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

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

# **Exhibit 2**

## Scope of Work

## **Exhibit 3**

# Required FTA Clauses (Part 1 and Part 2)

### EXHIBIT 3

#### REQUIRED FTA CLAUSES

##### PART 1

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

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



## REQUIRED FTA CLAUSES

### PART 2

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

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

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

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

legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to VTA (through Contractor in the case of a subcontractor's bill-of-lading).

- F. CHARTER SERVICE:** If the Contract is for the operation of transportation service, Contractor will comply with the following:
- a. Flow Down:** The requirements of this Section F apply to Contractor as the first tier service contractor. The provisions of this Section F do not flow down to subcontractors.
  - b. Compliance with Federal Law:** Contractor will comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:
    - i.** Federal transit laws, specifically 49 U.S.C. § 5323(d);
    - ii.** FTA regulations, “Charter Service,” 49 C.F.R. Part 604;
    - iii.** Any other federal Charter Service regulations; or
    - iv.** Federal guidance, except as FTA determines otherwise in writing.
  - c. Violations:** If Contractor engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on Contractor. These corrective measures and remedies may include:
    - i.** Barring Contractor or any subcontractor operating public transportation under its award that has provided prohibited charter service from receiving federal assistance from FTA;
    - ii.** Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or
    - iii.** Any other appropriate remedy that may apply.
- G. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT:** If the Contract has a total value of more than \$150,000, Contractor will comply with the following:
- a. Flow Down:** The requirements of this Section G apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section G.

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

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

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

apprenticeship. In addition, Contractor will comply with any implementing requirements FTA may issue.

**d. Age:** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (“U.S. EEOC”) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. Part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. Part 90, and federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

**J. EMPLOYEE PROTECTIONS:**

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

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

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

**ii. Anti-Kickback:** Contractor shall comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by U.S. DOL regulations at 29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

- c. If the Contract (i) has a total value of more than \$100,000 and (ii) involves the employment of mechanics or laborers, Contractor will comply with the following:
- i. **Contract Work Hours and Safety Standards:** Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the U.S. DOL regulations at 29 C.F.R. Part 5. Under 40 U.S.C. § 3702 of the Contract Work Hours and Safety Standards Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
1. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply if the Contract is for (i) the purchase of supplies or materials or articles ordinarily available on the open market or (ii) transportation or transmission of intelligence.
  2. In the event of any violation of this section, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and any such subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by this section.
  3. The FTA shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor (i) under the Contract, (ii) under any other federal government contract with the same prime Contractor, or (iii) any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act and held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

4. Contractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring all subcontractors to include these clauses in any lower tier subcontracts.

**ii. Contract Work Hours and Safety Standards for Awards Not Involving Construction:** Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

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

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

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

- L. FLY AMERICA:** If performance of the Contract involves transportation of persons or property by air between a place in the U.S. and a place outside the U.S., or between places outside the U.S., Contractor will comply with the following:
- a. Flow Down:** The requirements of this Section L apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section L.
  - b. Definitions:**
    - i. “International air transportation”** means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
    - ii. “United States” or “U.S.”** means the 50 States, the District of Columbia, and outlying areas.
    - iii. “U.S.-flag air carrier”** means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
  - c. Use of U.S.-Flag Air Carriers:** Pursuant to Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act), Contractor and all of its subcontractors at every tier must use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. Contractor understands that the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, will disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
  - d. Statement of Unavailability of U.S.-Flag Air Carriers:** In the event that Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, Contractor shall include a statement on vouchers involving such transportation essentially as follows:



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

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

[State reasons]:

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- e. **Subcontracts:** Contractor shall include the substance of this clause, including this paragraph (5), in each subcontract or purchase under the Contract that may involve international air transportation.
  - f. **Code Share Agreement:** Contractor is permitted to use transportation on a foreign air carrier when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number.
  - g. **Air Transportation Agreement:** Contractor is permitted to use transportation by a foreign air carrier if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.
- M. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION:** If the Contract has a total value of \$25,000 or more, Contractor will comply with the following:
- a. **Flow Down:** If Contractor and/or any of its subcontractors enter into covered transactions with a participant at the next lower level, Contractor and/or its subcontractor, as applicable, must require that participant to: (a) comply with subpart C of 2 C.F.R. Part 180, as supplemented by 2 C.F.R. Part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. Part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.
  - b. **Compliance with Federal Law:** Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. These provisions apply to the Contract and to (i) any subcontract at any tier of \$25,000 or more, and (ii) each contract at any tier for a federally required audit (irrespective of the contract amount), and (iii) each contract at any tier that must be approved by an FTA official irrespective of the contract amount.
  - c. **Certification:** By executing this Contract, Contractor hereby certifies that its principals, affiliates, and subcontractors are eligible to participate in the federally funded Contract and are not presently declared by any federal department or agency to be:

- i. Debarred from participation in any federally assisted award;
- ii. Suspended from participation in any federally assisted award;
- iii. Proposed for debarment from participation in any federally assisted award;
- iv. Declared ineligible to participate in any federally assisted award;
- v. Voluntarily excluded from participation in any federally assisted award; or
- vi. Disqualified from participation in any federally assisted award.

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

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

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

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

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

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

developed under the Contract shall become subject data as defined herein and shall be delivered as the federal government may direct.

- f. Unless prohibited by state law, upon request by the federal government, Contractor will indemnify, save, and hold harmless the federal government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor will indemnify the federal government for any such liability arising out of the wrongful act of any employee, official, or agents of the federal government.
- g. Nothing contained in this clause on rights in data shall imply a license to the federal government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the federal government under any patent.
- h. Data developed by Contractor and financed entirely without using federal assistance provided by the federal government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.
- i. Contractor will include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

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

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

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

- a. **Flow Down:** The requirements of this Section R apply to Contractor and its Contract subcontractors at every tier if the relevant subcontract involves the making, presenting, or submitting of covered claims and statements. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section R.
  - b. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the Contract. Upon execution of the Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Contract or the FTA assisted project for which the Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the federal government deems appropriate.
  - c. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the federal government deems appropriate.
  - d. Contractor will include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. Contractor will not modify the clauses, except to identify the subcontractor who will be subject to the provisions.
- S. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS:** If (i) Contractor is recognized by FTA to be a transit operator and (ii) the Contract is for transit operations, Contractor will comply with the following:
- a. **Flow Down:** The requirements of this Section S apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section S.
  - b. Contractor will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):
    - i. **U.S. DOL Certification:** Contractor will complete a certification issued by U.S. DOL as a condition of the Contract.



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

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

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

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

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

- b. Contractor will design and construct any new building or additions to existing buildings in accordance with the standards for Seismic Safety required in DOT Seismic Safety Regulations at 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. Contractor will ensure that all work performed under the Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued under the Contract.

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

- a. **Flow Down:** The requirements of this Section X, along with VTA’s Drug and Alcohol Policy, apply to Contractor and its Contract subcontractors at every tier that require the performance of a safety-sensitive function. Contractor is responsible for ensuring that all relevant lower tier contractors and subcontractors are in compliance with this Section X.
- b. Contractor will establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Part 655; produce any documentation necessary to establish its compliance with 49 C.F.R. Part 655; and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State

Oversight Agency of California or VTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Part 655 and review the testing process.

- c. **Certification:** Contractor will certify annually its compliance with 49 C.F.R. Part 655 before December 15 and to submit the Management Information System (MIS) reports before March 10 to:

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

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

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



- Z. VIOLATION AND BREACH OF CONTRACT:** If the Contract has a total value exceeding the simplified acquisition threshold as defined by 48 C.F.R. 2.101(b) (“Simplified Acquisition Threshold”), Contractor will comply with the following:
- a. Flow Down:** The requirements of this Section Z apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section Z.
  - b. Disputes:** VTA and Contractor intend to resolve all disputes under the Contract to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the VTA’s and Contractor’s organization. In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with VTA’s direction or decisions made thereof.
  - c. Performance During Dispute:** Unless otherwise directed by VTA, Contractor shall continue performance under the Contract while matters in dispute are being resolved.
  - d. Remedies:** The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by VTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
- AA. SPECIAL U.S. DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS:** If the Contract has a total value of \$10,000 or more and is for construction, Contractor will comply with the following:
- a. Flow Down:** The requirements of this Section AA apply to Contractor and its Contract subcontractors performing construction work at every tier. Contractor is responsible for ensuring that all applicable lower tier contractors and subcontractors are in compliance with this Section AA.
  - b.** Contractor will comply with (i) U.S. DOL regulations set forth in 41 C.F.R. Part 60-4, (ii) Executive Order 11246 “Equal Employment Opportunity,” as amended (including by Executive Order 11375), and (iii) 42 U.S.C. § 2000 (e) note.

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

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

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

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

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

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

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

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

- a. **Flow Down:** The requirements of this Section EE apply to Contractor and its Contract subcontractors at every tier. Contractor is responsible for ensuring that all lower tier contractors and subcontractors are in compliance with this Section EE.
- b. The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth herein. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F and the Master Agreement or any revision thereto, are hereby incorporated by reference and made a part of the Contract, except to the extent FTA determines otherwise in writing. Anything to the contrary herein

notwithstanding, all FTA-mandated terms are deemed to control in the event of a conflict with other provisions contained in the Contract. Contractor will not perform any act, fail to perform any act, or refuse to comply with any VTA requests which would cause VTA to be in violation of any FTA terms and conditions.

## **Exhibit 4**

# Quality Assurance Provision

EXHIBIT 4

**QUALITY ASSURANCE PROVISION**

1. **QUALITY ASSURANCE SYSTEM POLICY:** The Contractor and/or supplier shall have and maintain an effectively defined and documented Quality Assurance System, which demonstrates the Contractor and/or supplier's policy, objective and commitment to quality at all levels of the organization. This system shall be submitted in writing to VTA as part of the pre-award bid package for approval. The Contractor and/or supplier shall also have the capability to ensure original design integrity, inspection, testing, adhering to Scope of Work and/or technical specification by preventing nonconformity at all stages from production through delivery.
2. **MANAGEMENT ORGANIZATION:** The Contractor and/or supplier shall have a designated quality assurance representative with the defined responsibility and authority to verify Contract conformance and initiate corrective and/or preventative actions on the occurrence of any nonconformance relating to product (systems, parts, components, materials, and services), performance, customer service, process and/or Quality Assurance System. VTA reserves the right to audit and assess the effectiveness of this Quality Assurance System organization. The Contractor and/or supplier shall:
  - A. Identify, document and communicate changes to the Quality Assurance System, and any problems relating to the system and its nonconformities.
  - B. Initiate, recommend or provide solutions through designated channels.
  - C. Verify the implementation of corrections, preventative actions and/or solutions.
  - D. Ensure that the Quality Assurance System requirements of this Contract are established, implemented and maintained.
  - E. Review, audit and report on the Quality Assurance System at defined intervals sufficient to ensure its continuing suitability and effectiveness in satisfying the requirements of this Contract.
3. **PROCEDURES:** The Contractor and/or supplier shall define and maintain documented procedures on the management of the Quality Assurance System and how the quality requirements of this Contract will be met. These procedures shall include work instruction defining the Contractor and/or supplier's method of operation in assuring specified requirements and activities that are consistently carried out.
4. **QUALITY PLANNING:** The Contractor and/or supplier shall prepare a quality plan which identifies organization structure and any controls, processes, equipment, fixtures, resources, skills and/or special training required to meet the quality requirements of this Contract.

5. **DESIGN INFORMATION:** The Contractor and/or supplier shall have and maintain a documented procedure for design information for the product(s), (such as drawings, specifications, and standards) to ensure that the product(s) are manufactured, inspected, and tested to the latest applicable requirements. All changes to design information shall be processed in a manner that will ensure accomplishment as specified, and a record of actual incorporation points (by date, batch, lot, unit, or other specific identification) shall be maintained.
6. **DOCUMENT AND DATA CONTROL:** The Contractor and/or supplier shall have and maintain a documented procedure to control documents and data that relate to the performance of this Contract. All standards, specifications, drawings, bills of materials, invoices, bills of lading, shipping notices, packing slips and customer service reports shall be reviewed and approved for adequacy by authorized personnel prior to issuing.
7. **PURCHASING:** The Contractor and/or supplier shall have and maintain a documented procedure to ensure that any service or bill of materials provided by a subcontractor meets the type, class, grade and/or other precise identifications, such as specifications, drawings, process requirements, inspection and test instructions and other relevant technical data as required or approved by the Original Equipment Manufacturer (OEM).
8. **PRODUCT IDENTIFICATION AND TRACEABILITY:** The Contractor and/or supplier shall stamp or engrave on the product(s), suppliers name, code, part number, month, day and year of manufacture, and will be serialized if specifically required by VTA. The Contractor and/or supplier shall also identify the product(s) by suitable means from receipt, storage and delivery. An explanation of any codes or special markings established by the supplier must be provided in writing to VTA within thirty (30) calendar days after Contract award.
9. **INSPECTION AND TESTING:** The Contractor and/or supplier shall have and maintain documented procedures for inspection and testing activities in order to verify specified requirements for the products(s) are met. The Contractor and/or supplier shall know the status of product(s), which conform or non-conform to the inspections and tests performed.
  - A. **SOURCE INSPECTIONS:** VTA reserves the right to inspect, at the source any products(s) furnished or services rendered under the Contract. Inspection at the source does not necessarily constitute acceptance, nor shall it relieve the Contractor of its responsibility to furnish acceptable product(s). When it is not practical, cost effective, or feasible to determine quality conformance of the purchased items upon receipt, inspection at the source may be performed.
10. **CONTROL OF INSPECTION, MEASURING, AND TEST EQUIPMENT:** The Contractor and/or supplier shall have and maintain documented procedures to control calibration, inspection, testing, and measuring of facilities, equipment and tools, to demonstrate the conformance of product(s) to specified requirements.

**11. CONTROL OF NON-CONFORMING PRODUCT:** The Contractor and/or supplier shall have and maintain procedures to ensure that any materials or final assembled product(s) that do not conform to specified requirements are prevented from usage or shipment. The Contractor and/or supplier shall:

- A. Provide the identification, documentation, evaluation, segregation and the disposition of nonconforming product(s).
- B. Ensure controls are in place to prevent further processing, delivery or servicing of nonconforming product until the deficiency and/or unsatisfactory condition has been corrected.
- C. Re-inspect all nonconforming product(s), which are rejected during receiving inspection.
- D. Provide upon specific request a failure analysis report on the nonconformance which should communicate the root cause of the non-conformities.

**12. CORRECTIVE AND PREVENTATIVE ACTION:** The Contractor and/or supplier shall have and maintain documented procedures for implementing corrective and preventive action to eliminate the cause of actual or potential non-conformities. The Contractor and/or supplier shall:

- A. Implement and record any changes to procedures, guidelines and plans resulting from corrective and preventive actions.
- B. Have an effective process for handling and tracking customer complaints and reports. All reports to the Contractor and/or supplier requesting correction to any nonconformity shall be in the form of a “Supplier Corrective Action Request” (SCAR) from VTA’s Quality Assurance and Warranty Office.
  - The Contractor and/or supplier shall provide VTA in writing with the correction and prevention of nonconformity by completing the correction and prevention section of the VTA SCAR form within thirty (30) calendar days of receipt.
- C. Utilize information sources such as audit results, quality records, service reports, and customer complaints to detect, analyze, and eliminate potential causes of nonconformities.
- D. Determine the steps needed to deal with any problem requiring corrective and preventive action, and initiate controls to ensure that it is effective.

13. **HANDLING, STORAGE, PACKAGING, AND DELIVERY:** The Contractor and/or supplier shall package the product(s) in such a manner as to prevent damage during shipment, receiving and storage. The Contractor and/or supplier shall also ensure that shipped product(s) are not damaged. Any damaged product(s) discovered at receiving will be returned to the Contractor and/or supplier at no cost to VTA.
14. **CONTROL OF QUALITY RECORDS:** The Contractor and/or supplier shall have and maintain procedures for identification, collection, indexing access, filing storage, maintenance, and disposition of quality records. Quality records shall be maintained to demonstrate conformance to specified requirements and effective operation of the Quality Assurance System.
15. **QUALITY AUDITS:** The Contractor and/or supplier shall have and maintain procedures for planning and implementing internal quality audits to verify whether quality activities and related results comply with planned requirements and to determine the effectiveness of the Quality Assurance System. The Contractor and/or supplier shall:
  - A. Document the results of audits and bring them to the attention of the personnel having responsibility in the area audited. The management personnel responsible for the area shall take timely corrective action on deficiencies found during the audit.
  - B. Schedule follow-up audits to verify and record the implementation and effectiveness of the corrective action taken.
16. **TRAINING:** The Contractor and/or supplier shall have and maintain procedures for identifying training needs and provide for the training of all personnel performing activities affecting quality and related to the performance requirements of this Contract. Personnel performing specific assigned tasks shall be qualified/certified on the basis of appropriate education, training and/or experience, as required.
17. **SERVICING:** The Contractor and/or supplier shall have and maintain procedures for coordinating, performing, verifying, and reporting that customer field servicing meets the specified requirements.
18. **STATISTICAL TECHNIQUES:** The Contractor and/or supplier shall identify specific statistical methods for establishing, controlling and verifying quality levels, performance assessing, and conducting nonconformity analysis.



## **Exhibit 5**

# Warranty Provision

## EXHIBIT 5

### WARRANTY PROVISION

1. **POLICY:** Warranties in this document are in addition to any statutory remedies or warranties imposed on the Contractor and/or supplier. Consistent with this requirement, the Contractor and/or supplier shall guarantee and warrant all products (systems, components, parts, materials, and services) to be free from defects or failures in materials and workmanship, and adhere to OEM's performance requirements and VTA's specified requirements. The Contractor and/or supplier shall also have and maintain an effectively defined and documented warranty administration system that demonstrates the Contractor and/or supplier's or OEM's policy, procedure and commitment to respond to and resolve warranty claims or service requests within a reasonable time. The Contractor and/or supplier is required to submit warranty policy, procedure, and forms for VTA review.
2. **COVERAGE:** All products supplied are warranted to be free from defects for one (1) year beginning on the date of installation or acceptance, except as specified below. The Contractor and/or supplier must submit its written standard limited warranty guarantee(s) for VTA review upon request.
  - A. **WARRANTY START DATE:** The warranty shall start from the date the equipment is returned to service after the product has been installed, inspected, tested and accepted. VTA Quality Assurance and Warranty Office shall show date of installation/acceptance or proof of purchase receipt to qualify for warranty coverage.
  - B. **MANUFACTURERS STANDARD WARRANTY:** Any supplier or manufacturer's standard limited warranty coverage greater than that specified above must also be extended to VTA.
3. **LIMITATIONS:** Warranty coverage shall not apply to failures that have been caused or contributed by the following:
  - A. Improper: use, servicing, maintenance, inspection and testing.
  - B. Failure to comply with OEM's operating, maintenance, servicing, inspection and testing requirements.
  - C. Use of inadequate, improper or incompatible component(s).
  - D. Accident, negligence, abuse, not caused by Contractor and/or supplier or OEM.
  - E. Unauthorized modification of equipment affecting design or performance characteristics.

- F. Use of non-approved products as specified by the OEM.

4. **REPAIR PROCEDURES:**

- A. The Contractor and/or supplier is responsible for all warranty-covered work. To the extent practicable, VTA will allow the Contractor and/or supplier or its designated representative to perform such work. At its discretion, VTA may perform such work if it determines it needs to do so based on transit service or other requirements. The Contractor and/or supplier shall reimburse such work.
  - B. The Contractor and/or supplier or its designated representative shall begin work on warranty-covered repairs, within five (5) days after receiving notification of a defect from VTA. VTA shall, as much as possible, accommodate the Contractor and/or supplier 's schedule to complete repairs.
  - C. The Contractor and/or supplier shall provide at its own expense all spare products and tools required for repairs. At VTA's option, the Contractor and/or supplier may be required to remove the equipment from VTA's property while repairs are being affected. If the equipment is removed from VTA's property, the Contractor and/or supplier's representative must diligently pursue repair procedures.
  - D. If VTA performs the warranty-covered repairs, it shall correct or repair the defect and any related defects utilizing products supplied by the Contractor and/or supplier specifically for this repair. At its discretion, VTA may use Contractor and/or supplier-specified products available from its own stock if deemed in its best interest. Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this warranty may be submitted by VTA to the Contractor and/or supplier for reimbursement or replacement of products. The Contractor and/or supplier shall provide forms for these reports when required.
  - E. VTA may require the Contractor and/or supplier to supply new products for warranty –covered repairs being performed by VTA. These products shall be shipped prepaid to VTA from any source selected by the Contractor and/or supplier within five (5) working days of receipt of the request for said products. Products supplied by the Contractor and/or supplier shall be Original Equipment Manufacturer (OEM) or its equivalent.
5. **SERVICING:** The Contractor and/or supplier may be requested to provide field service support for the correction of warranty failures as required by VTA.
6. **CLAIMS:** All warranty defects and failures will be submitted to the Contractor and/or supplier as a VTA warranty claim. The Contractor and/or supplier shall notify VTA of receipt and/or status of the claim.

- A. The Contractor and/or supplier must notify VTA in writing of the disposition of a warranty claim within fifteen (15) working days of receipt.
- B. The Contractor and/or supplier must resolve all open warranty claims within sixty (60) calendar days after receipt.

If the warranty claim is not resolved within the stated time frame the Contractor and/or supplier will be informed of VTA's intent to automatically credit VTA's accounts payable for the Contractor and/or supplier with the amount of the open claim.

- C. The Contractor and/or supplier is required to notify the VTA QA/Warranty Office on the disposition of products within five (5) days after VTA's request for a Return Material Authorization (RMA).
7. **REMEDIES:** Contractor and/or supplier shall promptly repair, replace and/or pay for all warranty defects including products, labor, and shipping and handling. The Contractor and/or supplier shall also reimburse for any progressive, compensatory, and consequential damages or fines due to product failures.
8. **REIMBURSEMENT:** Contractor and/or supplier is required to reimburse VTA for all costs associated with a warranty repair claim or service request.
- A. The product costs shall be based on the most current supplier Contract price or the invoiced price for replacement.
  - B. The labor repair times shall be fair and reasonable and based on current OEM or industry Standard Repair Time (SRT) guidelines or an agreed upon repair time standard.
  - C. The Contractor and/or supplier is required to reimburse at VTA hourly shop labor rate based on VTA's current labor cost accounting system.
  - D. The Contractor and/or supplier shall be assessed the cost of shipping or a fifteen percent (15%) handling charge on products returned or scraped.
9. **SYSTEMATIC/FLEET DEFECTS:** During the warranty period, when repairs or modifications necessitated by defective design, material, or workmanship occur to an extent in excess of ten percent ( 10%) of the product (used for the same function in the same system or subsystem), the Contractor and/or supplier shall promptly furnish all necessary labor and material to effect such repairs and modifications for every product delivered under the Contract, according to the terms and conditions outlined, including systems or subsystems in which the product has not yet failed.

10. **FAILURE ANALYSIS:** When requested by VTA, the Contractor and/or supplier will be required to provide a written failure analysis report for defective products supplied under this Contract and which occurred during the warranty period. The report shall be received by VTA within thirty (30) calendar days from the date of request.
11. **ADMINISTRATION:** Warranty claims and other warranty issues shall be administered, coordinated and resolved with the VTA's QA/Warranty Office and a Contractor and/or supplier's assigned representative.
- A. For warranty repair claims or service requests which are determined by the Contractor and/or supplier not to be under warranty, the Contractor and/or supplier must forward a written failure analysis report and itemized quotes to VTA's QA/Warranty Office, and obtain an authorizing purchase order before proceeding with the repair.
  - B. The Contractor and/or supplier shall be able to electronically communicate on warranty coverage, registrations, claims, service requests and bulletins/alerts.
  - C. The Contractor and/or supplier is required to reference the VTA warranty purchase order and warranty claim number when shipping warranty replacement products.
  - D. The Contractor and/or supplier is required to properly identify warranty returns or replacement products with a bill of lading.
12. **PERFORMANCE REVIEWS:** The Contractor and/or supplier is required to periodically meet with VTA's QA and Warranty Office to ensure that the warranty administration requirements are clarified and properly being carried out according to the terms and conditions of this Contract. The Contractor and/or supplier is also required to publish a VTA open warranty claims status report showing the disposition of each claim.