

Contract C19222

I-280/Foothill Expressway Off-Ramp Improvements

Volume 1 Contract Documents

Issued for Bid
December 12, 2019



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SECTION 1 INVITATION FOR BID

1.1. Introduction

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

**I-280/Foothill Expressway Off-Ramp Improvement
Contract C19222**

1.2. Obtaining the Contract Documents

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

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

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

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

1.3. Description of Work

For purposes of this Contract, Work consists of furnishing all labor, materials, tools, equipment, services, supervision, and incidentals necessary to widen the existing northbound Interstate 280 (“I-280”) off-ramp to Foothill Expressway from one lane to two lanes with standard shoulders. The Work will include new pavement, concrete curb, concrete barrier, concrete retaining wall, metal guard railings, drainage pipes and inlets, overhead sign, lighting, striping, and signs. The Project location is along this off-ramp, and along I-280 between the branch connectors from State Route 85 (“SR 85”) and the Foothill Expressway off-ramp in the cities of Cupertino and Los Altos. All improvements will be constructed within the State of California Department of Transportation (Caltrans) right-of-way.

The existing off-ramp from northbound I-280 to Foothill Expressway is a single lane ramp, which expands to a two-lane ramp approximately 400’ beyond the exit nose with a 2’ inside shoulder and a 2’ outside shoulder. At the ramp terminus is the Foothill Expressway intersection that is controlled by a traffic signal, which will be undergoing a signalization upgrade by Caltrans in 2020.

I-280 is an eight-lane freeway (four lanes in each direction including an HOV lane) with a northbound auxiliary lane from the adjacent SR 85 interchange. Caltrans will also be performing a resurfacing project along I-280 from the Foothill Expressway interchange north to the Sand Hill Road interchange in 2020 as well; therefore, construction coordination may be required between this Project and the adjacent Caltrans Foothill Expressway intersection signalization upgrades and I-280 resurfacing projects.

The Engineer's Estimate for this Work ranges from \$2.4 million to \$3.2 million. Refer to **Section 6.4 Time for Performance** for the time limit to complete all Work.

1.4. Submittal Location and Deadline

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

January 16, 2020 at 2:00 PM

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

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

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

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

1.5. Licenses

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

License: Class A (General Engineering)

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

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

1.6. Bidding and Contract Information

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

Bid Forms to Submit	Refer to Section 4 Bid Forms for a list of required forms and certifications to submit at time of bid opening.
Bid Security	Each Bid must be accompanied by a certified check, a cashier's check or a bidder's bond in the sum of not less than 10% of the Total Bid Price. Refer to Section 3.10.2 Bid Security Form/ Bidder's Bond .

Prevailing Wages	This Project is a “public work” as defined in Sections 1720 through 1720.6 of the California Labor Code. This Contract is subject to the prevailing wages as described in Section 3.5 Prevailing Wage Requirements .
Department of Industrial Relations Registration	Contractor and all subcontractors used for the Contract shall be registered, pursuant to Section 1725.5 of the California Labor Code, at the time of Bid Opening. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (“DIR”). Refer to Section 3.5 Prevailing Wage Requirements .
Pre-Qualification	Pre-Qualification is required as defined in Section 1.9 Pre-Qualification Requirements .
Contract Forms to Submit	Refer to Section 5 Contract Forms for a list of required forms and certifications to submit at time of award. These forms are for reference only and are not to be submitted with the Bid Forms.
Additional Information	▪ This Project is locally funded.

1.7. Business Diversity Program

VTA encourages the use of Business Diversity Programs Business Enterprise (“BDPBE”) firms in all our contracting opportunities. VTA has an 18% aspirational goal for its BDPBE. Refer to **Section 3.8 Business Diversity** and **Appendix C Business Diversity Policy and Requirements** for additional information.

A 11.16% participation goal for Small Business Enterprise (“SBE”) has been established for this Contract. Refer to **Section 3.8 Business Diversity** and **Appendix C Business Diversity Policy and Requirements** for additional information.

1.8. Federal Requirements

Federal Requirements do not apply.

1.9. Pre-Qualification Requirements

This Contract requires Pre-Qualification of all prospective Bidders. The Pre-Qualification application is contained in **Appendix I Pre-Qualification Requirements**.

Prospective Bidders that are not pre-qualified may qualify during the solicitation period, up to two days before Bid Opening. Prospective Bidders not currently pre-qualified, and intending to be pre-qualified, must request Pre-Qualification sufficiently in advance of the Bid Opening so as to ensure there will be no need to extend the solicitation period or delay the award.

1.10. Pre-Bid Meeting and Project Site Tour

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

Santa Clara Valley Transportation Authority
Procurement, Contracts and Materials Management
3331 North First Street, Building A, Conference Room A106

San José, California 95134
on

December 19, 2019 at 10:00 AM

There will be no Project site tour.

1.11. Communication Protocol

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

Contract Administrator: Cathy Clegg
Email: cathy.clegg@vta.org

The deadline for submitting inquiries will be 2 PM, five (5) working days before Bid Opening date.

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

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

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

1.12. Confidentiality

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

1.13. Reservations of Rights of VTA

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

- VTA reserves the right to issue addenda to amend this IFB or any related forms or document, or any reference information provided to Bidders.
- VTA reserves the right to respond to inquiries after the deadline for submitting inquiries.
- VTA reserves the right to cancel the procurement, to reject any and all Bids, or to negotiate separately in any manner necessary to serve the best interests of VTA, in accordance with applicable law.

- VTA reserves the right to waive any informality or immaterial irregularity in any Bid and/or accept or reject any items of a Bid.
 - This IFB does not obligate VTA to procure or to contract for any services.
 - VTA reserves the right to change or alter the schedule for any events associated with this IFB upon notice to all potential Bidders.
 - VTA reserves the right to eliminate any Bidder who submits incomplete or inadequate responses or is not responsive to the requirements of this IFB.
 - VTA reserves the right to interview any or all Bidder references and to clarify the information provided pursuant to this IFB.
-

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

Approved for posting:



Daren Gee, P.E.
Construction Contracts Administration Manager
VTA Procurement, Contracts and Materials Management



Date

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SECTION 2 FOREWORD

2.1. Overview of Santa Clara Valley Transportation Authority

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

Working under a 17-member Board of Directors, VTA has a \$420 million annual budget and its currently approved capital program is approximately \$2.3 billion. It owns a fleet of 495 buses and 99 rail cars as well as 4 historic trolleys. VTA employs approximately 2,100 people.

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

2.2. Equal Opportunity Employer

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

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

2.3. Description of the Contracting Process

2.3.1. General Process

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

Bid Process

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

Award Process

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

Contract Execution and Notice to Proceed

- Execution of Contract by VTA
- VTA issues a Notice to Proceed

2.3.2. Notice of Award

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

Promptly upon VTA's approval of the award of the Contract, the Contracts Office will issue a "Notice of Award" letter to the Successful Bidder. Included with the NOA (as defined in **Section 2.5 Definitions**) will be two (2) originals of the **Construction Agreement** and one (1) original **Performance Bond** and **Payment Bond**.

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

Documents

For additional information, reference the following:

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

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

2.3.3. Bid Security

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

2.3.4. Executed Contract and Notice to Proceed

- (a) After delivery by the Successful Bidder of two (2) signed original Construction Agreements and all required submissions as stipulated above, VTA will sign the Construction Agreement. No agreement between VTA and Contractor is in effect until VTA executes the Construction Agreement.
- (b) VTA will issue a Notice to Proceed promptly following execution of the Construction Agreement and Contractor's compliance with the requirements as set forth in Section 2.3 and contingent upon approval of other documents as stated in the follow up "Letter to Notice of Award" issued by VTA.

Contractor shall commence performance of the Work after receipt of the Notice to Proceed, and shall continuously and diligently prosecute the Work to completion on or before the time or times set forth in **Section 6 Special Conditions** herein. Regardless of the date of the Notice to Proceed, the first day charged shall be the **35th calendar day** following the date of the NOA. Should the first charged day fall on a Friday or weekend or holiday, the following working day shall be the first day charged

Contractor shall neither enter upon nor occupy VTA property or commence any materials fabrication prior to receiving the Notice to Proceed. Any Work performed or expenses incurred by Contractor prior to Contractor's receipt of Notice to Proceed shall be entirely at Contractor's risk.

2.4. State and Federal Tax Forms

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

2.5. Definitions

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

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

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

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

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

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

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

"DIR" means California Department of Industrial Relations

“IFB” means Invitation for Bids

“NOA” means Notice of Award

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

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

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

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

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

“VTA” means Santa Clara Valley Transportation Authority

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

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

SECTION 3 INSTRUCTIONS TO BIDDERS

3.1. Pre-Bid Meeting

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

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

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

3.2. Examination of the Contract Documents

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

3.3. Examination of Site and Existing Conditions

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

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

3.4. Addenda to Contract Documents

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

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

addendum and that addendum shall include an announcement of the new date, if applicable, for the Bid Opening.

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

3.5. Prevailing Wage Requirements

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

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

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

Workers employed in the Work must be paid at the rates at least equal to the prevailing wage rates specified by VTA. If Contractor uses a craft or classification not shown on the prevailing wage determinations, Contractor may be required to pay the wage rate of that craft or classification most closely related to it as shown in the general determinations effective at the time of Contract award.

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

3.6. Workers Compensation

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

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

3.7. Reserved

3.8. Business Diversity

3.8.1. Goal

A participation goal for Small Business Enterprises (“SBEs”) has been established for this Contract as detailed in Section 1.7 Business Diversity Program of the Invitation for Bid.

3.8.2. Business Diversity Policy and Requirements

Bidders must comply with VTA's Small Business Enterprises Policy and Requirements, as set out in **Appendix C Business Diversity Policy and Requirements**.

A Bidder who fails to achieve the SBE participation goal and who fails to demonstrate sufficient good-faith efforts to meet such goal shall be deemed “non-responsive” and therefore ineligible for award of the Contract.

Bid Form 4, Bid Form 5, and Good Faith Efforts (if the SBE goal is not achieved) must be submitted in accordance with Section 3.10 Bid Forms and Appendix C Business Diversity Policy and Requirements. If Bidder is also a SBE firm, then list the bidder/contractor name on the Bid Form 4 and Bid Form 5.

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

It is the Bidder’s sole responsibility for verifying subcontractor certification as a SBE to VTA. Bidders may search a list of VTA's certified SBE firms at <http://www.vta.org/about-us/doing-business-with-vta-search-for-sbes>. VTA’s SBE application is available at <http://www.vta.org/About-Us/Inside-VTA/Small-Business-Enterprise-Program>.

The SBE Goal Achieved in the approved Bid Form 4 equates to a commitment from Contractor; Contractor must meet this commitment.

3.9. Preparation of Bid

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

3.9.1. Submit Bid on Form Provided

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

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

No modification of a Bid Form will be considered.

3.9.2. Prices, Taxes and Applicable Fees in the Bid

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

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

3.9.3. Sealed Envelope

All Bids shall be enclosed in a sealed envelope bearing the Contract number, the title of the Project, the date and hour of the opening, and the name of the Bidder. Bids shall be addressed to the name and location as specified in **Section 1.4. Submittal Location and Deadline**. It is the sole responsibility of the Bidder to see that its Bid is received in a timely manner.

3.10. Bid Forms

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

3.10.1. Bid Form 1: Schedule of Quantities and Prices

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

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

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

3.10.2. Bid Form 2: Bid Security Form/ Bidder’s Bond

At the Bid Opening, each Bid shall be accompanied by **Bid Form 2** and a certified or cashier’s check, or a Bidder's Bond in the sum of not less than **10% of the Total Bid Price** (as defined in **Section 2.5 Definitions** and as further represented below) and said checks or bond shall be made payable to the order of the Santa Clara Valley Transportation Authority.

3.10.3. Bid Form 3: Designation of Subcontractors

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

3.10.4. Bid Form 4: Listing SBE Contractor or Subcontractors

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

3.10.5. Bid Form 5: Supplemental Contractor and Subcontractor Information

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

If a participation goal was specified in **Section 3.8 Business Diversity**, Bidders are required to submit Good Faith Efforts documentation if the participation goal is not achieved. **If Good Faith Efforts documentation is required, it will be submitted by the three (3) low Bidders (and other Bidders at VTA's request), no later than 5 PM on the 2nd working day after the Bid Opening**. Refer to **Appendix C Business Diversity Policy and Requirements** regarding requirements for Good Faith Efforts documentation.

3.10.6. Reserved

3.10.7. Bid Forms 8 and 9

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

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

3.10.8. Reserved

3.11. Bids and Bid Opening

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

3.11.1. Late Bids

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

3.11.2. Withdrawal of Bid

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

3.11.3. Conditional Bids

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

3.11.4. Bidders Interested in More than One Bid

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

3.11.5. Single Bid Response

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

3.12. Award or Rejection of Bids

3.12.1. Award Process

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

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

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

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

3.12.2. Reserved

3.13. Basis of Award

Bids shall only be accepted from those Bidders who have been pre-qualified as required for this Project. The fact of pre-qualification or any pre-qualification rating will not preclude VTA from a post-Bid consideration and determination of whether a Bidder has the quality, fitness, capacity and experience to satisfactorily perform the proposed Work, and has demonstrated the requisite trustworthiness. The criteria for determining the Successful Bidder will include the Bidder’s responsiveness to the requirements of the Contract Documents, Bidder’s responsibility, and price.

3.14. Responsibility Hearing

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

The Bidder must exercise its right to request a hearing within **5 calendar days** after receipt of such notice. Failure to submit a written request for a hearing within the time frame set forth in this Section, will be deemed a waiver of the right to such a hearing and the awarding authority may proceed to determine

whether or not the award of the contract should be made to another Bidder or whether or not the Bidder is non-responsible for this and future contracts.

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

3.15. Bidder Review and Protest Procedures

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

3.15.1. General Information

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

3.15.2. Pre-Bid Opening Protests

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

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

3.15.3. Post Bid Opening Protests

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

3.15.4. Reserved

3.16. Reserved

SECTION 4 BID FORMS

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

Bid Form 1	Bid Form, Schedule of Quantities and Prices, Contractor Information
Bid Form 2	Bidder's Bond Note: Form must be acknowledged by a notary
Bid Form 3	Designation of Subcontractors
Bid Form 4	Listing of SBE Contractor or Subcontractors
Bid Form 5	Supplemental Contractor and Subcontractor Information
Bid Form 6	Not Applicable
Bid Form 7	Not Applicable
Bid Form 8	Non-Collusion Declaration
Bid Form 9	Public Contract Code Statements
Bid Form 10	Not applicable
Bid Form 20	Not Applicable
Bid Form 21	Not applicable
Bid Form 22	Not applicable
Bid Form 23	Not applicable

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BID FORM 1
BID FOR CONTRACT C19222

This form must be submitted with the Bid.

FROM: _____
(BIDDER'S NAME)

TO: THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
STATE OF CALIFORNIA

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

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

Addendum No. _____ Dated _____
Addendum No. _____ Dated _____
Addendum No. _____ Dated _____
Addendum No. _____ Dated _____
Addendum No. _____ Dated _____
Addendum No. _____ Dated _____

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

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

CONTINUED ON NEXT PAGE →

BID FORM 1 (continued)

Schedule of Quantities and Prices

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

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

BIDDER'S NAME: _____

SS = STANDARD SPECIFICATIONS (CALTRANS)

* See Caltrans Standard Specifications Section 1 for abbreviations

(F)	Bid Item	Spec Reference	Description	Qty.	Units*	Unit Price	Total
	1	SS-7	LEAD COMPLIANCE PLAN	1	LS		\$
	2	SC-6.21	PROGRESS SCHEDULE (CRITICAL PATH METHOD) (MINIMUM BID REQUIRED=\$15,000)	1	LS		
	3	SS-10	DEVELOP WATER SUPPLY	1	LS		
	4	SS-12	CONSTRUCTION AREA SIGNS	1	LS		
	5	TS-12	TRAFFIC CONTROL SYSTEM	1	LS		
	6	SS-12	TEMPORARY TRAFFIC STRIPE (PAINT)	3,710	LF		
	7	SS-12	CHANNELIZER (SURFACE MOUNTED)	42	EA		
	8	SS-12	TEMPORARY PAVEMENT MARKER	60	EA		
	9	TS-12	PORTABLE CHANGEABLE MESSAGE SIGN	4	EA		
	10	SS-12	TEMPORARY RAILING (TYPE K)	2,480	LF		
	11	SS-12	TEMPORARY CRASH CUSHION MODULE	49	EA		
	12	SS-13	JOB SITE MANAGEMENT	1	LS		

I-280/Foothill Expressway Off-Ramp Improvements
CONTRACT C19222

(F)	Bid Item	Spec Reference	Description	Qty.	Units*	Unit Price	Total
	13	Appendix G, TS-14	PREPARE STORM WATER POLLUTION PREVENTION PLAN	1	LS		
	14	SS-13	RAIN EVENT ACTION PLAN	12	EA		
	15	SS-13	STORM WATER SAMPLING AND ANALYSIS DAY	9	EA		
	16	SS-13	STORM WATER ANNUAL REPORT	2	EA		
	17	SS-13	TEMPORARY HYDRAULIC MULCH (BONDED FIBER MATRIX)	2,710	SQYD		
	18	SS-13	TEMPORARY COVER	280	SQYD		
	19	SS-13	TEMPORARY DRAINAGE INLET PROTECTION	7	EA		
	20	SS-13	TEMPORARY FIBER ROLL	2,180	LF		
	21	SS-13	TEMPORARY REINFORCED SILT FENCE (WILDLIFE EXCLUSION)	1,500	LF		
	22	Appendix G, TS-14, SS-13	TEMPORARY SILT FENCE	2,190	LF		
	23	SS-13	TEMPORARY CONSTRUCTION ENTRANCE	4	EA		
	24	SS-13	STREET SWEEPING	1	LS		
	25	SS-13	TEMPORARY CONCRETE WASHOUT	1	LS		
	26	TS-14	TREATED WOOD WASTE	1,250	LB		
	27	SS-20	ABANDON PIPELINE (IRRIGATION CROSSOVER)	1	EA		
	28	SS-83	REMOVE MGS	330	LF		
	29	SS-15	REMOVE CONCRETE (CY)	150	CY		
	30	Appendix G, TS-14, SS-16	TEMPORARY HIGH VISIBILITY FENCE	120	LF		

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(F)	Bid Item	Spec Reference	Description	Qty.	Units*	Unit Price	Total
	31	TS-14	CLEARING AND GRUBBING	1	LS		
	32	SS-19	ROADWAY EXCAVATION	2,720	CY		
	33	TS-14	ROADWAY EXCAVATION (TYPE Z-2) (AERIALY DEPOSITED LEAD)	460	CY		
F	34	SS-19	STRUCTURE EXCAVATION (RETAINING WALL)	235	CY		
F	35	TS-14	STRUCTURE EXCAVATION (TYPE Z-2) (AERIALY DEPOSITED LEAD)	301	CY		
F	36	SS-19	STRUCTURE BACKFILL (RETAINING WALL)	64	CY		
	37	SS-20	ROADSIDE CLEARING	1	LS		
	38	SS-20	SALVAGE IRRIGATION FACILITY	5	EA		
	39	SS-20	2" REMOTE CONTROL VALVE	1	EA		
	40	SS-20	2" PLASTIC PIPE SUPPLY LINE (CLASS 315)(SUPPLY LINE)	222	LF		
F	41	SS-20	8" WELDED STEEL PIPE CONDUIT (0.250" THICK)	48	LF		
	42	SS-21	HYDROMULCH	24,000	SQFT		
	43	SS-21	FIBER ROLLS	2,150	LF		
	44	TS-21	STRAW	8,650	SQFT		
	45	SS-21	HYDROSEED	24,000	SQFT		
	46	TS-21	COMPOST (CY)	74	CY		
	47	SS-21	INCORPORATE MATERIALS	8,650	SQFT		
	48	SS-25	CLASS 2 AGGREGATE SUBBASE	330	CY		

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(F)	Bid Item	Spec Reference	Description	Qty.	Units*	Unit Price	Total
	49	SS-26	CLASS 2 AGGREGATE BASE	64	CY		
	50	SS-25	CLASS 3 AGGREGATE BASE	190	CY		
	51	SS-28	LEAN CONCRETE BASE	360	CY		
	52	SS-39	HOT MIX ASPHALT (TYPE A)	2,470	TON		
	53	SS-39	PLACE HOT MIX ASPHALT DIKE (TYPE E)	320	LF		
	54	SS-39	PLACE HOT MIX ASPHALT DIKE (TYPE F)	730	LF		
	55	SS-39	TACK COAT	4	TON		
	56	SS-39	COLD PLANE ASPHALT CONCRETE PAVEMENT	1,900	SQYD		
	57	SS-56	60" CAST-IN-DRILLED-HOLE CONCRETE PILE (SIGN FOUNDATION)	25	LF		
F	58	SS-51	STRUCTURAL CONCRETE, RETAINING WALL	122	CY		
F	59	SS-51	STRUCTURAL CONCRETE, DRAINAGE INLET	8	CY		
F	60	SS-51	BAR REINFORCING STEEL (RETAINING WALL)	16,950	LB		
F	61	SS-56	FURNISH SIGN STRUCTURE (TRUSS)	21,000	LB		
F	62	SS-56	INSTALL SIGN STRUCTURE (TRUSS)	21,000	LB		
	63	TS-56	REMOVE SIGN STRUCTURE (EA)	1	EA		
	64	SS-65	12" REINFORCED CONCRETE PIPE	78	LF		
	65	SS-65	18" REINFORCED CONCRETE PIPE	10	LF		

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(F)	Bid Item	Spec Reference	Description	Qty.	Units*	Unit Price	Total
	66	SS-71	REMOVE PIPE (LF)	6	LF		
	67	SS-71	REMOVE INLET	2	EA		
	68	TS-73	MINOR CONCRETE (TEXTURED PAVING)	14	CY		
	69	TS-73	MINOR CONCRETE (CURB AND GUTTER)	6	CY		
F	70	SS-75	MISCELLANEOUS IRON AND STEEL	1,060	LB		
	71	SS-81	REMOVE PAVEMENT MARKER	45	EA		
	72	SS-81	PAVEMENT MARKER (RETROREFLECTIVE)	119	EA		
	73	SS-82	REMOVE ROADSIDE SIGN (WOOD POST)	6	EA		
	74	SS-82	REMOVE ROADSIDE SIGN (STRAP AND SADDLE BRACKET METHOD)	1	EA		
	75	SS-82	FURNISH FORMED PANEL SIGN (OVERHEAD)	220	SQFT		
	76	SS-82	FURNISH SINGLE SHEET ALUMINUM SIGN (0.063"-UNFRAMED)	115	SQFT		
	77	SS-82	FURNISH SINGLE SHEET ALUMINUM SIGN (0.080"-UNFRAMED)	66	SQFT		
	78	SS-82	ROADSIDE SIGN - ONE POST	7	EA		
	79	SS-82	ROADSIDE SIGN - TWO POST	4	EA		
	80	SS-82	INSTALL SIGN (SSBM)	1	EA		
	81	TS-83	VEGETATION CONTROL (MINOR CONCRETE)	250	SQYD		
	82	SS-83	MIDWEST GUARDRAIL SYSTEM (WOOD POST)	700	LF		
	83	TS-83	TRANSITION RAILING (TYPE WB-31)	1	EA		

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(F)	Bid Item	Spec Reference	Description	Qty.	Units*	Unit Price	Total
	84	SS-83	CONCRETE BARRIER (TYPE 60MC)	340	LF		
F	85	SS-83	CONCRETE BARRIER (TYPE 836A)	236	LF		
	86	SS-84	6" THERMOPLASTIC TRAFFIC STRIPE	2,490	LF		
	87	SS-84	8" THERMOPLASTIC TRAFFIC STRIPE	890	LF		
	88	SS-84	THERMOPLASTIC PAVEMENT MARKING	440	SQFT		
	89	SS-84	6" THERMOPLASTIC TRAFFIC STRIPE (BROKEN 17-7)	860	LF		
	90	SS-84	REMOVE THERMOPLASTIC TRAFFIC STRIPE	1,300	LF		
	91	SS-84	REMOVE THERMOPLASTIC PAVEMENT MARKING	65	SQFT		
	92	TS-87	LIGHTING SYSTEM	1	LS		
	93	TS-87	SIGNAL AND LIGHTING SYSTEM	1	LS		
	94	SC-6.11	MOBILIZATION	1	LS		
	95	SC-6.45, SS-5	CONSTRUCTION STAKING	1	LS		
TOTAL BID PRICE:						\$	

CONTINUED ON NEXT PAGE →

BID FORM 1 (continued)

Signature Page

A. ENTER FULL AND CORRECT NAME OF BIDDER:

Firm Name: _____

B. ENTER BUSINESS ADDRESS

Street Address: _____

City, State, ZIP: _____

Phone #: _____ Email: _____

C. CALIFORNIA CONTRACTOR'S LICENSE

Number: _____

Class: _____

Expires: _____

D. BIDDER INFORMATION

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

E. LIST PRINCIPALS

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

F. SIGN AND DATE

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

Signature: _____

Name (print): _____

Title: _____

Date: _____

**BID FORM 2
BIDDER'S BOND**

KNOW ALL PEOPLE BY THESE PRESENTS: That

WHEREAS the undersigned, _____

as Principal and _____

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

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

**I-280/FOOTHILL EXPRESSWAY OFF-RAMP IMPROVEMENTS
CONTRACT C19222**

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

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

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

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

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

PRINCIPAL

SURETY

(Company)

(Company)

(Signature)

(Signature)

(Name – Please Print)

(Name – Please Print)

(Title)

(Title)

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

NOTE TO SURETY COMPANY:

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

SURETY COMPANY ATTORNEY-IN-FACT

State of California)
County of _____)

On _____, before me, the undersigned, a Notary Public in and for the State, personally appeared _____, known

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

(SEAL)

WITNESS MY HAND AND OFFICIAL SEAL:

Notary Public for the State of California

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

BID FORM 3
DESIGNATION OF SUBCONTRACTORS

IMPORTANT INFORMATION

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

A. ENTER PROJECT AND BIDDER INFORMATION

Contract Name _____
Contract Number _____
Bidder Name _____
Total Bid Price: \$ _____
Amount to be Subcontracted: \$ _____
Percentage to be Subcontracted: _____ %

B. ENTER NAMES OF SUBCONTRACTORS AS IDENTIFIED ABOVE

Name of Subcontractor	City and State of Subcontractor	Bid Item	Portion of Work	Contractor's State License Number	Contractor's DIR Registration Number

CONTINUED ON NEXT PAGE →

BID FORM 4 LISTING OF SBE CONTRACTOR OR SUBCONTRACTORS

This form must be submitted with the Bid. Refer to instructions on Page 2 of this form when filling out this form. (Ref: SBE Goal)

A. ENTER CONTRACTOR INFORMATION

Firm (Prime): _____
 Street Address: _____
 City, State, ZIP: _____
 Phone #: _____
 Fax #: _____
 Email: _____
 Preparer's Name: _____
 Preparer's Title: _____
 Signature: _____
 Date: _____ Age of Firm: _____
 Is Firm (Prime) a Small Business Enterprise? Yes No

VTA to Complete this Section
Contract Number: _____
Federal Aid Project #: _____
Bid Opening Date: _____
Contract Award Date: _____
VTA OBDPE certifies that all SBE certifications are valid and information on this form is complete and accurate.
OBDPE Rep Signature: _____
Printed Name/Title: _____
Phone #: _____
Date Signed: _____

SBE Participation Goal	%
Bid Amount (Enter Base Contract Amount)	\$

B. LIST SBE CONTRACTOR AND SUBCONTRACTORS:

Bid Item	Description of Work, Service, or Materials Supplied	Certification Number	Agency Certifying	Name and Address of Certified SBE	SBE Dollar Amount

Formula to calculate SBE Goal Achieved

$\frac{\text{Total SBE Dollar Amount}}{\text{Base Contract Amount}} \times 100 = \text{SBE Goal Achieved as a percentage}$
--

Enter totals from any additional sheets here:

Total SBE Dollar Amount	\$
SBE Goal Achieved (see formula at left)	%

C. GOOD FAITH EFFORT: Check this box if attempts to solicit sufficient SBE participation to meet the SBE Participation Goal has been unsuccessful and good faith effort will be submitted in accordance with contract requirements.

D. LIST TOTALS OF CONTRACTOR AND SUBCONTRACTORS (SBE AND NON-SBE):

Total Dollar Amount of ALL Subcontractors: \$ _____ Total Number of ALL Subcontractors: _____

INSTRUCTIONS FOR BID FORM 4

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

IMPORTANT: Identify all SBE firms being claimed for credit, regardless of tier. Names of the First Tier SBE Subcontractors and their respective items(s) of work listed above must be consistent, where applicable, with the names and items of the work in the Bid Form 4a "Supplemental Contractor and Subcontractor Information". The preparer indicated in Part A is providing written confirmation of each listed SBE.

PART A: ENTER CONTRACTOR INFORMATION

- Box 1: Name of firm (Prime Contractor) submitting Bid.
Box 2 and 3: Address of firm.
Box 4 and 5: Phone number of individual submitting the Bid; Fax number of firm
Box 6: Email of individual submitting the Bid
Box 7, 8 and 9: Printed name and title and signature of individual preparing this bid form the Bid;
Box 10: Enter age of firm
Box 11: Indicate if the Firm (Prime contractor) is a Small Business Enterprise.
Box 12: VTA will enter the SBE Participation Goal – the contract goal which is the minimum required SBE participation.
Box 13: Enter Bid Amount representing Base Contract Amount as provided in Bid Form 1.

PART B: LIST SBE CONTRACTOR AND SUBCONTRACTORS

- Column 1: Bid Item: Enter bid item number for work, services, or materials to be provided.
Column 2: Description: Enter description of work, services, or materials to be provided.
• Indicate all work to be performed by SBEs including work performed by the prime contractor's own forces, if the prime is a SBE.
• If 100% of the item is not to be performed or furnished by the SBE, describe the exact portion to be performed or furnished by the SBE. See Appendix C Business Diversity Policy and Requirements to determine how to count the participation of SBE firms. A summary of that information is provided below:

CREDIT FOR SBE VENDOR of materials or supplies is **limited to 60%** of its expenditures for materials and supplies required under this Contract and obtained from a SBE regular dealer. Credit for SBE manufacturers is given at 100% toward the SBE goal only where the SBE vendor manufactures or substantially alters the material prior to resale.
CREDIT FOR SBE BROKERS (Distributor or Representative) is limited to the fees and commissions of the amount paid. All other firms receive 100% credit, less work subcontracted by the SBE to non-SBE firms, towards the SBE goal.
CREDIT FOR SBE TRUCKING FIRMS is limited to amount performed by the SBEs own trucks and drivers and by certified SBE trucking subhauers. A SBE trucking firm must itself own and operate at least one fully licensed, insured and operational truck used on the Contract.

- Columns 3 and 4: Enter certification number and agency certifying the SBE. A SBE must be certified by VTA's Office of Business Diversity Program (OBDP) or SBEs/DBEs certified with the California Unified Certification Program (CUCP), or accepted by OBDP at the time of Bid.
Column 5: Enter name and address of the certified SBE subcontractor. Also, enter the prime contractor's name if the prime is a SBE.
Column 6: Enter the subcontracted dollar amount of the work to be performed or service to be provided. See Appendix C Business Diversity Policy and Requirements to determine how to count the participation of SBE/DBE firms. A summary of that information is also above
Box 14: Box 14 is the sum of the values in column 6.
Box 15: Calculate the SBE Goal Achieved. This percentage must equal or exceed the SBE Participation Goal amount written in Box 12. In the event of arithmetic error in the total bid amount, then Box 15 will be revised. The successful Bidder's SBE Goal Achieved equates to the Contractor's committed SBE goal.

PART C: GOOD FAITH EFFORT

- Box 16 Check Box 16 if insufficient SBE Participation has been achieved and a good faith effort is required. Refer to the contract *Section 7.0 General Conditions, 13.7 Good Faith Effort* for documentation to provide.

PART D: LIST TOTALS OF CONTRACTOR AND SUBCONTRACTORS

- Line 1: Enter the total dollar amount of all subcontracted contractors. SUM = [SBEs + all Non-SBEs]. Do not include the prime contractor information in this count.
Line 2: Enter the total number of all subcontracted contractors. SUM = [SBEs + all Non-SBEs]. Do not include the prime contractor information in this count.

BID FORM 5 SUPPLEMENTAL CONTRACTOR and SUBCONTRACTOR INFORMATION

IMPORTANT INFORMATION

- **ALL FIRMS FILL THIS OUT:** All firms bidding on prime contracts and bidding or quoting subcontractors are required to complete this form for the identified contract name and number. The form must be copied by the prime Bidder and distributed to all subcontractors. Prime Firm will then complete and sign the form in the final section below and submit the information to VTA.
- **SUBMITTAL DUE DATE:** Refer to Section 3.0 Instructions to Bidders for submittal information.
- **INSTRUCTIONS:** If you require additional forms or information, please contact the project Contract Administrator.

A. ENTER PROJECT INFORMATION

Contract Name _____

Contract Number _____

B. ENTER CONTRACTOR/SUBCONTRACTOR INFORMATION

Firm Name: _____

Street Address: _____

City, State, ZIP: _____

Phone #: _____

State License #: _____

DIR Registration #: _____

C. ENTER DETAILS REGARDING CONTRACTOR/SUBCONTRACTOR LISTED ABOVE

Check One:	<input type="checkbox"/> DBE <input type="checkbox"/> SBE <input type="checkbox"/> Non-SBE/Non-DBE <input type="checkbox"/> BDPBE (MWBE, DVBE, or LGBTBE)
Age of Firm:	_____
Annual Gross Receipts <i>(indicate bracket of income)</i>	<input type="checkbox"/> Below \$500K <input type="checkbox"/> \$500K to \$1M <input type="checkbox"/> \$1M to \$4M <input type="checkbox"/> \$4M to \$6M <input type="checkbox"/> \$6M to \$13M <input type="checkbox"/> Above \$13M
Ethnicity	<input type="checkbox"/> Asian <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Native American <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Caucasian <input type="checkbox"/> Other _____
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female

D. FORM COMPLETED BY:

Form Completed by *(print name and sign)*: _____

Date Signed: _____ Email address: _____

E. TO BE COMPLETED BY PRIME FIRM (BIDDER)

Prime Firm (Bidder): _____

Was this firm selected for a subcontract or purchase for this contract? Yes No

If yes, enter the dollar value of this subcontract or purchase: \$ _____

Enter the description of this firm's work: _____

INSTRUCTIONS FOR BID FORM 5

Refer to these instructions when filling out Bid Form 5.

The subcontractor or contractor filling out this form will fill out Part A to Part D. The form is then finalized by the Prime Firm (Bidder) by completing Part E. The Prime Firm (Bidder) will then submit all the forms to VTA in accordance with the instructions provided in the Bid documents.

PART A: ENTER PROJECT INFORMATION

- Box 1: Enter contract name for which this form is being filled out.
Box 2: Enter contract number for which this form is being filled out.

PART B: ENTER CONTRACTOR/ SUBCONTRACTOR INFORMATION

- Box 3 to Box 8: Enter contractor/subcontractor name, address, phone number, California State License Board Number (if not listed in Bid Form 3, and DIR registration number (if not listed in Bid Form 3).

PART C: ENTER DETAILS REGARDING CONTRACTOR/SUBCONTRACTOR LISTED ABOVE

- Box 9: Check one of the choices offered. If checked for SBE (Small Business Enterprise), DBE (Disadvantaged Business Enterprise) or BDPBE (Business Diversity Programs Business Enterprise), the firm must be certified. Refer to contract documents for additional information about certification.
Box 10: Enter age of firm.
Box 11: Check one of the choices offered to indicate bracket of income.
Box 12: Check one of the choices offered to indicate ethnicity. If "Other", please enter information in space provided.
Box 13: Indicate gender.

PART D: FORM COMPLETED BY:

- Box 14: Print and sign the name of the individual who provided the information in Parts A to C.
Box 15: Enter date signed.
Box 16: Provide email address of the individual who provided the information in Parts A to C.

PART E: TO BE COMPLETED BY PRIME FIRM (BIDDER)

- Box 17: Enter prime firm (bidder) name.
Box 18: Answer the yes/no question.
Box 19: If entered yes to Box 18, enter the dollar value of this subcontract or purchase.
Box 20: Enter the description of the firm's work for the firm identified under B to C.

**BID FORM 8
NON-COLLUSION DECLARATION**

State of California)
)
County of _____) ss.

The undersigned declares:

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

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

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

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

correct and that this declaration is executed on this _____ day of _____, 20__

at _____,
(CITY) (STATE)

SIGN AND DATE

Signature of Declarant: _____

Name (print): _____

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BID FORM 9 PUBLIC CONTRACT CODE STATEMENTS

There are three parts to this **Bid Form #9**. Complete the information in each part and sign the last page of this **Bid Form #9**.

A. Public Contract Code Section 10285.1 Statement

In accordance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the Bidder hereby declares under penalty of perjury under the laws of the State of California that the Bidder has _____, has not _____ been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "Bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

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

The above Statement is part of the Proposal. Signing this Proposal on the signature portion thereof (second page to this form) shall also constitute signature of this Statement. Proposers are cautioned that making a false certification may subject the certifier to criminal prosecution.

B. Public Contract Code Section 10162 Questionnaire

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

Has the Bidder, any officer of the Bidder, or any employee of the Bidder who has a proprietary interest in the Bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation? Yes _____
No _____

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

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

BID FORM 9 (continued)

C. Public Contract Code 10232 Statement

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

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

By my signature on this **Bid Form #9**, I certify, under penalty of perjury under the laws of the State of California, that the foregoing questionnaire and statements of the Public Contract Code Sections 10285.1, 10162, AND 10232 are true and correct.

SIGN AND DATE

Signature: _____
Name (print): _____
Title: _____
Date: _____

SECTION 5 CONTRACT FORMS

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

- | | |
|------------------------|---|
| Contract Form 1 | Construction Agreement
Note: Form must be acknowledged by a notary |
| Contract Form 2 | Performance Bond
Note: Form must be acknowledged by a notary |
| Contract Form 3 | Payment Bond
Note: Form must be acknowledged by a notary |
| Contract Form 4 | Listing of Subcontractors, Suppliers, and Subconsultants |

These Contract Forms will be returned to:

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

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CONTRACT FORM 1 CONSTRUCTION AGREEMENT

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

INSERT SUCCESSFUL BIDDER’S COMPANY NAME

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

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

**I-280/FOOTHILL EXPRESSWAY OFF-RAMP IMPROVEMENTS
CONTRACT C19222**

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

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

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

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

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

4. **Quality of Work.** Where the plans and specifications describe portions of the Work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be provided.
5. **Time for Performance.** Contractor shall commence the Work immediately upon issuance by VTA of a Notice to Proceed and shall complete all of the Work by the dates specified in Contract **Section 6.4 Time for Performance**. The issuance of a Notice to Proceed is contingent upon Contractor's submittal of proper insurance certificates, performance bond, payment bond, Listing of Subcontractors, Suppliers and Subconsultants, Federal and State Tax Forms, Storm Water Pollution Prevention Plan, and executed Construction Agreement no later than **six (6) working days** following the date of VTA's Notice of Award. The first chargeable day under the Contract is set out in Contract **Section 6.4 Time for Performance**.
6. **Entire Contract.** The Contract constitutes the entire agreement between VTA and Contractor respecting the subject matter hereof. All other agreements, understandings and communications between the parties hereto are deemed to be merged into and superseded by the provisions of the Contract. No modification or change to the Contract shall have any force or effect unless it is in writing and expressly referred to as being a change order to the Contract. If any provision of the Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way.
7. **Responsible Conduct.** Contractor shall at all times deal in good faith and truthfully with VTA. Contractor shall submit documentation to VTA, including reports, claims, requests for change orders, equitable adjustment, Contract modifications or requests of any kind seeking increased compensation or decreases of an obligation on the Contract only in good faith and upon an honest evaluation of the underlying circumstances and an honest calculation of any amount being sought. A violation of this standard of conduct will subject Contractor to being deemed "non-responsible" pursuant to SCVTA Administrative Code, Chapter 9, Article III and potentially ineligible for future contracts with VTA, regardless of whether VTA relied on or responded to the submission.

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

INSERT NAME OF CONTRACTOR

**SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY**

By: _____

By: _____

Title: _____

Thor Vue
PCMM Manager

Date: _____

Contractor's License No.: _____

By: _____

Class: _____

Nuria I. Fernandez
General Manager / CEO

Expiration Date: _____

Date: _____

I-280/Foothill Expressway Off-Ramp Improvements
Contract C19222

Approved as to Form:

By: _____
Legal Counsel

I-280/Foothill Off-Ramp Improvements
C19222

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**CONTRACT FORM 2
PERFORMANCE BOND FOR PUBLIC WORKS**

KNOW ALL PEOPLE BY THESE PRESENTS: That

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

INSERT SUCCESSFUL BIDDER’S COMPANY NAME

(“Principal”) a contract described as:

**I-280/FOOTHILL EXPRESSWAY OFF-RAMP IMPROVEMENTS
CONTRACT C19222**

and all of the Contract Documents attached to or forming a part of said contract (herein collectively referred to as the “Contract”) are hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of said Contract to furnish a bond executed by an admitted surety insurer for the faithful performance of said Contract;

NOW THEREFORE, we, the Principal and

INSERT SURETY COMPANY

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

The condition of this obligation is such that if the above-bound Principal, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Contract and any alteration thereof made as therein provided, on their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend and save harmless VTA, its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

And the said Surety for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or additions to the terms of the Contract or to the Work or to the specifications.

In the event suit is brought upon this bond by VTA and judgment is recovered, Surety shall pay all costs incurred by VTA in such suit, including reasonable attorneys’ fees, court costs, expert witness fees and investigation expenses.

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

PRINCIPAL

SURETY

(Company)

(Company)

(Signature)

(Signature)

(Name – Please Print)

(Name – Please Print)

(Title)

(Title)

CORPORATE SEAL

CORPORATE SEAL

NOTE: Attach the following:

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

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

KNOW ALL PEOPLE BY THESE PRESENTS: That

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

INSERT SUCCESSFUL BIDDER’S COMPANY NAME

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

**I-280/FOOTHILL EXPRESSWAY OFF-RAMP IMPROVEMENTS
CONTRACT C19222, and**

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

NOW THEREFORE, we, the Principal and

INSERT SURETY COMPANY

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

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

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

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

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

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

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

PRINCIPAL

SURETY

(Company)

(Company)

(Signature)

(Signature)

(Name – Please Print)

(Name – Please Print)

(Title)

(Title)

CORPORATE SEAL

CORPORATE SEAL

NOTE: Attach the following:

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

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

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

IMPORTANT INFORMATION

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

A. ENTER PROJECT AND CONTRACTOR INFORMATION

Contractor Name _____

Total Contract Price: \$ _____

Amount to be Subcontracted: \$ _____

Percentage to be Subcontracted: _____ %

B. ENTER NAMES OF SUBCONTRACTORS, SUPPLIERS, AND SUBCONSULTANTS

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

NOTE

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

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SECTION 6 SPECIAL CONDITIONS

6.1. Indemnity and Defense of Claims

6.1.1. Indemnify and Hold Harmless

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

6.1.2. Limitation on Indemnity

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

6.1.3. Duty to Defend

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

6.1.4. Survive Expiration or Termination

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

6.2. Insurance

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

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

6.3. Contract Bonds and Surety Requirements

6.3.1. Payment Bond

The Payment Bond shall be in an amount of **100%** of the Total Contract Price and shall inure to the benefit of persons performing labor or furnishing materials in connection with the Work. This bond shall be maintained in full force and effect until all Work under the Contract is completed and accepted by VTA, and until all claims for materials and labor have been paid. See the form of the Payment Bond in Section 5 Contract Forms.

6.3.2. Performance Bond

The Performance Bond shall be in an amount of **100%** of the Total Contract Price and shall insure the faithful performance by Contractor of all of the Work. It shall also insure the replacement of, or making acceptable, any defective materials or faulty workmanship. See the form of the Performance Bond in Section 5 Contract Forms.

6.3.3. Surety Requirements

Sureties for necessary bonds must:

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

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

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

6.4. Time for Performance

The time limit for completion of all Work is **215 calendar days** commencing on the First Charged Day. First Charged Day is defined as the 35th calendar day following the issuance of a NOA by VTA. Should the First Charged Day fall on a Friday or weekend or holiday, the following working day shall be the First Charged Day.

As described in **Section 8 Technical Specifications**, except for limited vegetation clearing necessary to minimize effects to nesting birds, Work in the field must be conducted between April 15 and October 15 to minimize effects on listed species and habitats.

6.5. Liquidated Damages

Contractor agrees that its failure to complete the Work or any part thereof within the time periods or by the dates specified in the Contract, as such time periods or dates may be revised by change order, will result in damages being sustained by VTA. Since it is impractical and infeasible to determine the actual amount of such damage, it is further agreed that Contractor shall pay to VTA, as agreed, fixed and liquidated damages and not as a penalty, the amount specified hereunder for each day of delay or part thereof until such Work or part thereof is completed and accepted, and Contractor and its surety shall be liable for the amount thereof.

VTA may deduct the sum of liquidated damages from progress or final payment(s) due under this Contract.

The Work must be completed and accepted within the duration set out in **Section 6.4 Time for Performance**. Liquidated Damages will be assessed at \$1,900 per calendar day thereafter for each and every day beyond the time specified in **Section 6.4**. See **Section 8 Technical Specifications, Section 12-4.02C(1)** for additional details regarding the aforementioned liquidated damages.

6.6. Contract Data Requirements

6.6.1. Contract Data Requirements

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

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

6.6.2. Submittal

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

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

- a. Submit drawings, schedules and samples as required in the Technical Submittals List.
- b. Coordinate preparation and processing of submittals with performance of construction activities;
- c. Coordinate each submittal with fabrication, purchasing, testing, delivery, other submittals, and related activities that require sequential activity; and

- d. Coordinate transmittal of different submittals for related parts of the Work so that processing will not be delayed because of the need to review submittals concurrently for coordination.
- e. Submit any supporting data, such as manufacturer's literature and/or calculations, in the same manner and number as the drawings, schedules and samples required.

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

- a. Initial Review: Contractor shall allow twenty (20) working days for initial review and appropriate action by VTA on each submittal. Contractor shall allow additional time if processing must be delayed to permit coordination with subsequent submittals. VTA will advise Contractor when a submittal being processed must be delayed for coordination.
- b. Concurrent Review: Where concurrent review of submittals by VTA and other parties is required, Contractor shall allow thirty (30) working days for initial review and appropriate action by VTA of each submittal.

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

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

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

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

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

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

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

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

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

Contractor shall submit six (6) legible copies of complete and detailed working and shop drawings as required for the performance of the Work, which must be suitable for electronic scanning. In addition, drawings must be prepared on a reproducible sheet measuring 22 inches by 34 inches unless approved otherwise. Each full size drawing sheet must have a blank area five inches by five inches minimum, located above the title block, for VTA's acceptance stamp. The title block must display the following:

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

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

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

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

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

Contractor shall test samples as specified. Accepted samples not destroyed in testing may be retained by VTA. Samples not approved by VTA will be returned at Contractor's expense, if so requested at the time

of submittal. Contractor shall mail a letter under separate cover submitting each shipment of samples detailing the information required in the preceding paragraph. Contractor shall enclose a copy of the letter with the shipment.

6.7. Permits, Fees and Inspections

VTA will obtain the following permit: Caltrans Construction Encroachment Permit

6.7.1. Caltrans Permit

Contractor must obtain a copy of the Caltrans Construction Encroachment Permit issued to VTA and must comply with all provisions of said permit. Contractor must also, at its own cost and expense, apply for the Caltrans Construction Encroachment Permit (under VTA's Caltrans Construction Encroachment Permit) within ten (10) calendar days after the NOA. Contractor must submit its Caltrans Construction Encroachment Permit application along with the required attachments to the Caltrans Project Manager, Arun Guduguntla (510) 286-5437, at 111 Grand Avenue, Oakland, CA 94612.

6.8. Payment of Fines and Fees

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

6.9. VTA Furnished Materials

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

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

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

6.10. Delivery, Unloading and Storage

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

Contractor must fully comply with the requirements related to storage of materials found in the Storm Water Pollution Prevention Plan (SWPPP) and **Section 8 Technical Specifications**, and Contractor is responsible for all costs associated with such compliance.

6.11. Work Sequence and Constraints

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

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

6.11.1. Contractor's Work Area

Section 7.34 Contractor's Work Area is deleted in its entirety and replaced with the following:

The highway right of way must be used only for purposes that are necessary to perform the required Work. Contractor must not occupy the highway right of way, or allow others to occupy the highway right of way, for purposes which are not necessary to perform the required Work.

No state-owned parcels adjacent to the highway right of way are available for the exclusive use of Contractor within the Worksite. Contractor shall secure, at Contractor's own expense, areas required for plant sites, storage of equipment or materials, or for other purposes related to performance of Work.

No area is available within the Worksite for the exclusive use of Contractor. However, temporary storage of equipment and materials on state property may be arranged with the State of California, subject to the prior demands of state maintenance forces and to other Contract requirements.

Use of Contractor's Work areas and other state-owned property will be at Contractor's own risk, and the state and VTA will not be held liable for damage to or loss of materials or equipment located within these areas. Contractor will be responsible for all security, utilities, and upkeep of Work and laydown areas and for their restoration to a condition equal to that which existed when Contractor began using such areas. Such restoration must be complete before final payment is made to Contractor.

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

Contractor shall obtain encroachment permits prior to occupying state-owned parcels outside the Worksite. The required encroachment permits may be obtained from the Caltrans Permit Engineer.

Contractor shall remove (i) rubbish on a daily basis, and (ii) equipment and materials when Work is completed, from the Worksite and other state-owned property which Contractor occupies.

6.11.2. Mobilization

Mobilization will consist of preparatory work and operations, including, but not limited to, those necessary for (i) the movement of personnel, equipment, supplies, and incidentals to the Worksite; (ii) the establishment of all offices, buildings, and other facilities necessary for Work on the Project; and (iii) all other Work and operations which must be performed, or costs which must be incurred, prior to beginning Work on the various Contract items on the Worksite.

Attention is directed to **Section 7.59 Progress Payment**. Payments for mobilization will be made as follows:

- When the monthly progress payment invoice of the amount earned (not including the amount earned for mobilization) is 5 percent or more of the original Total Contract Price, then 50 percent of the Contract price for the mobilization Bid Item or 5 percent of the original Contract amount (whichever is less) must be included in the invoice for payment.
- When the monthly progress payment invoice of the amount earned (not including the amount earned for mobilization) is 10 percent or more of the original Total Contract Price then the total amount earned for mobilization must be 75 percent of the Contract item price for mobilization or 7.5 percent of the original Total Contract Price (whichever is less) and that amount must be included in the invoice for payment.
- When the monthly progress payment invoice of the amount earned (not including the amount earned for mobilization) is 20 percent or more of the original Contract amount, the total amount earned for mobilization must be 95 percent of the Contract item price for mobilization or 9.5 percent of the original Contract amount (whichever is less) and that amount must be included in the invoice for payment.
- When the monthly progress payment invoice of the amount earned (not including the amount earned for mobilization) is 50 percent or more of the original Contract amount, the total amount earned for mobilization must be 100 percent of the Contract item price for mobilization or 10 percent of the original Contract amount (whichever is less) and that amount must be included in the invoice for payment.

After acceptance of the Work pursuant to **Section 7.55 Final Inspection and Acceptance of All or a Portion of the Work**, the amount remaining to be paid, if any, of the Contract item price for mobilization in excess of 10 percent of the original Contract amount must be included for payment in conformance with the provisions in **Section 7.59 Progress Payment**.

The Contract lump sum price paid for the mobilization Bid item includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the Work involved in mobilization as specified herein. The Contract lump sum price paid for the mobilization Bid item is not subject to (1) adjustment pursuant to **Section 7.65 Change Requests and Change Notices** or **Section 7.66 Change Order** or (2) retention of funds pursuant to **Section 7.59 Progress Payments**.

6.12. Reserved

6.13. Sound Control Requirements

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

Construction equipment must not be operated, and the engines of this equipment must not be allowed to run, between the hours of 7:00 p.m. and 7:00 a.m., or on weekends or holidays. Equipment may be operated during the restricted hours only to:

- a. Service traffic control facilities,
- b. Service construction equipment,
- c. Perform that Work which the Contract specifies be done during restricted hours, or
- d. Saw transverse and longitudinal weakened plane joints in concrete pavement.

The requirements in this section do not relieve Contractor from responsibility for complying with all applicable local ordinances regulating noise level outside the limits of the state right of way.

Noise level requirements apply to all equipment on the job or related to the job, including but not limited to trucks, transit mixers, or transit equipment that may or may not be owned by Contractor. The use of loud sound signals must be avoided in favor of light warnings except those required by safety laws for the protection of personnel.

Sound and vibratory monitoring devices are required for all noise producing activities, including but not limited to the following:

- a. Pile driving
- b. Sheet piling
- c. Vibratory compaction
- d. Saw cutting
- e. All demolition

6.14. Safety Precautions, Programs and First Aid Requirements

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

6.14.1. Safety Supervision

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

- (1) Identify a competent individual, i.e.: a superintendent or foreperson, who must be assigned to work at the Worksite and must be responsible for Worksite safety,
- (2) Contractor must submit a site-specific work plan which addresses the scope of work to be performed and certify that the designated safety representative has received competent person training in all aspects of the site-specific work plan, and

- (3) Contractor agrees to comply with all state, federal and local regulations with regards to safety. Contractor will provide a copy of its Injury Illness Prevention Program for review and approval from VTA prior to beginning the Work.

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

Contractor must perform Work in compliance with California Labor Code Section 6705 concerning trench excavation safety plans. Excavation for any trench 5 feet or more in depth must not begin until Contractor has received written approval from VTA of Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of that trench ("Protection Plan") and any design calculations used in the preparation of the detailed plan.

The Protection Plan prepared by Contractor must show the details of the design of shoring, bracing, sloping, or other provisions to be made for worker protection during the excavation. The Protection Plan must not allow the use of shoring, sloping, or a protective system less effective than that required by the Construction Safety Orders of the California Division of Occupational Safety and Health, which are incorporated herein by this reference as if fully set forth herein and may be made available to Contractor upon request.

If the Protection Plan complies with the shoring system standards established by the Construction Safety Orders, the Protection Plan must be submitted to VTA at least five (5) days before Contractor intends to begin excavation for the trench.

If the Protection Plan varies from the shoring system standards established by the Construction Safety Orders, the Protection Plan must be prepared and signed by an engineer who is registered as a Civil Engineer in the State of California, and the Protection Plan and design calculations must be submitted to VTA at least three (3) weeks before Contractor intends to begin excavation for the trench.

6.14.2. Hazardous Substances

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

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

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

6.14.3. Safety Data Sheets and Hazardous Substances

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

6.14.4. Hazardous Substances Controls and Storage

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

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

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

6.14.5. Written Safety Precautions

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

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

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

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

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

6.14.6. Protection of Work and Property; Responsibility for Loss

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

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

6.14.7. VTA Patrols

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

6.14.8. Notice in Writing Before Breaking Ground

Contractor shall give notice in writing, at least forty-eight (48) hours before breaking ground, to all persons having interests on or near the Worksite, including public utility companies, owners of property having structures or improvements in proximity to the Worksite, superintendents, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables,

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

6.14.9. Safeguards for Safety and Protection

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

6.14.10. Job Safety Compliance

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

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

6.14.11. Damage to the Work

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

6.14.12. Dangerous Conditions

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

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

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

Contractor shall not permit open fires on the Worksite.

Use or storage of explosives is prohibited.

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

No later than five (5) working days prior to the arrival of a crane, Contractor must provide the most recent annual and quadrennial safety inspection certificates. Contractor must also provide crane operator certificates from the National Commission for the Certifying of Crane Operators, as outlined in Illness and Injury Prevention Plan (IIPP), at least five (5) working days prior to a crane operator working onsite.

6.14.13. Emergencies

In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any Federal or State safety or health law or regulation, arising out of or in any way connected with the Work or its performance, Contractor shall ensure that at least one of Contractor's employees with authority shall be on duty during working hours, and act immediately to prevent threatened damage, injury or loss or to remedy said violation, whichever is applicable, failing which VTA may immediately take whatever action it deems necessary, including, but not limited to, suspending the Work as provided in **Section 7.69 Suspension of the Work**. Contractor shall also establish and maintain adequate First Aid facilities at locations close to work areas, and mark such locations with signs of adequate size and composition. Contractor shall also ensure that at least one of Contractor's employees qualified by a recognized authority to perform First Aid is on duty while Work is being performed. Contractor shall also ensure that at least one CPR/first aid trained employee is available onsite for every 15 employees onsite. Notwithstanding the immediately foregoing, there must at all times be at least 2 CPR/first aid trained employees onsite during Work hours. Training records or certificates for initial and renewal CPR/first aid training must be forwarded to VTA no later than ten (10) days following NOA.

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

6.14.14. Aerially Deposited Lead

Aerially Deposited Lead (ADL) is defined in the Technical Specifications/Caltrans Standard Specifications.

Provisions of this section must be made a part of every subcontract executed pursuant to this Contract.

Excavation, transportation, placement, and handling of soils containing ADL must result in no visible dust. Contractor shall have a water truck available at all times while performing earthwork, excavation, or grubbing activities in Work areas containing ADL at hazardous levels.

Contractor must prepare a Project specific Lead Compliance Plan (as defined in the Caltrans Standard Specifications) to prevent or minimize exposure to potentially hazardous levels of lead. Contractor must comply with (i) Title 8 of the California Code of Regulations, Section 5192(b)(4) and (ii) the Occupational Safety and Health Guidance Manual published by National Institute of Occupational Safety and Health, Occupational Safety and Health Administration (OSHA). The Lead Compliance Plan must contain required elements including but not be limited to: identification of key personnel for the Project, job hazard analysis for work assignments, summary of risk assessment, air monitoring plan, personal protective equipment, delineation of work zones on-site, decontamination procedures, general safe work practices, security measures, emergency response plans, and worker training.

The Lead Compliance Plan must (i) utilize monitoring and exposure standards based on the construction standards set forth in Title 8 of the California Code of Regulations Section 1532.1 and (ii) contain a description of activities, specific means employed to achieve compliance, report of the technology considered, schedule for implementation of the program, a work practice program, administrative control schedule, description of arrangements for information transfer between contractors concerning potential exposure to lead and other relevant information. The Lead Compliance Plan must be approved by Contractor's Certified Industrial Hygienist before submission to VTA. The Lead Compliance Plan must be submitted to VTA for review and acceptance at least 15 days prior to beginning any Work in areas containing ADL.

Prior to performing any Work in areas containing ADL, personnel who have no prior training or are not current in their training status must complete a safety training program provided by Contractor, which meets the requirements of Title 8 of the California Code of Regulations Section 1532.1.

Personal protective equipment, training, and medical surveillance required by Contractor's Lead Compliance Plan must be supplied to VTA personnel by Contractor. The number of VTA personnel will be two (2).

6.15. Reserved

6.16. Access and Working Hours

All Work on the Caltrans right of way affecting traffic will be subject to the Caltrans lane closure process.

6.17. Contractor Cooperation and Coordination

Contractor shall meet weekly with the Resident Inspector, Project Manager and affected subcontractors to review construction status problems, schedule, concerns, etc. and to resolve any outstanding issues. The date and time of this weekly meeting will be established by the Resident Inspector at the Pre-Construction Meeting.

Contractor shall cooperate with VTA as directed to allow for any Work adjacent to or within the Worksite to be conducted during progress of the Work under this Contract. Prior to any site preparation, grading, or construction activities, Contractor shall cooperate as directed by VTA to allow a VTA biologist to conduct preconstruction surveys. Contractor must not commence Work until such time as the preconstruction surveys are complete as notified in writing by VTA.

The following is added to **Section 7.39 Cooperation/Coordination and Work by Others**. Other projects that may require coordination include, but are not limited to, traffic signal upgrades at the I-280 northbound off-ramp/Foothill Expressway intersection (Caltrans project EA 04-3J710) and I-280 resurfacing project (Caltrans project EA 04-3J3204) as listed in the description of Work.

6.18. Substantial Completion and Acceptance

In addition to the requirements outlined in **Section 7.55 Final Inspection and Acceptance of All or a Portion of the Work**, the following apply:

6.18.1. Substantial Completion

Substantial Completion shall be deemed to have occurred only when all of the following conditions have been satisfied:

- Contractor completes all Work except for punch list items, final cleanup and other items included in the requirements for Final Acceptance;
- Contractor has completed all electrical and system work to level of completion ready for integration and testing and permission to operate from PG&E;
- Contractor has ensured that all Work has been performed in accordance with the requirements of the Contract Documents;
- Contractor has ensured that the Project may be used without damage to the Project or any other property on or off the Worksite, and without injury to any person;
- Contractor shall have furnished to VTA for VTA's approval certificates that the Work is in conformance with all applicable design criteria, applicable codes and Governmental Rules;

6.18.2. Punch List Items

Contractor shall submit a proposed Punch List to VTA when Contractor believes the Project has been substantially completed in compliance with the Contract. The "Punch List" shall be a statement of repairs, corrections and adjustments to the Contract Work, and incomplete aspects of the Project which, in Contractor's opinion, can be completed with minimal interference to the occupancy, use and operation of the completed facility.

All Punch list items will be completed to the reasonable satisfaction of VTA

6.18.3. Final Acceptance

Contractor shall achieve Final Acceptance by meeting the following requirements, in addition to the requirements as outlined in **Section 7.55 Final Inspection and Acceptance of All or a Portion of the Work:**

- All requirements for Substantial Completion and Punch List Completion have been fully satisfied;
- All spare parts, if any, have been purchased and delivered to VTA free of liens;
- Contractor shall have delivered to VTA a certification representing that there are no outstanding claims of Contractor or claims, Liens or stop payment notices of any Subcontractor or laborer with respect to the Work, other than any previously submitted unresolved claims of Contractor and any claims, Liens or stop payment notices of a Subcontractor or laborer being contested by Contractor (in which event the certification shall include a list of all such matters with such detail as is requested by VTA and, with respect to all Subcontractor and laborer claims, Liens and stop payment notices, shall include a representation by Contractor that it is diligently and in good faith contesting such matters by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same). For purposes of such certificate, the term "claim" shall include all matters or facts which may give rise to a claim;
- VTA shall have received and accepted all Construction Documents, Record Documents and as-built schedule, test data and other deliverables required under the Contract Documents;
- All of Contractor's obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance) shall have been satisfied in full or waived in writing by VTA; and
- Contractor shall have delivered to VTA a Notice of Completion for the Project in recordable form and meeting all statutory requirements.

6.19. Final Pay Quantities

When the estimated quantity for a specific portion of the Work is designated on the plans or in the Schedule of Quantities and Prices as a final pay quantity (F), the estimated quantity shall be the final quantity for which payments for the specific portion of the Work will be made, unless the dimensions of the portion of the Work shown on the plans are revised by VTA, or unless the portion of the Work is eliminated. If the dimensions of the specific portion of the Work are revised, and the revisions result in an increase or decrease in the estimated quantity of the portion of the Work, the final quantity for payment will be revised in the amount represented by the changes in the dimensions. If the specific portion of the Work is eliminated, the final pay quantity designated for the specific portion of the Work will be eliminated. In the event that the quantity of a final pay item shown on the Schedule of Quantities and Prices differs from a quantity that can be calculated from dimensions or lines shown on the Plans, the quantity shown on the Schedule of Quantities and Prices shall govern.

When portions of an item have been designated on the plans or in the Schedule of Quantities and Prices as final pay quantities, portions so designated will be measured and paid for in accordance with the provisions of **Section 7.59 Progress Payments**.

6.20. Project Close-Out Requirements – Record Drawings

During the Project, Contractor shall keep a master set of drawings updated, noting any variation of the Work. Upon completion of the Work, Contractor shall produce a master “Record” set of plans by neatly transferring all such noted variations to blueprint copies of the same drawings, and shall deliver same to VTA for signed receipt, certification, and delivery to VTA.

Record Drawings shall include all shop drawings submittals indicated as NO EXCEPTIONS TAKEN (NET) and MAKE CORRECTION NOTED (MCN). Shop Drawings indicated as MAKE CORRECTION NOTED (MCN) shall be revised to reflect the required corrections or modifications.

In addition, project closeout will include marked specifications, drawings submitted as part of design reviews, design calculations, test procedures and results, subcontracts, purchase orders, employment records, shop drawings, change orders, daily logs and certificates of inspections, and other items pertinent to the installed and tested contract Work.

6.21. Progress Schedule

6.21.1. General Requirements

- (a) **Critical Path Method.** Scheduling of Work must be performed by Contractor in accordance with this Section 6.21 Progress Schedule.

Development of the schedule and project status reporting requirements must employ computerized Critical Path Method (CPM) scheduling.

- (b) **Primavera.** All Schedules must be prepared using the latest version of “Primavera” software.
- (c) **Incorporation of Contract Requirements.** All schedules prepared by Contractor shall meet the requirements for access, sequencing, construction staging, delivery of Contractor and VTA-furnished materials, Contract milestone and completion dates as specified in the Contract Documents.

- (d) **Contractor's Representation.** Submittal of the baseline CPM schedule ("Baseline") and subsequent schedule updates ("Updates") shall be Contractor's representation that the submitted schedule meets all of the requirements of the Contract and that Contractor plans to execute the Work in the sequence, durations, and methods indicated on the submitted Baseline and Updates.
- (e) **Submittal Format.** Unless otherwise specified in this Section 6.21 Progress Schedule, procedures for the submission, review and acceptance of all schedule submittals will be in accordance with Section 6.6 Contract Data Requirements. Contractor shall submit three (3) copies of each schedule submittal and an electronic copy of the exported schedule data file on compact disk or other acceptable electronic medium for all schedule submittals.
- Schedule submittals includes Baseline, monthly updates, schedule revisions, recovery schedules, Time Impact Evaluations, and mitigation plans
- (f) **Current Schedule.** Contractor shall develop the schedule and monitor the actual progress of the Work. The accepted Baseline, together with the most recent accepted Update constitute the "Current Schedule". The Current Schedule will be the basis for evaluating progress and time extension requests.
- (g) **Acceptance No Waiver.** Acceptance of Preliminary and Baseline schedules and updates by VTA does not constitute a waiver of any Contract requirement including the Contract completion and milestone dates. Neither schedule inaccuracies nor Contractor's failure to include in the schedule an element of the Work shall relieve Contractor from responsibility for accomplishing the Work in accordance with the Contract requirements.
- (h) **Pay Item.** The Schedule pay item includes full compensation for all costs associated with schedule submittals and re-submittals and no additional compensation will be allowed therefor.
- (i) **Schedule Adjustments.** VTA reserves the right to require that Contractor modify, adjust, add to, or clarify any portion of the Current Schedule which may later be discovered to be insufficient or inaccurate for planning, monitoring, or prosecuting the Work. No additional compensation will be provided for such modifications, adjustments, additions, or clarifications.
- (j) **Reserved**

6.21.2. Reserved

6.21.3. Schedule Float

- (a) **Definition.** "Float" is the amount of time between the early and late start dates of an activity, or between the early and late finish dates of the activity in the CPM schedule. A Baseline with negative float will not be accepted.
- (b) **Ownership.** Neither VTA nor Contractor owns Float; the Project owns Float. As such, Float is considered an expiring resource available to both parties.
- (c) **Early Completion.** If Contractor submits a schedule showing completion dates earlier than the dates specified in **Section 6.4 Time for Performance** and **Section 6.11 Work Sequence and Constraints**, VTA may, in its discretion, accept or reject the schedule. If the schedule showing early completion is accepted, VTA may, in its discretion, issue a change order

adjusting the Contract dates. However, if a change order is issued, no additional compensation will be provided to Contractor for such adjustment to the Contract. If VTA elects not to issue a change order adjusting the Contract dates, any additional time between the early and contract completion dates will be Float. Neither party will be liable to the other for impacts to early completion dates.

6.21.4. Reserved

6.21.5. Baseline CPM Schedule

- (a) **Submittal.** Contractor shall prepare and submit for acceptance by VTA, a detailed Baseline as further specified in **Section 6.51 Technical Submittals List**. The Baseline shall be an orderly and practical plan for completion of the Work in conformance with all Contract requirements. The date of the Baseline shall be the date of Notice of Award.
- (b) **Format and Content.** The Baseline must be comprehensive. It must include all activities necessary to clearly establish the critical path and to demonstrate complete and accurate planning and sequencing of the Contract and to permit monitoring and evaluation of progress and time impacts.

The Baseline must be time-scaled and comply with the following requirements:

- All activities in the schedule, with the exception of the first and last activities, shall have a minimum of one predecessor and a minimum of one successor.
- The Baseline must not show a duration longer than 15 days for any activity except submittals, approvals, fabrication and procurement, unless otherwise approved by VTA. An activity "duration" is the total number of actual working days required to perform that activity including the first day thereof.
- Include a Special Calendar for those activities susceptible to weather delays. The Special Calendar shall incorporate the number of working days that are anticipated will be lost due to adverse weather conditions in accordance with **Section 6.21.12 Adverse Weather Delays**.
- Identify procurement of substantial items of material and equipment and, include as separate activities the following: submittal, review, approval, order, delivery and inspection at the Worksite. The timing and duration for VTA review and approval of submittals and shop drawings will be 14 calendar days for overhead sign structure, mast arm pole, or structural items related to the retaining wall; otherwise 7 calendar days for all other submittals and shop drawings.
- Identify VTA-furnished materials and equipment, if any, as separate activities.
- Show dependencies (or relationships) between activities.
- Include Contractor testing, VTA testing, training of VTA personnel, delivery of spare parts, submittal of operating and maintenance manuals, developing and completing punch list items, and clean-up as separate activities.
- Show the interface with the work of other contractors and agencies, including utilities.
- Identify all activities to be performed by subcontractors by name of subcontractor.

- Identify all anticipated non-working days and holidays.
- (c) **Baseline Report.** Contractor must submit with the Baseline a report containing the following information: (i) A list of activities, showing the early, late and actual start and finish dates, duration, float, responsibility code and the predecessor and successor relationship, sorted by early start; (ii) A time-scaled network diagram that includes activities and their relationships; and (iii) A written narrative which describes the basis, assumptions, planned sequence of work operations, production rates, equipment, resources, constraints, and any other considerations used to develop the Baseline.
- (d) **Review and Resubmittal.** VTA shall review and provide comments on the Baseline within 14 days of receipt. Contractor shall revise and resubmit the Baseline to address all comments, concerns and modifications requested by VTA within 14 days of receipt of VTA comments. Contractor shall include with the Baseline re-submittal a line-by-line response to each VTA comment indicating how it has been addressed by Contractor.

6.21.6. Schedule Update

- (a) **Submittal.** Following acceptance of the Baseline, Contractor shall prepare and submit monthly schedule updates ("Updates") to reflect actual progress, anticipated changes to planned activities, and corrections to out-of-sequence logic. Five (5) days before the end of each month, VTA will meet with Contractor and its Scheduler to review the progress of activities and Contractor's proposed logic revisions for that month. Contractor must submit the Updates to VTA within 7 calendar days following the end of the month.
- (b) **Content.** Each Update shall show all work activities including those already completed. Completed activities shall incorporate "As-Built" information including when activities were actually started and completed, logic revisions, and activity re-sequencing. The Weather Delay Calendar shall be revised to include actual weather delay days that occurred during the reporting period.
- (c) **Update Report.** A report shall be submitted with the Update containing the following information: (i) A list of activities, showing the early, late and actual start and finish dates, duration, float, responsibility code and the predecessor and successor relationship, sorted by early start; (ii) A time-scaled network diagram that includes activities and their relationships, and (iii) A written narrative which includes:
- Status of major project components (percent complete, amount of time ahead or behind schedule) and an explanation of how the Project will be brought back on schedule if delays have occurred.
 - Progress made on critical activities.
 - An explanation for lack of progress on critical path activities that were planned to be performed during the previous month.
 - An explanation for any schedule changes, including changes to logic or to activity durations.
 - List of critical activities scheduled to be performed in the next three (3) week period.
 - Status of major material and equipment procurement.

- Any delays encountered during the month.
 - List of any working days lost due to weather and changes made to the weather delay calendar.
 - Any other information pertinent to status of the Contract. Contractor shall include additional status information requested by VTA at no additional cost.
- (d) **Acceptance.** VTA will, within 14 working days after receipt of the Update, either accept, accept with comments, or reject the submittal: (i) If accepted, no additional action by Contractor is required for that month; (ii) If accepted with comments, the requested revisions must be incorporated into the next Update. Failure to incorporate the requested revisions into the subsequent Update will be cause for rejection of the subsequent Update; or (iii) If rejected, within five calendar days, Contractor shall provide a separate line-by-line response to all comments and re-submit the Update incorporating the requested revisions. Only one (1) Update re-submittal per month will be reviewed by VTA. If an Update is not accepted, the amount of that month's schedule installment payment will be deducted from the Contract (see **Section 6.21.13 Payment Provisions**).
- (e) **Current Schedule.** The accepted Update shall become the Current Schedule.

6.21.7. Three-Week Look-Ahead Schedule

- (a) **Project Meetings.** At the weekly progress meeting (see **Section 7.27 Project Meetings**), Contractor will provide a time-scaled Three Week Look-Ahead Schedule ("Three Week Schedule"). The Three Week Schedule must show the actual progress for the previous week and planned activities for the upcoming three weeks.
- (b) **Primavera.** The Three Week Schedule will be prepared using "Primavera" software. Handwritten schedules shall not be accepted by VTA. VTA may request electronic transmittal of the Three Week Schedule by compact disk or other electronic medium acceptable to VTA, at least one day ahead of the weekly progress meeting.
- (c) **Consistency.** The activities in the Three Week Schedule shall be based upon and correlated by activity number to the Current Schedule. The actual progress data incorporated into the Update and the Current Schedule shall be consistent with the data previously shown in the Three Week Schedules. The format of the Three Week Look-Ahead Schedule shall be subject to review and acceptance by VTA.

6.21.8. Schedule Revisions

- (a) **Significant Changes.** If Contractor desires to make a change in the method or manner of construction that results in significant changes to the logic, sequence or duration of scheduled activities, Contractor shall submit a request for a schedule revision to VTA. Contractor must not revise the Current Schedule until the proposed revision has been accepted by VTA.
- (b) **Format of Request.** To request a revision to the Current Schedule, Contractor shall provide VTA with a written narrative that includes a description and reason for each proposed revision. Contractor shall also provide a time-scaled logic diagram which compares the original sequence and durations to the revised sequence of work and activity duration.
- (c) **VTA Response.** VTA shall respond to the request for revision within 14 days. Contractor shall submit any objections to VTA's response in writing within 7 days of receipt and shall include

any additional information it wishes VTA to consider in connection with the request for revision. Thereafter, VTA's determination on the request for revision shall be final and the schedule shall be updated in accordance therewith.

6.21.9. Recovery Schedule

- (a) **Submittal.** If an Update shows a date for final completion or for any of the milestones beyond the Contract dates, Contractor shall, within 7 days after submittal of the Update, submit a Recovery Schedule. Contractor's submittal shall explain the methodology, basis and assumptions used in the Recovery Schedule. If sequence changes are proposed, Contractor shall provide a schedule diagram comparing the original sequence to the proposed sequence of work.
- (b) **Acceptance.** Contractor shall incorporate any revisions to the Recovery Schedule requested by VTA. The Recovery Schedule shall not be incorporated into the Current Schedule until accepted by VTA. Change Requests and Change Notices
- (c) **Change Requests and Change Notices.** Contractor shall follow the procedures of **Section 7.65 Change Requests and Change Notices** for any changes to the Work that Contractor contends results in additional cost. Contractor's failure to submit a timely Change Request will constitute a waiver of any and all such costs and claims associated therewith including anticipated profits.

6.21.10. Time Impact Evaluation for Change Orders and Delays

- (a) **Submittal.** When Contractor becomes aware of circumstances that it considers a change to the contract resulting in delay (including Change Notices and Force Account directives), Contractor must prepare and submit a Time Impact Evaluation (TIE). The TIE must include both a written narrative and schedule diagram that shows how Contractor proposes to incorporate the change into the Current Schedule and how it impacts the critical path.
- (b) **Preparation Costs.** Contractor must be responsible for all costs associated with the preparation of TIE's and the process of incorporating them into the Current Schedule.
- (c) **Acceptance.** Once accepted by VTA, the TIE shall be incorporated into the next Update at no additional cost to VTA. If Contractor and VTA are unable to reach agreement, Contractor shall incorporate changes in accordance with VTA's direction.
- (d) **Time for Submittal/Waiver.** Contractor shall submit a TIE within 15 days of the circumstances giving rise to the change. Contractor's failure to submit a timely TIE in connection with a change causing delay shall constitute a waiver of any and all rights to a time extension, and all claims based thereon, including anticipated profits, for that change.

6.21.11. Time Extensions

- (a) **Timely Request/ Waiver.** Contractor shall request a time extension in accordance with **Section 6.21.10 Time Impact Evaluation for Change Orders and Delays** for any change, delay, or disruption that impacts a completion date of the Current Schedule. Contractor's failure to request a time extension within 15 days of the circumstances causing the delay shall constitute a waiver of any and all rights to a time extension, compensation, and any and all claims, including but not limited to time-related overhead, indirect impacts, cumulative

impacts, constructive acceleration, and loss of anticipated profits, based thereon, for that delay.

- (b) **Contractor Without Fault.** A time extension will be granted only if the change, delay, or disruption that impacts a completion date is beyond the control and without the fault or negligence of Contractor or any subcontractor and impacts the Critical Path.
- (c) **Compensable Delays.** A delay is compensable to Contractor only if it: (i) is caused by VTA; (ii) is not concurrent with Contractor's caused delays or delays that are excusable but non-compensable (e.g. weather delays); and (iii) impacts the Critical Path.
- (d) **Non-Compensable Delays.** A delay caused by VTA is non-compensable if it is concurrent with Contractor caused delays or delays that are excusable but non-compensable.
- (e) **Mitigation Plan.** For any delay for which Contractor feels they are entitled to a time extension, Contractor shall, within 15 days of the events causing the delay, submit to VTA a mitigation plan, including a schedule diagram, which explains how the impact can be mitigated. Contractor shall also include a detailed cost breakdown of the labor, equipment and material required to mitigate the delay. Contractor is responsible for the cost to prepare the mitigation plan. VTA will review and comment on the time extension and mitigation plan. Within 15 days VTA will accept, accept with comments or reject the time extension and mitigation plan.

6.21.12. Adverse Weather Delays

- (a) **Typical Inclement Weather Days.** Contractor shall assume and incorporate into all Schedules the typical number of working days lost as a result of inclement weather shown on the table set forth below. Only working days lost as a result of inclement weather in excess of those listed for a given month shall be considered for a time extension. Typical weather days for a given month, which are not actually lost, shall not be carried over to any other month.

Typical Number of Working Days Lost to Weather

<u>Month</u>	<u># of Days</u>
January	5
February	5
March	5
April	4
May	3
June	0
July	0
August	0
September	0
October	0
November	3
December	5

- (b) **Effect on Critical Path Activities.** A working day shall not be deemed lost as a result of inclement weather, and therefore eligible for a time extension, unless at least 60% of Contractor's planned work forces are unable to be employed on the critical path activities.

Weather delays may consist of days lost during inclement weather, days lost because of wet soil, and days lost because of site clean-up after inclement weather.

- (c) **Time Extensions for Weather Delay.** Contractor shall establish all of the requirements of this Section and comply with **Section 6.21.11 Time Extensions** for a time extension based on weather delay.
- (d) **Non-Compensable.** All time extensions granted for weather delays shall be non-compensable.

6.21.13. Payment Provisions

- (a) **Administration of Pay Item.** If the contract contains a separate pay item for "Progress Schedule", that pay item shall be administered as follows: (i) 25% shall be invoiced upon acceptance of the Baseline, and (ii) the remaining 75% shall be invoiced in equal monthly installments for each accepted Update thereafter. The equal monthly invoice amounts shall be determined by dividing the remaining pay item amount by the number of months from the date of acceptance of the Baseline, or sixty (60) days from the first charged day, whichever is earlier, through contract completion. The final installment shall not be invoiced until after final acceptance of the Contract and a final As-Built schedule is received. There shall be no separate payment for any other required schedule submittal.
- (b) **Deductions.** If Contractor fails to submit the Baseline within sixty days from the first charged day, Contractor shall not be entitled to payment for the Baseline and therefore 25% of the total amount of the "Progress Schedule" pay item shall be deducted from the Contract. Thereafter, each month Contractor fails to submit an accepted Update, Contractor shall not be entitled to payment for that Update and the amount of that monthly installment payment shall be deducted from the Contract. Forfeiture of any payments shall not relieve Contractor from the responsibility to submit the CPM schedule update and all other requirements of this section including weekly schedule reports, daily Contractor construction reports, time impact evaluations and recovery schedules throughout the term of the contract, including the final As-Built schedule.
- (c) **Special Retention.** In addition to the amount retained by VTA, if any, from each progress payment as provided for in **Section 7.59 Progress Payments**, VTA may withhold additional amounts, not to exceed 10% of the total progress payment, for Contractor's failure to meet the requirements of **Section 6.21 Progress Schedule**. VTA will pay Contractor the amount withheld once VTA has determined that Contractor has satisfactorily complied with the requirements of **Section 6.21 Progress Schedule**.

6.22. References to Days

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

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

- New Year's Day (January 1),
- Martin Luther King, Jr. Day (3rd Monday in January),
- President's Day (the third Monday of February),
- Cesar Chavez Day (March 31),
- Memorial Day (the last Monday in May),

- Independence Day (July 4),
- Labor Day (the first Monday of September) (triple time)
- Veterans Day (November 11)
- Thanksgiving Day (the 4th Thursday in November)
- The day after Thanksgiving (Friday)
- Christmas Day (December 25)

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

6.23. Reserved

6.24. Reserved

6.25. Reserved

6.26. Quality Assurance and Quality Control Requirements

Contractor shall, at its own expense, submit for VTA's review and approval, a Quality Assurance program consistent **with the requirements as specified in Appendix M Quality Assurance and Quality Control Requirements** and these specifications.

6.27. Environmental Coordination and Cooperation

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

6.28. Reserved

6.29. Reserved

6.30. Compliance and Testing for Highway and Transit Pavement

Section 7.49 Certificates of Compliance and Testing includes specific testing and compliance requirements. In addition to **Section 7.49 Certificates of Compliance and Testing**, the following requirement applies for highway and transit pavement Work.

VTA has adopted methods for testing the quality of materials and work. These methods are identified by number and are referred to in Section 8 Technical Specifications/Caltrans Standard Specifications as the California Test. Copies of individual California Tests are available and will be furnished to interested persons upon request.

Whenever the specifications require compliance with specified values for the following properties, tests will be made by the California Test indicated unless otherwise specified:

Properties

California Test

Relative Compaction	216 or 231
Sand Equivalent	217
Resistance (R-value)	301
Grading (Sieve Analysis)	202
Durability Index	229

Whenever a reference is made in the specifications to a California Test by number, it shall mean the California Test in effect on the day the Notice of Award for the Work is dated.

Whenever the specifications provide an option between two (2) or more tests, VTA will determine the test to be used.

Whenever a reference is made in the specifications to a specification, manual, or test designation either of the American Society of Testing and Materials, the American Association of State Highway and Transportation Officials, Federal Specifications, or any other recognized national organization, and the number or other identification representing the year of adoption or latest revision is omitted, it shall mean the specification, manual, or test designation in effect on the day the Notice to Bidders is dated. Whenever said specification manual or test designation provides for test reports (such as certified mill test reports) from the manufacturer, copies of such reports, identified as to the lot of material, shall be furnished to VTA. When material which cannot be identified with specific test reports is proposed for use, VTA may, at its discretion, select random samples from the lot for testing. Test specimens from the random samples, including those required for retest, shall be prepared in accordance with the referenced specification and furnished by Contractor at their own expense. The number of such samples and test specimens shall be entirely at the discretion of VTA.

6.31. References to CALTRANS Standard Specifications

The Work specified herein must be performed in accordance with the Caltrans Standard Specifications, Sections 10 through 98 inclusive, dated 2018, the Standard Plans dated 2018, insofar as they are specifically referenced in **Section 8.0 Technical Specifications** herein.

Attention is directed to **Table K-1 in Appendix K “VTA Substitutions for Caltrans Specs”** of these Contract Documents. Wherever in the Caltrans Standard Specifications, Sections 10 through 98 inclusive, the Caltrans sections in Table K-1 are referenced, the referenced section is hereby deleted and the corresponding VTA General / Special Condition or Contract Section is substituted.

6.32. Air Pollution Control

Contractor must comply with all applicable air pollution control ordinances and statutes, including any air pollution control rules, regulations, ordinances, and statutes, specified in California Government Code Section 11017 and by the Bay Area Air Quality Management District.

6.33. Increased or Decreased Quantities and Quantity Variation

Section 7.57 Increased or Decreased Quantities and Quantity Variation is deleted in its entirety and replaced with the following:

If the actual quantity of any item of Work paid for on a unit price basis varies from the quantity for such item in the Schedule of Quantities and Prices by 25 percent or less, payment for the item of the Work will be made at the Contract unit price.

If the actual quantity of any item of the Work paid for on a unit price basis exceeds the quantity for such item in the Schedule of Quantities and Prices by more than 25 percent, the compensation payable to Contractor for the amount in excess of the 125 percent of the quantity will be reviewed by Contractor and VTA, and an equitable adjustment may be made to the unit price for such excess amount by means of a change order to credit VTA with any reduction in cost or to compensate Contractor for any increase in the cost resulting from the change in quantity. This review of the adjustment will be made on a force account basis in accordance with **Section 7.60 Force Account Payment** at the time mutually acceptable to VTA and Contractor.

If the actual quantity of any item of the Work paid for on a unit price basis is less than 75 percent of the quantity for such item in the Schedule of Quantities and Prices, the compensation payable to Contractor will be reviewed by Contractor and VTA, and an equitable adjustment may be made to the unit price for the entire quantity by means of a change order credited to VTA with any reduction in cost or compensate Contractor for any increase in cost resulting from the change in quantity. This review of the adjustment will be made on a force account basis in accordance with **Section 7.60 Force Account Payment** at the time mutually acceptable to VTA and Contractor.

The payment for the total quantity of the Work so adjusted in accordance with these provisions will not in any case exceed the payment which would have been made for 75 percent of the original quantity at the original Contract unit price.

See also **Section 7.56 Compensation** for additional terms regarding increased or decreased quantities and quantity variation.

6.34. Final Pay Estimate

VTA will make a proposed final pay estimate in writing of the total amount payable to Contractor, including an itemization of the total amount, segregated by Contract item quantities, extra work, and other bases for payment. The final pay estimate must show each deduction made or to be made for prior payments and amounts to be kept or retained under the provisions of the Contract. Prior estimates and payments will be subject to correction in the proposed final pay estimate. Contractor shall submit written approval of the proposed final pay estimate or a written statement of exceptions to VTA no later than the close of business on the thirtieth (30th) day after receiving the proposed final pay estimate. If the thirtieth (30th) day falls on a Saturday, Sunday, or legal holiday, then receipt of the written approval or statement of exceptions by VTA must not be later than close of business of the next business day. Contractor's receipt of the proposed final pay estimate must be evidenced by postal receipt. VTA's receipt of Contractor's written approval or statement of exceptions must be evidenced by either (i) postal receipt if mailed or (ii) VTA's written receipt, if delivered by hand.

Upon Contractor's approval, or if Contractor files no exceptions within the specified period of thirty (30) days, VTA will issue a final pay estimate in writing, in conformance with the proposed final pay estimate submitted to Contractor, and within thirty (30) days thereafter VTA will pay the entire sum found to be due. That final pay estimate and payment thereon will be conclusive and binding against both parties to the Contract on all questions relating to the amount of Work done and the compensation payable therefor, except as otherwise provided in **Section 7.59 Progress Payment**.

6.35. Partnering

VTA will promote the formation of a partnering relationship with Contractor in order to effectively complete the Contract to the benefit of both parties. The purpose of this relationship will be to maintain cooperative communication and mutually resolve conflicts at the lowest possible management level.

Contractor may request the formation of such a partnering relationship by submitting a request in writing to VTA after NOA. If Contractor's request for partnering is approved by VTA, scheduling of a partnering workshop, selecting the partnering facilitator and workshop site, and other administrative details must be mutually agreed upon by both parties.

The costs involved in providing a facilitator and a workshop site will be borne equally by VTA and Contractor. Contractor shall pay all compensation for the wages and expenses of the facilitator and of the expenses for obtaining the workshop site. VTA's share of such costs will be reimbursed to Contractor in a change order written by VTA. **Markups will not be added.** All other costs associated with the "partnering" relationship will be borne separately by the party incurring the costs.

The establishment of a partnering relationship will not change or modify the terms and conditions of the Contract and will not relieve either party of the legal requirements and obligations of the Contract.

6.36. Alternative Methods of Construction

Whenever the plans or specifications provide that more than one specified method of construction or more than one specified type of material or construction equipment may be used to perform portions of the Work and leave the selection of the method of construction or the type of material or equipment to be used up to Contractor, it is understood that VTA does not guarantee that every specified method of construction or type of material or equipment can be used successfully throughout all or any part of any project.

It is Contractor's responsibility to select and use the alternative or alternatives which will satisfactorily perform the Work under the conditions encountered. In the event some of the alternatives are not feasible or it is necessary to use more than one of the alternatives on any project, full compensation for any additional cost involved is included in the Contract price paid for the item of work involved and no additional compensation will be allowed therefor.

6.37. Highway Construction Equipment

Pursuant to the authority set forth in California Vehicle Code Section 591, VTA has determined that, within such areas as are within the limits of the Project and are open to public traffic, the following requirements of the California Vehicle Code will apply: the lighting requirements in Section 25803; the brake requirements in Chapter 3 of Division 12; the splash apron requirements in Section 27600; and "Load Limits" section 5-1.37 of Caltrans Standard Specifications when operating equipment on completed or existing treated base, surfacing, pavement or structures.

6.38. Conformity with Contract Documents

Work and materials must conform to the lines, grades, typical cross sections, dimensions, and material requirements, including tolerances, shown on the plans or indicated in the specifications. Although measurement, sampling, and testing may be considered evidence as to conformity, VTA will be the sole

judge as to whether the Work or materials deviate from the plans and specifications, and VTA's decision as to any allowable deviations therefrom will be final.

6.39. Use of Materials Found on the Work

Unless designated as selected material as provided in Section 19-2.03D, "Selected Material" of the Caltrans Standard Specifications, Contractor, with the approval of VTA, may use in the proposed construction such stone, gravel, sand, or other material that (i) is suitable in the opinion of VTA and (ii) may be found in excavation. Contractor will be paid for the excavation of those materials at the Contract price for the excavation, but Contractor shall replace at Contractor's expense with other suitable material all of that portion of the material so removed and used which was contemplated for use in the Work, except that Contractor need not replace, at Contractor's expense, any material obtained from structure excavation used as structure backfill. No charge for materials so used will be made against Contractor. Contractor must not excavate or remove any material from within the highway location that is not within the excavation, as indicated by the slope and grade lines, without written authorization from VTA.

6.40. Final Inspection and Acceptance

Section 7.55.1 Final Inspection and Acceptance of all the Work is amended to include the following:

There will be no portions of the Work for which Contractor may be relieved of the duty of maintenance and protection as provided in this Section 7.55.1.

6.41. Dust Control

This Work will consist of applying water or dust palliative, or both, for the alleviation or prevention of dust nuisance.

Dust resulting from Contractor's work, either inside or outside the right of way, must be controlled by Contractor in strict conformance with **Section 7 General Conditions** of this Contract, in addition to all current San Francisco Bay Area Air Quality Management District regulatory requirements.

Nothing in this **Section 6.42 Dust Control** will prevent Contractor from applying water and/or dust palliative for Contractor's convenience if so desired. Water must be applied as provided in Section 10, "Watering" of the Caltrans Standard Specifications and dust palliative must conform to and be applied as provided in Section 18, "Dust Palliative" of the Caltrans Standard Specifications.

Additionally, air quality monitoring is required for the following activities:

- 1) Bridge demolition
- 2) Earthwork operations
- 3) Saw Cutting
- 4) Crack and Sealing Portland Cement Concrete (PCC) Pavement
- 5) Sandblasting
- 6) Any additional operations which may contribute to the degradation of ambient air quality, when deemed necessary by VTA.

6.42. Preservation of Property

Attention is directed to **Section 7.45 Protection and Restoration of Property**.

Existing trees, shrubs, and other plants, that are not to be removed as shown on the plans or specified in the Contract and are injured or damaged by reason of Contractor's operations, must be replaced by Contractor.

Replacement planting must conform to the requirements in Section 20-4.03F, "Replacement Plants", of the Caltrans Standard Specifications. Contractor shall water replacement plants in conformance with the provisions in Section 20-4.03G "Watering", of the Caltrans Standard Specifications.

Damaged or injured plants must be removed and disposed of outside the highway right of way in conformance with the provisions in **Section 7.51 Disposal of Materials**. Replacement planting of injured or damaged trees, shrubs, and other plants must be completed not less than 20 working days prior to acceptance of Work. Replacement plants must be watered as necessary to maintain the plants in a healthy condition. All landscaping within any project temporary construction easement (TCE) or property of which VTA has been granted a permit to enter during the construction period must be left, upon Project completion, in a condition equal to or better than the pre-existing construction condition. Landscaping, hardscape, etc. which is damaged must be replaced in these areas at Contractor's expense. Prior to the start of any Work within a TCE, Contractor shall provide VTA with a photo record, with date shown on the photo, of the existing condition prior to construction. Additionally, Contractor shall tour the area with a VTA representative to confirm the condition of the area with the photos. If Contractor fails to provide and perform these duties, Contractor must restore the TCE to the satisfaction of VTA at Contractor's expense.

Source of Supply and Quality of Materials

Contractor shall furnish all materials required to complete the Work, except materials that are designated in the specifications to be furnished by VTA.

Only materials conforming to the requirements of the specifications are permitted to be incorporated in the Work.

The materials furnished and used must be new, except as may be provided elsewhere in this Contract or on the Contract plans. The materials must be manufactured, handled, and used in a workmanlike manner to ensure completed Work in accordance with the plans and specifications.

Materials to be used in the Work will be subject to inspection and tests by VTA. Contractor shall furnish without charge such samples as may be required.

Contractor shall provide VTA with a list of Contractor's sources of materials and the locations at which those materials will be available for inspection. The list must be submitted on a VTA furnished form and must be provided to VTA in sufficient time to permit inspecting and testing of materials to be supplied from the listed sources in advance of their use. VTA furnished materials must be identified within the baseline schedule as a separate activity as detailed in **Section 6.21 Progress Schedule**. VTA may inspect, sample, or test materials at the source of supply or other locations, but the inspection, sampling or testing will not be undertaken until VTA is assured by Contractor of the cooperation and assistance of both Contractor and the supplier of the material. Contractor shall assure that VTA has free access at all times to the material to be inspected, sampled, or tested.

It is understood that (i) the inspections and tests if made at any point other than the point of incorporation in the Work will in no way be considered as a guarantee of acceptance of the material nor of continued acceptance of material presumed to be similar to that upon which inspections and tests have been made; and (ii) inspection and testing performed by VTA will not relieve Contractor or Contractor's suppliers of responsibility for quality control.

Manufacturers' warranties, guaranties, instruction sheets, and parts lists, which are furnished with certain articles or materials incorporated in the Work, must be delivered to VTA before acceptance of Work.

Reports and records of inspections made and tests performed, when available at the Worksite, may be examined by Contractor.

6.43. Services

Delete **Section 7.44.1 Lines and Grades** in its entirety and replace with the following:

Construction staking must be performed by Contractor. Construction stakes must be provided for the Work in accordance with Chapter 12 "Construction Surveys" of the Caltrans Surveys Manual. The following list establishes the minimum level of staking required for this Project. Temporary control points for construction must be established utilizing Caltrans' control monumentation.

Existing monuments which will be lost due to construction must be cross-tied and referenced with surveyor's field notes. This information must be forwarded to VTA for future retracement of monuments. Incremental cost associated with lost monumentation will be deducted from Contractor payment.

Right-of-way and limits of clearing must be flagged at 100 feet intervals with 3 foot laths.

Rough grade stakes and slope staking must be placed at 50 feet intervals on centerline, at all Begin Curves (BC's), End Curves (EC's) and grade breaks, at top of slope and at toe of slope.

Intermediate slope staking must be provided with spacing of 50 feet to control cut slope or fill slope in excess of 30 feet.

Contour grading must be staked at all grade breaks, with maximum spacing of 50 feet intervals.

Drainage culverts and underdrains must be staked at 25 feet intervals.

Manholes and inlets must be staked with two 10 foot straddle stakes.

Staking for signs must be two 5 foot straddle stakes.

Sanitary and water system must be staked at 25 feet intervals.

Street light standards and sign structures must be staked with two 10 foot straddle stakes.

Curb stakes spaced longitudinally every 50 feet and at beginning and end of curb and beginning and end of horizontal and vertical curves. When grade is less than 0.3 percent or radius of curvature is less than 1,000 feet space every 25 feet.

Bridge staking: One set of abutment fill stakes in accordance with layout shown in Caltrans' Survey Manual Section 12.5-10. One set of stakes for rows of piles, one set of offset staking to layout line for abutment, bent and wingwalls, and one set of stakes for edge of deck and finished deck elevations.

Retaining and sound wall layout lines must be staked at 20 feet intervals at the offsets determined by Contractor.

Finished grade stakes must be provided at 25 feet intervals.

Contractor must prepare and verify slope staking/grid grade sheets.

Contractor must stake temporary roadways per the above criteria.

Existing monuments for horizontal and vertical controls at the locations shown on the plans must be used to establish the lines and grades required for the completion of the Work as shown on the plans.

In the event that Contractor's operations destroy any of the construction stakes placed by Contractor, Contractor shall replace such stakes when instructed by VTA at no additional cost to VTA.

Contractor must independently verify the primary horizontal and vertical control and inform VTA of any significant differences between published values and found values.

Contractor must furnish temporary horizontal and vertical control and construction stakes and marks and set with accuracy adequate to assure that the contemplated and completed Work conforms to the lines, grades, and sections shown on the plans. Vertical alignment, horizontal alignment, and the coordinates and elevations of control points will be furnished to Contractor for its use in performing the construction staking.

All computations necessary to establish the exact position of the Work from control points must be made by Contractor. All computations, survey notes, and other records necessary to accomplish the Work must be neat, legible, and accurate and be in a format as outlined in Caltrans' Survey Manual. Such computations, notes, and other records must be made available to VTA immediately upon completion of staking and prior to the start of related construction. Contractor will provide systematic and organized copies of all field notes and cut sheets to VTA no later than 24 hours following completion of field survey staking and at least 48 hours prior to use. Said notes must contain all pertinent survey information including names of party chief, crewmembers, and date of survey. Submission of notes and cut sheets must not be construed as acceptance or approval by VTA of the accuracy of the stakes.

In the event Contractor's operations destroy any of the Project control points, other than those designated on the plans to be relocated, Contractor shall replace such control points at its own expense, subject to verification by VTA.

Contractor shall notify VTA of any conflicts between design and existing conditions and submit a RFI (as defined in Section 7.25.3) before commencing survey.

VTA will perform periodic verification surveys to assure the quality of construction staking effort. VTA verification surveys may be performed at any time.

Contractor shall submit to VTA a schedule of values for the Contract item "Construction Staking" in advance of the Work in accordance with **Table B-2, Technical Submittals List, of Appendix B.**

SECTION 7 GENERAL CONDITIONS

LEGAL RESPONSIBILITIES AND RELATIONSHIPS

7.1. Applicable Law and Jurisdiction

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

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

7.2. Compliance with Laws and Regulations

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

7.3. Contractor Licensing Requirements

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

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

7.4. Independent Contractor

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

7.5. Permits, Licenses, Fees and Notices

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

7.6. Nondiscrimination

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

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

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

7.7. Prohibited Interests

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

7.8. Labor Provisions

7.8.1. Register with DIR

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

7.8.2. Safety

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

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

7.8.3. Overtime Requirements

Neither Contractor nor any subcontractor of any tier shall require or permit any worker to work in excess of eight hours in any single calendar day or in excess of 40 hours in any single calendar work week (defined as seven sequential calendar days) unless such worker receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any single calendar day or in excess of 40 hours in any single calendar work week, whichever is greater. Failure to comply with the preceding requirements shall subject Contractor or any subcontractor of any tier to the penalties specified in Labor Code §1813.

7.8.4. Prevailing Wage Rates

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

Workers employed in the Work must be paid at the rates at least equal to the prevailing wage rates as adopted. If Contractor uses a craft or classification not shown on the prevailing wage determinations, Contractor may be required to pay the wage rate of that craft or classification most closely related to it as shown in the general determinations effective at the time of Contract award.

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

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

7.8.5. Liability for Unpaid Wages

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

7.8.6. Withholding for Unpaid Wages and Liquidated Damages

The U.S. DOT or VTA may upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of Work performed by Contractor or subcontractor under this Contract or any other Federal contract with Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) (2) of 29 CFR Section 5.

7.8.7. Travel and Subsistence Payments

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

7.8.8. Retention of Labor Records

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

7.8.9. Employment of Apprentices

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

7.8.10. Subcontracts

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

7.9. Hazardous Materials or Unusual Conditions

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

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

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

7.10. Reserved

7.11. Reserved

7.12. Patent Rights

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

7.13. Intellectual Property, Copyright and Patent Infringement

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

7.14. Rights in Technical Data

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

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

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

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

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

7.15. Ownership of Work and Material

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

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

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

7.16. Title and Risk of Loss

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

7.17. Assignment and Delegation

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

7.18. Subcontracts

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

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

7.19. Waiver and Non-waiver

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

7.20. Antitrust Claims

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

7.21. Stop Notices

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

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

7.22. Reserved

7.23. Reserved

AUTHORIZED REPRESENTATIVES AND COMMUNICATIONS

7.24. Authorized Representatives

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

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

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

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

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

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

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

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

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

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

7.25. Notices and Communications

7.25.1. Notices

All notices and other communications concerning this Contract shall be written in English, shall bear the number assigned to this Contract by VTA and shall follow VTA's correspondence format and reference system. Notices and other communications may be delivered personally, by private package delivery, by regular, certified, or registered mail, or any electronic means acceptable to VTA.

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

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

7.25.2. Drawing/Plan Clarification

A drawing/plan clarification from VTA is intended to make some requirement(s) of the drawings or plans clearly understood. Drawing clarifications/plan clarifications may be sketches, drawings or in narrative form and shall not change any requirement of the Contract. Responses to Contractor inquiries shall be as outlined in **Section 7.25.3 Requests for Information (RFIs)**.

7.25.3. Requests for Information (RFIs)

In the event Contractor, or any subcontractor or supplier, at any tier, determines that some portion of the drawings, specifications or other Contract Documents requires clarification or interpretation by VTA, Contractor shall submit a Request for Information (RFI) in writing to VTA. RFIs may be submitted only by Contractor and shall only be submitted on the Request for Information form provided by VTA. Contractor shall clearly and concisely set forth the issue for which clarification or interpretation is sought and why a response is needed from VTA. In the Request for Information, Contractor shall set forth its own interpretation or understanding of the requirement along with the reasons why it has reached such an understanding.

VTA will review all RFIs to determine whether they are RFIs within the meaning of this Contract. If VTA determines that the document is not a RFI it will be returned to Contractor, unreviewed as to content, for resubmittal as the appropriate document required by the subject matter.

Responses to RFIs shall be issued within 5 working days of receipt of the request from Contractor unless VTA determines that a longer period of time is necessary to provide an adequate response. If a longer period of time is determined to be necessary, VTA will notify Contractor as soon as possible within those five (5) working days of the anticipated response time. The five (5) working days shall start at the time the RFI is received by VTA's designated contact person. If Contractor submits a RFI on an activity with five (5) working days or less of float on the current approved project schedule, Contractor shall mark the RFI as "Critical". Contractor shall not be entitled to any time extension due to the time it takes VTA to respond to such Critical request provided that VTA responds within the five (5) working days set forth above.

Responses from VTA will not change any requirement of the Contract Documents unless so noted in the response to the RFI. In the event Contractor believes that a response to a RFI will cause a change to the requirements of the Contract, Contractor shall immediately give written notice to VTA in accordance with **Section 7.65 Change Requests and Change Notices**. Failure to give such written notice shall waive

Contractor's right to seek additional time or cost in accordance with **Section 7.65.1** of the Contract Documents.

7.26. Pre-Construction Meeting

Prior to issuance of a Notice to Proceed, a pre-construction meeting will be held at a time and place to be designated by notice from VTA. At this meeting, detailed procedures will be discussed for handling the following items:

- Authorized Representative
- Correspondence
- Notices
- Change requests and change notices
- Change orders
- Submittals
- Approvals
- Progress payments
- Schedules
- Community relations
- Inspection plans
- Requests for information (RFI)
- Other pertinent agenda items

7.27. Project Meetings

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

7.28. Publicity Releases

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

TIME FOR PERFORMANCE OF WORK

7.29. Notice to Proceed

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

Contractor will be required to give VTA a 48-hour advance notice before starting work. Contract personnel will be allowed on the job site only during normal VTA working hours unless otherwise authorized by VTA

7.30. Time of Completion

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

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

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

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

During actual construction, a calendar day shall not be a "working day" if Contractor is specifically required by the Contract Documents to suspend construction operations or if Contractor is prevented by inclement weather or otherwise, as determined by VTA and agreed to by Contractor, from proceeding with the Work as anticipated by the parties.

Contractor shall not perform any fieldwork during three annual designated holidays: Labor Day, Thanksgiving Day and Christmas Day. Fieldwork shall not include receipt or delivery of materials or equipment or work performed in field offices. During these periods, VTA will not have the construction management personnel to support, inspect, or oversee Contractor's Work.

7.31. Progress Schedule

Contractor shall develop and maintain progress schedules in CPM format identifying critical events involved in the performance of the Work under the Contract in accordance with the requirements of **Section 6 Special Conditions**.

7.32. Excusable Delays and Extensions of Time

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

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

7.33. Failure to Complete the Work on Time

If the Work is not completed by Contractor in the time specified, as that time may be extended as authorized elsewhere in the Contract, it is understood that VTA will suffer damage; and, it being impracticable and extremely difficult to determine the amount of actual damage, it is agreed that Contractor shall pay as fixed and liquidated damages, and not as a penalty, the sum set forth in **Section 6 Special Conditions** of the Contract for each calendar day of delay until the Work is completed and accepted, and Contractor and its surety shall be liable for the amount thereof.

PERFORMANCE OF WORK

7.34. Contractor's Work Area

Contractor shall be responsible for all security, utilities and upkeep of Work and laydown areas and for their restoration to a condition equal to that which existed when Contractor began using such areas. Such restoration shall be complete before final payment is made to Contractor. If VTA areas are not available to Contractor, Contractor shall be responsible for furnishing whatever areas it deems necessary to perform Work under this Contract, at no additional cost to VTA.

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

7.35. Temporary Construction Facilities and Utilities

Contractor shall furnish all temporary construction facilities, utilities, and services which are necessary to prosecute the Work. This includes, but is not limited to fencing, flagmen, sanitary facilities, security, power, water, and weather protection. Contractor shall remove all temporary facilities upon completion of the Work or when they are no longer needed for Contractor's purposes, whichever is earlier.

7.36. Character of Workers

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

7.37. Working Environment

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

7.38. Public Convenience and Safety

Contractor shall so conduct its operations as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of work than can be prosecuted

properly with due regard to the rights of the public. Unless otherwise provided in the Contract, all public traffic shall be permitted to pass through the Work with as little inconvenience or delay as possible. Where possible, such traffic shall be routed on new or existing paved surfaces. Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by Contractor at its expense. Existing traffic signal and highway lighting systems shall be kept in operation for the benefit of the traveling public during progress of the Work, and other forces will continue routine maintenance of existing systems.

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

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

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

7.39. Cooperation/Coordination and Work by Others

Contractor shall coordinate its Work with all other contractors and subcontractors performing Work on the site. Contractor shall schedule its Work so as to avoid conflicts with other contractors and to avoid damage to completed or incomplete Work. Contractor shall be responsible for any damage to the Work of other contractors or subcontractors if Contractor's actions resulted in such damage and are a) willful or b) negligent and the proximate cause. Contractor shall take immediate action to remedy such damage so as to not delay the immediate prosecution of the Work.

7.40. Security

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

7.41. Product Options, Supplier Approval and Substitutions

For products specified in this Contract or in Contractor's submittals by brand name or manufacturer, whether or not followed by the words "or approved equal," Contractor shall select any product or manufacturer named, or shall submit a request to substitute an equal product or manufacturer. As required by the California Public Contracts Code §3400, such request shall be made within **35 calendar days** from date of the Notice of Award in order to receive consideration, unless later submission of a request is agreed to by VTA. Contractor shall submit a separate request for each substitution. The burden of proof as to the equality of any material, process or article shall rest with Contractor. VTA's determination of the equality or superiority of an article proposed for substitution shall be based upon but need not be limited to consideration of such factors as are specified in the Technical Specifications; dimensional compatibility with other materials with which it combines to produce a unified design system; all aspects of finished appearance including form, texture, and color, as it affects other design elements. In the event an approved substitution is more expensive than the specified materials, process or article, the difference in cost of such material, process or article so furnished shall be borne by Contractor.

Contractor may not make a substitution without VTA's prior written approval. If applicable, specific requirements for the submittal of such requests will be contained in **Section 6 Special Conditions**.

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

7.42. Source of Materials

Contractor shall be completely responsible for locating, identifying, and furnishing all materials required to be furnished under this Contract, except for VTA furnished materials specified in **Section 6 Special Conditions**. VTA shall perform or cause to be performed all tests required to demonstrate to VTA's satisfaction that the proposed materials satisfy the requirements of the Contract

7.43. Submittal of Shop Drawings, Product Data and Samples

Working and shop drawings may consist of drawings, diagrams, schedules, or other data prepared by Contractor, or any subcontractor of any tier, manufacturer, supplier or distributor, as are necessary to adequately control the Work or to illustrate or detail some portion of the Work. No change shall be made by Contractor in any working or shop drawing after it has been approved by VTA.

Working Drawings for any part of the permanent Work shall include, but not be limited to: stress sheets, anchor bolt layouts, shop details, erection plans, equipment lists and any other information specifically required elsewhere in the Contract.

Working drawings for cribs, cofferdams, falsework, temporary support systems, haul bridges, centering and form work and for other temporary work and methods of construction Contractor proposes to use, shall be submitted when required by the Contract or ordered by VTA.

Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, or other information furnished by Contractor to illustrate materials, products, systems, or equipment for some portion of the Work.

Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work shall be judged.

Working drawings and shop drawings, product data, samples, and similar submittals shall not modify any Contract requirement, except as expressly allowed by this Contract. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required, the way Contractor proposes to comply with Contract requirements.

Contractor shall review, approve, and submit to VTA all working and shop drawings, product data, samples, or similar submittals required by this Contract, or that are necessary for its proper completion, in accordance with the Schedule for Technical Submittals shown in **Section 6 Special Conditions** and **Section 8 Technical Specifications**, in a sequence that causes no delay in the Work, or in the work of VTA or any other VTA Contractor.

By approving and submitting working and shop drawings, alternative construction methods, product data, samples, or similar submittals, Contractor represents that it has determined and verified all related materials, measurements, and construction criteria, and that it has checked and coordinated the information contained within its submittals with the requirements of the Work and this Contract.

Contractor shall not be relieved of responsibility for any deviation from the requirements of this Contract by VTA's approval of shop and working drawings, product data, samples, plans, programs, schedules, or

similar submittals unless Contractor has specifically informed VTA at the time of submittal in writing of the deviation and VTA has given written approval of the specific deviation. Contractor shall not be relieved of responsibility for errors or omissions in working and shop drawings, product data, samples, plans, programs, schedules or similar submittals by VTA's approval of the submittal. Contractor shall not deviate from approved working and shop drawings, product data, samples, or similar submittals without VTA's written approval.

Contractor shall not commence any portion of the Work requiring submission of shop or working drawings, product data, samples, or similar submittals until the required submittal has been approved by VTA.

Contractor shall direct specific attention, in writing or on resubmitted shop and working drawings, product data, samples, or similar submittals, to revisions other than those required by VTA on previous submittals.

Specific requirements for the submittal of shop and working drawings, product data and samples are contained in **Section 6 Special Conditions**.

Full compensation for furnishing all working and shop drawings, product data and samples is included in the prices paid for the Contract Items of Work (as defined in **Section 7.56 Compensation**) to which such drawings relate and no additional compensation will be allowed.

7.44. Survey Requirements

7.44.1. Lines and Grades

Surveying is to be provided as follows:

- (a) VTA will provide primary control monuments for the Project. Horizontal and vertical datums will be provided to Contractor.
- (b) Contractor must independently verify the primary horizontal and vertical control and inform VTA of any significant differences between published values and found values.
- (c) Contractor will use said primary control to set such stakes or marks as it determines necessary to establish the line and grades required for the performance of the Work specified in the Contract. Relevant right of way data will be supplied by VTA to Contractor. Contractor is responsible for all construction staking on Project.
- (d) Contractor shall notify VTA of any conflicts between design and existing conditions and submit a Request for Information (RFI) before commencing survey.
- (e) Contractor will provide systematic and organized copies of all field notes and cut sheets to VTA on a weekly basis (documents must be delivered at least 24 hours before VTA verification survey is scheduled). Name of firm, job description, party chief, crew members, and date of survey shall appear on all field notes and cut sheets.

VTA Survey will perform periodic verification surveys to quality assure construction staking effort. VTA verification surveys may be performed at any time.

7.44.2. Monument Preservation

For the purposes of this **Section 7.44.2** the word Contractor refers to the General Contractor assigned to VTA's project and the professional surveyors under the employ of said General Contractor.

Contractor shall notify VTA of any existing monuments which will be disturbed or destroyed during the course of construction and Contractor will be responsible – and bear the full costs - for tying out the existing monuments and setting new monuments, per the Professional Land Surveyors' Act, Business and Professional Code Sections 8771 through 8773.

Contractor shall place new monuments (when possible) in a location to minimize traffic exposures for surveyors. Existing monuments to be replaced by the new monuments shall be removed and disposed of by Contractor. New monuments shall be established before existing monuments are removed so that vertical and horizontal control shall be available at all times. The following guidelines will be used as part of the monument preservation process:

- (a) **Pertaining to existing, undisturbed monuments:** Contractor will reset the monument box (with cover) to final grade. If there is no monument box for the monument then Contractor will set a new one at grade to preserve the monument and to make it accessible. If the monument is higher than final grade then Contractor's professional land surveyor will set ties to the monument and reset it below final grade and set the monument box accordingly.
- (b) **Pertaining to destroyed or disturbed monuments:** Contractor must notify VTA Survey, in advance, of any monuments that will be disturbed and/or destroyed.
 - (1) Contractor will replace all monuments that VTA's Survey Department determines are of future value to professional surveyors in retracing original surveys of record and will be set according to VTA specifications. Contractor may be asked by VTA to also contact the City Engineering/Survey Department or other agency/s (e.g., County, Caltrans, Santa Clara Valley Water District, etc.) for additional information regarding monument and monument box specifications.
 - (2) Monuments shall be constructed in accordance with the appropriate City or other agency's Standard Provisions, to the dimensions and details shown on the appropriate City or other agency's Standard Details.
 - (3) Any monument that Contractor cannot replace in its original position due to obstruction or improvements must be replaced with a witness monument that is tied into the original monument by bearing and distance.
 - (4) Contractor will then establish project coordinates for all new monuments and witness monuments, adjust by least squares method and furnish VTA Survey with the results and the calculation sheets.

Note: These standards are VTA standards and Contractor is not only bound by these standards but also the most recent update of the State Land Surveyors Act and the standards currently established by the appropriate City or other agency (e.g., County, Caltrans, Santa Clara Valley Water District, etc.). VTA and the appropriate City or other agency must be allowed to review all Corner Records and/or relevant documentation before Contractor's first submittal to the County Surveyor.

Contractor will bear the full expense of all work related to the above described monument preservation program. If the above specified "advance" notice is not given to the VTA Survey Department and/or

the survey monuments are disturbed or destroyed without reference points having been set, VTA will re-establish the original position of the survey monuments (and all necessary tie monuments) and the associated land surveying costs will be deducted from Contractor's budget amount.

7.45. Protection and Restoration of Property

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

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

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

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

7.46. Utility Paint Markings

Contractor shall completely remove all utility paint markings at project completion. Removal will be by use of the high water pressure method only. Payment for removal of all utility paint markings is included in the price paid for other items of work and no additional compensation will be allowed for this work.

7.47. Reserved

7.48. Inspection

VTA shall at all times have access to the Work during construction and shall be furnished every reasonable facility for verifying that the materials and workmanship conform to the requirements of the Contract. All work done and all materials furnished shall be subject to VTA's on-site and off-site inspection and approval. VTA may test and inspect, either at Contractor's, subcontractor's or supplier's facility, all components, subsystems or workmanship prior to assembly of such components into the Work and prior to acceptance of the Work by VTA. Following such testing and inspection, VTA will issue a deficiency list to Contractor listing those items which fail to comply with the Contract. VTA may either reject or require correction of defective material, workmanship, or nonconformity to this Contract. Contractor shall, at its own expense, make available tools, pits, hoists, scaffolds, platforms, other equipment, facilities, drawings, and assistance as may be necessary for inspections or tests.

Costs of the inspectors shall be borne by VTA and shall not be a part of the Contract Price. Costs of re-inspection shall be backcharged to Contractor. The performance of, or the failure to perform, such inspection shall not relieve Contractor of any responsibility for complete Contract performance. Where shop inspection is required by the terms of the Contract, Contractor shall not ship materials until VTA releases such materials for shipment.

Contractor shall not cover any work until inspected and released by VTA. Re-examination of covered and questioned work may be ordered by the Authorized Representative at any time prior to final acceptance. If so ordered, the work shall be uncovered by Contractor. The testing and uncovering or removal, replacement and recovering shall be at Contractor's expense.

7.49. Certificates of Compliance and Testing

7.49.1. Certificates of Compliance

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

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

7.49.2. Testing

Contractor shall obtain the services of an independent testing company to perform all testing of materials and work in accordance with the Contract Documents. All material testing shall be paid for by Contractor.

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

7.49.3. Furnish without Charge

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

7.50. Removal of Rejected or Unauthorized Work

All work which has been rejected shall be remedied, or removed and replaced by Contractor in a manner acceptable to VTA, and no compensation will be made for such removal, replacement or remedial work.

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

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

7.51. Disposal of Materials

Except for materials generated pursuant to **Section 7.9 Hazardous Materials or Unusual Conditions**, Contractor shall be responsible for the disposal of all excess materials generated during the performance of this Contract. When any material is to be disposed of outside the project area, other than a public dump, Contractor shall first obtain a written permit from the property owner on whose property the disposal is to be made and he shall file with VTA said permit or a certified copy thereof together with a written release from the property owner absolving VTA from any and all responsibility in connection with the disposal of material and said property, and before any material is disposed of on said property, Contractor shall obtain written permission from VTA to dispose of the material at the location designated in said permit.

7.52. Protection of Completed Portions of Work

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

7.53. Clean-up

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

7.54. Redlined Construction Drawings

Drawings showing all approved changes made during construction which differ from the approved drawing set for construction, shall be furnished by Contractor prior to the acceptance of the Work. Final construction drawings submitted to VTA shall be in the form of redlined drawings clearly and neatly indicating all changes made with the approval of VTA and other field changes made which reflect the as-built condition of the Contract. During the construction period, redlined construction drawings shall be maintained by Contractor and made available to VTA for review on a daily basis.

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

7.55.1. Final Inspection and Acceptance of all the Work

When Contractor considers that all of the Work covered under this Contract has reached final completion, Contractor shall so inform VTA in writing. If necessary and required, acceptance tests on the Work will be

performed as set forth in **Section 8 Technical Specifications**. VTA will prepare a punchlist covering the Work that fails to pass the acceptance tests or is otherwise unacceptable and will reject such Work. Contractor shall proceed immediately to correct or replace unsatisfactory, incomplete or unacceptable work. For items of Work not completed by Contractor VTA may proceed to have the items corrected or completed using VTA or third party forces in accordance with **Section 7.50 Removal of Rejected or Unauthorized Work**. The costs of such corrections shall be deducted from compensation due Contractor.

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

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

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

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

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

Final acceptance of a discrete portion of Work deemed complete will occur after successful completion of all testing and deficiency and punchlist items, and VTA's determination that the Work conforms in all respects to all the Contract requirements. VTA shall inform Contractor of such acceptance of the Work by issuing a written notification stating that the Work has been completed in accordance with the Contract requirements and is accepted under the terms and conditions thereof. After VTA has accepted the Work,

Contractor will be relieved of the duty of maintaining and protecting the accepted Work and will not be required to perform any further Work thereon and Contractor shall be relieved of its responsibility for injury to persons or property or damage to the Work which occurs after formal acceptance by VTA. Acceptance of a discrete portion of the Work shall not relieve Contractor from responsibility for errors, improper fabrication, non-conformance to a Contract requirement, latent defects, or for deficiencies within Contractor's control. Unless otherwise stipulated, all warranties begin with the date of such acceptance of the particular discrete portion of the Work.

COMPENSATION, PAYMENTS, RECORDS AND AUDIT

7.56. Compensation

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

Neither the payment of any progress payment nor any retained percentage shall relieve Contractor of any obligation to make good any defective work or material.

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

The adjustment of the contract unit price will be the difference between the contract unit price and the actual unit cost, which will be determined as hereinafter provided, of the total performed quantity of the item. If the costs applicable to the item of Work included fixed costs, the fixed costs will be deemed to have been recovered by Contractor by the payments made for 125 percent of the quantity in the **Schedule of Quantities and Prices** and in computing the actual unit cost; the fixed costs will be excluded. Subject to the above provisions, the actual unit cost will be determined by VTA in the same manner as if the Work were to be paid for on force account basis as provided in in **Section 7.60 Force Account Payment**; or the adjustment will be as agreed to by Contractor and VTA.

When the compensation payable for the number of units of an item of Work performed in excess of 125 percent of the quantity in the **Schedule of Quantities and Prices** is less than \$5,000.00 at the applicable contract unit price, VTA reserves the right to make no adjustment in the contract unit price if VTA so elects, except that an adjustment will be made if requested in writing by Contractor.

7.57. Increased or Decreased Quantities and Quantity Variation

Increases or decreases in the quantity of a Contract unit price in the Schedule of Quantities and Prices ("**Contract Item**") will be determined by comparing the total performed quantity of that item of Work with the quantity in the **Schedule of Quantities and Prices**.

If the total performed quantity of a Contract Item required under the Contract varies from the quantity in the **Schedule of Quantities and Prices** by 25 percent or less, payment will be made for the performed quantity of that item of Work at the Contract unit price.

Should the total performed quantity of any item of Work required under the Contract be less than 75 percent of the quantity in the **Schedule of Quantities and Prices**, an adjustment in compensation pursuant to this Section will not be made unless Contractor so requests in writing. If Contractor so requests, the quantity of the Contract Item, unless covered by an executed contract change order specifying the compensation payable therefore, will be paid for by adjusting the Contract unit price as hereinafter

provided, or at the option of VTA, payment for the performed quantity of that the Contract Item will be made on the basis of force account as provided in in **Section 7.60 Force Account Payment**, provided however, that in no case shall the payment for that Work be less than that which would be made at the Contract unit price.

The adjustment of the Contract unit price will be determined as hereinafter provided, of the total performed quantity of the item, including fixed costs. The actual unit cost will be determined by VTA in the same manner as if the Work were to be paid for on a force account basis as provided in in **Section 7.60 Force Account Payment** or the adjustment will be as agreed to by Contractor and VTA.

The payment for the total performed quantity of the item of Work will in no case exceed the payment, which would be made for the performance of 75 percent of the quantity in the **Schedule of Quantities and Prices** for the item at the original Contract unit price

If the total performed quantity of any item of Work required under the Contract varies from the quantity in the **Schedule of Quantities and Prices** by more than 25 percent, in the absence of any executed contract change order specifying the compensation to be paid, the compensation payable to Contractor will be determined in accordance with **this Section 7.57**.

Should the total performed quantity of any item of Work required under the Contract exceed the quantity in the **Schedule of Quantities and Prices** by more than 25 percent, the Work in excess of 125 percent of the quantity in the **Schedule of Quantities and Prices** and not covered by an executed contract change order specifying the compensation to be paid therefore will be paid for by adjusting the Contract unit price, as hereinafter provided, or at the option of VTA payment for the Work involved in the excess will be made on the basis of force account as provided in **Section 7.60 Force Account Payment**.

The adjustment of the Contract unit price will be the difference between the Contract unit price and the actual unit cost, which will be determined as hereinafter provided, of the total performed quantity of the item. If the costs applicable to the item of Work included fixed costs, the fixed costs will be deemed to have been recovered by Contractor by the payments made for 125 percent of the quantity in the **Schedule of Quantities and Prices** and in computing the actual unit cost; the fixed costs will be excluded. Subject to the above provisions, the actual unit cost will be determined by VTA in the same manner as if the Work were to be paid for on force account basis as provided in **Section 7.60 Force Account Payment**; or the adjustment will be as agreed to by Contractor and VTA.

When the compensation payable for the number of units of an item of Work performed in excess of 125 percent of the quantity in the **Schedule of Quantities and Prices** is less than \$5,000.00 at the applicable contract unit price, VTA reserves the right to make no adjustment in the Contract unit price if VTA so elects, except that an adjustment will be made if requested in writing by Contractor.

7.58. Certified Payrolls

7.58.1. Submit Certified Copies

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

7.58.2. Form of Certified Copies

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

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

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

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

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

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

7.59. Progress Payment

7.59.1. Schedule of Values

(1) For Contracts \geq \$500,000

Following Notice of Award and 15 days prior to the first invoice submittal Contractor shall prepare and submit for approval a detailed cost breakdown of all Lump Sum Items, setting forth the estimated value of the various elements of work in conformity with the organization indicated in the Initial 90 Day and Baseline Schedules. Each item in the Schedule of Values shall include its proper share of overhead and profit. A proposed Schedule of Values may be rejected if any item is determined by VTA to be unbalanced or VTA deems it to be incomplete. VTA may request a detailed cost breakdown of any items. This breakdown shall be for the purpose of enabling Contractor and VTA to check and verify the periodic invoices to be submitted by Contractor in connection with requests for partial payments as provided for below.

The Schedule of Values breakdown will also be used in the calculation of changes whether additive or deductive, to work performed under Lump Sum Bid Items, to the extent applicable.

(2) For Contracts $<$ \$500,000

If the Contract is bid on a Lump Sum basis, or there are Lump Sum line items in the Schedule of Quantities and Prices, within 10 working days following Notice of Award, Contractor shall prepare and submit a detailed Schedule of Values giving a complete breakdown of all Lump Sum prices, setting forth the estimated value of the various subdivisions of the work. Each item in the Schedule of Values shall include its proportionate share of overhead and profit. A

proposed Schedule of Values may be rejected if any item is determined by VTA to be unbalanced or VTA deems it to be incomplete. VTA may request a detailed cost breakdown of any items. The Schedule of Values shall be for the purpose of enabling Contractor and VTA to agree upon progress payment documents as described below. Notice to Proceed shall not be given until the Schedule of Values is approved by VTA.

7.59.2. Progress Payment Processing

Once every thirty days during the term of the Contract, Contractor will prepare estimates of the work performed and materials delivered. Contractor will submit the estimates to VTA on Contractor-supplied letterhead for review. VTA will review and verify whether all items, units, quantities and prices shown on the Contractor-provided invoice are correct and that all work has been performed and materials supplied in accordance with the terms of the Contract.

If VTA is not in agreement with the quantities/prices on Contractor's invoice, VTA will schedule a meeting to review the discrepancies after which Contractor will submit a revised invoice. No payment will be due on the disputed amounts.

Upon verification and acceptance, VTA will prepare a "Progress Payment – Form B" that includes all the agreed units, quantities and prices. VTA will sign the Form B and forward the signed copy to Contractor for counter-signature and inclusion of the revised invoice for onward transmission to VTA Accounts Payable. The invoice Contractor transmits for payment must match the amount due shown on the Form B less retention and any special withholdings.

As a condition precedent to any progress payment becoming due, Contractor must include along with each invoice:

- (a) conditional waivers and releases of lien, stop payment notice, and payment bond rights every subcontractor or supplier has with respect to all labor, services, materials, and equipment covered by the invoice; and
- (b) unconditional waivers and releases of lien, stop payment notice, and payment bond rights every subcontractor or supplier has with respect to labor, services, materials, and equipment covered by the previous invoice.

Payment to Contractor will be made 30 days following receipt of Contractor's invoice in VTA's Accounts Payable department. However, no payment shall be due until Contractor returns the certified Form B, the required waivers and releases, and the accompanying invoice to VTA.

7.59.3. Full Compensation

Payment for various bid items listed in the Schedule of Quantities and Prices (Bid Form 1) shall constitute full compensation to complete the Work in conformity with the Contract. All costs for Work shown or indicated in the Contract Documents, even if not specifically provided for by a bid item in the Schedule of Quantities and Prices shall be included. Except for relief provided by **Section 7.65 Change Requests and Change Notices**, **Section 7.66 Change Order**, and **Section 7.67 Differing Site Conditions**, Contractor will not be entitled to additional compensation for providing any activity or material necessary for the completion of the Work in accordance with the Contract even though the activity or material is not included in a specific bid item or indicated in the Contract.

7.59.4. Materials on Hand

Acceptable materials on hand consist of materials or equipment furnished and delivered by Contractor to its facility or the jobsite but not yet incorporated in the Work, and properly stored in a location acceptable to VTA.

In order for materials on hand to be approved for payment, Contractor shall request payment for them on VTA-furnished forms accompanied by documentation as therein required including evidence of purchase, if appropriate. The materials must be separated from other like materials and must be physically identified as the property of VTA for use only on this Contract. VTA may enter upon the premises of Contractor for the purpose of inspection, checking or auditing, or for any other purpose, as VTA considers necessary.

7.59.5. Retention

VTA will retain **five percent** of each progress payment as part security for the fulfillment of the Contract by Contractor, and shall pay to Contractor the balance not retained, after deducting all previous payments and all sums to be kept or retained under the provisions of the Contract. No such payment will be construed to be an acceptance of any defective Work or improper materials.

Should the Contract Amount be subsequently modified by change order(s), VTA will hold retention on payments for the additional change order Work.

If Federal requirements apply (refer to Section 1.8), then the following applies: In conformance with **Public Contract Code Section 7200(b)**, in subcontracts between Contractor and subcontractor and in subcontracts between subcontractor and any subcontractor thereunder, retention proceeds shall not be withheld, and the exceptions provided in **Public Contract Code Section 7200 (c)** shall not apply. At the option of Contractor, subcontractors shall be required to furnish payment and performance bonds issued by an admitted surety.

7.59.6. Special Withholding

VTA may withhold amounts from any payments otherwise due to Contractor as it determines necessary to cover:

- (a) Claims against Contractor arising from or in any way related to this Contract, any other contract between VTA and Contractor, or any other transaction or occurrence involving VTA and Contractor;
- (b) Defective work not remedied;
- (c) Failure of Contractor to make proper payments to any of its Subcontractors;
- (d) Failure to complete the Work in accordance with the approved Contract progress schedule.
- (e) Damage to other work or property caused by Contractor or its subcontractor of any tier.
- (f) An amount, not less than ten percent (10%) of the total progress payment, due to the failure to abate, within one (1) working day or immediately in cases of imminent danger, infractions of Contractor's Safety Plan, CAL/OSHA, FEDERAL OSHA, ANSI or other applicable safety standards.
- (g) An amount not to exceed twenty percent (20%) of the total progress payment, due to four or more repeated infractions in a single payment period of Contractor's Safety Plan CAL/OSHA, FEDERAL OSHA, ANSI and all other applicable safety standards.

- (h) Items listed in **Appendix B Contracts Data Requirements List** or **Section 8 Technical Specifications** that are not received within the time specified. The amount withheld may be ten percent (10%) of the total progress payment or \$10,000, whichever is greater. Contractor's failure to submit any required items may subject it to the remedies of **Section 7.71 Termination for Default**.
- (i) Any and all other circumstances in which VTA determines that it is necessary to protect its interests.

Whenever VTA withholds special retention, written notice of the amount withheld and the reasons therefore shall be given Contractor. When Contractor removes the grounds for such withholding, VTA will include the amount so withheld in the next scheduled progress payment.

7.59.7. Substitution of Securities

Securities may be substituted in lieu of the withholding of retention from progress payments in accordance with **Public Contract Code § 22300**, which states.

§ 22300 Performance retentions; provision for substitute security; escrow agreement

(a) Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract however, substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. § 1921 et. seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to the Contractor. Upon satisfactory completion of the contract, the securities shall be returned to Contractor.

(b) Alternatively, Contractor may request and the owner shall make payment of retentions earned directly to the escrow agent at the expense of Contractor. At the expense of Contractor, Contractor may direct the investment of the payments into securities and Contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by Contractor. Upon satisfactory completion of the contract, Contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section.

(c) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and the public agency.

The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in a public agency contract.

For purposes of this section, the term "public agency" shall include, but shall not be limited to, chartered cities.

(d) (1) Any contractor who elects to receive interest on moneys withheld in retention by a public agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the contractor elects to receive interest on any monies withheld in retention by a public agency, then the subcontractor shall receive the identical rate of interest received by the contractor on any retention moneys withheld from the subcontractor by the contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the contractor elects to substitute securities in lieu of retention, then, by mutual consent of the contractor and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by the contractor.

(2) This subdivision shall apply only to those subcontractors performing more than five percent of the contractor's total Bid.

(3) No contractor shall require any subcontractor to waive any provision of this section.

(e) The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by Contractors and subcontractors in public contract procedures.

(f) The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into as of _____, 2020__ by and between _____, whose address is _____ hereinafter called "Owner," _____ whose address is _____ hereinafter called "Contractor" and _____, a state or federally chartered bank, whose address is _____ hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the owner and Contractor for _____ in the amount of _____ dated _____ (hereinafter referred to as the "Contract"). Alternatively, on written request of Contractor, the owner shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the owner and Contractor. Securities shall be held in the name of _____, and shall designate Contractor as the beneficial owner.

(2) The Owner shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the contractor until the time that the escrow created under this contract is terminated. The contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by Contractor. Upon seven days' written notice to the Escrow Agent from the owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the owner certifying that the Contract is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the owner and Contractor pursuant to Sections (6) to (8), inclusive, of this agreement and the owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner [For withdrawal or release specified in paragraphs (6) to (8)]:

_____ (Title)
_____ (Name)
_____ (Signature)
_____ (Address)

On behalf of Contractor:

_____ (Title)

(Name)
(Signature)
(Address)

On behalf of Escrow Agent:

(Title)
(Name)
(Signature)
(Address)

(11) In accordance with Section 22300(c) of the Public Contract Code securities eligible for deposit by Contractor or investment hereunder shall be _____ and no others.

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

OWNER

(Title)
(Name)
(Signature)

CONTRACTOR

(Title)
(Name)
(Signature)

ESCROW AGENT

(Title)
(Name)
(Signature)

7.60. Force Account Payment

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

7.60.1. Work Performed by Contractor

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

(15%) of the cost of material, fifteen percent (15%) of equipment rental and five percent (5%) of the cost of subcontractors, including trucking.

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

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

7.60.2. Labor

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

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

7.60.3. Materials

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

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

- (a) If a cash or trade discount by the actual supplier is offered or available to the purchaser, it shall be credited to VTA notwithstanding the fact that such discount may not have been taken.
- (b) If materials are procured by the purchaser by any method which is not a direct purchase from and a direct billing by the actual supplier to such purchaser, the cost of such materials shall be deemed to be the price paid to the actual supplier as determined by VTA. No markup except for actual costs incurred in the handling of such materials will be permitted.
- (c) If the materials are obtained from a supply or source owned wholly or in part by the purchaser, payment for these materials will not exceed the price paid by the purchaser for similar materials furnished from said source on contract items or the current wholesale price for such materials delivered to the jobsite, whichever price is lower.

- (d) If the cost of such materials is, in the opinion of VTA, excessive, then the cost of such material shall be deemed to be the lowest current wholesale price at which such materials are available in quantities concerned delivered to the jobsite, less any discounts as provided above.

7.60.4. Equipment Rental

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

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

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

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

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

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

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

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

7.60.5. Equipment at the Worksite

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

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

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

7.60.6. Equipment Not at the Worksite

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

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

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

Hours of Operation	Hours to be paid
0.....	4
0.5.....	4.25
1.....	4.5
1.5.....	4.75
2.....	5
2.5.....	5.25
3.....	5.5
3.5.....	5.75
4.....	6
4.5.....	6.25
5.....	6.5
5.5.....	6.75
6.....	7
6.5.....	7.25
7.....	7.5
7.5.....	7.75
8.....	8
Over 8.....	Actual hours in operation

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

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

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

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

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

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

7.60.7. Work Performed by Special Forces or Other Special Services

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

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

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

7.60.8. Owner-Operated Equipment

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

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

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

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

7.61. Prompt Payment

7.61.1. Prompt Payment to Contractor

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

A certified **Progress Payment – Form B document**, as described in **Section 7.59 Progress Payments** shall constitute a payment request. Any payment request determined by VTA not to be a proper payment request shall be returned to Contractor within seven (7) days of receipt setting forth in writing the reasons why the payment request is not proper.

7.61.2. Payment to Subcontractors

Contractor shall adhere to all federal and California prompt payment laws and regulations including **Business and Professions Code Section 7108.5** requiring Contractor to pay subcontractors within seven (7) days of receipt of each progress payment to the extent of each subcontractor's interest therein, unless otherwise agreed to in writing between Contractor and the subcontractor.

Any violation of this provision shall subject Contractor or subcontractor to the penalties, sanctions and other remedies specified in **Section 7108.5 of the California Business and Professions Code**. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies

otherwise available to Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by Contractor or deficient subcontract performance, or noncompliance by a subcontractor.

This provision applies to all contractors and subcontractors.

Contractor must include in its subcontract language a provision that it will use appropriate alternative dispute resolution mechanisms to resolve any payment disputes with subcontractors or suppliers.

Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.

7.62. Final Payment

Final payment shall not become due until the following actions have been satisfactorily completed:

- Satisfactory completion of final inspection of all the Work under the Contract
- Contractor submittal to VTA of:
 - An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied, and
 - A release of liens and claims arising out of the Contract, to the extent and in the form designated by VTA. If a claim remains unsatisfied after all payments are made, Contractor shall reimburse VTA for all monies that VTA may be compelled to pay in discharging the claim, including all costs and reasonable attorney's fees.
- Issuance by VTA of a Letter of Final Acceptance of the Work.
- The recording of a Notice of Completion by VTA.

VTA may at its option and at any time retain out of any amounts due Contractor, sums sufficient to cover claims, filed pursuant to California Civil Code Section 9000 et seq.

VTA will make final payment within **30-60 calendar days** of the recording of the Notice of Completion.

The acceptance of final payment by Contractor shall constitute a waiver of all claims against VTA arising under the Contract.

7.63. Project Records

Comprehensive records and documentation relating to this Project shall be kept by Contractor and all subcontractors. The records shall include, but are not limited to Contract Documents, Drawings, Specifications, Addenda, Shop Drawings and Submittals, Change Orders, Modifications, Test Records, redline construction plans, As-Built Drawings, and cost and pricing data. Contractor shall maintain a complete set of records relating to this Contract for a period of seven years from final payment for this Work.

The cost records shall be complete and in sufficient detail to allow evaluation of the accuracy and completeness, and currency of the costs or prices. Contractor shall permit the authorized representatives of VTA, the U.S. Department of Transportation, and the Comptroller General of the United States to examine and audit all such records and any subcontracts under this Contract during the time period so specified. In addition, **every contract and subcontract involving the expenditure of public funds in excess of ten thousand dollars (\$10,000) entered into by a public entity in the State of California shall be subject to the examination and audit of the State Auditor**, at the request of the public entity or as part of any audit of the public entity, for a period of three years after final payment under the Contract.

CONTRACT MODIFICATIONS, DISPUTES AND CLAIMS

7.64. Reserved

7.65. Change Requests and Change Notices

7.65.1. Change Request

Contractor may make a written request to VTA to modify the Contract (Change Request) based upon the receipt of, or the discovery of information that changes the scope, price, schedule, level of performance, or other facet of the Contract.

Contractor shall deliver a document entitled "Change Request" to VTA within thirty (30) days after receipt of, or the discovery of, information (other than receipt of a "Change Notice") that Contractor believes will cause a change to the scope, price, schedule, level of performance, or other facet of the Contract. Upon receipt of a Change Notice, Contractor shall follow the procedures of **Section 7.65.2 Change Notice**. All Change Requests, and any Claims based thereon including any request or claim for cumulative impact costs shall be deemed waived unless a Change Request is delivered to VTA within the thirty (30) calendar days specified herein.

The Change Request shall include information necessary to substantiate the effect of the change and any impacts to the Work, including any change in schedule or Contract Price, and shall include all existing documentation or a description of anticipated documentation. In addition, the Change Request shall contain a detailed description of the proposed adjustment to the Contract Price or currently approved progress schedule, or both, and shall reference any other provisions of the Contract that will require modification because of the change. If a Change Request proposes an adjustment in the Contract Price, upon request of VTA, Contractor shall submit a complete breakdown of costs including detailed pricing and back up information for all work and any impacts thereto contemplated by the change.

The unavailability of all information necessary to quantify the change shall not excuse the timely submission of the Change Request. Contractor shall supplement the Change Request with additional information or documentation, as it becomes available. If VTA has not received sufficient substantiating documentation or information within a reasonable time after receipt of the Change Request, such insufficiency may be grounds to deny the Change Request.

If a Change Request or portions thereof are acceptable to VTA, VTA will issue a Contract Change Order consistent therewith. If a Change Request or portions thereof are not acceptable to VTA, VTA shall notify Contractor in writing.

Any request by Contractor to modify the Contract must first be submitted to VTA and proceed as a Change Request pursuant to these provisions. Contractor may submit the matter as a Claim pursuant to **Section 7.68 Claims and Claim Resolution** only if: (i) the Change Request has been denied by VTA in whole or in part; or (ii) the Change Request has not been resolved within ninety (90) days after receipt by VTA.

In the event of a dispute, Contractor shall proceed with the Work without delay, as directed by VTA.

7.65.2. Change Notices

VTA may, at any time during performance of the Contract notify Contractor of changes to the Contract by issuing a **Change Notice** to that effect. Contractor shall, within fifteen (15) days after receipt of such Change Notice, provide to VTA a written response identifying any proposed adjustment in Contract Price, including any adjustment for cumulative impact costs and schedule to perform the changes identified in

the Change Notice, unless another time period for response is specified in the Change Notice. Upon request of VTA, Contractor shall submit a complete breakdown of costs including detailed pricing information and backup for all work and any impacts thereto caused by the change. VTA shall then issue an appropriate change order.

If VTA directs Contractor to perform additional work, the basis for compensation for such work shall be either: 1) increase in quantity of a Contract Item(s), 2) negotiated lump sum price, 3) unit prices mutually agreed upon under the Schedule of Values, or 4) force account, as determined by VTA. The markups described in **Section 7.60.1 Work Performed by Contractor** shall be the maximum allowed for all additional work directed by VTA.

VTA retains the right to direct Contractor to complete a portion of the Work at a time different than that specified in the Contract or reflected in the currently approved progress schedule. Such direction will be in writing and will provide for an equitable adjustment in the compensation to be paid to Contractor, if any. If such direction modifies the amount of compensation or time required for the completion of the Work, an appropriate change order will be issued.

If Contractor and VTA cannot agree on the appropriate adjustment to the Contract Price or schedule, Contractor may either accept VTA's determination or identify and submit the matter as a Claim pursuant to the provisions of **Section 7.68 Claims and Claim Resolution**. In the event of a dispute, Contractor shall proceed with the Work without delay as directed by VTA.

7.66. Change Order

A change order is a written document issued by VTA, that:

- Changes the Total Contract Price, as modified by any previously executed change orders, or
- Alters the scope of Work under the Contract, or
- Alters the schedule for performance of the Work under the Contract as set forth in the currently approved schedule, or
- Makes any other change to the Contract, or makes a combination of any of the aforementioned Contract changes.

7.67. Differing Site Conditions

7.67.1. Soil Boring or Other Data

Where VTA has included soil boring information or other data in the Contract, they are included for Contractor's information only and VTA does not guarantee the accuracy of the information contained therein.

7.67.2. Notice of Differing Conditions

Contractor shall promptly and before such conditions are disturbed, notify VTA in writing of subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, or unknown physical conditions at the site, of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

All Change Requests involving differing site conditions and any Claims based thereon shall be deemed waived unless Contractor has given written notice before the conditions are disturbed as specified herein.

VTA will, as soon as practicable, investigate or cause to be investigated the items noted by Contractor and, if it is determined that such conditions do materially so differ and cause an increase or decrease in Contractor's cost of or time required for the performance of any part of the Work under the Contract, whether or not changed as a result of such conditions, an equitable adjustment will be made and the Contract modified.

7.68. Claims and Claim Resolution

As required by law, VTA sets forth the provisions of **Public Contract Code section 9204**, which apply to all claims by a contractor in connection with a public works project.

7.68.1. Claim Defined

"Claim" means a separate demand by Contractor, sent by registered mail or certified mail with return receipt requested for:

- A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a VTA under a contract for a public works project;
- Payment by VTA of money or damages arising from work done by, or on behalf of, Contractor pursuant to the Contract and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled to; or
- Payment of an amount that is disputed by VTA.

7.68.2. Claim Requirements

Claim requirements are as follows:

- (a) Any submittal intended by Contractor to be evaluated by VTA as a Claim shall be entitled "Claim"
- (b) All Claims must be submitted by Contractor within thirty (30) days after the date of the event giving rise to the Claim, such as, for example, the denial by VTA of a Change Request, the failure of VTA to respond to a Change Request within ninety (90) days after receipt of required substantiating information and documentation, or the issuance by VTA of a disputed Change Order. Any Claim not submitted within the specified thirty (30) days is waived.
- (c) Claims must be in writing and must be submitted with all documents reasonably necessary to substantiate the Claim. A Claim must state in as much detail as possible the basis for the Claim and the additional compensation or extra time to which Contractor believes it is entitled. If the Claim is silent regarding entitlement to extra time, Contractor is not entitled to any extra time in connection with the Claim. If the Claim is silent regarding additional compensation, Contractor is not entitled to any additional compensation in connection with the Claim.
- (d) Contractor must notify VTA promptly in writing of any changes in its estimates of additional compensation or extra time, and the notification must state the reasons for the changes.
- (e) All Claims and any amendments thereto shall include the fully executed certification set forth below. Any Claim submitted without a fully executed certification shall be rejected by VTA and returned to Contractor.

I, _____, BEING THE _____ (MUST BE AN OFFICER) OF _____ (CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH CONTRACTOR BELIEVES THE OWNER IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTION 12650 ET SEQ, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT, AND/OR OTHER SEVERE LEGAL CONSEQUENCES.

By _____

- (f) Contractor may not file any Claims after the date of final payment.

7.68.3. Claim Review

VTA will conduct a reasonable review of the claim and respond in writing to Contractor's Claim within forty-five (45) calendar days after VTA's receipt of the Claim.

VTA's written response will identify what portion of the Claim is disputed and what portion is undisputed.

VTA and Contractor may, by mutual agreement extend the time period for VTA's review and response to the Claim.

If VTA needs approval from its governing body to provide Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

7.68.4. Payment of Undisputed Portion

Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after VTA issues its written statement. If VTA fails to issue a written statement within the time specified or agreed, **Section 7.68.5 Meet and Confer** will apply.

7.68.5. Meet and Confer

If Contractor disputes VTA's written response, or if VTA fails to respond to a Claim within the time prescribed, Contractor may so notify VTA, in writing, either within fifteen (15) days of receipt of VTA's response or within fifteen (15) days of VTA's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, VTA shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

Within 10 working days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, VTA shall provide Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed.

Any payment due on the undisputed portion of the Claim following the meet-and-confer conference shall be processed and made within 60 days after VTA issues its written statement.

Any disputed portion of the Claim, as identified by Contractor in writing, shall be submitted to nonbinding mediation, with VTA and Contractor sharing the associated costs equally. VTA and Contractor shall mutually agree to a mediator within 10 working days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to all other applicable contractual and legal provisions.

For purposes of this **Section 7.68.5**, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this **Section 7.68.5**.

Following the meet and confer conference, if the Claim or any portion remains in dispute, Contractor may file a Government Code claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a Government Code claim must be filed shall be tolled from the time Contractor submits its written Claim pursuant to the above provisions until the time the Claim is denied as a result of the meet-and-confer process, including any period of time utilized by the meet-and-confer process.

The above procedures do not apply to Government Code claims for tort damages and are not intended, and shall not be construed, to change the time for filing such claims.

7.68.6. Inaction Deemed Rejection

Failure by VTA to respond to a Claim within the time periods described in this **Section 7.68** or to otherwise meet the time requirements of **Public Contract Code Section 9204** shall result in the claim being deemed rejected in its entirety. A Claim that is denied by reason of VTA's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of Public Contract Code section 9204, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

7.68.7. Subcontractor Claims

If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against VTA because privity of contract does not exist, Contractor may present to VTA a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that Contractor present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to VTA shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, Contractor shall notify the subcontractor in writing

as to whether Contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

7.68.8. Waivers of Rights under Public Contract Code Section 9204

A waiver of the rights granted by **Public Contract Code Section 9204** is void and contrary to public policy, provided, however, that (1) upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) VTA may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

7.68.9. Procedures for Civil Actions

As required by law VTA sets forth below the provisions of **Public Contract Code Section 20104.4**, which applies to civil actions filed to resolve claims of \$375,000 or less:

- (a) Within 60 days, but no earlier than 30 days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.*
- (b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 commencing with Section 2016.0103 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.*
(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.
(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.
- (c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.*

However, unless otherwise agreed to by VTA and Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

The above claims procedures are also subject to **Public Contract Code § 20104.6**, which provides:

- (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the Contract.*
- (b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.*

SUSPENSION OF WORK, CONTRACT TERMINATION

7.69. Suspension of Work

In addition to the right of VTA to suspend Work under any other provision of this Contract, VTA may require Contractor to suspend all or part of the Work called for by this Contract at any time for up to **ninety (90) days** after a written Suspension Order is delivered to Contractor, and for any further period to which the parties may agree. The Suspension Order shall include the following:

- A clear description of the Work to be suspended;
- Guidance as to the action to be taken on subcontracts; and
- Other requests for minimizing costs.

Upon receipt of a Suspension Order, Contractor shall comply with its terms immediately and take all reasonable steps to minimize cost allocable to the Work covered by the Order during the period of work stoppage. Within the period specified by the Order, or within any extension of that period to which the parties may agree, VTA may:

- Terminate the Work covered by the Order as set forth in this section.
- Cancel the Suspension Order; or
- Allow the period of the Suspension Order to expire.

Contractor shall resume work upon the cancellation or expiration of a Suspension Order. An equitable adjustment shall be made in the Work scope, Contract Price, or Contract time, as appropriate, and the Contract shall be modified in writing in accordance with this section and **Section 7.32 Excusable Delays and Extensions of Time** if:

- The Suspension Order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this Contract; and
- Contractor asserts a claim for an adjustment within thirty (30) days after the end of the period of work stoppage; and
- The Suspension Order was not caused by Contractor's default or other act or omission within the control or responsibility of Contractor.

In preparation for and during suspensions of work, Contractor shall take every reasonable precaution to prevent damage to or deterioration of the Work. Contractor shall repair or replace, at no cost to VTA, Work that is damaged or deteriorated during a work suspension due to Contractor's failure to comply with this duty. If VTA determines that Contractor is not taking reasonable precautions and Contractor fails

to take the corrective action within five days after written notice from VTA, VTA may cause such action to be taken and recover the reasonable cost thereof from Contractor.

7.70. Termination for Convenience or in the Public Interest

VTA may terminate the performance of Work in whole or in part at any time by written notice to Contractor if VTA determines that termination is in the best interest of VTA or the public. If performance of Work is so terminated, Contractor shall be entitled to payment for all Work performed acceptably and to payment for all acceptable goods or services ordered by and delivered to Contractor before termination, provided that Contractor provides a final itemized invoice, including all necessary documentation to substantiate all costs incurred, for the above amounts within thirty (30) days after receiving the termination notice.

7.71. Termination for Default

7.71.1. Events or Conditions

Contractor is in default under the Contract upon the occurrence of any one or more of the following events or conditions:

- (a) Contractor does not promptly begin the Work under the Contract Documents; or
- (b) Contractor does not perform the Work in accordance with the Contract Documents, including:
 - (i) conforming to applicable standards set forth therein in designing and/or constructing the Project, (ii) providing schedules or other documentation required by the Contract Documents, or (iii) refuses to remove and replace rejected materials or unacceptable Work; or
- (c) Contractor discontinues the prosecution of the Work (exclusive of work stoppage due to termination or suspension of the Work by VTA), does not prosecute the Work within the schedule, or prosecutes the Work so as to endanger the performance of this Contract in accordance with its terms; or
- (d) Contractor does not resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from VTA to do so or (if applicable) after cessation of the event preventing performance; or
- (e) Contractor becomes insolvent, or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts or makes an assignment for the benefit of creditors; or
- (f) Insolvency, receivership, reorganization or bankruptcy proceedings are commenced by or against Contractor; or
- (g) Any representation or warranty made by Contractor in the Contract Documents or any certificate, schedule, instrument or other document delivered by Contractor pursuant to the Contract Documents is false or materially misleading when made; or
- (h) Contractor breaches any agreement, representation or warranty contained in the Contract Documents; or
- (i) Contractor assigns or transfers the Contract Documents or any right or interest herein, except as expressly permitted by the Contract Documents; or

- (j) Contractor does not discharge or obtain a stay of any final judgment(s) or order for the payment of money against it in excess of \$25,000 in the aggregate arising out of the prosecution of the Work (provided that for purposes hereof posting of a bond in the amount of 125 percent of such judgment or order shall be deemed an effective stay); or
- (k) Contractor does not, absent a valid dispute, make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable law; or
- (l) Contractor fails reasonably to comply with any instructions of VTA consistent with the Contract Documents; or
- (m) Contractor violates any laws, regulations and ordinances, or order of any government entity applicable to Contractor, the Work, or the Contract; or
- (n) Contractor does not provide and maintain the Performance and Payment Bonds and insurance as required hereunder; or
- (o) Contractor or one of its subcontractors causes, through its negligence, gross negligence, recklessness, or willful misconduct, death or grievous bodily injury to any person or property damage in excess of \$25,000; or
- (p) Contractor does not defend or indemnify any party that Contractor is obligated to defend or indemnify under the Contract Documents; or
- (q) Contractor offers or gives any improper consideration, in any form, either directly or through an intermediary, to any VTA director, officer, employee, contractor, or authorized representative, with the intent of securing the Contract or the making of any determination with respect to Contractor's performance of the Work; or
- (r) Contractor is placed on the California State Labor Commissioner's list of debarred contractors pursuant to **Labor Code §1771.1 or §1771.7**; or
- (s) Contractor or any of its directors, members, officers, partners, principals, employees, or any Contractor's representative is convicted for a violation of any Law related to Contractor's obligations under the Contract, including without limitation, in connection with the Work, goods supplied, payments to be made, or Claims submitted

7.71.2. Notice and Procedures

Contractor and its Surety (as defined in the Performance Bond for Public Works required by this Contract (Performance Bond)) are entitled to seven (7) days' notice and opportunity to cure any breach described in **Sections 7.71.1 (a) through (d) and (i) through (l), and any non-material breach described in Sections 7.71.1 (h) or (m)**. Contractor and its Surety are entitled to three (3) days' notice and opportunity to cure any breach described **Sections 7.71.1 (n) and (p)**. Except as specified above, Contractor and its Surety have no right to notice or opportunity to cure with respect to any breach described in **Sections 7.71.1 (e), (f), (g), (h) (m), (o), or (q) through (s)**. If Contractor is unable to cure the applicable default within the time period specified, but in VTA's reasonable determination (i) Contractor has diligently and continuously undertaken efforts to cure such default, and (ii) such failure to cure is beyond the control of Contractor, VTA may extend the cure period in accordance with its discretion.

If any breach described in **Sections 7.71.1 (a) through (s)** is not subject to cure or is not cured within the period (if any) specified, VTA may declare that an "Event of Default" has occurred and notify Contractor

to discontinue the Work. The declaration of an Event of Default must be in writing and given to Contractor and Surety. In addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the Contract and the Performance Bond, VTA may assume any of Contractor's subcontracts, appropriate any or all materials and equipment on the Worksite and any or all work product, including plans and specifications, as may be suitable and acceptable, and may direct the Surety to complete the Contract or may enter into an agreement for the completion of the Contract according to the terms and provisions hereof with another contractor or the Surety, or use such other methods as may be required for the completion of the Contract, including completion of the Work by VTA. Upon completion of such work, Contractor is entitled to return of all unused materials and its equipment, tools and appliances, except that there shall be no claim on account of usual and ordinary depreciation, loss, or wear and tear.

If Contractor's right to proceed is so terminated, Contractor shall not be entitled to receive any further payment until the Work is completed. Contractor and its surety(s) shall be liable to VTA for any additional costs of completion of the Work, including compensation for additional managerial and administrative services, plus liquidated damages accruing under the terms of this Contract from the Contract completion date, as extended by authorized time extensions, to the date of final completion.

If, after termination for failure to fulfill contract obligations, it is determined that Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of VTA.

7.72. Contractor's Duties Upon Termination

Immediately after receipt of a notice of termination, either for default or convenience (Notice of Termination), Contractor shall:

- Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
- Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
- Assign to VTA in a manner, at the times, and to the extent directed by VTA, all of the right, title, and interest of Contractor under the orders and subcontracts as designated by VTA;
- Terminate all other orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination; and
- Assign to VTA in a manner, at the times, and to the extent directed by VTA, all of the remaining right, title, and interest of Contractor under the orders and subcontracts so terminated.

WARRANTY PROVISIONS

7.73. Warranty

It is a condition of this Contract that the equipment, materials or design furnished, and workmanship performed by Contractor or any subcontractor or supplier at any tier, shall conform to the requirements of this Contract and shall be free of any defect. Neither inspection, testing and acceptance by VTA of such equipment, materials, design or work performed, partial or final payment, nor any provisions of the Contract relieves Contractor from responsibility for any latent defect, gross mistakes or fraud. Contractor and its surety(s) warrant all equipment, materials, design and workmanship for a period of one (1) year

from the date of final acceptance by VTA of all, or, in VTA's sole discretion, a discrete portion of the Work. Contractor shall extend to VTA any warranty from a subcontractor or supplier that exceeds the above warranty period. If additional or varying guarantees are required, they will be specified in **Section 6 Special Conditions** of this contract. VTA retains the right, at its sole discretion, to assign to a third Party any warranty received under this Contract.

7.74. Warranty Work

Contractor is responsible for all warranty-covered repair work during the warranty period as specified above. Contractor shall provide at its own expense all spare parts and tools required for repairs. To the extent practicable, VTA will allow Contractor or its Authorized Representative to perform such work. When warranty repairs are required, VTA and Contractor's Authorized Representative must confer on the most appropriate remedy to be performed within a reasonable time. If Contractor fails to remedy any failure or defect within a reasonable time, VTA shall have the right to replace, repair, or otherwise remedy the failure or defect at Contractor's expense. At its discretion, VTA may also perform such work if it deems necessary to do so to meet its operational commitments or other requirements. Contractor shall reimburse VTA for all expenses for such work including materials and labor. The hourly shop labor rates shall be based on VTA's current labor cost accounting system. Contractor shall reimburse VTA for such work within sixty (60) days of receipt of warranty claim.

7.75. Warranty on Repaired or Replaced Parts

Contractor warrants any materials, parts or components which are used for replacement under the initial warranty period again for the total original warranty period of the replaced particular material, part or component.

7.76. Systematic Failures

In the event that, during the warranty period, repairs or modifications necessitated by defective design, material, or workmanship occur to an extent in excess of ten percent (10%) of the components used for the same function in the same assembly or subsystem purchased under this Contract, Contractor shall promptly furnish all necessary labor and material to effect such repairs and modifications for every system delivered under the Contract under the terms and conditions outlined, including systems in which the item has not yet failed. When requested by VTA, Contractor will be required to provide a written failure analysis report for defective products supplied under this Contract and which occurred during the warranty period. The report shall be received by VTA within forty-five (45) days from the date of request.

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SECTION 8 TECHNICAL SPECIFICATIONS

The Technical Specifications are provided in Volume 2.

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SECTION 9 CONTRACT DRAWINGS / PLANS

The Contract Drawings/Plans are provided in Volume 3.

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SECTION 10 INFORMATION HANDOUTS

Contractor must familiarize itself with the information set forth in this **Section 10 Information Handouts**.

Information Handouts are provided in Volume 4.

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APPENDICES

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APPENDIX A INSURANCE REQUIREMENTS

Without limiting Contractor's indemnification of VTA, Contractor shall 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 by Contractor, its agents, representatives, or employees. The cost of such insurance shall be included in Contractor's Bid.

Certificates of Insurance

Contractor shall 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. Contractor shall instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to the designated VTA Contract Administrator and email a copy to Insurance.Certificates@vta.org.

The certificates will:

1. identify the underwriters, the types of insurance, the insurance limits, the deductibles and the policy term;
2. include copies of all the actual policy endorsements required herein; and
3. in the "Certificate Holder" box include:

**Santa Clara Valley Transportation Authority
3331 North First Street
San José, CA 95134-1906
Contract No. C19222**

In the Description of Operations/Locations/Vehicles/Special Items Box:

1. Certificate Holder shall be named as Additional Insured;
2. VTA contract number shall appear;
3. The list of policies scheduled as underlying on the Umbrella policy shall be listed; and
4. 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 the Contract is executed. At any time, VTA reserves the rights to receive within three working days of request, complete, certified copies of all insurance policies.

If Contractor receives any notice that any of the insurance policies required by this Appendix A Insurance Requirements may be cancelled or coverage reduced for any reason whatsoever, Contractor or insurer shall immediately provide written notice to the designated VTA Contract Administrator that such insurance policy required by this Appendix A Insurance Requirements is canceled or coverage is reduced.

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 Contractor to suspend work at Contractor's expense until a new policy of insurance is in effect.

Renewal of Insurance

Contractor will provide VTA with a current Certificate of Insurance and endorsements within ten (10) business days from the expiration of insurance.

Contractor shall instruct its insurance broker/agent to:

1. Submit all renewals of insurance certificates and required notices electronically in PDF format to:

Insurance.Certificates@vta.org

2. Provide the following information in the "Certificate Holder" box:

Santa Clara Valley Transportation Authority
3331 North First Street
San José, CA 95134-1906
Contract No. C19222

INSURANCE

Without limiting Contractor's indemnification of VTA, Contractor must procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by Contractor, its agents, representatives, or employees. The cost of such insurance must be included in Contractor's Bid/Proposal.

A. Liability and Workers' Compensation Insurance

1. Minimum Scope of Coverage

Coverage must be at least as broad as:

- a. General Liability coverage; Insurance Services Office "occurrence" form CG 0001. General Liability insurance written on a "claims made" basis is not acceptable.
- b. 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. Contractor's Pollution Liability: covering liability arising out of the treatment, handling, storage, transportation, or accidental release of any hazardous material.

2. Minimum Limits of Insurance

- a. Contractor must maintain limits no less than:
 1. General Liability (including umbrella/excess liability): \$10,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If General Liability Insurance 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.

2. Automobile Liability (including umbrella/excess liability): \$10,000,000 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.
 3. Workers' Compensation and Employers Liability: Statutory Workers' Compensation limits and Employers Liability limits of \$1,000,000 per accident.
 4. Contractor's Pollution Liability: \$3,000,000 per occurrence.
- b. Notwithstanding any language in this Contract to the contrary, if Contractor carries insurance limits exceeding the minima stated in Section 2(a)(1)-(4) immediately above, such greater limits will apply to this Contract.

3. Self-Insured Retention

Any self-insured retention or deductible in excess of \$50,000 (\$100,000 if Contractor is a publicly-traded company) must be declared to and approved by VTA. If Contractor is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention or deductible in excess of \$50,000, Contractor must provide a current financial statement documenting the ability to pay claims falling within the self-insured retention. At the option of VTA, either: the insurer must reduce or eliminate such self-insured retention as respects VTA, the State of California, Caltrans, the City of Cupertino, the City of Los Altos, the County of Santa Clara Roads and Airports Department, their directors, officers, officials, employees and volunteers; or Contractor must procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

B. Builder's Risk Insurance

Contractor must be responsible for all loss or damage, howsoever caused, to the Work and materials, until final acceptance by VTA.

Contractor must procure and maintain at its own expense Builder's Risk insurance including but not limited to:

- Builder's Risk,
- Course of Construction,

- Installation Floater or
- Similar first-party property insurance covering the interest of the Contractor and VTA) as follows:
 1. Coverage must be provided on an “all-risk” basis. Coverage does not need to include the perils of Earthquake and/or Flood.
 2. Coverage must apply to all Work and materials under this Contract, whether in process or manufacture or finished, including off-site storage, “in transit” coverage to the final agreed upon destination of delivery, and including loading and unloading operations, and such coverage must be in force until the Work and materials are accepted by VTA.
 3. Coverage must be in an amount no less than the full replacement value of the finished Work and materials with no periodic reporting requirements.
 4. The deductible may not exceed \$50,000 per occurrence and must be borne by the Contractor.
 5. Loss, if any, must be adjustable with and payable to VTA as trustee for all entities having an insurable interest.

C. Claims Made Provisions

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

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

D. Other Provisions

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

1. General Liability and Automobile Liability

- a. VTA, the State of California, Caltrans, the City of Cupertino, the City of Los Altos, the County of Santa Clara Roads and Airports Department, their directors, 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, the State of California, Caltrans, the City of Cupertino, the City of Los Altos, the County of Santa Clara Roads and Airports Department, their directors, officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.

- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, the State of California, its directors, officers, officials, employees, or volunteers.
- c. Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. The General Liability General Aggregate limit must apply per project, not per policy.
- e. The General Liability policy must be endorsed to remove the exclusion for railroad liabilities, with coverage at least as broad as afforded by ISO CG 24 17.

2. All Coverages

- a. The insurer must agree to waive all rights of subrogation against VTA, the State of California, Caltrans, the City of Cupertino, the City of Los Altos, the County of Santa Clara Roads and Airports Department, their directors, officers, officials, employees, and volunteers for losses arising from work performed by Contractor and its subcontractors for VTA.
- b. Contractor's insurance coverage must be primary insurance as respects VTA, the State of California, Caltrans, the City of Cupertino, the City of Los Altos, the County of Santa Clara Roads and Airports Department, their directors, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by VTA, the State of California, Caltrans, the City of Cupertino, the City of Los Altos, the County of Santa Clara Roads and Airports Department, their directors, officers, officials, employees, or volunteers must be excess of Contractor's insurance and may not contribute with it.

3. Other Insurance Provisions

- a. For all lines of coverage, the Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.
- b. If any coverage forms or endorsements required by this Contract are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services Office, or the American Association of Insurance Services, during the duration of this Contract, VTA reserves the right to require the Contractor to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

E. Acceptability of Insurers

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

OTHER INSURANCE REQUIREMENTS

In addition to the insurance requirements set forth above, Contactor must also satisfy the following insurance requirements:

Contractor must procure insurance, maintain insurance, and name Caltrans, the City of Cupertino, the City of Los Altos, and the County of Santa Clara Roads and Airports Department as additional insured, all in the same manner and to the same extent conforming to the provisions in Section 7-1.06 "Insurance" of the Caltrans Standard Specifications, for the protection of the State of California, which are incorporated herein by this reference.

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APPENDIX B CONTRACT DATA REQUIREMENTS

Table B-1 represents only a partial listing of submittal requirements. The table is a reminder to Contractor of his responsibility to submit submittals in a timely manner.

Table B-2 Technical Submittals List follows Table B-1. The Technical Submittal List is intended to summarize the requirements for submittals as specified in the Contract Documents

Other submittals shall be required in accordance with the Technical Specifications. If conflicts exist between the lists and the referenced paragraph, the referenced paragraph will take precedence. Refer to Contract Section 6.6 for additional information and requirements for contract data submittals and technical submittals.

Table B-1 Contract Data List

	Description	Reference Section	Due Date/Frequency
50001	Construction Agreement	Section 5	Within 6 working days following Notice of Award
50002	Performance Bond	6.3.2	“
50003	Payment Bond	6.3.1	“
50004	Certificate of Insurance	6.2	“
50005	Listing of Subcontractors, Suppliers and Subconsultants	Section 4	“
50006	IRS Form W-9	2.4	“
50007	FTB Form 587 or 590	2.4	“
50008	Material Suppliers List, including Subcontractors.	—	Within 10 working days following Notice of Award and Identification
50009	Personnel to sign Change Orders	7.24	“
50010	Emergency Contacts	7.24	“

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	Description	Reference Section	Due Date/Frequency
50011	EEO Officer-Contractor and all subcontractors.	Appendix C	“
50012	Safety Officer – Name and title.	6.14	“
50013	Prevailing Wages List	7.8	“
50014	Executed Subcontracts	7.18	Within 30 days following Notice of Award
50015	Certified Payrolls	7.58	Weekly
50016	Monthly MWBE/SBE/DBE Utilization Reports	Appendix C	Monthly
50017	Final MWBE/SBE/DBE Utilization Report	Appendix C	Prior to Final Payment

For technical documents, refer to Technical Submittals List below.

Table B-2 Technical Submittals List

	Item	Reference	Due Date/Frequency	Comments
51001	Caltrans Encroachment Permit Application (to Caltrans)	6.7	Within 10 days of Notice of Award	1 hard & 1 e-copy
51002	Schedule of VTA Furnished Materials	6.9	Within 20 working days after Notice to Proceed	1 hard & 1 e-copy
51003	Site Specific Safety Plan	6.14	Within 20 days following Notice of Award	1 hard & 1 e-copy
51004	Material Safety Data Sheets (MSDS)	6.14	Within 20 days following Notice of Award	1 hard & 1 e-copy

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	Item	Reference	Due Date/ Frequency	Comments
51005	Illness & Injury Prevention Plan	6.14	Within 6 working days following Notice of Award	1 hard & 1 e-copy
51006	Emergency Action Plan	6.14	Within 10 days following Notice of Award	1 hard & 1 e-copy
51007	Copies of all accident investigations	6.14	Within 5 days following accident	1 hard & 1 e-copy
51008	Copies of Job Hazard Analysis	6.14	No later than 5 days prior to operation being performed	1 hard & 1 e-copy
51009	List of First-Aid / CPR trained employees and proof of training	6.14	Within 10 days following Notice of Award	1 hard & 1 e-copy
51010	Lead Compliance Plan	6.14	At least 15 days prior to beginning any work in areas containing Aerially Deposited Lead	1 hard & 1 e-copy
51011	Punch List Items	6.18	Before Final Acceptance	1 hard & 1 e-copy
51012	Baseline CPM Schedule	6.21	Within 20 days of First Charge Day	3 hard & 1 e-interactive copy
51013	Monthly CPM Schedule Update and Update Report	6.21	Within 5 days of the beginning of the month	3 hard & 1 e-interactive copy

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	Item	Reference	Due Date/ Frequency	Comments
51014	3 Week Look Ahead Progress Schedule	6.21	At every progress meeting	3 hard & 1 e-interactive copy
51015	Operations and Maintenance (O&M) Manuals	6.21	Before Final Acceptance	Copies As Specified
51016	Quality Assurance Plan	6.26	Within 20 days following Notice of Award	1 hard & 1 e-copy
51017	Source of Supply of Materials	6.44	At least 30 days before placing material	1 hard & 1 e-copy
51018	Construction Staking	6.45	Not less than 2 working days in advance of work operation	1 hard & 1 e-copy
51019	Submittal of all Field Notes & Cut Sheets	6.45	No later than 24 hours following completion of field survey staking and 48 hours prior to use	1 hard & 1 e-copy
51020	Request for Information (RFIs)	7.25	Within 5 days before required response	1 hard & 1 e-copy
51021	Request for Substitute	7.41	35 days from Notice of Award	1 hard & 1 e-copy
51022	Product Data Sheets	7.43	Within 20 days following Notice of Award	1 hard & 1 e-copy
51023	Redlined Construction Drawings	7.54	Before Final Acceptance	3 hard & 1 e-copy

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	Item	Reference	Due Date/ Frequency	Comments
51024	Schedule of Values	7.59	Within 10 days following Notice of Award	1 hard & 1 e-copy
51025	Warranties	6.44, 7.73	Before Final Acceptance	As Specified
51026	Plans and Shop and Working Drawings Submittal	6.6, 6.20, 6.21, and 7.43	Varies, 7-14 days	6 hard & 1 e-copy
51027	SWPPP (Storm Water Pollution Prevention Plan)	Appendix G	Within 5 days following Notice of Award	1 hard & 1 e-copy
51028	Notification of work in vicinity of Environmentally Sensitive Areas (ESA)	Appendix G	At least 15 working days in advance of Earthwork in vicinity of ESA	1 hard & 1 e-copy
51029	Material Plan for material not from commercial source	TS-6	At least 60 days before placing material	1 hard & 1 e-copy
51030	Analytical test results for material not from commercial source	TS-6	At least 15 days before placing material	1 hard & 1 e-copy
51031	Environmental product declaration	TS-6	Register on Caltrans Data Interchange for Materials Engineering at least 15 days before submitting	1 hard & 1 e-copy
51032	Welding Report Submittal	Section 11 (Standard Specifications)	Within 7 days following the performance of any welding	As Specified

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	Item	Reference	Due Date/ Frequency	Comments
51033	Written Schedule of Planned Closures	Section 12 (Standard Specifications)	Each Monday by noon for the following week's closures	1 hard & 1 e-copy
51034	Amendment to the Closure Schedule	Section 12 (Standard Specifications)	At least 5 working days in advance of a planned closure	1 hard & 1 e-copy
51035	Temporary Dewatering and Non-Storm Water Discharge Control System Plan	Section 13 (Standard Specifications)	At least 15 days before discharge activities	3 hard & 1 e-copy
51036	Inspection Reports to Resident Engineer	TS-14	Weekly	1 hard & 1 e-copy
51037	Excavation and Transportation Plan for Regulated Material	TS-14	Within 15 days of Notice of Award	3 hard & 1 e-copy
51038	Documentation from receiving disposal facility confirming appropriate disposal	TS-14	Within 5 days of transporting material	1 hard & 1 e-copy
51039	HMA Job Mix Formula	Section 39 (Standard Specifications)	At least 15 days prior to production of the Asphalt Concrete Mixture	6 hard & 1 e-copy
51040	Mix design for minor concrete for vegetation control	TS-83	At least 10 days prior to production of concrete	1 hard & 1 e-copy

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APPENDIX C
BUSINESS DIVERSITY POLICY AND REQUIREMENTS
(Ref SBE Goal)

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1.1 Policy

It is the policy of Santa Clara Valley Transportation Authority (VTA) to ensure that Small Business Enterprises (SBE) as defined in federal regulations at 13 CFR Part 121 have the opportunity to participate in the performance of contracts and subcontracts financed with local funds.

Any certified DBE is eligible to participate as a SBE toward the SBE participation goal.

VTA’s Office of Business Diversity Program encourages Contractors to call (408) 321-5962 for assistance in identifying eligible SBE firms. Listings of eligible firms are also available on the following website:

<http://www.vta.org/About-Us/Inside-VTA/Small-Business-Enterprise-Program>

1.2 SBE Participation Goal

A SBE participation goal has been established as stated in the Invitation for Bid and the Bid Forms for this Contract.

1.3 Counting SBE Participation toward the Goal

SBE firms may perform as prime contractors, subcontractors to a prime (1st tier), or subcontractor to subcontractor (2nd tier). Only the value of the work actually performed by the SBE, including materials and supplies, will be counted toward the SBE participation goal.

A SBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work. If a SBE does not perform or exercise responsibility of at least 30% of the total cost of its contract with its own work force, or if the SBE subcontracts a greater portion of work of a contract than would be expected on the basis of normal industry practice, then it will be presumed that the SBE is not performing a commercially useful function.

Credit for a SBE vendor of materials or supplies is limited to 60% of the amount to be paid to the vendor for the materials or supplies unless the vendor manufactures or substantially alters the goods. Credit for SBE brokers is limited to only the fees and commissions portion of the amount paid. All other firms receive 100% credit, less work subcontracted by the SBE to non-SBE firms, toward the SBE goal.

Credit for SBE trucking firms is limited to the amount performed by the SBE's own trucks and drivers and by certified SBE trucking subhaulers. A SBE trucking firm must itself own and operate at least one fully licensed, insured and operational truck used on the contract.

In a joint venture, only the portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the Work of the Contract that the SBE performs with its own forces will be counted toward the SBE goal.

Bidders are encouraged to utilize services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in VTA's community and marketplace.

1.4 Certification

1.4.1 Firms Certified

All SBE firms listed on the Bid Forms must be certified by at the time of Bid to be counted toward the SBE participation goal. Contractor shall utilize the following sources for identifying certified SBE firms for solicitation: California Unified Certification Program (CUCP) database; California Department of General Services Small Business database; VTA SBE database.

1.4.2 Expired Certification

During the life of a contract, work performed by SBE firms whose certification has expired will not continue to be counted toward the SBE participation goal. Only work performed by a certified SBE firm will be counted toward the SBE participation goal when the SBE firm has been paid.

1.5 Bid Submittals

1.5.1 Bid Form 4

Bid Form 4 lists SBE Bidder plus the subcontractor(s) or supplier(s) Bidder intends to use and count toward the SBE participation goal, with a complete description of services or supplies to be provided by each, work which the SBE further subcontracts to non-SBE firms, and the dollar value of each such subcontracting or supplies transaction. Instructions for completing the form are provided on the form.

1.5.2 Bid Form 5

Bid Form 5 is Supplemental Contractor and Subcontractor information. Instructions for completing the form are provided on the form.

1.5.3 Good Faith Effort

A Bidder not achieving the SBE participation goal must submit a report documenting that it made sufficient efforts to meet the SBE participation goal. Documentation of Good Faith Effort must be provided in accordance with **Appendix C Section 1.8 Good Faith Efforts**.

1.6 Award of the Contract

VTA will award this Contract to the lowest responsible and responsive bidder as required by federal and California laws and VTA SBE policy.

Following the bid opening and submittal of all documentation, VTA will evaluate all bids and required information submitted by bidders to formulate a recommendation for award of the Contract. The bidder with the lowest bid price who also meets the specified SBE participation goal or demonstrates that sufficient good faith efforts, for those contracts with a specific goal vs. non-specific goal (NSG), were made to meet the specified SBE participation goal will be deemed the lowest responsible and responsive bidder.

1.7 Compliance

VTA will advise Bidder of its compliance with the contract SBE participation goal or with the good faith efforts documentation requirements.

1.8 Good Faith Efforts

1.8.1 General

To determine whether a Bidder that has failed to meet the SBE participation goal may be awarded the Contract, VTA will decide whether the Bidder made adequate “good faith efforts”, where applicable, to meet the goal.

“Good faith efforts” means all necessary and reasonable steps to achieve the SBE participation goal which by their scope, intensity and appropriateness, could reasonably be expected to fulfill the goal. Only those efforts made prior to Bid Opening will be considered in evaluating good faith efforts. Mere *pro forma* efforts are not sufficient good faith efforts to meet the SBE contract requirements.

Bidders are expected to be directly responsible for performing the good faith efforts requirements of this Contract. Bidder’s use of third parties to support its good faith efforts is at Bidder’s own risk and does not relieve the Bidder from being responsible for meeting the good faith efforts requirements.

VTA may request ancillary or omitted documentation required to complete Bidder's good faith efforts submittal.

1.8.2 Good Faith Criteria

The criteria listed below are reflective of good faith efforts undertaken by a Bidder actively and aggressively seeking to meet the goal:

- (a) **Pre-Bid Meeting.** Bidder attended any pre-solicitation or pre-Bid meetings that were scheduled by VTA to inform Bidders of the Small Business Enterprise Program requirements for this Contract. VTA may waive this requirement if it determines from the documentation submitted that Bidder is informed as to those program requirements.
- (b) **Identification of SBE Participation Opportunities.** Bidder identified and selected specific items of the Work to be performed by SBE firms to provide genuine opportunities for participation by SBE firms. Bidder shall provide documentation showing the items that were identified and selected and shall describe how such items were utilized by Bidder to solicit SBE participation. Where appropriate, Bidder should be able to show that Bidder broke out Contract work to facilitate SBE participation, even when Bidder preferred to perform this portions of the Work with its own forces.
- (c) **Advertisements.** At least ten calendar days¹ before the Bid Opening, Bidder solicited sub-bids from SBE firms for specified categories of work or materials or supplies for the contract through advertisements (not simply the listing of planholders) placed in two or more of the following media, one of which shall be from each of the following two categories:

Category I

Daily Pacific Builder
300 American Metro Blvd., Suite 185
Hamilton, NJ 08619
(888) 814-0513

OR

Daily Construction Service
P. O. Box 1748
Glen Ellen, CA 95442
Email: vicki.darmiento@cmdgroup.com
(800) 242- 9747

Category II

Small Business Exchange
795 Folsom Street, First Floor
San Francisco, CA 94107
(415) 778-6250

- (d) **Written Notice.** At least ten calendar days before the Bid Opening, Bidder provided written notice to a sufficient number of SBE certified firms in each subcontracting work category, and

¹ The time of requirements for advertising [Section 7.1c)] and written notice [Section 7.1d)] shall apply only those contracts for which VTA has issued public notice of the contract at least 15 calendar days prior to bid opening.

to such firms in each category of materials or supplies for the project. Written notice to a minimum of ten (10) firms shall constitute a sufficient number of firms to be notified if the approved databases contain at least 10 firms for that category.

Written notice shall be sent first to “local firms”, then, where none are available or remain, to out-of-area firms. “Local” shall mean Santa Clara County and its contiguous counties, as well as Sacramento and San Joaquin Counties.

- (e) **Follow-up of Initial Solicitations.** Bidder followed up initial solicitations of interest by contacting the SBE firms to determine with certainty whether the firms were interested in bidding on the project. Such follow-up activity shall be documented with telephone and or fax logs or other written documentation that shall be submitted to VTA and that shall set forth, at a minimum, the following information:
- The type of contact; i.e., telephone, meeting, letter, fax, or e-mail;
 - The name of the SBE firm contacted;
 - The date and time the SBE firm was contacted;
 - The full name, title, telephone or fax number, and e-mail address of the person at the SBE firm contacted by Bidder;
 - The responses of each of the SBE firms contacted with regard to its interest in submitting a sub-bid; and
 - For each SBE firm contacted that declined to bid, the reason(s) provided by the SBE firm for declining to bid.
- (f) **Information Regarding Plans, Specifications, and Requirements.** Bidder provided interested SBE firms with information about the plans, specifications and requirements for selected subcontracting or materials or supplies work. Bidder shall describe the information provided to interested firms, report the name of the firms involved, and set forth the date and method of providing such information.
- (g) **Request for Assistance in the Recruitment of SBE Firms.** Bidder requested assistance from federal, state, and local agencies for lists of SBE firms, as accepted or approved by VTA, on a case-by-case basis. Bidder is responsible for receiving approval from VTA prior to listing SBE firms of other agencies not certified or approved by VTA. Bidder shall state the agencies contacted, names of persons contacted, date and method of contact and results of contacts.
- (h) **Good-Faith Evaluation of and Negotiation with Interested SBE Firms.** Bidder evaluated the proposals of and negotiated in good faith with interested SBE firms, and did not unjustifiably reject SBE firm(s) as unsatisfactory or unqualified without sound reasons based on a thorough assessment of the capabilities of the firm(s) in question. Bidder shall list all SBE responses to the solicitation, and all SBE sub-bids which were received but not used. **NOTE: If no SBE bids are received, this fact must be stated.** Bidder shall provide, at a minimum, the following information:
- The names, addresses and telephone and fax numbers of SBE firms, including full name and title of the contact person at the SBE firm who responded to the solicitation or submitted sub-bids;
 - A summary of the discussions and negotiations between Bidder and each such firm;
 - If a bid is rejected by Bidder, the reasons for the rejection;

- A copy of all rejected SBE sub-bids, along with copies of all bids received by non-SBE firms for the same or similar scope of work. If the rejected SBE sub-bids or the other bids received are not in writing, Bidder shall set forth the amount of each such sub-bid or other bid, together with a description of the work bid upon for each; and
- If Bidder rejected a SBE as unqualified, a description of the assessment conducted by Bidder prior to reaching such conclusion.

The ability of or desire of a prime Contractor to perform the Work with its own firm does not relieve the Bidder of the responsibility to make sufficient good faith efforts. Prime Contractors are not required to accept higher quotes from SBE firms if the price difference is excessive or unreasonable when compared to industry standards.

(i) **Advice and Assistance to Interested SBE Firms.** Bidder advised and made efforts to assist those SBE firms requesting help in obtaining bonds, lines of credit or insurance required by VTA or Bidder. Assistance may include, but is not limited to:

- Contacting bonding and/or insurance companies on behalf of a SBE firm;
- Arranging with sureties phased or incremental bonding for the SBE firm;
- Waiving bonds or insurance requirements;
- Referring SBE firms to resource agencies which may assist SBE firms to obtain bonding, insurance or lines of credit, such as the Small Business Administration (SBA); or
- Making efforts to assist interested SBE firms in obtaining necessary equipment, supplies, materials, or related assistance or services.

Bidder shall state whether any such advice or assistance was given and to whom, the dates of any such advice or assistance, and a description of the advice or assistance provided.

(j) **Efforts to Obtain SBE Firms Could Reasonably Be Expected to Meet Goals.** Bidder's efforts to obtain SBE firm participation could reasonably be expected by VTA to produce a level of participation sufficient to meet the goals and requirements of VTA. Bidder shall provide any additional data to support a demonstration of good faith efforts to produce the level of SBE participation sufficient to meet the goal for this Contract.

(k) **Performance of Other Bidders to be Taken into Account.** The performance of other Bidders in meeting the SBE participation goal may be taken into account by VTA. If, for example, the apparent low Bidder fails to meet the SBE participation goal but other Bidders meet the goal, this may be taken into consideration in considering whether the apparent low Bidder made good faith efforts to meet the goal.

1.8.3 Presumption

Satisfaction of the criteria above will create a rebuttable presumption that Bidder has made an adequate good faith effort to comply with the goal and requirements of VTA for SBE participation for this Contract.

1.8.4 Verification of Information

VTA may verify the accuracy or completeness of any or all of the documentation submitted by Bidder by directly contacting the listed SBE firms or through other means.

1.9 Commitment

The SBE Goal Achieved in the approved Bid Form 4 equates to a commitment from the Contractor. The Contractor must meet this commitment ("SBE Commitment") regardless of the participation goal stated during Contract advertisement.

1.10 Non-Discrimination

Contractor shall make VTA's contracting requirements known to subcontractors, vendors and suppliers who are certified or accepted as certifiable as a SBE firm, as well as to non-SBE firms, and shall provide a practical opportunity for all firms to participate in this Contract.

1.11 Substitution of SBE Subcontractors by non-SBE Contractor

1.11.1 Prior Written Consent

A SBE subcontractor or supplier shall not be replaced without the prior written consent of VTA.

1.11.2 Substitution Process

Contractor shall make good faith efforts to find another SBE subcontractor or supplier to substitute for the original SBE that is unwilling or unable to perform the Work. The efforts employed by the Contractor shall be those that one could reasonably expect a Contractor to take if the Contractor were actively and aggressively trying to engage a certified SBE firm to substitute for a SBE firm that has to be replaced and shall include the following:

- (a) Contractor shall immediately notify VTA in writing of its intent to replace a SBE firm, and of the reasons therefore, prior to any solicitation or advertisement for replacement firms. A copy of the notice shall be provided to the VTA Office of Business Diversity Program (OBDP).
- (b) VTA will provide written notice to the SBE firm of Contractor's request for substitution and of the reasons therefore and they will be requested to provide any written objections within five working days.
- (c) Contractor shall utilize the following sources for identifying certified SBE firms for solicitation: California SBE Uniform Certification Program database.
- (d) Contractor shall provide written notice to at least five firms in each work or material/supply category to be substituted. If Contractor provides written notice to less than five firms Contractor shall explain to OBDP in writing why the number of firms solicited was sufficient. Written notice shall be sent first to firms located in the County of Santa Clara and its contiguous counties as well as Sacramento and San Joaquin counties ("local firms") and then, where appropriate, to out-of-area SBE firms.
- (e) Contractor shall contact the SBE firms solicited to determine with certainty whether the firms are interested in bidding on the project. This follow-up shall be documented with telephone logs, fax logs or other written documentation and submitted to OBDP.
- (f) Contractor shall provide OBDP with the following information:
 - A list and copies of all SBE and non-SBE responses to the solicitation, including all bids received;
 - If a bid is rejected by Contractor, the reasons for the rejection;

- If Contractor rejected a SBE firm as unqualified, a description of the qualification assessment conducted by Contractor and the factors considered.

1.11.3 Penalty

A Contractor who fails to use good faith efforts to replace a SBE firm with another SBE firm may be subject to the imposition of a penalty of up to 15% of the value of the work of the subcontractor or supplier replaced.

1.12 Reports

1.12.1 Monthly SBE Utilization Report

Contractor must submit monthly SBE Utilization Reports electronically to the SBE Administrator, VTA Office of Business Diversity Program. These monthly report shall be submitted electronically and the Contractor will document the dollar value of payments to SBE firms, and the percentage of the Contract completed. VTA will monitor the Contract for compliance with SBE requirements.

This system is web-based, accessible from any computer via the internet at: <https://vta.sbdbe.com>.

Contractor and each subcontractor will receive an email providing them with Log On identification, and a temporary password and instructions on how to use the system. Classroom training will also be provided. Other assistance will be provided upon request.

Contractor will include this requirement in all of its subcontracts and purchase orders when required to provide or verify SBE utilization documentation.

If the SBE Utilization Reports indicate potential problems, such as a failure to meet the SBE Commitment, the Contractor shall meet with the appropriate VTA representative(s) to address any deficiencies and discuss appropriate corrective actions. When the Contract completion reaches 50% and the SBE utilization percentage participation goal completed is less than 50% of the SBE Commitment, a detailed report of the reasons why must be submitted to VTA stating a plan to reach the SBE Commitment by Contract completion.

1.12.2 Final SBE Utilization Report

Prior to final payment, Contractor will be required to submit a final SBE Utilization Report. In addition to payments to the SBEs, the final report must include payments to and other information about all other businesses, including non-SBE subcontractors, suppliers of materials, trucking firms, consultants and others.

1.12.3 Failure to Submit Reports

Failure by Contractor to submit required reports as described above may be considered grounds for a determination by VTA of non-responsibility in consideration of Contractor's eligibility to bid on or be awarded future work.

1.13 Change Orders, Extra Work and Allowances

Including all change or extra work and allowances, Contractor shall maintain the contractual SBE goal throughout the life of the Contract or make good faith efforts to meet the SBE participation goal.

1.14 Prompt Payment

Contractor must adhere to all Federal and California prompt payment laws and regulations. See also 7.61, Prompt Payment. If Contractor does not adhere to prompt payment requirements, penalties may apply.

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APPENDIX E

POLICY ON THE USE OF PERSONAL ELECTRONIC DEVICES

Refer to Contract Special Conditions Section 6.15.2 Use of Electronic Devices regarding compliance with the California Public Utilities Commission (CPUC) requirements, including the notice that the use of personal electronic devices is prohibited at all times when within 6 feet of the **Track Zone (an area within 6 feet of the closest rail on both sides of the track)**.

Refer to the attached VTA policy “Use of Personal Electronic Devices by Bus and Light Rail Employees and Contractor Staff”.

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POLICY USE OF PERSONAL ELECTRONIC DEVICES BY BUS AND LIGHT RAIL EMPLOYEES AND CONTRACTOR STAFF (AFSCME)	Document Number:	OPS-PL-0001(c)
	Version Number:	03
	Date:	04/10/2017

1.0 Purpose:

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

2.0 Scope:

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

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

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

3.0 Responsibilities:

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

4.0 Policy:

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



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POLICY USE OF PERSONAL ELECTRONIC DEVICES BY BUS AND LIGHT RAIL EMPLOYEES AND CONTRACTOR STAFF (AFSCME)	Document Number:	OPS-PL-0001(c)
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4.1 Restrictions and Storage:

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

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

All PEDs shall be Turned Off and Stowed Away while operating a bus or LRV, or while sitting in the Operator's Area, as defined in Section 5. The bag that the PED is stowed away in must conceal the device so that it is not visible without opening the bag. Employees acting in a management or supervisory role and who are not operating a bus or LRV, or otherwise functioning in an Operator capacity, may keep their cell phone on their persons while in the Operator's Area as long as it is on vibrate or silent. The supervisor must leave the Operator's Area before using the cell phone, with the exception of the Operator's Area on a bus where a bona fide emergency exists or the supervisor is on the bus for the purposes of training or testing. Supervisors who must operate a bus or LRV, or otherwise function in an Operator capacity, may stow their PED in the Operator pouch.

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

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

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



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engine, and clear the Operator’s Area. The PED must be Turned Off and Stowed Away prior to returning to the Operator’s Area or restarting the engine.

Use of cell phone communication is allowed to safely direct the movement of pushing a dead-car train only when no other means of communication is available and prior approval has been obtained from the Operations Control Center.

- 4.1.3 Personnel who are directing, flagging, or otherwise controlling the movement of rail transit vehicles, or performing any task while Fouling the Tracks may keep the PED in their possession and powered on but must proceed to a safe area outside the Safety Envelope (minimum 6 feet from the nearest light rail) to use their PED. Rail Controllers in the Operations Control Center must unplug and step away from their console before using their PED.

4.2 Discipline:

Failure to adhere to this Policy may constitute a serious safety violation. Violations of this policy will be considered a disciplinary action under Article 20 of the AFSCME Collective Bargaining Agreement (CBA). VTA employees who violate this policy will be subject to disciplinary action as listed below subject to the underlying circumstances and the individual employee. Talking on a PED, texting, playing video games or other violations that distract the Operator and pose the greatest risk will result in the highest levels of discipline.

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

(The discipline table is located on the next page).

**Discipline is mitigated if the employee is acting in a management or supervisory role and the violation occurred during an emergency.*



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	VIOLATION	1st Offense	2nd Offense	3rd Offense
4.2.1	Any violation of this policy where the employee is involved in an accident (preventable or non-preventable). <i>*Discipline issued for preventable accidents only.</i>	Termination <i>*10-15 days</i>	<i>*20 - 30 days</i>	<i>*Termination</i>
4.2.1(a)	<i>*If the accident results in a fatality and the employee was using a PED, then discipline will be issued whether the accident is preventable or non-preventable.</i>	<i>*20 days – Termination</i>	<i>*Termination</i>	
4.2.2	Use of PED while operating a bus, LRV, hi-rail vehicle or on-track equipment.	20 – 30 days <i>*5-10 days</i>	Termination <i>*10 - 15 days</i>	<i>*Termination</i>
4.2.3	Use of PED in the Operator’s Area, but not while operating a bus or LRV.	10 – 20 days	20 – 30 days	Termination
4.2.4	Use of PED while directing, flagging, acting as the EIC, or otherwise controlling the movement of rail transit vehicles, or performing any task while Fouling the Tracks.	10 – 20 days	20 – 30 days	Termination
4.2.5	Failure to Turn Off and properly Stow Away PED while operating a bus or LRV, or while in the Operator’s Area.	Up to 10 days <i>*Written Warning</i>	10 – 30 days <i>*Up to 5 days</i>	Termination <i>*10-30 days</i>

4.2.6 Any contractor staff violating this Policy will be removed from the job and will not be allowed to return to the project. The contractor may be made responsible for any fines levied on VTA for the violation. Repeat



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violations from the same contractor’s staff may result in the contract being cancelled.

5.0 Definitions:

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



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5.7 Stowed Away: Not on one's person; must be completely concealed, so that it is not visible, in a backpack or bag and out of reach.

5.8 Turned Off: The power is off.

6.0 Summary of Changes:

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

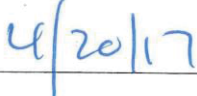
7.0 Approval Information:

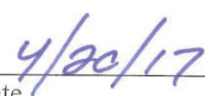
<i>Prepared by</i>	<i>Reviewed by</i>	<i>Approved by</i>
 George Sandoval Operations Manager	 Inez Evans Chief Operating Officer	 Nuria I. Fernández General Manager/CEO

Concurrence by American Federation of State County and Municipal Employees, Local 101:


 Tina Acree
 Business Agent, AFSCME


 Steve Jovel
 President, AFSCME


 Date


 Date

Date Approved: 04/20/2017



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APPENDIX G ENVIRONMENTAL COORDINATION AND COOPERATION

The following requirements of this Appendix G apply to this Project if the box next to the requirement is checked:

- 1.1 Tree Removal
- 1.2 Archaeological Sensitive Area
- 1.3 Archaeological/Historical Discoveries
- 1.4 Environmentally Sensitive Areas
- 1.5 Mitigation Measures
- 1.6 Migratory Nesting Birds
- 1.7 Sudden Oak Death
- 1.8 Storm Water Pollution Prevention Plan (SWPPP)
- 1.9 Erosion and Sedimentation Control Action Plan Element (ESCAPE)
- 1.10 Water Pollution Control Program (WPCP)
- 1.11 Construction Water Conservation

Attachments to this Appendix are included if the box next to the listed attachment is checked:

- Attachment G1 Sample regulatory agency permits *OR* Regulatory agency permits
- Attachment G2 ESCAPE Template

1.1 Tree Removal

1.1.1 Tree Removal Policy. During performance of Work under this Contract, Contractor shall adhere to the **tree removal policy of the jurisdiction within whose boundaries the Work takes place**. Trees which are required to be removed in order to construct the project will be shown on the plans and jointly marked in the field by VTA and Contractor, as trees to be removed. These will be the only trees whose removal by Contractor shall be permitted by the terms of the Contract and the costs therefore shall be deemed to be included in the appropriate pay items of the Contract. Trimming or removal of any trees not specifically designated on the plans shall only be allowed upon review, conditioning and approval by VTA.

1.1.2 Damaged or Injured Trees, Shrubs, and Plants. Existing trees, shrubs, and other plants, that are not to be removed and are injured or damaged by reason of Contractor's operations, shall be examined by a certified arborist to determine if the tree, shrub or plant will recover with treatment or must be removed and replaced. The arborist will be retained by VTA for consultation and any required treatment of the tree, shrub or plant, and will be paid for by Contractor. In the event that the arborist recommends removal and replacement, and no jurisdictional tree, shrub or plant replacement policy is applicable, Contractor shall replace in accordance with the following

- (a) The minimum size of the tree replacement for an 18 inch diameter or 52 inch circumference tree removed shall be four 24 inch box trees, and two 24 inch box trees for each tree removed between 12 and 18 inches in diameter. All other trees removed shall be replaced by one 15 gallon tree at a ratio of 1:1
- (b) The minimum size of shrub replacement shall be 15-gallon. Replacement ground cover plants shall be from flats and shall be planted 12 inches on center.

1.1.3 Replacement before Final Inspection. Replacement planting of injured or damaged trees, shrubs and other plants shall be completed prior to Final Inspection. Replacement plants shall be watered as necessary to maintain the plants in a healthy condition.

1.1.4 Disposal. Damaged or injured plants shall be removed and disposed of outside the Worksite in accordance with **contract requirements for Disposal of Materials**. At the option of VTA, removed trees and shrubs (except those which are diseased) may be reduced to chips. VTA may direct that such chipped material be spread within the Worksite at locations designated by VTA.

1.2 Archaeological Sensitive Area (NOT APPLICABLE)

1.3 Archaeological/Historical Discoveries

1.3.1 Should any archaeological or historical artifacts or skeletal material be discovered or unearthed during construction activities, all work within a minimum of 50 ft. of the find shall be halted immediately, and the exact area of work stoppage will subsequently be field determined and marked by VTA. Contractor, Subcontractor, Engineer or inspector as appropriate, shall immediately notify VTA, and VTA will initiate procedures in accordance with 36 CFR 800.11, California Public Resources Code Section 5097.98, and Santa Clara County Ordinance Code

Sections B6-16 through B6-23. Construction activities within the area marked by VTA shall remain halted until written authorization is obtained from VTA that construction in the vicinity of the find may resume.

1.3.2 In the event of work suspension pursuant to this section, Contractor shall, within 24 hours, notify VTA of the costs involved resulting from said work stoppage. Contractor shall maintain a log of each such stoppage of work, setting forth the date and time of notification of work stoppage, date and time of actual cessation of operations in the area, and date and time of commencement of operations and costs incurred herein. Contractor shall submit a claim for reimbursement of such costs within 72 hours thereof and shall notify VTA of the anticipated amount of claim within 24 hours of said work suspension. In the event of work suspension hereunder, Contractor shall exert all reasonable efforts to otherwise utilize labor and equipment affected by the suspension in other portions of the project.

1.4 Environmentally Sensitive Areas

1.4.1 Contractor's attention is directed to the designated Environmentally Sensitive Area(s) (ESAs), shown on the plans. The exact location of the boundaries of ESA(s) shall be established by VTA. Contractor shall place temporary high visibility fence (Type ESA) and temporary reinforced silt fence (Wildlife Exclusion Fencing) at the boundary of each ESA as shown on the plans and described in these special conditions, and as directed by VTA.

1.4.2 Contractor shall preserve and protect the ESA at all times and is prohibited from entering fenced ESA for any purpose.

1.4.3 Within the boundaries of the fenced ESA, no project related activities shall take place. This specifically prohibits vehicle access, storage, or transport of any materials, including hydrocarbon and lead contaminated materials or any other project related activities.

1.4.4 Contractor shall cooperate in permitting ESA monitoring operations during construction as directed by VTA.

1.4.5 Full compensation for work involved in complying with the requirements of this **Appendix G Section 1.4 Environmentally Sensitive Areas** shall be considered as included in the contract prices paid for the various items of work involved and no additional time or compensation will be allowed therefore.

1.5 Mitigation Measures

1.5.1 The approved environmental document for this project has identified mitigation measures that shall be implemented before, during, and after construction. Said approved environmental document is available for inspection at the Santa Clara Valley Transportation Authority, PCMM Office, 3331 N. First Street, Bldg. A, San José, CA 95134

1.5.2 Contractor shall comply with the environmental document and the following provisions as a requirement of the Contract:

(a) California Red-Legged Frog

Contractor shall provide VTA with written notice at least 15 days and no more than 30 days prior to any site preparation, grading or construction activity within approximately 100 ft. of the temporary reinforced silt fence (Wildlife Exclusion Fencing) shown on the plans to allow the VTA provided biologist to conduct a pre-construction survey for this species. No work, including placement of the Wildlife Exclusion Fencing, may begin until the pre-construction survey is completed.

If no California red-legged frogs are found during the focused surveys prior to construction, all vegetation within the clearing and grubbing limits in the work areas near the ESA shall be completely removed by Contractor, just prior to the initiation of construction in the area.

(b) Raptors

If possible, Contractor's construction activities, particularly tree and shrub removal, will be scheduled between September to January to avoid the nesting season for most bird species, including raptors.

Contractor shall provide VTA with written notice at least 15 days and no more than 30 days prior to any site preparation, grading or construction activity to allow the VTA provided biologist to conduct pre-construction surveys for nesting raptors, if in nesting bird season (February 1st to August 31st).

If an active nest is located during the breeding season, (February 1 to August 31), Contractor shall erect ESA fence to establish such a construction-free buffer zone 300 feet around the active nest, as directed by VTA. No activities, including grading or other construction, shall proceed in the ESA.

(c) San Francisco Dusky-Footed Woodrat

Contractor shall provide VTA with written notice at least 15 days and no more than 30 days prior to any site preparation, grading or construction in the vicinity of temporary high visibility fence (Type ESA) shown on the plans to allow the VTA provided biologist to conduct a pre-construction survey to locate any active woodrat nests. No work, including placement of the Wildlife Exclusion Fencing, may begin until the pre-construction survey is completed.

If active woodrat nest(s) are located, Contractor shall coordinate with VTA provided biologists to assist in disturbing the woodrat nests and relocating the sticks of the woodrat nest outside of the project impact area immediately prior to clearing and grubbing activities.

1.5.3 Noise

#@#

Contractor shall maintain and operate all equipment consistent with the manufacturer's specifications. Construction equipment will include available noise suppression devices and properly maintained mufflers.

Contractor shall site fixed and mobile equipment to minimize noise emissions outside the right-of-way, and shall minimize the staging of construction equipment and unnecessary idling of equipment in the vicinity of residences and other sensitive receptors.

1.5.4 Arborist (NOT APPLICABLE)

1.6 . Migratory Nesting Birds

1.6.1 Contractor's attention is directed to the nesting/breeding migratory birds that may be present in the project area. The nesting season in the project area is considered to be from February 1st to August 31st. It is against the law to harm these birds and other wildlife as per the Migratory Bird Treaty Act and the California Fish and Game Code. It is Contractor's responsibility to ensure that birds are not allowed to nest in areas that may be impacted by construction.

1.6.2 During the nesting season, Contractor shall inspect all project areas that may be impacted by construction, including all vegetation, grounds, and bridge(s), every two (2) days to identify any new and partially built nests before the nests are halfway completed. Contractor shall notify VTA immediately of any suspected new bird nests.

1.6.3 In the event that an active nest or roost is discovered in the construction areas, or in adjacent areas considered by the VTA provided biologist to be disturbed by construction, Contractor shall erect ESA fence at approximately 50 feet around the nest /roost at the direction of VTA. No construction activity may occur within the ESA until VTA coordinates with CDFW to develop alternatives to avoid take of the nest. Once consultation is complete, work may begin/resume when written permission is obtained from VTA to remove the ESA. No additional time or compensation will be allowed therefore.

1.6.4 Contractor shall install and maintain nesting exclusion devices, such as netting, wire mesh, etc., throughout the breeding season, or until work in an area makes the devices unnecessary. Such devices shall be required in potential nesting locations, which include but are not limited to vegetation, retaining walls, guard rails, bridges (access openings, weep holes, corners, joints, falsework, etc.). Contractor shall be responsible for the maintenance, repair, or replacement of exclusion devices until all of the work is complete. Contractor shall remove all exclusion devices when work in the area is complete. Any exclusion devices installed prior to construction start must also be removed by Contractor when all of the work is complete, and no additional compensation will be provided therefore.

1.6.5 If any deficiencies related to the requirements of this section are discovered by VTA or their designated representative during the life of the contract, Contractor will be notified and expected to correct the problem within twenty-four (24) hours.

1.6.6 Contractor shall be responsible for any work stoppages and shall be expected to complete all work as specified elsewhere in these special provisions.

1.6.7 Full compensation for work involved in complying with the requirements of **Appendix G Section 1.6 Migratory Nesting Birds** shall be considered as included in the contract prices paid for the various items of work involved and no additional time or compensation will be allowed therefore

1.7 Sudden Oak Death

1.7.1 Contractor is responsible for complying with any requirements regarding Sudden Oak Death (SOD), including any requirements from the Santa Clara Agricultural Commissioner or federal agencies regarding quarantines for plant material. Contractor shall be thoroughly familiar with the provisions of 7 CFR Part 301, Phytophthora Ramorum; Quarantine and Regulations (Federal Register Vol. 67, No. 31 6827-6837, dated Thursday, February 14, 2002), hereafter referred to as the Rules and Regulations. Contractor shall avoid activities that could result in a need to comply with the specified Rules and Regulations to the maximum extent practicable. In

the event that a situation arises that cannot be avoided involving one or more of the quarantined species, soils or other regulated materials as defined therein, Contractor shall implement the provisions in the specified Rules and Regulations. Furthermore, Contractor shall contact the Santa Clara County Agriculture Commissioner (SCCAC) for additional information and direction. The Engineer shall be notified immediately in the event a situation arises requiring compliance with the Rules and Regulations and subsequent notification of the SCCAC. Furthermore, documentation shall be provided to the Engineer enumerating the steps taken to comply.

1.7.2 Full compensation for work involved in complying with the requirements of **Appendix G Section 1.7 Sudden Oak Death** shall be considered as included in the contract prices paid for the various items of work involved and no additional time or compensation will be allowed therefore.

1.8 Storm Water Pollution Prevention Plan (SWPPP)

1.8.1 Unless other requirements are specified in **Section 6 Special Conditions**, Contractor shall comply with the provisions of the National Discharge Elimination System (NPDES), General Permit No. CAS000002 for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity adopted by the State Water Resources Control Board on September 2, 2009 as Order No. 2009-0009-DWQ, effective July 1, 2010, and all amendments (Construction General Stormwater Permit). Contractor shall also comply with the provisions of the Caltrans NPDES General Permit (Order No. 2009-0009-DWQ, NPDES No.: CAS000003) for storm water discharges associated with Caltrans activities

1.8.2 VTA is responsible for obtaining coverage under the Construction General Stormwater Permit. For this purpose VTA must electronically submit completed Project Record Documents prior to initiation of construction, including the Notice of Intent and Contractor's approved Storm Water Pollution Prevention Plan, to the California State Water Resources Control Board, and pay the applicable fee.

1.8.3 The Construction General Stormwater Permit requires development of a Storm Water Pollution Prevention Plan (SWPPP) for the construction site.

- (a) Contractor shall prepare and submit an SWPPP for the subject site to VTA for review and approval **within five working days after Notice of Award**. The submittal will utilize the Caltrans SWPPP template located on Caltrans website at: <https://dot.ca.gov/programs/construction/storm-water-and-water-pollution-control>. Contractor shall clearly identify the subcontractors and the manner in which Contractor will ensure their compliance with the approved SWPPP.
- (b) VTA will provide review comments within three working days of receipt of Contractor's SWPPP.
- (c) Contractor shall return a final SWPPP to VTA within two working days of receipt of VTA's comments. These documents shall be in conformance with the requirements and conditions set forth in the Construction General Stormwater Permit.
- (d) A Notice to Proceed will not be issued by VTA without the express written approval of the document contents by VTA.

1.8.4 Contractor shall identify in the SWPPP the specific Best Management Practices (BMP) it proposes to use in connection with the performance of Work under this Contract. Contractor shall use applicable BMPs included in the latest edition of the **Caltrans Construction Site Best**

Management Practices (BMP) Manual prepared by the (available online at <https://dot.ca.gov/programs/construction/storm-water-and-water-pollution-control/manuals-and-handbooks>).

1.8.5 Contractor shall keep a copy of the approved SWPPP on site at all times and shall make it available to governing officials. Contractor shall amend the SWPPP whenever there is a change in construction operations, or in storm water conditions which affect the discharge of pollutants into surface waters, groundwater, or storm sewer systems.

1.8.6 Contractor is advised that preparation and implementation of an approved SWPPP does not relieve Contractor of compliance with other State, County, and local governments' regulations including those relating to storm water management or non-point source runoff controls.

1.8.7 In addition to the above, Contractor shall comply with any Water Pollution Control requirements detailed in Section 8 Technical Specifications.

1.8.8 Full compensation for conforming to the requirements of this section shall be paid for as described in the Schedule of Quantities and Prices (SQP).

1.9 Erosion and Sedimentation Control Action Plan Element (ESCAPE) (NOT APPLICABLE)

1.10 Water Pollution Control Program (WPCP) (NOT APPLICABLE)

1.11 Construction Water Conservation

Contractor shall, whenever possible and not in conflict with other requirements of the Contract, minimize the use of water during construction of the project. Watering equipment shall be kept in good working order; water leaks shall be repaired promptly; and washing of equipment, except when necessary for safety or for the protection of equipment, shall be discouraged. All water used for construction purposes such as dust control, compaction, cleaning streets, etc., may be reclaimed water.

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Contract No. C19222

Request for Pre-qualification of Bidders

I-280/Foothill Expressway
Off-Ramp Improvements

Issued
November 5, 2019

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NOTES:

- ATTACHMENT 1 Statement of Qualification Certification Form
Bidder is required to turn this form in along with the Pre-Qualification Questionnaire.
- ATTACHMENT 2 Validation Statement
Bidders who have previously been pre-qualified by VTA may submit this form instead of the Pre-Qualification Questionnaire, as described in Item G. "Validation of Prior Pre-Qualification" herein.
- APPENDIX A: Project Site Map
Appendix A does not require any action by the Bidder. The project site map is included for Bidder's information only.
- APPENDIX B: SCORING MATRIX
Appendix B does not require any action by the Bidder. The scoring matrix is included for Bidder's information only.
- APPENDIX C: INTERVIEW QUESTIONNAIRE
Appendix C does not require any action by the Bidder. Appendix C contains only questions used by VTA staff to interview owner references. This is included for Bidder's information only.

NOTICE

A. SOLICITATION OF PRE-QUALIFICATION STATEMENTS

The Santa Clara Valley Transportation Authority (VTA) will be soliciting bids for the Interstate 280 (I-280)/Foothill Expressway Off-Ramp Improvements (Project).

Notice is hereby given that VTA is now soliciting Statements of Qualifications (SOQ) from bidders (Bidders) with construction expertise to furnish all labor, materials, tools, equipment, services, supervision and incidentals necessary to widen the existing northbound Interstate 280 (I-280) off-ramp to Foothill Expressway in the cities of Los Altos and Cupertino.

This Request for Pre-Qualification of Bidders is intended to solicit information in the form of a Pre-Qualification Questionnaire and qualification statements.

All Bidders that intend to submit a bid for the Project must fully complete the Pre-Qualification Questionnaire, provide all materials requested herein, and be approved by VTA in order to be included on the final qualified Bidders list. No bid will be accepted from a Bidder that has failed to comply with these requirements. If two or more contractors submit a SOQ as part of a Joint Venture or expect to submit a SOQ as part of a Joint Venture, each entity within the Joint Venture must be separately pre-qualified.

Answers to questions contained in the attached Pre-Qualification Questionnaire, information about current bonding capacity, notarized statement from surety, and the most recent reviewed or audited financial statements, with accompanying notes and supplemental information, are required. VTA will use these documents as the basis of rating contractors in respect to the Project size and scope. VTA reserves the right to check other sources available. VTA's decision will be based on objective evaluation criteria.

B. OBTAINING THE REQUEST FOR PRE-QUALIFICATION

View all solicitations advertised by VTA at <https://www.vta.org/solicitations>. Click on the name of the solicitation that you are interested in.

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

Register as a vendor and sign up for notifications for your North American Industry Classification System ("NAICS") business codes at <https://www.vta.org/user/register?type=vendor>. By registering as a VTA vendor, Bidder will automatically receive notifications by email of upcoming VTA bidding opportunities. You can reset your password at <https://www.vta.org/user/password>. It is highly recommended that prospective Bidders acquire the Request for Pre-Qualification documents directly from the VTA website in order to be assured of obtaining all addenda. The Request for Pre-Qualification documents will also be included the Invitation for Bids (IFB) issued for this Project.

C. SUBMITTAL LOCATION AND DEADLINE

Bidders seeking to participate in this Request for Pre-Qualification process must submit a fully completed SOQ in a sealed package marked "CONFIDENTIAL" to:

**Santa Clara Valley Transportation Authority
Procurement, Contracts and Materials Management
3331 North First Street, Building A
San José, CA 95134-1906**

ATTENTION: Cathy Clegg / Pre-Qualification for Contract C19222

Bidders may submit pre-qualification packages during regular working hours on any day that the offices of VTA are open. The SOQ package must be submitted on or before the bid opening date as detailed in the IFB.

Potential Bidders that are not pre-qualified may qualify during the solicitation period. Contractors not currently pre-qualified, and intending to be pre-qualified, must request pre-qualification sufficiently in advance of the closing date for bids so as to ensure there will be no need to extend the solicitation period or delay the award.

Failure to provide a responsive SOQ by the time specified above will preclude the Bidder from subsequent participation in the IFB for the Project.

D. INQUIRIES

Inquiries regarding this Request for Pre-Qualification must be directed by e-mail to Cathy Clegg at Cathy.Clegg@vta.org.

E. NOTICE OF DETERMINATION

VTA will notify each Bidder that submits an SOQ regarding their qualification status by letter no later than ten business days after submission of the pre-qualification package. If a Bidder submits its pre-qualification on the bid opening date, VTA will not issue the Notice of Recommended Award until all pre-qualification packages have been reviewed.

F. BID SOLICITATION PERIOD

Bidders may be pre-qualified as defined in Section E, immediately above. Please note the following:

Bidders are encouraged to submit pre-qualification packages as soon as possible, so that they may be notified of omissions of information to be remedied or of their pre-qualification status well in advance of the bid opening date for this Project.

The closing time for bids will not be changed in order to accommodate supplementation of incomplete submissions, or late submissions.

G. VALIDATION OF PRIOR PRE-QUALIFICATION

Bidders who have been pre-qualified by VTA will be considered pre-qualified for a project of similar size and scope for one year following the date of notification of pre-qualification. The Validation Statement (Attachment 2) is required to be submitted on the date stated for pre-qualification packages.

INTRODUCTION TO THE REQUEST FOR PRE-QUALIFICATION

A. PROJECT BACKGROUND

VTA is proposing to widen the existing northbound I-280 off-ramp to Foothill Expressway from one lane to two lanes with standard shoulders. The Project limits are along this off-ramp, and along I-280 between the branch connectors from State Route 85 (SR 85) and the Foothill Expressway off-ramp in the cities of Cupertino and Los Altos. All improvements will be constructed within Caltrans' right-of-way. This is a limited improvement project to implement operational improvements for a balanced weaving section along this segment of I-280 as identified in VTA's 2005 SR 85/I-280 study.

The existing interchange at I-280 and Foothill Expressway is a modified Caltrans two-quadrant cloverleaf (Type L-7), with an additional diagonal on-ramp to southbound I-280. The existing off-ramp from northbound I-280 to Foothill Expressway is a single-lane ramp, which expands to a two-lane ramp approximately 400' beyond the exit nose with a 2' inside shoulder and a 2' outside shoulder. At the approach to Foothill Expressway, these two lanes split off to a left turn lane and a free-right turn lane. This ramp intersection is controlled by a traffic signal, which will be undergoing a signalization upgrade by Caltrans some time in 2020.

At this location, I-280 is an eight-lane freeway (four lanes in each direction including an HOV lane with a northbound auxiliary lane from the adjacent SR 85 interchange). Caltrans will also be performing a resurfacing project along I-280 from Foothill Expressway interchange to the north some time in 2020 as well, so there may be construction coordination required between this off-ramp widening project and the adjacent Foothill Expressway intersection signalization upgrades and I-280 resurfacing projects.

B. PROJECT DESCRIPTION

The Work will include furnishing all labor, supervision, materials, equipment and incidentals which are necessary to construct the following:

1. Installation of new pavement, widening and overlay
2. Re-striping of ramp lanes
3. Installation of new signs and overhead sign
4. Installation of street lighting and signal loop detectors
5. Installation of concrete curb, barrier, retaining wall and metal guard railings
6. Installation of drainage inlets and pipes
7. Installation of irrigation equipment and erosion control devices

The estimated cost of construction for the Project is in the range of \$2.4 million to \$3.2 million.

C. PROCUREMENT PROCESS: PRE-QUALIFICATION PROCUREMENT

The process for award of this Project includes this Request for Pre-Qualification and the issuance of the IFB to pre-qualified firms.

Only those firms that have been found to be qualified in the pre-qualification process may submit sealed bids with pricing information.

Award is then made to the lowest responsive and responsible Bidder as though it were a regular sealed-bid procurement.

Prior to submitting a SOQ in response to this Request for Pre-qualification, Bidders are advised to carefully review Section B (PROJECT DESCRIPTION) in order to understand the requirements of this Project.

D. PROJECT SCHEDULE

It is anticipated that the IFB for the Project will be advertised in **December 2019** with bid opening in **January 2020**. (Solicitation Period). The estimated time for construction of the Project is 180 calendar days.

E. PREPARATION OF THE SOQ SUBMITTAL

Each prospective Bidder must provide a complete, responsive SOQ package which consists of contact information and general information, essential requirements for qualification, scored questions, and project experience, with all the required attachments and any other supplemental information. Submission of an incomplete and/or unclear SOQ could result in a determination by VTA that the prospective Bidder is nonresponsive and therefore not pre-qualified.

Bidders shall submit one (1) original copy of the SOQ package to be delivered to VTA at the required location and time specified in **Item C of the Notice** section above.

Each questionnaire must be signed under penalty of perjury in the manner designated on the form provided as **Attachment 1 Statement of Qualification Certification Form**, by an individual who has the legal authority to bind the Bidder on whose behalf that person is signing. If any information provided by a Bidder becomes inaccurate, the Bidder must immediately notify VTA and provide updated accurate information in writing, under penalty of perjury.

F. EVALUATION AND ANALYSIS

All SOQs will first be reviewed for their responsiveness, including timely receipt of the package and inclusion of all required forms. Any SOQ that is incomplete in any material respect may be deemed non-responsive and maybe rejected in its entirety.

Note: A contractor may be found not pre-qualified for bidding on this specific Project until the contractor meets VTA's requirements. In addition, a contractor may be found not pre-qualified for either:

- (1) Omission of requested information or
- (2) Falsification of information

Bidders will be scored based on the Request for Pre-Qualification Questionnaire Score Sheet (see APPENDIX B: SCORING MATRIX).

G. NOTICE OF APPEAL

A Bidder can make an appeal in regards to its pre-qualification rating. The Bidder initiates the appeal by delivering a notice of appeal to VTA no later than ten business days prior to the closing time for the receipt of bids (refer to Item C under the Notice section above titled "Submittal Location and Deadline"). Without a timely appeal, the Bidder waives any and all rights to challenge the decision of VTA, whether by administrative process, judicial process or any other legal process or proceeding.

If the Bidder requests a hearing on its appeal, the hearing process shall be conducted and shall conclude no later than five business days after VTA's receipt of the notice of appeal, and no later than five business days prior to the closing time for the receipt of bids. The hearing shall be an informal process conducted by a panel to whom VTA's Board of Directors has delegated responsibility to hear such appeals (the "Appeals Panel"). At or prior to the hearing, the Bidder will be advised of the basis for VTA's pre-qualification determination. The Bidder will be given the opportunity to present information and reasons in opposition to the rating. Within

one day after the conclusion of the hearing, the Appeals Panel will render its decision. It is the intention of VTA that the date for the submission and opening of bids will not be delayed or postponed to allow for completion of an appeal process.

H. GENERAL CONTRACTOR AND ENGINEERING FIRMS

Bidders are advised that they must have a California contractor's license, classification Class A to bid on this Project. All of Contractor's subcontractors must also be properly licensed to perform the work for which they are responsible.

The Request for Pre-Qualification requires the Bidder to identify and supply information regarding the General Contractor. All Bidders responding to this Request for Pre-Qualification are hereby cautioned that the Contractor's State License Law regulates contractor licensing matters. Each Bidder, in its pre-qualification submittals shall disclose all of its license classifications, numbers, and expiration dates.

Bidders are also advised that Contractor and all subcontractors used for the Project shall be registered, pursuant to Section 1725.5 of the California Labor Code, with the Department of Industrial Relations ("DIR") at the time of bid opening. This Project is subject to compliance monitoring and enforcement by the DIR.

I. CONFIDENTIALITY

The pre-qualification packages (answers submitted on the Pre-Qualification Questionnaire) submitted by Bidders are not public records and are not open to public inspection. All information provided will be kept confidential to the extent permitted by law. However, the contents may be disclosed to third parties for purpose of verification, or investigation of substantial allegations, or in the appeal hearing. State law requires that the names of contractors applying for pre-qualification status shall be public records subject to disclosure, and the first page of the Pre-Qualification Questionnaire will be used for that purpose.

J. RESERVATION OF RIGHTS OF VTA

VTA reserves, holds and may exercise, at its sole discretion, the following rights and conditions with regard to this Request for Pre-qualification, and by responding to this Request for Pre-Qualification, Bidder acknowledges and consents to the following rights and conditions:

1. VTA reserves the right to adjust, increase, limit, suspend or rescind the pre-qualification rating based on gathered information.
2. VTA reserves the right to waive minor irregularities and omissions in the information contained in the submitted Request for Pre-Qualification application.

While it is the intent of the Pre-Qualification Questionnaire and documents to assist VTA in determining Bidder responsibility prior to bid and to aid VTA in selecting the lowest responsive and responsible Bidder, neither the fact of pre-qualification, nor any pre-qualification rating, will preclude VTA from a post-bid consideration and determination of whether a Bidder has the quality, fitness, capacity and experience to satisfactorily perform the proposed work, and has demonstrated the requisite trustworthiness.

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PRE-QUALIFICATION QUESTIONNAIRE

I-280/FOOTHILL EXPRESSWAY CONTRACT No. C19222

SUBMITTAL LOCATION: Santa Clara Valley Transportation Authority
Procurement, Contracts and Materials Management
3331 North First Street, Building A
San José, CA 95134-1906
ATTENTION: Cathy Clegg / Pre-Qualification for Contract C19222

BIDDER: _____
(provide name of firm)

DATE: _____

Note: Only this cover page, Parts I through IV of this document (along with any requested or required supporting documents), and Attachment 1 Statement of Qualification Certification Form are to be submitted.

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PART I: CONTACT INFORMATION

The Bidder must provide all of the following contact information to be considered for further review. The Bidder is the contractor that will execute the Project contract.

A. BIDDER'S CONTACT INFORMATION

1. Firm Name: _____
(as it appears on license)
2. Address: _____
3. Phone Number of Firm: _____ Fax: _____
4. Contact Person & Title: _____
(contact person for this SOQ; contact does not need to be the firm's owner)
5. Contact Person Email: _____
6. Bidder is: a Corporation a Partnership
 a Sole Proprietorship a Joint Venture
 Other legal entity (specify): _____
7. Date of company formation or incorporation: _____
8. Under the laws of what state: _____

B. EXECUTION AND CERTIFICATION

Complete and attach ATTACHMENT 1 STATEMENT OF QUALIFICATION CERTIFICATION FORM. All Information set forth in this SOQ shall be certified under penalty of perjury by the Bidder and, if a partnership or joint venture, its general partners or joint venture members.

- END OF PART I -

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PART II. ESSENTIAL REQUIREMENTS FOR QUALIFICATION

Contractor will be immediately disqualified if the answer to any of questions 1 through 5 is "no."¹

1. Contractor possesses a valid and current California Contractor's license for this Project for which it intends to submit a bid.

Yes No

2. Contractor has a liability insurance policy with a policy limit of at least \$1,000,000 per occurrence and \$2,000,000 aggregate.

Yes No

3. Contractor has current workers' compensation insurance policy as required by the Labor Code or is legally self-insured pursuant to Labor Code section 3700 et. seq.

Yes No Contractor is exempt from this requirement, because it has no employees

4. Have you attached your latest copy of a reviewed or audited financial statement with accompanying notes and supplemental information?

Yes No

NOTE: A financial statement that is not either reviewed or audited is not acceptable. A letter verifying availability of a line of credit may also be attached; however, it will be considered as supplemental information only, and is not a substitute for the required financial statement.

5. Have you attached a notarized statement from an admitted surety insurer (approved by the California Department of Insurance) and authorized to issue bonds in the State of California, which states: (a) that your current bonding capacity is sufficient for the project for which you seek pre-qualification if you are seeking pre-qualification for a single project; or (if you are seeking pre-qualification valid for a year) (b) your current available bonding capacity?²

Yes No

¹ A "no" answer to Question 4 will not be disqualifying if the contractor is exempt from complying with Question 4, for reasons explained in footnote 2.

² An additional notarized statement from the surety may be requested by VTA at the time of submission of a bid, if this pre-qualification package is submitted more than 60 days prior to submission of the bid.

NOTE: Notarized statement must be from the surety company, not an agent or broker.

6. Has your contractor's license been revoked at any time in the last five years?
- Yes No
7. Has a surety firm completed a contract on your behalf, or paid for completion because your firm was default terminated by the project owner within the last five (5) years?
- Yes No
8. At the time of submitting this pre-qualification form, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7?
- Yes No

If the answer is "Yes," state the beginning and ending dates of the period of debarment:

9. At any time during the last five years, has your firm, or any of its owners or officers been convicted of a crime involving the awarding of a contract of a government construction project, or the bidding or performance of a government contract?
- Yes No

- End of Part II -

**PART III. ORGANIZATION HISTORY, ORGANIZATIONAL PERFORMANCE,
COMPLIANCE WITH CIVIL AND CRIMINAL LAWS**

Current Organization and Structure of the Business

For Firms That Are Corporations:

- 1a. Date incorporated: _____
- 1b. Under the laws of what state: _____
- 1c. Provide all the following information for each person who is either (a) an officer of the corporation (president, vice president, secretary, treasurer), or (b) the owner of at least ten per cent of the corporation's stock.

Name	Position	Years with Co.	% Ownership
	CEO		
	President		
	Secretary		
	Treasurer		

- 1d. Identify every construction firm that any person listed above has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, "owner" and "partner" refer to ownership of ten per cent or more of the business, or 10 per cent or more of its stock, if the business is a corporation.

Person's Name	Construction Firm	Dates of Person's Participation with Firm

For Firms That Are Partnerships:

- 1a. Date of formation: _____
- 1b. Under the laws of what state: _____

- 1c. Provide all the following information for each partner who owns 10 per cent or more of the firm. *(attach additional pages if necessary)*

Name	Position	Years with Co.	% Ownership

- 1d. Identify every construction company that any partner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, “owner” and “partner” refer to ownership of ten per cent or more of the business, or ten per cent or more of its stock, if the business is a corporation.

Person’s Name	Construction Company	Dates of Person’s Participation with Company

For Firms That Are Sole Proprietorships:

- 1a. Date of commencement of business. _____
- 1b. Social security number of company owner. _____
- 1c. Identify every construction firm that the business owner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, “owner” and “partner” refer to ownership of ten per cent or more of the business, or ten per cent or more of its stock, if the business is a corporation.

Person’s Name	Construction Company	Dates of Person’s Participation with Company

For Firms That Intend to Make a Bid as Part of a Joint Venture:

- 1a. Date of commencement of joint venture. _____
- 1b. Provide all of the following information for each firm that is a member of the joint venture that expects to bid on one or more projects:

Name of firm	% Ownership of Joint Venture

History of the Business and Organizational Performance:

2. Has there been any change in ownership of the firm at any time during the last three years?

NOTE: A corporation whose shares are publicly traded is not required to answer this question.

Yes No

If "yes," explain on a separate signed page.

3. Is the firm a subsidiary, parent, holding company or affiliate of another construction firm?

NOTE: Include information about other firms if one firm owns 50 per cent or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm.

Yes No

If "yes," explain on a separate signed page.

4. Are any corporate officers, partners or owners connected to any other construction firms?

NOTE: Include information about other firms if an owner, partner, or officer of your firm holds a similar position in another firm.

Yes No

If "yes," explain on a separate signed page.

5. State your firm's gross revenues for each of the last three years:

2016: \$ _____
2017: \$ _____
2018: \$ _____

Scored Questions:

6. How many years has your organization been in business in California as a contractor under your present business name and license number? _____ Years

7. Is your firm currently the debtor in a bankruptcy case?

Yes No

If "yes," please attach a copy of the bankruptcy petition, showing the case number, and the date on which the petition was filed.

8. Was your firm in bankruptcy at any time during the last five years? (This question refers only to a bankruptcy action that was not described in answer to question 7, above)

Yes No

If "yes," please attach a copy of the bankruptcy petition, showing the case number and the date on which the petition was filed, and a copy of the Bankruptcy Court's discharge order, or of any other document that ended the case, if no discharge order was issued.

Licenses:

9. List all California construction license numbers, classifications and expiration dates of the California contractor licenses held by your firm:

License Number	Trade Classification	Date Issued	Expiration Date

10. If any of your firm's license(s) are held in the name of a corporation or partnership, list below the names of the qualifying individual(s) listed on the California State Licensing Board (CSLB) records who meet(s) the experience and examination requirements for each license.

11. Has your firm changed names or license number in the past five years?

Yes No

If “yes,” explain on a separate signed page, including the reason for the change.

12. Has any owner, partner or (for corporations) officer of your firm operated a construction firm under any other name in the last five years?

Yes No

If “yes,” explain on a separate signed page, including the reason for the change.

13. Has any CSLB license held by your firm or its Responsible Managing Employee (RME) or Responsible Managing Officer (RMO) been suspended within the last five years?

Yes No

If “yes,” explain on a separate signed page.

Disputes:

14. At any time in the last five years has your firm been assessed and paid liquidated damages after completion of a project under a construction contract with either a public or private owner?

Yes No

If yes, explain on a separate signed page, identifying all such projects by owner, owner’s address, the date of completion of the project, amount of liquidated damages assessed and all other information necessary to fully explain the assessment of liquidated damages.

15. In the last five years has your firm, or any firm with which any of your company’s owners, officers or partners was associated, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any government agency or public works project for any reason?

NOTE: “Associated with” refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to Part II question 1c or 1d on this form.

Yes No

If “yes,” explain on a separate signed page. State whether the firm involved was the firm applying for pre-qualification here or another firm. Identify the name of the company, the name of the person within your firm who was associated with that company, the year of the event, the owner of the project, the project and the basis for the action.

16. In the last five years has your firm been denied an award of a public works contract based on a finding by a public agency that your company was not a responsible bidder?

Yes No

If “yes,” explain on a separate signed page. Identify the year of the event, the owner, the project and the basis for the finding by the public agency.

* * * * *

NOTE: The following two (2) questions, refer only to disputes between your firm and the owner of a project. You need not include information about disputes between your firm and a supplier, another contractor, or subcontractor. You need not include information about “pass-through” disputes in which the actual dispute is between a sub-contractor and a project owner. Also, you may omit reference to all disputes with amounts of less than \$50,000.

17. In the past five years has any claim **against** your firm concerning your firm’s work on a construction project been **filed in court or arbitration?**

Yes No

If “yes,” on separate signed page identify the claim(s) and provide the project name, date of the claim, name of claimant, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

18. In the past five years has your firm made any claim against a project owner concerning work on a project or payment for a contract and **filed that claim in court or arbitration?**

Yes No

If “yes,” on separate signed page identify the claim and provide the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

* * * * *

19. At any time during the past five years, has any surety company made any payments on your firm's behalf as a result of a default, to satisfy any claims made against a performance or payment bond issued on your firm's behalf, in connection with a construction project, either public or private?

Yes No

If "yes," explain on a separate signed page the amount of each such claim, the name and telephone number of the claimant, the date of the claim, the grounds for the claim, the present status of the claim, the date of resolution of such claim if resolved, the method by which such was resolved, the nature of the resolution and the amount, if any, at which the claim was resolved.

20. In the last five years has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

Yes No

If "yes," explain on a separate signed page. Name the insurance carrier, the form of insurance and the year of the refusal.

Criminal Matters and Related Civil Suits:

21. Has your firm or any of its owners, officers or partners ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?

Yes No

If "yes," explain on a separate signed page, identifying who was involved, name of the public agency, date of the investigation and the grounds for the finding.

22. Has your firm or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?

Yes No

If "yes," explain on a separate signed page, identifying who was involved, name of the public agency, date of the conviction and the grounds for the conviction.

23. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?

Yes No

If “yes,” identify on a separate signed page the person or persons convicted, the court (the county if a state court, the district or location of the federal court), the year and the criminal conduct.

Bonding:

24. Bonding Capacity: Provide documentation from your surety identifying the following:

Name of bonding company/surety: _____

Name of surety agent, address and telephone number:

25. If your firm was required to pay a premium of more than one per cent for a performance and payment bond on any project(s) on which your firm worked at any time during the last three years, state the percentage that your firm was required to pay. You may provide an explanation for a percentage rate higher than one per cent, if you wish to do so.

26. List all other sureties (name and full address) that have written bonds for your firm during the last five years, including the dates during which each wrote the bonds:

27. During the last five years, has your firm ever been denied bond coverage by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?

Yes No

If yes, provide details on a separate signed sheet indicating the date when your firm was denied coverage and the name of the company or companies which denied coverage; and the period during which you had no surety bond in place.

**Compliance with Occupational Safety and Health Laws and with Other Labor Legislation
Safety**

28. Has CAL OSHA cited and assessed penalties against your firm for any “serious,” “willful” or “repeat” violations of its safety or health regulations in the past five years?

NOTE: If you have filed an appeal of a citation, and the Occupational Safety and Health Appeals Board has not yet ruled on your appeal, you need not include the information about the citation.

Yes No

If “yes,” attached a separate signed page describing the citations, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision.

29. Has the Federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

Yes No

If “yes,” attach a separate signed page describing each citation.

30. Has the EPA or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor, in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

Yes No

If “yes,” attach a separate signed page describing each citation.

31. How often do you require documented safety meetings to be held for construction employees and field supervisors during the course of a project?

Once each week or more often

Less than once each week

32. List your firm's Experience Modification Rate (EMR) (California workers' compensation insurance) for each of the past three premium years:

NOTE: An Experience Modification Rate is issued to your firm annually by your workers' compensation insurance carrier.

	Year	List EMR
Most recent available year		
Previous year		
Year prior to previous year		
Three-year average EMR:		

If your EMR for any of these three years is or was 1.00 or higher, attach a letter of explanation.

33. Within the last five years has there ever been a period when your firm had employees but was without workers' compensation insurance or state-approved self-insurance?

Yes No

If "yes," please explain the reason for the absence of workers' compensation insurance on a separate signed page. If "No," please provide a statement by your current workers' compensation insurance carrier that verifies periods of workers' compensation insurance coverage for the last five years. (If your firm has been in the construction business for less than five years, provide a statement by your workers' compensation insurance carrier verifying continuous workers' compensation insurance coverage for the period that your firm has been in the construction business.)

Prevailing Wage and Apprenticeship Compliance Record:

34. Has there been more than one occasion during the last five years in which your firm was required to pay either back wages or penalties for your own firm's failure to comply with the **State's** prevailing wage laws?

NOTE: This question refers only to your own firm's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.

Yes No

If "yes," attach a separate signed page or pages, describing the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.

35. During the last five years, has there been more than one occasion in which your own firm has been penalized or required to pay back wages for failure to comply with the **Federal Davis-Bacon** prevailing wage requirements?

Yes No

If "yes," attach a separate signed page or pages describing the nature of the violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid, the amount of back wages you were required to pay along with the amount of any penalty paid.

36. Provide the **name, address and telephone number** of the apprenticeship program (approved by the California Apprenticeship Council) from whom you intend to request the dispatch of apprentices to your company for use on any public work project for which you are awarded a contract by VTA.

Name: _____

Address: _____

Telephone: _____

37. If your firm operates its own State-approved apprenticeship program, **provide the following information on a separate page and insert in this Part III.**

- a. Identify the craft or crafts in which your firm provided apprenticeship training in the past year.
- b. State the year in which each such apprenticeship program was approved, and attach evidence of the most recent California Apprenticeship Council approval(s) of your apprenticeship program(s).
- c. State the number of individuals who were employed by your firm as apprentices at any time during the past three years in each apprenticeship and the number of persons who, during the past three years, completed apprenticeships in each craft while employed by your firm.

38. At any time during the last five years, has your firm been found to have violated any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works?

NOTE: You may omit reference to any incident that occurred prior to January 1, 1998, if the violation was by a subcontractor and your firm, as general contractor on a project, had no knowledge of the subcontractor's violation at the time they occurred.

Yes No

If "yes," provide the date(s) of such findings, and attach copies of the Department's final decision(s).

Not Scored - For Information Only:

39. The following is required for information only and will not be used as prequalification criteria.

In the past five years, has a governmental agency claimed that your firm violated any law, rule or regulation including the laws of any country, state or locality?

Yes No

In the latter situation, indicate whether your firm has been required to pay a penalty or fine equal to greater than \$10,000 or required to take remedial action costing \$10,000 or more, or whether members of the firm have been subject to periods of incarceration of 30 days or more.

- **End of Part III** -

PART IV. RECENT CONSTRUCTION PROJECTS COMPLETED

Contractor shall provide information about its six most recently completed public works projects and its three largest completed private projects within the last three years.³ Names and references must be current and verifiable.

Use separate sheets of paper for each project. Use the form on the next page or substitute a similar form that has the same order of requested information.

³ If you wish, you may, using the same format, also provide information about other projects that you have completed that are similar to the project(s) for which you expect to bid.

PROJECT DATA SHEET # ____
(One data sheet per project; number each sheet)

NAME OF BIDDER: _____

Project Name	
Project Location	
Owner	
Owner Contact Name	
Owner Contact Phone #	
Owner Contact Email	
Architect or Engineer (A/E)	
A/E Contact Name	
A/E Contact Phone #	
A/E Contact Email	
Construction Manager Name	
Construction Manager Phone #	
Construction Manager Email	
Description of Project and Scope of Work Performed	
Total Value of Construction (including change orders)	
Original Scheduled Completion Date	
Time Extensions Granted (number of days)	
Actual Date of Completion	

- **End of Part IV** -

ATTACHMENT 1 - STATEMENT OF QUALIFICATION CERTIFICATION FORM

CERTIFICATION:

The undersigned is/are a legally authorized representative(s) of the Entity, and hereby declare that I am/ we are submitting this Request for Pre-Qualifications; I am/we are duly authorized to sign this Request for Pre-Qualifications on behalf of the above named firm; and I/we have read all the answers herein and know all of their contents and that all information set forth in this Request for Pre-Qualifications and all attachments hereto are, to the best of my/our knowledge, true, accurate and complete as of its submission date.

The undersigned certifies and declares under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed in _____ County, California, on _____.

(Date)

Signature: _____ Date: _____

BIDDER's Typed Name and Title:

[This page intentionally left blank]

ATTACHMENT 2 - VALIDATION STATEMENT

Applicant Firm: _____

Tax ID No. or SSN _____



PRIME CONTRACTOR PRE-QUALIFICATION VALIDATION STATEMENT

A copy of this VALIDATION FORM must be completed and signed by at least one General Partner, Owner, Principal or Officer Authorized to Legally Commit the Applicant Firm. Submit to VTA on or before the date specified for Pre-Qualification Packages are due.

NOT TO BE SUBMITTED WITH APPLICATION – FOR VALIDATION ONLY

RFP or IFB Name and Number _____

DECLARATION

I, (printed full name) _____ hereby declare under penalty of perjury under the laws of the United States of America and of the State of California that I am the (position or title) _____ of (firm name) _____, and that I am duly authorized to execute this Validation Statement on behalf of this entity. I acknowledge that any false, deceptive or fraudulent statements on this Validation Statement will result in denial of pre-qualification. I hereby certify and declare that:

The Pre-Qualification Application dated _____ on file with VTA is correct and current as submitted.

-OR-

The Pre-Qualification Application dated _____ on file with VTA is correct and current as submitted, except as modified by the attached changed pages and/or attachments to said application. (Applicants may attach additional sheets to describe changes). Attach recent financial statements if previous are more than one year old.

Date: ___/___/___

Signature of Person Certifying for Applicant Firm

A MATERIAL FALSE STATEMENT, OMISSION OR FRAUDULENT INDUCEMENT MADE IN CONNECTION WITH THIS PRE-QUALIFICATION IS SUFFICIENT CAUSE FOR DENIAL OF THE APPLICATION OR REVOCATION OF A PRIOR APPROVAL, THEREBY PRECLUDING THE APPLICANT FIRM FROM DOING BUSINESS WITH, OR PERFORMING WORK FOR VTA, EITHER AS A PRIME CONTRACTOR, SUBCONTRACTOR OR SUPPLIER FOR A PERIOD OF THREE YEARS. IN ADDITION, SUCH FALSE SUBMISSION MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES. [TITLE 18 USC 1001, FALSE STATEMENTS; CALIFORNIA PENAL CODE SECTION 132, OFFERING ALTERED OR ANTE-DATED OR FORGED DOCUMENTS OR RECORDS; AND SECTION 134, PREPARING FALSE DOCUMENTARY EVIDENCE.]

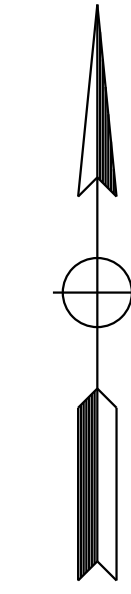
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APPENDIX A: PROJECT SITE MAP

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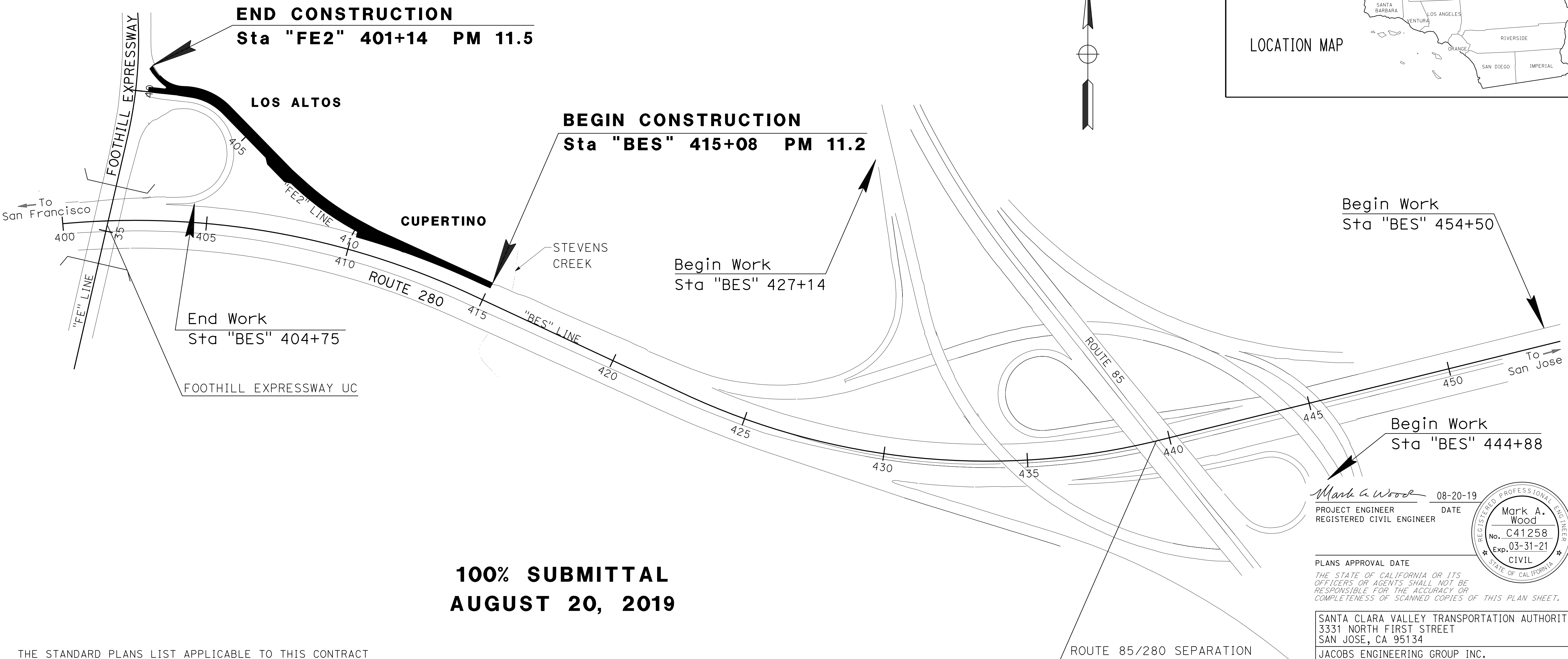
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
PROJECT PLANS FOR CONSTRUCTION ON
STATE HIGHWAY
IN SANTA CLARA COUNTY
IN AND NEAR LOS ALTOS AND CUPERTINO
FROM FOOTHILL EXPRESSWAY UNDERCROSSING
TO 0.4 MILE NORTH OF ROUTE 85/280 SEPARATION

TO BE SUPPLEMENTED BY STANDARD PLANS DATED 2018



Dist	COUNTY	ROUTE	POST MILES TOTAL PROJECT	SHEET No.	TOTAL SHEETS
04	SCI	280	11.2/11.5	1	45

LOCATION MAP



100% SUBMITTAL
AUGUST 20, 2019

NO SCALE

Mark A. Wood 08-20-19
 PROJECT ENGINEER DATE
 REGISTERED CIVIL ENGINEER

REGISTERED PROFESSIONAL ENGINEER
 No. C41258
 Exp. 03-31-21
 CIVIL
 STATE OF CALIFORNIA

PLANS APPROVAL DATE
 THE STATE OF CALIFORNIA OR ITS OFFICERS OR AGENTS SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS OF SCANNED COPIES OF THIS PLAN SHEET.

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
 3331 NORTH FIRST STREET
 SAN JOSE, CA 95134

JACOBS ENGINEERING GROUP INC.
 300 FRANK H. OGAWA PLAZA, SUITE 600
 OAKLAND, CA 94612

CONTRACT No.	04-4G6804
PROJECT ID	0413000086

INDEX OF PLANS

SHEET No.	DESCRIPTION
1	TITLE AND LOCATION MAP
2-3	TYPICAL CROSS SECTIONS
4	PROJECT CONTROL
5	LAYOUT
6	PROFILE AND SUPERELEVATION DIAGRAM
7-10	CONSTRUCTION DETAILS
11-12	TEMPORARY WATER POLLUTION CONTROL PLANS
13-16	DRAINAGE PLANS, PROFILES AND DETAILS
17	UTILITY
18	CONSTRUCTION AREA SIGNS
19-30	STAGE CONSTRUCTION AND TRAFFIC HANDLING PLANS
31	DETOUR PLAN
32-33	PAVEMENT DELINEATION AND SIGN PLANS
34-35	SIGN DETAILS AND QUANTITIES
36-37	SUMMARY OF QUANTITIES
38	RETAINING WALL PLANS
39	IRRIGATION PLAN
40-42	EROSION CONTROL PLANS
43-45	ELECTRICAL PLANS

APPROVED AS TO IMPACT ON STATE FACILITIES AND CONFORMANCE WITH APPLICABLE STATE STANDARDS AND PRACTICES AND THAT TECHNICAL OVERSIGHT WAS PERFORMED.

DATE SIGNED

LICENSE EXP DATE

REGISTRATION No.

CALTRANS DESIGN OVERSIGHT APPROVAL

CONSULTANT DESIGN MANAGER

12-31-19

74922

OUYNH NGUYEN

MARK WOOD

THE STANDARD PLANS LIST APPLICABLE TO THIS CONTRACT IS INCLUDED IN THE NOTICE TO CONTRACTORS AND SPECIAL PROVISIONS BOOK.

THE CONTRACTOR SHALL POSSESS THE CLASS (OR CLASSES) OF LICENSE AS SPECIFIED IN THE "NOTICE TO BIDDERS."

LAST REVISION DATE PLOTTED => 21-AUG-2019 TIME PLOTTED => 09:13

APPENDIX B: SCORING MATRIX

Note: References to Part I, Part II, Part III and Part IV refer to the Parts of the Pre-Qualification Questionnaire.

A. PART I: CONTACT INFORMATION

Part I seeks information about the makeup of the BIDDER, and is for identification purposes only. There is no evaluative scoring value for these parts.

B. PART II: ESSENTIAL REQUIREMENTS FOR QUALIFICATION

This part seeks information about the BIDDER, and consists of pass/fail questions. This is the first step in rating the BIDDER. A Bidder that “fails” any one of the questions 1-9 listed in Part II will be disqualified (except with respect to certain questions providing additional requirements for consideration).

C. PART III: ORGANIZATION, HISTORY, ORGANIZATIONAL PERFORMANCE, COMPLIANCE WITH CIVIL AND CRIMINAL LAWS

The first set of questions (Questions 1 to 5) seek information about the organization and structure of the BIDDER. There is no evaluative scoring value for these questions.

The next sets of questions (Questions 6 to 38) are scored. Refer to the Scoring Matrix on the next page.

D. PART IV:

This part seeks information about the Bidders project experience and requests contact information for each project.

Interviews will be conducted based on this information and scored. Refer to APPENDIX C: INTERVIEW QUESTIONNAIRE for the set of questions and passing score.

To prequalify, the Bidder must have a passing grade within each of the two sections identified below.

QUESTION #	QUANTITY	YES	NO	SCORE
6	6 yrs + = 5 pts 5 yrs = 4 pts	N/A	N/A	

QUESTION #	QUANTITY	YES	NO	SCORE
	4 yrs = 3 pts 3 yrs or less = 2 pts			
7	N/A	0	3	
8	N/A	0	3	
Questions 9 to 12 are not scored				
13	N/A	0	5	
14	5 pts for 0 project with \$50,000+ LDs <u>or</u> 1 project with LD 3 pts for 2 projects with \$50,000+ LD 0 pt for any other answer	N/A	N/A	
15	N/A	0	5	
16	N/A	0	5	
17	If firm's average gross revenue for the last 3 years was <\$50M: 5 pts for "No" or "Yes" with 1 instance 3 pts for "Yes" with 2 instances 0 pts for "Yes" with more than 2 instances If firm's average gross revenue for the last 3 years was >\$50M: 5 pts for "No" or "Yes" with 1, 2, or 3 instances 3 pts for "Yes" with 4 or 5 instances 0 pts for "Yes" with more than 5 instances	N/A	N/A	
18	If firm's average gross revenue for the last 3 years was <\$50M: 5 pts for "No" or "Yes" with 1 instance 3 pts for "Yes" with 2 instances 0 pts for "Yes" with more than 2 instances If firm's average gross revenue for the last 3 years was >\$50M: 5 pts for "No" or "Yes" with 1, 2, or 3 instances 3 pts for "Yes" with 4 or 5 instances 0 pts for "Yes" with more than 5 instances	N/A	N/A	
19	5 pts for "No" or "Yes" with 1 claim 3 pts for 2 claims -5 pts for more than 2 claims	N/A	N/A	
20	5 pts for "No" or "Yes" with 1 instance 3 pts for 2 instances 0 pt for more than 2 instances	N/A	N/A	

QUESTION #	QUANTITY	YES	NO	SCORE
21	N/A	-5	5	
22	N/A	-5	5	
23	N/A	-5	5	
Questions 24 and 26 are not scored				
25	5 pts for rate $\leq 1\%$ 3 pts for rate no higher than 1.10% 0 pts for any other answer	N/A	N/A	
27	N/A	0	5	

TOTAL SCORE – QUESTIONS 6 TO 27	
<input type="checkbox"/>	Pass (scored 57 to 76)
<input type="checkbox"/>	Disqualified - total score is less than 57

QUESTION #	QUANTITY	YES	NO	SCORE
28	<p>If firm's average gross revenue for the last 3 years was <\$50M: 5 pts for "No" or "Yes" with 1 instance 3 pts for "Yes" with 2 instances 0 pts for "Yes" with more than 2 instances</p> <p>If firm's average gross revenue for the last 3 years was >\$50M: 5 pts for "No" or "Yes" with 1, 2, or 3 instances 3 pts for "Yes" with 4 or 5 instances 0 pts for "Yes" with more than 5 instances</p>	N/A	N/A	
29	<p>If firm's average gross revenue for the last 3 years was <\$50M: 5 pts for "No" or "Yes" with 1 instance 3 pts for "Yes" with 2 instances 0 pts for "Yes" with more than 2 instances</p> <p>(continuance of Question 29)</p> <p>If firm's average gross revenue for the last 3 years was >\$50M: 5 pts for "No" or "Yes" with 1, 2, or 3 instances 3 pts for "Yes" with 4 or 5 instances 0 pts for "Yes" with more than 5 instances</p>	N/A	N/A	
30	<p>If firm's average gross revenue for the last 3 years was <\$50M: 5 pts for "No" or "Yes" with 1 instance 3 pts for "Yes" with 2 instances 0 pts for "Yes" with more than 2 instances</p> <p>If firm's average gross revenue for the last 3 years was >\$50M: 5 pts for "No" or "Yes" with 1, 2, or 3 instances 3 pts for "Yes" with 4 or 5 instances 0 pts for "Yes" with more than 5 instances</p>	N/A	N/A	
31	<p>3 pts for once a week or more often 0 pts for any other answer</p>	N/A	N/A	
32	<p>5 pts for 3- year average EMR of ≤ 0.95</p>	N/A	N/A	

QUESTION #	QUANTITY	YES	NO	SCORE
	3 pts for 3- year average EMR of 0.95 to 1.00 0 pts for any other EMR			
33	5 pts for "No" or "Yes" with 1 instance 0 pts for any other answer	N/A	N/A	
34	If firm's average gross revenue for the last 3 years was <\$50M: 5 pts for "No" or "Yes" with 1 or 2 instances 3 pts for "Yes" with 3 instances 0 pts for "Yes" with more than 3 instances If firm's average gross revenue for the last 3 years was >\$50M: 5 pts for "No" or "Yes" with ≤ 4 instances 3 pts for "Yes" with 5 or 6 instances 0 pts for "Yes" with more than 6 instances	N/A	N/A	
35	If firm's average gross revenue for the last 3 years was <\$50M: 5 pts for "No" or "Yes" with 1 or 2 instances 3 pts for "Yes" with 3 instances 0 pts for "Yes" with more than 3 instances If firm's average gross revenue for the last 3 years was >\$50M: 5 pts for "No" or "Yes" with ≤ 4 instances 3 pts for "Yes" with 5 or 6 instances 0 pts for "Yes" with more than 6 instances	N/A	N/A	
36	5 pts for 1 or more approved apprenticeship program is listed. 0 pts for any other answer	N/A	N/A	
37	5 pts for 1 or more persons completed an approved apprenticeship program while employed by the firm. 0 pts for no person completed an approved apprenticeship program	N/A	N/A	
38	If firm's average gross revenue for the last 3 years was <\$50M: 5 pts for "No" or "Yes" with 1 or 2 instances	N/A	N/A	

QUESTION #	QUANTITY	YES	NO	SCORE
------------	----------	-----	----	-------

3 pts for "Yes" with 3 instances
0 pts for "Yes" with more than 3 instances

If firm's average gross revenue for the last 3 years was >\$50M:

5 pts for "No" or "Yes" with ≤ 4 instances
3 pts for "Yes" with 5 or 6 instances
0 pts for "Yes" with more than 6 instances

TOTAL SCORE – QUESTIONS 28 TO 38

- Pass (scored 38 to maximum 53)
- Disqualified - total score is less than 38

APPENDIX C: INTERVIEW QUESTIONNAIRE

The highest possible score is 120 Points. A score less than 55 points disqualifies a contractor from bidding on this project. For a score of between 56 and 72, conduct an interview of another contact, that is, a manager of another completed project. A score of 72 or higher on each of two interviews is sufficient for pre-qualification..

Company to be Pre-Qualified : _____
VTA Project to be Pre-Qualified for : _____
Company to be Interviewed : _____
Company Contact Person : _____
Contact Person Phone : _____
Referenced Project : _____

NUMBER	QUESTION	SCORE
1.	On a scale of 1-10, with 10 being the best, did the contractor provide adequate personnel?	Score: _____
2.	On a scale of 1-10, with 10 being the best, did the contractor provide adequate supervision?	Score: _____
3.	On a scale of 1-10, with 10 being the best, was there adequate equipment provided on the job?	Score: _____
4.	On a scale of 1-10, with 10 being the best, was the contractor timely in providing reports and other paperwork, including change order paperwork and scheduling updates?	Score: _____
5.	On a scale of 1-10, with 10 being the best, did the contractor adhere to the project schedule that your [agency] [business] approved?	Score: _____
6.	On a scale of 1 to 10, with 10 being the best, was the project completed by the contractor on schedule? (10 = completed on schedule including approved time extensions, 1 = significant and harmful delays)	Score: _____
7.	On a scale of 1-10, with 10 being the best, rate the contractor on the timely submission of reasonable cost and time estimates to perform change order work.	Score: _____
8.	On a scale of 1-10, with 10 being the best, rate the contractor on how well the contractor performed the work after a change	Score: _____

NUMBER	QUESTION	SCORE
	order was issued, and how well the contractor integrated the change order work into the existing work.	
9.	On a scale of 1-10, with 10 being the best, rate how has the contractor been performing in the area of turning in Operation & Maintenance manuals, completing as-built drawings, providing required training and punch list items?	Score: _____
10.	On a scale of 1-10, Has the contractor made any claim, dispute or lawsuit in excess of \$50,000 concerning work or payment? (10 = no claims > \$50K, 5 = 1 claim, 0 = many claims).	Score: _____
11.	On a scale of 1-10, with 10 being the highest, rate the contractor with respect to timely payments by the contractor to either subcontractors or suppliers. (If the person being interviewed knows of no such difficulties, the score on this question should be "10.")	Score: _____
12.	On a scale of 1-10, with 10 being the best, how would you rate the quality of the work overall?	Score: _____
13.	Are there any outstanding stop notices, liens, or claims by the contractor that are currently unresolved on contracts for which notices of completion were recorded more than 120 days ago? (1 point for each is deducted from overall score; maximum amount to be deducted is 5 points)	# of stop notices, liens or claims: _____

PRE-QUALIFICATION INTERVIEW RESULT					
SECTION		POSSIBLE SCORE	PASSING SCORE	EARNED SCORE	RESULT
Question No. 1 to Question No. 12	:	120	55	_____	
Deduction as per Question No.13	:	0	0	_____	
Total		120	55	_____	<input type="checkbox"/> Passed <input type="checkbox"/> Failed

Interviewer: _____

Signature: _____

Date: _____

APPENDIX K VTA SUBSTITUTIONS FOR CALTRANS SPECIFICATIONS

Refer to Contract **Section 6.32 References to CALTRANS Standard Specifications** as an introduction to this Appendix K.

Contractor must perform the Work in accordance with the State of California Department of Transportation (Caltrans) Standard Specifications, Sections 10 through 98 inclusive, dated 2018, the Standard Plans dated 2018, insofar as they are specifically referenced in **Section 8.0 Technical Specifications** herein.

Attention is directed to **Table K-1 below**. Wherever in the Caltrans Standard Specifications, Sections 10 through 98 inclusive, the Caltrans sections in Table K-1 are referenced, the referenced section is hereby deleted and the corresponding VTA General / Special Condition or Contract Section is substituted. The absence of a reference to a General or Special Condition in Table K-1 does not imply that the Condition is deleted from the Contract.

Table K-1 – VTA Substitutions for Caltrans Specs

Caltrans Standard Specification		Corresponding Section of these Contract Documents or General or Special Condition	
Sections 1, 2 & 3 of Caltrans Standard Specifications are deleted in their entirety and replaced by the following Sections of these Contract Documents: Section 1.0 Invitation for Bid Section 3.0 Instructions to Bidders Section 4.0 Bid Forms Section 5.0 Contract Forms			
Section 3: Contract Award and Execution is replaced by the following:			
3-1.06	Contractor License	7.3	Contractors Licensing Requirements
Section 4: Scope of Work is replaced by the following:			
4-1.02	Intent	Contract Form	
4-1.04	Use of Materials Found on the Job Site	7.42	Source of Materials
4-1.05	Changes And Extra Work	7.65 7.66	Changes Requests and Change Notices Change Order
4-1.05B	Work-Character Change	7.65	Change Requests and Change Notices

Caltrans Standard Specification		Corresponding Section of these Contract Documents or General or Special Condition	
4-1.06	Differing Site Conditions (23 CFR 635.109)	7.67	Differing Site Conditions
4-1.13	Cleanup	7.53 7.55	Clean-up Final Inspection and Acceptance of All or a Portion of the Work
Section 5: Control of Work is replaced by the following			
5-1.02	Contract Components	Contract Form	
5-1.03	Engineer's Authority	7.24	Authorized Representatives
5-1.12	Assignment	7.17	Assignment and Delegation
5-1.13	Subcontracting	7.18	Subcontracts
5-1.16	Representative	7.4 7.24	Independent Contractor Authorized Representatives
5-1.17	Character of Workers	7.36	Character of Workers
5-1.20	Coordination with Other Entities	7.39	Cooperation/Coordination and Work by Others
5-1.20B	Permits, Licenses, Agreements, and Certifications	7.5	Permits, Licenses, Fees and Notices
5-1.20B(4)	Contractor – Property Owner Agreement	7.51	Disposal of Materials
5-1.23B	Action Submittals	7.43	Submittal of Shop Drawings, Product Data and Samples
5-1.26	Construction Surveys	7.44	Survey Requirements
5-1.30	Noncompliant and Unauthorized Work	7.50	Removal of Rejected or Unauthorized Work
5-1.33	Equipment		N/A
5-1.36	Property and Facility Preservation	7.45	Protection and Restoration of Property
5-1.36C(3)	Non-highway Facility Rearrangement	6.11	Work Sequence and Constraints
5-1.36D	Survey Monuments	7.44.2	Monument Preservation

Caltrans Standard Specification		Corresponding Section of these Contract Documents or General or Special Condition	
5-1.37B	Load Limits		N/A
5-1.38	Maintenance and Protection Relief	7.55	Final Inspection and Acceptance of All or a Portion of the Work
5-1.39A	General	7.52	Protection of Completed Portions of Work
5-1.39B	Damage Caused by an Act of God	7.32	Excusable Delays and Extensions of Time
5-1.42	Requests for Information	7.25.3	Requests for Information (RFIs)
5-1.43	Potential Claims And Dispute Resolution	7.65 7.68	Change Requests and Change Notices Claims and Claim Resolution
5-1.46	Final Inspection and Contract Acceptance	7.55	Final Inspection and Acceptance of All or a Portion of the Work
5-1.47	Guarantee	7.73 7.74 7.75	Warranty Warranty Work Warranty on Repaired or Replaced Parts
Section 6: Control of Materials is replaced by the following:			
6-1.02	Department-Furnished Materials	6.9	VTA Furnished Materials
6-2.02	Quality Control	6.26	Quality Assurance and Quality Control Requirements
Section 7: Legal Relations and Responsibility To The Public is replaced by the following:			
7-1.02A	General	7.1 7.2	Applicable Law and Jurisdiction Compliance with laws and Regulations
7-1.02B	US Fair Labor Standards Act	7.8 Contract Form	Labor Provisions
7-1.02I(2)	Nondiscrimination	7.6	Nondiscrimination
7-1.02K(1)	General	7.8	Labor Provisions
7-1.02K(2)	Wages	7.8.4 7.60.2	Prevailing Wage Rates Labor
7-1.02K(3)	Certified Payroll Records (Labor Code § 1776)	7.8.8 7.58	Retention of Labor Records Certified Payrolls

Caltrans Standard Specification		Corresponding Section of these Contract Documents or General or Special Condition	
7-1.02K(4)	Apprentices	7.8.9	Employment of Apprentices
7-1.02K(5)	Working Hours	7.8 7.8.3	Labor Provisions Overtime Requirements
7-1.02K(6)	Occupational Safety and Health Standards	6.14 7.8.2	Safety Precautions, Programs and First Aid Requirements Safety
7-1.02K(6)(b)	Excavation Safety	6.14 7.8.2 7.43	Safety Precautions, Programs and First Aid Requirements Safety Submittal of Shop Drawings, Product Data, and Samples
7-1.02L(2)	Antitrust Claims	7.15 7.16 7.20	Ownership of Work and Material Title and Risk of Loss Antitrust Claims
7-1.02O	Vehicle Code		N/A
7-1.03	Public Convenience	7.38	Public Convenience and Safety
7-1.04	Public Safety	7.38	Public Convenience and Safety
7-1.05	Indemnification	6.1	Indemnity and Defense of Claims
7-1.06	Insurance	Appendix A	Insurance Requirements
7-1.06C	Workers' Compensation and Employer's Liability Insurance	Appendix A	Insurance Requirements
7-1.08	Personal Liability	6.1 Appendix A	Indemnity and Defense of Claims Insurance Requirements
Section 8: Prosecution and Progress is replaced by the following:			
8-1.02	Schedule	6.21 7.30	Progress Schedule Time of Completion
8-1.04B	Standard Start	6.4 7.29	Time for Performance Notice to Proceed
8-1.05	Time	7.30	Time of Completion
8-1.06	Suspensions	7.69	Suspension of the Work
8-1.07	Delays	7.32	Excusable Delays and Extensions of Time

Caltrans Standard Specification		Corresponding Section of these Contract Documents or General or Special Condition	
8-1.10	Liquidated Damages	6.5	Liquidated Damages
8-1.13	Contractor's Control Termination	7.71	Termination for Default
8-1.14	Contract Termination	7.70	Termination for Convenience or in the Public Interest
		7.71	Termination for Default
Section 9: Payment is replaced by the following:			
9-1.02	Measurement	Section 8	Technical Specifications
9-1.02C	Final Pay Item Quantities	6.19	Final Pay Quantities
9-1.03	Payment Scope	7.59	Progress Payment
9-1.04	Force Account	7.60	Force Account Payment
9-1.04A	General	7.60.1	Work Performed by Contractor
9-1.04B	Labor	7.60.2	Labor
9-1.04C	Materials	7.60.3	Materials
9-1.04D	Equipment Rental	7.60.4	Equipment Rental
9-1.04D(2)	Equipment On the Job Site	7.60.5	Equipment at the Worksite
9-1.04D(3)	Equipment Not On the Job Site and Not Required for Original-Contract Work	7.60.6	Equipment Not at the Worksite
9-1.04D(5)	Non-Owner-Operated Dump Truck Rental	7.60.4	Equipment Rental
9-1.05	Extra Work Performed By Specialists	7.60.7	Work Performed by Special Forces or Other Special Services
9-1.06	Change Quantity Payment Adjustments	7.57	Increased or Decreased Quantities and Quantity Variation
9-1.06D	Eliminated Items	7.66	Change Order
9-1.16	Progress Payments	7.59	Progress Payment
9-1.16E(2)	Progress Withholds	7.59	Progress Payment
9-1.16E(4)	Stop Notice Withholds	7.21	Stop Notices
9-1.17	Payment After Contract Acceptance	7.59	Progress Payment

Caltrans Standard Specification		Corresponding Section of these Contract Documents or General or Special Condition	
9-1.17B	Payment Before Final Estimate		N/A
9-1.17D	Final Payment and Claims	7.59	Progress Payment
9-1.17D(2)(b)	Overhead Claims		N/A
9-1.21	Clerical Errors		N/A
9-1.22	Arbitration		N/A
Section 13: Water Pollution Control			
13	Water Pollution Control	Appendix G Section 8	Environmental Coordination and Cooperation Technical Specifications
Section 14: Environmental Stewardship			
14	Environmental Stewardship	Appendix G	Environmental Coordination and Cooperation
14-8.02	Noise Control	6.13	Sound Control Requirements
Section 20: Landscape			
20-1.02C	Pesticides	7.1 7.2	Applicable Law and Jurisdiction Compliance with Laws and Regulations

APPENDIX M

QUALITY ASSURANCE AND QUALITY CONTROL REQUIREMENTS

Refer to **Section 6.27, Quality Assurance and Quality Control Requirements** and make the following change: Replace the section in its entirety with the following:

The Contractor shall at his own expense, within 10 calendar days following the Notice of Award, prepare and submit to VTA for approval a Quality Control Plan. The contractor shall establish, implement, and maintain the quality control plan to manage, control, document, and ensure that materials and Work complies with the requirements of the contract documents. The minimum contractor quality control activities are defined in the construction contract.

The contractor's quality control plan should address the following elements:

- Managing the work to ensure that both onsite and offsite work complies with the contract requirements, including the work of subcontractors, suppliers, and testing laboratories.
- Managing submittals, including but not limited to, supplemental quality control plans, qualification and certification documents for laboratories and testing personnel, certificates of compliance, shop drawings and proposed methods for fabrication and construction activities, mix designs, inspection reports, and test results.
- Providing the necessary inspection to ensure effective quality control and assurance of quality for acceptance of materials and workmanship. This includes but is not limited to fabrication, sampling and testing, production, storage, delivery, construction, and placement.
- Identifying, controlling, and documenting materials and workmanship that do not meet the specified level of quality. Documentation should include the nature of the non-conformance, location, extent, and disposition (such as removed and replaced, reworked, accepted based on engineering judgment). The final disposition of non-conforming materials or workmanship must be authorized by Caltrans.
- Training to ensure that proficiency is achieved and maintained by personnel performing activities that affect quality.
- Ensuring that the equipment used in the production and testing of the materials provide accurate and precise measurements in accordance with the applicable specifications.
- Maintaining a record of inspections, including but not limited to, date of inspection, results of inspection, and any subsequent corrective actions taken.

APPENDIX N
REGULATORY PERMIT APPLICATIONS

SAMPLE CALTRANS ENCROACHMENT PERMIT

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
ENCROACHMENT PERMIT

TR-0120 (REV 6/2012)

Permit No.
04-19-N-OP-0099

In compliance with (Check one):

- Your application of January 24, 2019
- Utility Notice No. _____ of _____
- Agreement No. Freeway Maint. of 1/18/2019
Agreement
- R/W Contract No. _____ of _____

Dist/Co/Rte/PM
04/SCL/101, 237/45.2 - 45.8, 2.7-3.3

DATE
January 25, 2019

Fee Paid \$ Exempt	Deposit \$ Exempt
Performance Bond Amount \$ N/A	Payment Bond Amount \$ N/A
Bond Company N/A	
Bond Number (1) N/A	Bond Number (2) N/A

TO:
 Santa Clara Valley Transportation Authority
 3331 North First Street
 San Jose, CA 95134-1906
 Email: gene.gonzalo@vta.org
 Attn: Mr. Gene Gonzalo
 Phone: (408) 952-4236

PERMITTEE

and subject to the following, **PERMISSION IS HEREBY GRANTED** to:

Improve Mathilda Avenue from Almanor/Ahwanee Avenue to Innovation Way, including modifying the US 101 and SR 237 interchange, ramp metering, concrete barrier, signs, pavement delineation, bus stops, and the existing Mathilda OC (Br. No. 37-0177); widening Mathilda Avenue; adjusting utilities; and adding new street lighting, traffic signals, sidewalk, and Class II bike lanes, per Caltrans oversight project EA 04-4H2904 (Project ID 0413000204), on State Highways 04-SCL-101 and 237, Post Miles 45.2 to 45.8 and 2.7 to 3.3, respectively, in the City of Sunnyvale, for a construction cost of \$28,000,000.00.

A minimum of 7 days prior to the start of work under this encroachment permit, notice must be given to State Oversight Representative Sergio Lugo, 1007 Knox Avenue, San Jose, CA 95122, sergio.lugo@dot.ca.gov or (650) 573-4329, weekdays between 7:00 a.m. and 3:30 p.m., excluding holidays.

Notwithstanding General Provision 35, lane closures and other activities that may cause a traffic impact requires the permittee to apply for and obtain a closure ID prior to the start of work. Requests must be submitted using the attached "Encroachment Permit Work Scheduling Request Form."

THIS PERMIT IS NOT A PROPERTY RIGHT AND DOES NOT TRANSFER WITH THE PROPERTY TO A NEW OWNER.

The following attachments are also included as part of this permit (Check applicable):

- Yes No General Provisions (TR-0045)
- Yes No Utility Maintenance Provisions TR-0162 and TR-0163
- Yes No Special Provisions TR-0408
- Yes No A Cal-OSHA permit, if required: Permit No. By Contractor
- Yes No As-Built Plans Submittal Route Slip for Locally Advertised Projects
- Yes No Water Pollution Control Documents (SWPPP - By Contractor)

In addition to fee, the permittee will be billed actual costs for:

- Yes No Review
- Yes No Inspection
- Yes No Field Work

(If any Caltrans effort expended)

Yes No The information in the environmental documentation has been reviewed and considered prior to approval of this permit.

This permit is void unless the work is completed before January 1, 2021.

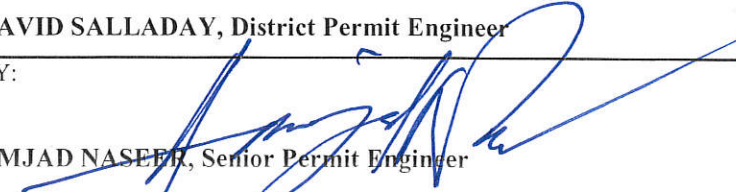
This permit is to be strictly construed and no other work other than specifically mentioned is hereby authorized.

No project work must be commenced until all other necessary permits and environmental clearances have been obtained.

Permit Engineer: DLau

c: ESherman III (2) - Maintenance
 JFavors - LCS, D4 TMC
 Joon Kang - Project Management
 Sergio Lugo - Construction
 CTarokh - Permits

APPROVED:
DAVID SALLADAY, District Permit Engineer

BY:

AMJAD NASEER, Senior Permit Engineer

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

In addition to the 2015 Caltrans Standard Plans and Standard Specifications (both available at <http://www.dot.ca.gov/des/oe/construction-contract-standards.html>) and approved project plans and special provisions, the permittee must comply with the attached “Encroachment Permit General Provisions” (TR-0045), “Hazardous Materials and Hazardous Waste Management Special Provisions” (TR-0408) (both available at [http://dot.ca.gov/trafficops/ep/docs/Appendix_K_\(WEB\).pdf](http://dot.ca.gov/trafficops/ep/docs/Appendix_K_(WEB).pdf)), and the following permit special provisions:

All work must comply with the permittee’s Storm Water Pollution Prevention Plan (SWPPP).

Certain details of work authorized herein are shown on the plans and specifications for the “Mathilda Avenue Improvements at US 101 and SR 237 Project” submitted by the permittee and attached to this encroachment permit, and/or as directed by the State Oversight Representative.

A pre-job meeting with the State Oversight Representative is required at least 7 days prior to the start of any work under this permit. Failure to do so may result in permit revocation with no prejudice.

The permittee must provide the stage construction plans, traffic handling plans, work schedule, and a list of all sub-contractors to the State Oversight Representative at the time of the pre-job meeting.

The permittee must contact the State Structure (Construction) Oversight Engineer Steve Gong at steve.gong@dot.ca.gov or (650) 222-7208 before beginning the bridge construction to schedule inspections.

The permittee must require the contractor to furnish payment and performance bonds naming the permittee as obligee and the State as additional obligee, and to carry the liability insurance in accordance with the 2015 Caltrans Standard Specifications.

Notwithstanding General Provision 4, construction must not begin until the contractor performing the work applies for and obtains a fee-exempt encroachment permit (referred to as a “double permit”) for the work authorized herein.

The permittee must update the Construction Material and Source Inspection Quality Management Plan (SIQMP) for any changes and/or updates to the construction material verification inspections performed at the manufacturing sources or at the project site, and submit the updated SIQMP to the State Oversight Representative for review and approval.

The permittee must comply with the permittee’s Quality Management Plan (QMP) and all the requirements for local agencies in the attached Department's:

- a. Construction Manual, including Chapter 9, Section 2 - Projects Administered by a Local Agency on the State Highway System, dated July 2017 (available at http://www.dot.ca.gov/hq/construc/constmanual/construction_manual.pdf),
- b. Construction Manual Supplement for Local Agency Resident Engineers, dated February 2017 (available at http://www.dot.ca.gov/hq/construc/constmanual/cm_supplement_lare.pdf), and
- c. Local Agency Structure Representative Guidelines, dated August 2014 (available at http://www.dot.ca.gov/hq/construc/CPDirectives/LASR_Guidelines.pdf).

Signs, lights, flags or other protective devices must not obscure the visibility of, nor conflict in intent, meaning, and function of either existing signs, lights and traffic control devices, or any construction area signs.

Install Type K temporary railing or other authorized protective systems when material or equipment is stored within 15 feet of the edge of an open traffic lane.

Install Type K temporary railing or other authorized protective systems when the near edge of an excavation is within 15 feet from the edge of an open traffic lane.

The approach end of Type K temporary railing must be offset a minimum of 15 feet from the edge of an open traffic lane. Install the temporary railing on a skew toward the edge of the traffic lane of not more than 1 foot transversely to 10 feet longitudinally with respect to the edge of the traffic lane. If the 15-foot minimum offset cannot be achieved, an array of temporary crash cushion modules must be installed at the approach end of the temporary railing.

On freeways and expressways, permittee's vehicles and equipment not involved in the permitted activities must be legally located outside the State highway right-of-way.

No vehicle or equipment must be stored overnight within the State highway right-of-way. All vehicles and equipment must be removed immediately at the completion of the day's work. Refueling of vehicle or equipment within the State highway right-of-way is strictly prohibited.

All traffic control devices must be installed, maintained, and removed by a qualified traffic control contractor.

Traffic control must also comply with the 2015 Caltrans Standard Plans T9 through T14 (available at <http://www.dot.ca.gov/des/oe/construction-contract-standards.html>), and the California MUTCD, Part 6, "Temporary Traffic Control" (available at <http://www.dot.ca.gov/trafficops/camutcd/>).

Except for installing, maintaining and removing traffic control devices, any work encroaching within 3 feet of the edge of a travel lane for areas with a posted speed limit below 45mph, or 6 feet of the edge of a travel lane, for areas with a speed limit posted at 45mph or higher, requires closing of that travel lane. Any work encroaching within 6 feet of the edge of the shoulder, requires closing of that shoulder.

Do not reduce an open traffic lane width to less than 11 feet. If traffic cones or delineators are used for temporary edge delineation, the side of the base of the cones or delineators nearest traffic is considered the edge of traveled way.

Temporary pedestrian facilities must comply with the Caltrans Temporary Pedestrian Facilities Handbook (available at http://www.dot.ca.gov/hq/construc/safety/Temporary_Pedestrian_Facilities_Handbook.pdf), and the California MUTCD Part 6, Chapter 6D – "Pedestrian and Worker Safety" (available at <http://www.dot.ca.gov/trafficops/camutcd/>).

Notwithstanding General Provision 13, temporary pedestrian access routes must comply with the 2015 Caltrans Standard Plans T30 through T34 (available at <http://www.dot.ca.gov/des/oe/construction-contract-standards.html>).

Streets and highways in the San Francisco Bay Area contain a significant number of existing underground utilities. This includes traffic signal conduits that are installed nine (9) inches or less in depth. The permittee is responsible for necessary site investigations for identification of the location and depth of existing underground facilities prior to excavation (e.g., pothole or hand-dig) to avoid damage or disruption in services.

All pavement must be saw cut prior to removal, or removed by grinding.

Pavement markings obliterated must be replaced in kind.

All signs and markings must comply with the California MUTCD (available at <http://www.dot.ca.gov/trafficops/camutcd/>).

Where Asphalt Concrete (AC) has been placed, temporary painted traffic striping and pavement markings must be installed within 24 hours. Where shown on the plans, after 30 days curing time, thermoplastic materials must be applied in accordance with the 2018 Caltrans Standard Specifications, Section 84, "Markings" (available at <http://www.dot.ca.gov/des/oe/construction-contract-standards.html>).

Changes to the provisions herein require an Encroachment Permit Rider, except for minor changes authorized by the State Oversight Representative.

Time extension requests must be made a minimum 2 weeks prior to permit expiration.

The State Representative or CHP may stop work not being performed in compliance with this permit.

Neither materials nor waste must be stockpiled within the State highway right-of-way.

All mud, dirt, and gravel tracked onto the roadway must be immediately removed.

No excavation must be left open overnight. Temporary backfilling of excavations in finished surfaces must be covered with a minimum 3 inches layer of cold asphalt concrete.

The permittee must comply with all requirements of the California Public Resource Code Sections 5024.5 and 5097.98, California Health and Safety Code Section 7050.5 (both available at <https://leginfo.legislature.ca.gov/faces/codes.xhtml>), and Volume 2 of the Caltrans Environmental Handbook (available at <http://www.dot.ca.gov/ser/vol2/vol2.htm>).

Should ground-disturbing activities take place as part of this project within the State highway right-of-way and there is an inadvertent archaeological or burial discovery, the permittee must cease all construction within 50 feet of the find, notify the County coroner, if necessary, and immediately contact Office of Cultural Resource Studies (OCRS), Caltrans District 4 at (510) 622-1673. Upon contact, an OCRS archaeologist will evaluate the find within one business day.

The permittee must maintain all improvement permitted herein in accordance with the attached executed freeway maintenance agreement.

Upon completion of work authorized by this encroachment permit, the permittee must provide the State Representative with a post-construction "Certification of Compliance with Americans with Disabilities Act (ADA)" (TR-0405) (available at [http://www.dot.ca.gov/trafficops/ep/docs/Appendix_D_\(WEB\).pdf](http://www.dot.ca.gov/trafficops/ep/docs/Appendix_D_(WEB).pdf)), stamped and signed by a California Licensed Professional Engineer or Architect.

Upon completion of work authorized by this encroachment permit, the permittee must provide the State Representative with As-Built plans, in accordance with General Provision 22.

Upon completion of work authorized by this encroachment permit, the permittee must provide the State Representative with "Notice of Completion" (TR-0128) (available at [http://www.dot.ca.gov/trafficops/ep/docs/Appendix_D_\(WEB\).pdf](http://www.dot.ca.gov/trafficops/ep/docs/Appendix_D_(WEB).pdf)).

Conditional Permit Requirements

1. The application for a double permit must include six copies of the traffic control plans, stamped and signed by a California Licensed Professional Engineer.
2. The application for a double permit must include copies of the payment and performance bonds furnished to the permittee, naming the State as additional obligee.

3. The permittee must obtain the State Oversight Representative's approval for any Contract Change Orders (CCO) within the State right-of-way.
4. The permittee must comply with requirements for the lane closure hours in the approved project special provisions.
5. The contractor must submit SWPPP to the State Oversight Representative before construction starts and obtain approval from Construction Environmental Engineering Support.

Enclosures

SAMPLE

APPENDIX P

POLICY ON REFLECTIVE SAFETY VESTS

Refer to Contract Special Conditions Section 6.14.15 Written Safety Precautions regarding compliance with

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

Refer to the attached VTA policy “Procedure on Reflective Safety Vests”.

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