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CONTRACT  
BETWEEN  
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
AND  
RSM US, LLP  
FOR  
AUDITOR GENERAL AND  
INTERNAL AUDIT SERVICES

CONTRACT NO. S16083

THIS CONTRACT for professional services ("Contract") is entered into between the Santa Clara Valley Transportation Authority ("VTA"), and RSM US, LLP ("Contractor").

- A. SERVICES TO BE PERFORMED:** Contractor shall furnish all technical and professional labor and materials to provide the services described in Exhibit A (herein referred to as "Services"), as requested by VTA by issuance of specific contract Task Orders and agreed to by Contractor.

Assignment of the Services shall be authorized by issuance of Task Orders the format of which will be substantially similar to Exhibit B.

- B. TERM OF THE CONTRACT:** The term of the Contract shall commence upon the execution of the Contract by both parties (the "Parties") and continue through completion on or before June 30, 2021, with the option of two (2) one-year extensions. The terms and conditions of the Contract shall remain in effect and applicable to all Task Orders issued during the term of this Contract.

- C. COMPENSATION:** Contractor shall be paid for the Services in accordance with Exhibit C.

Total compensation for Services performed under this Contract shall not exceed \$2,250,000.00.

A price shall be negotiated for each Task Order which will be governed by the labor rates listed in Exhibit D.

- D. PERFORMANCE OF THE SERVICES:**

1. Contractor represents that it is sufficiently experienced, properly qualified, registered, licensed, equipped, organized and financed to perform the Services.



2. Contractor shall perform the Services with the degree of skill and judgment normally exercised by firms performing services of a similar nature. In addition to other rights and remedies that VTA may have, VTA, at its option, may require Contractor, at Contractor's expense, to re-perform any Services that fail to meet the above standard.

**E. ASSIGNMENT AND SUBCONTRACTS:**

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

**F. CHANGES:** By written notice from VTA's Authorized Representative (as defined in Section M.1), VTA may, from time to time, order work suspension or make changes within the general scope of this Contract. If any such changes cause an increase or decrease in Contractor's cost to perform the Service or in the time required for its performance, Contractor shall promptly notify VTA thereof and assert its claim for adjustment within ten (10) days after the change is ordered, and an equitable adjustment shall be negotiated.

**G. INDEMNITY AND INSURANCE:** Contractor shall adhere to the indemnity and insurance requirements are set forth in Exhibit F.

**H. AUDIT AND RECORDS:**

1. Contractor shall maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records and data with respect to actual time devoted and costs incurred for the Services. Such documentation shall be supported by properly executed payrolls, invoices, contracts and vouchers evidencing in detail the nature and propriety of any charges and sufficient to allow a proper audit of the Services. All checks, payrolls, invoices, contracts and other accounting documents pertaining in whole or in part to the Services shall be clearly identified and readily accessible.
2. For the duration of the Contract, and for a period of three (3) years thereafter, VTA, VTA's independent third party auditor (who will be subject to written obligations of confidentiality satisfactory to RSM), and the state auditor shall have the right to examine and audit during Contractor's normal business hours, no more frequently than once every twelve (12) months, at its sole expense, those time, billing, and reimbursable expense records reasonably necessary to verify the costs incurred hereunder where such costs are the basis for billings under this Contract. Such examination shall be completed with



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minimum possible disruption to Contractor's business and within a commercially reasonable amount of time. VTA, the State Auditor, and VTA's independent third party auditor (who will be subject to written obligations of confidentiality satisfactory to RSM) will keep confidential all information learned in the course of any such examination and treat such confidential information with the same degree of care such entity treats its own confidential and proprietary information, but in no event less than a reasonable degree of care. Due to Contractor's confidential obligations to its other clients and its legal and professional responsibilities, Contractor will not provide VTA, the State Auditor, or VTA's independent third party auditor with access to information concerning Contractor's other clients.

3. Contractor shall report indirect costs in accordance with the cost principles contained in 48 CFR, Part 31, and follow the uniform administrative requirements set forth in 49 CFR, Part 18.
4. The provisions of this section shall be included in any subcontracts hereunder.

**I. MWBE POLICY:**

1. It is the policy of VTA to ensure that Minority and Women Owned Business Enterprises (MWBEs), as defined in the VTA MWBE Program, have an equitable opportunity to participate in the performance of contracts and subcontracts financed with local funds. VTA has an 18% MWBE aspirational goal.
2. Contractor will use commercially reasonable efforts to ensure that MWBE firms have an equitable opportunity to compete for subcontracting work under this Contract.

**J. SMALL BUSINESS ENTERPRISES:**

1. It is VTA policy to ensure that Small Business Enterprise (SBE) firms, as defined in Federal Regulations at 13 CFR Part 121 and 49 CFR Part 26, have an equitable opportunity to participate in the performance of contracts and subcontracts.
2. In connection with its performance under this Contract, although there is no specified SBE goal, Contractor agrees to cooperate with VTA in attempting to meet VTA's overall 19% annual utilization of SBE firms. In this regard Contractor will use commercially reasonable efforts to ensure that SBE firms shall have an equitable opportunity to compete for subcontract work under this Contract.



3. VTA will monitor compliance with Contract requirements for SBE firms. Electronic submittal will be on a web-based online system (B2Gnow), accessed from any computer via the internet at the following website: <https://vta.sbdbbe.com>. Contractor and its subcontractors will receive an email providing a Log-On identification, password, and instruction on how to use the system. All lower-tier subcontractors and vendors will be required to provide or verify SBE utilization documentation.
4. Contractor will be required to submit monthly SBE utilization reports electronically to the VTA Office of Small and Disadvantaged Businesses. These reports shall be submitted electronically by the Contractor and will document when payments to subcontractors were made, the dollar value of the payments to SBE firms, and the percentage of the Services completed.
5. At the conclusion of this Contract, Contractor shall submit a final SBE utilization report electronically to the VTA Office of Small & Disadvantaged Businesses by indicating a final audit where requested in the B2Gnow system. This final report will document when payments to subcontractors were made, the dollar value of payments to SBE firms, and the percentage of the Services completed.

#### **K. PROHIBITED INTERESTS:**

1. **SOLICITATION:** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach or violation of this warranty, VTA shall have the right to rescind this Contract without liability.
2. **INTEREST OF PUBLIC OFFICIALS:** No Board Member, officer or employee of the VTA during his or her tenure or for two years thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.
3. **INTEREST OF THE CONTRACTOR:** The Contractor covenants that it, its officers, directors or agents, presently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Services. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be knowingly employed.



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## L. TERMINATION AND SUSPENSION:

1. VTA may, by giving at least ten (10) business days' written notice to Contractor, terminate this Contract, or suspend performance hereunder, in whole or in part at any time for VTA's convenience. Contractor shall be compensated in accordance with the terms of the Contract for the Services satisfactorily performed prior to the effective date and time of termination or suspension. Contractor shall have no right to recover lost profits on the balance of the work.
2. VTA, by written notice given to Contractor, may declare default in Contractor's performance of any term of this Contract, specifying with particularity the basis for such default. Contractor shall deliver a response thereto in writing to VTA within two (2) business days of receipt of the notice, setting forth a reasonable proposal to cure the default. If Contractor fails to deliver the foregoing response on time or fails to cure the default within ten (10) business days after receipt of the notice (or within such additional time the Parties may agree upon in writing), VTA may elect to terminate this Contract for cause by serving written notice thereof to Contractor.
3. In the event of such termination for cause, VTA shall be relieved of any obligation of further payment to Contractor and may complete the remainder of the Services by itself, or by using an alternative, third party contractor. The additional cost to VTA for completing the Services shall be deducted from any sum due the Contractor and the balance, if any, shall be paid to the Contractor upon demand. The foregoing shall be in addition to any other legal or equitable remedies available to VTA.
4. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of VTA.
5. Contractor may, upon written notice to VTA, terminate or suspend its performance under this Agreement: (a) if VTA materially breaches one of its obligations under this Agreement, including, but not limited to, failure to make timely payment to Contractor as set forth herein, and does not cure that material breach within thirty (30) days after receipt of Contractor's written notice; or, (b) if continued performance by Contractor would result in a violation of law or a breach of its professional responsibilities.
6. In the event of a termination pursuant to Section L(5) above, Contractor shall be entitled to payment with respect to provable fees earned and reimbursable expenses incurred up to the effective date of termination. Contractor shall cease all work as of the effective date of termination and incur no further expenses beyond those authorized by VTA. Contractor shall forward to VTA all completed and uncompleted work product and any documentation related thereto. Contractor shall have no further responsibility or liability for any work designated as uncompleted or in progress as of the date of termination.



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**M. AUTHORIZED REPRESENTATIVES AND POINT OF CONTACT:** The Authorized Representatives identified below, or assigned designees, have authority to authorize changes to the scope, terms and conditions of this Contract, as set forth herein.

**1. AUTHORIZED REPRESENTATIVES:**

**VTA:**

Trish Kane  
Interim Manager of Procurement, Contracts and Materials  
3331 N. First Street, Bldg. A  
San Jose, CA 95134-1906  
[trish.kane@vta.org](mailto:trish.kane@vta.org)

**Contractor:**

Bill Eggert, Director  
RSM US, LLP  
100 West San Fernando St., Ste. 460  
San Jose, CA 95113  
(408) 572-4450  
[bill.eggert@rsmus.com](mailto:bill.eggert@rsmus.com)

- 2. NOTICES:** Notices shall be in writing and addressed to the Authorized Representatives at the addresses set forth above.
- 3. POINTS OF CONTACT:** The Points of Contact listed below are authorized to communicate regarding contract matters, except in the case where correspondence regarding legal notices must be addressed to the Authorized Representatives.

**VTA:**

Carolyn Vargas, Contracts Administrator  
3331 N. First Street, Bldg. A  
San Jose, CA 95134-1906  
[Carolyn.vargas@vta.org](mailto:Carolyn.vargas@vta.org)

**Contractor:**

Bill Eggert, Director  
RSM US LLP  
100 West San Fernando St., Ste. 460  
San Jose, CA 95113  
(408) 572-4450  
[Bill.eggert@rsmus.com](mailto:Bill.eggert@rsmus.com)

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



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## N. GENERAL PROVISIONS:

1. **OWNERSHIP OF DATA:** Except as set forth below, upon payment in full for the Services performed and Deliverables (defined below) delivered under this Contract, all drawings, specifications, reports, material, and other data custom-developed by Contractor, its assigned employees, or subcontractors for VTA pursuant to this Contract (collectively, "Deliverables") shall become the property of VTA as prepared, whether delivered to VTA or not, upon payment in full for the Services. Unless otherwise provided herein, all such Deliverables shall be delivered to VTA or its designee upon completion of the Contract or at such other times as VTA or its designee may request. Notwithstanding the preceding or any other provisions set forth in this Contract, Contractor reserves all rights in and to all proprietary works, information, and methodologies created, developed, or purchased by Contractor or any third party under contract to Contractor, whether before or during the term of this Contract, which has not been created specifically for VTA. For avoidance of doubt, Deliverables do not include Contractor's administrative communications, records, files, methodologies, processes, and working papers relating to the Services, all of which remain the sole and exclusive property of Contractor. In the event any of the Services set forth in Exhibit A are considered outsourced by VTA to the Contractor, VTA will acquire ownership of the working papers for such outsourced Services, and Contractor will be entitled to retain copies of all such working papers subject to the confidentiality obligations herein.
  
2. **NONDISCRIMINATION:** During performance of this Contract, Contractor, its employees and subcontractors shall not unlawfully discriminate, harass or allow harassment against any person because of race, religious creed, color, sex, gender, gender identity, gender expression, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), genetic information, marital status, age (over 40), sexual orientation or military and veteran status. In addition, Contractor and any subcontractor shall not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. Contractor shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment.
  
3. **CONFIDENTIALITY AND PUBLICITY:** Without the written consent of VTA, Contractor shall not disclose to third parties other than its employees or authorized subcontractors or disclose or use for any purpose other than performance of the Services any information provided to Contractor by VTA in connection with performance of this Contract, or any information developed or obtained by Contractor in the performance of this Contract, unless: (1) the information is known to Contractor prior to obtaining same from VTA or performing Services under this Contract; (2) the information is at the time of disclosure by Contractor then in the public domain; or (3) the information is obtained by or from a third party who did not receive it, directly or indirectly, from VTA and who has no obligation of confidentiality with respect thereto. Unless required by law, regulation, or court order,



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all material designated as confidential or proprietary by either Party shall be maintained as confidential information and each party shall treat the other Party's confidential information with the same degree of care as such Party treats its own confidential and proprietary information, but in no event less than a reasonable degree of care.

4. **NONWAIVER:** Failure of VTA to insist upon strict performance of any terms or conditions of this Contract or failure or delay in exercising any rights or remedies provided herein by law or its failure to properly notify Contractor in the event of breach or its acceptance of or payment for any Services hereunder shall not release Contractor from the representations or obligations of this Contract and shall not be deemed a waiver of any right of VTA to insist upon strict performance hereof or any of its rights or remedies hereunder.
5. **SEVERABILITY:** If any of the provisions of this Contract (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and Contractor shall negotiate an equitable adjustment in the provisions of the Contract with a view toward effecting the purpose of this Contract, and the validity and enforceability of the remaining provisions or portions or applications thereof shall not be affected thereby.
6. **INDEPENDENT CONTRACTOR:** In performance of the Services, Contractor will be acting as an independent contractor and not the agent or employee of VTA.
7. **ENTIRE CONTRACT:** This Contract constitutes the entire contract between VTA and Contractor relating to the subject matter hereof and supersedes any previous contracts, agreements or understandings, oral or written.
8. **AMENDMENT:** Except as expressly provided herein, the provisions of this Contract shall not be altered, modified or amended except through the execution of a written amendment executed by VTA and Contractor.
9. **COMPLIANCE WITH APPLICABLE LAW:** In the performance of Services hereunder, Contractor and its subcontractors, shall comply with all applicable requirements of state, federal and local law. The provision of this paragraph shall be included in any subcontracts hereunder.
10. **DOCUMENTS AND WRITTEN REPORTS:** In accordance with Government Code § 7550(a), any document or written report prepared in whole or in part by nonemployees of VTA shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of the document or written report if the total cost of the work performed by nonemployees of the agency exceeds five thousand dollars (\$5,000.00). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of the document or written report.






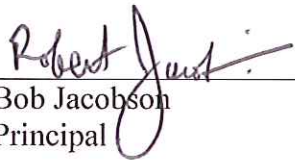
**11. INCORPORATION OF EXHIBITS AND ATTACHMENTS:** All exhibits and attachments referenced in this Contract are incorporated herein by this reference.

IN WITNESS WHEREOF, VTA and Contractor have executed this Contract as of the last date set forth below ("Effective Date").

*Santa Clara Valley  
Transportation Authority*

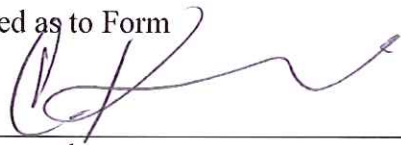
*RSM US, LLP*

  
\_\_\_\_\_  
Nuria I. Fernandez  
General Manager/CEO

  
\_\_\_\_\_  
Bob Jacobson  
Principal

*9/28/16*  
\_\_\_\_\_  
Date

*9/21/16*  
\_\_\_\_\_  
Date

Approved as to Form  
  
\_\_\_\_\_  
VTA Counsel



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## EXHIBIT A SCOPE OF SERVICES

The scope of Services includes, but is not be limited to, the following:

1. Contractor will serve in the capacity of the VTA Auditor General, unless otherwise approved at the sole discretion of VTA.
2. Contractor will assemble a team of professional auditors to provide internal audit and business consultative services.
3. Contractor has direct responsibility to:
  - a. Develop and recommend the Annual Internal Audit Work Plan for Board approval utilizing the results of the periodic risk assessment/risk refresh identifying risk areas and potential magnitude.
  - b. Plan and conduct each audit or project contained in the Internal Audit Work Plan.
  - c. Assign and manage the resources required to conduct each audit or project contained in the Internal Audit Work Plan.
  - d. Develop preliminary audit/project report and findings and review with VTA management, soliciting management's input.
  - e. Present audit or project report, including the recommended corrective actions and VTA management's commitment for implementing corrective action to the Governance & Audit Committee and Board of Directors.
  - f. Provide periodic written reports to the Governance & Audit Committee on the completion status of Internal Audit Work Plan projects.
  - g. Provide periodic written reports to the Governance & Audit Committee on the implementation status, adequacy and timeliness of corrective actions VTA Administration committed to implement to address recommendations contained in completed Auditor General reports.
  - h. Host a public meeting annually to: (1) present to the community and VTA stakeholders completed Auditor General work, including findings, recommendations and VTA Administration's commitment to corrective action; and (2) soliciting input for future projects and areas of emphasis or concern.
  - i. Review, evaluate, and investigate, as necessary, reports submitted to VTA's Ethics Hotline and provide periodic summary-level written reports on usage and issue disposition to the Governance & Audit Committee and Board of Directors.
  - j. Review, evaluate, and investigate, as necessary, alleged violations of VTA Code of Ethics provisions by a VTA Board member, advisory board member, committee member, vendor, or contractor/consultant.
  - k. As requested, review for reasonableness VTA budgetary, financial and/or investment assumptions.



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1. Perform other projects as requested by the Board.

4. Additional Requirements:

- a. Contractor, as well as other positions within RSM US, LLP, that are determined by VTA to be participating in the making of governmental decisions, will be required to file a Form 700, the financial disclosure form mandated by the California Fair Political Practices Commission (FPPC), and in accordance with FPPC rules, regulations and timetables.
- b. Contractor is required to attend certain Governance & Audit Committee meetings (as determined by VTA) to present Auditor General Office reports, answer questions, or provide information as needed. The minimum is the normally four (4) scheduled meetings that primarily focus on the Auditor General function. Most Governance & Audit Committee meetings are held immediately prior to a VTA Board of Directors' meeting.
- c. Contractor is required to attend in their entirety (except for Closed Session) all regular meetings of the VTA Board of Directors (normally 11 scheduled per year) to present Auditor General reports, gather information, answer questions, or provide information to the Board as needed. A designated representative may be sent, on occasion where scheduling conflicts occur, with VTA's prior written approval.
- d. Contractor is required to be on-site and to maintain office hours at VTA's River Oaks Administrative Campus a minimum of, on average, 16 hours per week, to provide access and communication opportunities between VTA staff and the Auditor General function. An enclosed private office is provided for this purpose. In addition, additional work space is provided for other staff of the selected firm serving as the VTA Auditor General Office.
- e. Contractor must have staffing capacity to assign to the function at least two (2) qualified individuals, both CPAs, with one (1) being an Audit Partner with a minimum of five (5) years of experience in performing and/or supervising governmental audits. This is in addition to any subject matter experts needed for each specific project.
- f. The final version (not drafts or working papers) of all Auditor General reports are reviewed in open session at Governance & Audit Committee and VTA Board of Directors meetings and are, therefore, public record.





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**EXHIBIT C**  
**COMPENSATION, INVOICING and PAYMENT**  
**TIME and MATERIALS**

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

**A. COMPENSATION:** This is a time and materials Contract with a maximum value of \$2,250,000.00, within which Contractor agrees to complete the Services defined in Section 1 of this Contract. Contractor is not authorized to provide Services hereunder exceeding the above-stated amount.

**1. LABOR COSTS:** The Services shall be invoiced in accordance with the following rate schedules.

**a. Exempt Personnel:** VTA shall pay for work by exempt personnel (as determined under the Fair Labor Standards Act, 29 U.S.C. § 201-219) at the labor rates as identified in Exhibit D, which include direct labor, indirect labor, overhead and profit. VTA payment for work by exempt personnel shall not include any premium pay.

**b. Non-Exempt Personnel:** VTA shall pay for overtime work by non-exempt personnel (Time and a Half, Double Time) in accordance with California law. VTA must approve all premium time in advance in writing.

**c.** Contractor may request increases in labor rates. Increases in labor rates may only occur once in a twelve (12) month period per individual. All requests shall be made in writing to VTA at least thirty (30) days prior to the date the requested new rates are to become effective. VTA must approve in writing any adjustments in advance prior to the effective date of the new labor rates.

**d.** The labor rate paid by Contractor to each employee shall not increase more than the annual average of the Consumer Price Index for the San Francisco Bay Area, using the **CPI-U, All Urban Consumers** index type for the twelve (12) month period preceding a new rate.

**e.** VTA will consider individual exceptions to the above limitation, on a case-by-case basis, not to exceed one (1) adjustment per employee per year, where Contractor can demonstrate that additional compensation is necessary to retain a specific employee VTA considers to be essential.

**2. SUBCONTRACTOR COSTS:** VTA shall reimburse subcontractor costs at actual cost without mark-up. Subcontractor costs shall be supported by invoices, as are prime costs. See paragraph II, Invoicing.



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3. **OTHER DIRECT COSTS (ODCs):** ODCs shall be authorized and reimbursed as follows. All ODCs shall be reimbursed at actual cost without mark-up and include the following types of expenses.
- a. Travel and Business Related Expenses. VTA will reimburse Contractor for travel and business related expenses in accordance with the VTA Travel and Expense Reimbursement Policy.
  - b. Parking, tolls, deliveries, film, photo developing, printing/copying and plan reproduction and blue print services expenses directly associated with the work will be reimbursed at cost. Except as otherwise provided herein, telephone, computer costs, CAD machine charges, in-house copying and facsimile charges shall be included in overhead and shall not be reimbursed.
  - c. All ODCs shall require appropriate documentation for reimbursement. VTA must approve in writing any ODC item estimated to exceed \$500.00 prior to incurring the expense.

**B. INVOICING:**

1. **INVOICE FORMAT:** VTA shall pay Contractor on the basis of invoices submitted every month for the Services performed during the preceding month. Invoices shall be in a form acceptable to VTA and each invoice must include:
  - Contract Number.
  - Name, classification and labor rate of employee.
  - Description of work performed.
  - Hours worked by employee accompanying with signed timesheets.
  - Other Direct Costs.
  - Subcontractor costs with itemization in same format above.
  - Total costs.
  - Percent of schedule and budget Expended.
2. **WAIVER:** Contractor shall be deemed to have waived the right to payment for Services not invoiced within six (6) months of the date the Services were performed. For purpose of this provision the date of the invoice shall be the date of receipt by VTA.
3. **INVOICE SUBMITTAL:** Contractor shall submit invoices by e-mail to the address listed below. Invoices shall be in a PDF, Word, or Excel format.

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



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4. Should VTA contest any portion of an invoice, that portion shall be held for resolution, and the uncontested balance shall be processed for payment. VTA may, upon reasonable advance written notice, during Contractor's normal business hours, no more frequently than once every twelve (12) months, and at its sole expense, review those time, billing and reimbursable expense records related to the Services performed by Contractor which are reasonably necessary to verify the amounts invoiced by Contractor under this Contract. Such review shall be completed with minimum possible disruption to Contractor's business and within a commercially reasonable amount of time. The VTA, and VTA's independent third party auditor (who will be subject to written obligations of confidentiality satisfactory to RSM), will keep confidential all information learned in the course of any such examination and treat such confidential information with the same degree of care such entity treats its own confidential and proprietary information, but in no event less than a reasonable degree of care. Due to Contractor's confidential obligations to its other clients and its legal and professional responsibilities, Contractor will not provide VTA with access to information concerning Supplier's other clients. Any overpayment uncovered in such a review may be charged against the Contractor's future invoices and any retention funds.

C. **PROMPT PAYMENT:** VTA will pay Contractor within thirty (30) days after receipt by VTA of a proper, fully documented, invoice. Contractor shall pay subcontractors for satisfactory performance of any of the Services performed by subcontractors within fifteen (15) days of receipt of payment by VTA for such Services. Contractor agrees further to return retainage payments to each subcontractor within fifteen (15) days after the subcontractor's work is satisfactorily completed.



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**EXHIBIT D  
LABOR RATE SCHEDULE**

<b>Name</b>	<b>Classification</b>	<b>Fully Burdened Hourly Rate</b>
Bill Eggert	Director	\$325.00
Corey Saunders	Director	\$325.00
Jing Li	Manager	\$230.00
Lily Rogers	Supervisor	\$190.00
Kevin Spaeth	Senior Associate	\$170.00
Ronald Szeto	Associate	\$130.00
Joe Benfatti	Partner-Subject Matter Advisor	\$350.00
Tauseef Ghazi	Director-Subject Matter Advisor	\$350.00
John Croy	Sr. Director-Subject Matter Advisor	\$300.00
Dave Potak	Manager-Subject Matter Advisor	\$250.00





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**EXHIBIT E**  
**APPROVED SUBCONSULTANTS**

Sam Schwartz  
Joe Iacobucci  
Director of Transit  
Chicago, Illinois  
[jiacobucci@samschwartz.com](mailto:jiacobucci@samschwartz.com)  
(773) 305-0800

Patrick Hagen  
Consultant  
State and Local Government Advisor  
Chicago, Illinois  
[Patrick.hagen@att.net](mailto:Patrick.hagen@att.net)



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**EXHIBIT F**  
**INDEMNITY, LIMITATION OF LIABILITY, and INSURANCE REQUIREMENTS**

**A. INDEMNITY:** To the maximum extent permitted by law, the Contractor shall indemnify, defend, and hold harmless Santa Clara Valley Transportation Authority its officers, agents and employees (hereinafter "VTA") from any: (1) third party claim, liability, loss, injury or damage (collectively, "Damages") arising out of, or in connection with, the performance of Services under this Contract caused by the negligent or willful acts or omissions of Contractor and/or its agents or employees or subcontractors, excepting only Damages to the extent caused by the gross negligence or willful misconduct of personnel employed by VTA; and, (2) personal injury, property damage, or death caused by the negligent or willful acts or omissions of Contractor and/or its agents or employees or subcontractors in connection with the performance of Services under this Contract, excepting only personal injury, property damage, or death to the extent caused by the gross negligence or willful misconduct of personnel employed by VTA.

Contractor's duty to defend any third party claim is triggered immediately upon an assertion of any third party claim against VTA; provided, however, VTA: (a) promptly notifies Contractor in writing of such action; (b) gives Contractor sole control of the defense thereof and any related settlement negotiations (except to the extent such settlement does not release VTA from any and all liability or admits fault or liability on the part of VTA); and (c) VTA cooperating with Contractor in such defense (including, without limitation, by making available to Contractor all documents and information in Contractor's possession or control that are relevant to the claim, and by making VTA's personnel available to testify or consult with Contractor or its attorneys in connection with such defense). Thus, Contractor's duty to defend does not depend on a finding that Contractor and/or any of its agents, employees, or subcontractors were, in fact, liable for the Damages.

This indemnity and defense of claims provision shall survive the expiration or termination of the Contract and remain in full force and effect.

**B. INSURANCE:** Without limiting the Contractor's indemnification of VTA, the 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 Services hereunder by the Contractor, its agents, representatives, or employees, and shall use commercially reasonable and appropriate efforts to require that its subcontractors, to the extent such subcontractor can procure such insurance, obtain comparable insurance coverage as Contractor is required to maintain herein.

**1. LIABILITY AND WORKER'S COMPENSATION INSURANCE**

**a. Minimum Scope of Coverage:** Coverage shall be at least as broad as:



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

**b. Minimum Limits of Insurance:** Contractor shall maintain limits no less than:

- 1) General Liability \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. If a Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 2) Automobile Liability \$1,000,000 combined single limit per accident for bodily injury and property damage.
- 3) Workers’ Compensation and Employers Liability: Statutory Workers’ Compensation limits and Employers Liability limits of \$1,000,000 per accident for bodily injury, \$1,000,000 each employee for bodily injury by disease, and a \$1,000,000 policy limit for bodily injury by disease.
- 4) Professional Liability: \$1,000,000 per claim and in the general aggregate.

**c. Self-Insured Retention:** Any self-insured retention in excess of \$25,000 (\$100,000 if Contractor is a publicly-traded company) must be declared to and approved by VTA. If Contractor is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention in excess of the stipulated amounts stated herein, the proposer/bidder must provide a current financial statement documenting the ability to pay claims falling within the self-insured retention. At the option of VTA, either: the insurer shall reduce or eliminate such self-insured retention as respects VTA, its officers, officials, employees and volunteers; or



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the propose/bidder shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

2. **CLAIMS MADE PROVISIONS:** If coverage is written on a “claims made” basis, the Certificate of Insurance shall clearly state so. In addition to all other coverage requirements, such policy shall provide that:
  - A. The policy must be in effect as of the date of this Agreement and the retroactive date shall be no later than the date of this Agreement.
  - B. If any policy is not renewed by a policy of equal or better coverage, or the retroactive date of such policy is to be changed, the Contractor shall obtain extended reporting period coverage of at least two (2) years.
3. **OTHER PROVISIONS:** The policies are to contain, or be endorsed to contain, the following provisions:
  - A. **Commercial General Liability and Automobile Liability**
    - 1) VTA, its officers, officials, employees and volunteers will be provided additional insured status under Contractor’s Commercial General Liability and Automobile Liability insurance policies via a blanket endorsement, including with respect to: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. With respect to volunteers who will be provided additional insured status, such status will apply solely to the extent such volunteers are performing duties related to the conduct of the VTA’s business and only to the extent applicable by law. Where coverage is not available due to local laws, such additional insured status to volunteers cannot and will not be provided, nor indicated on a certificate of insurance. To the extent permitted by law, the coverage shall contain no special limitations on the scope of protection specifically afforded to VTA, its officers, officials, employees, or volunteers.
    - 2) The Contractor’s insurance coverage shall be primary insurance with respect to VTA, its officers, officials, employees, and volunteers (except as noted above in subsection A(1) for volunteers). Any insurance or self-insurance maintained by VTA, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it (except as noted above in subsection A(1) for volunteers).



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- 3) Contractor will be responsible for any failure on its part to comply with reporting provisions of the policies that affects the coverage afforded to VTA, its officers, officials, employees, or volunteers under one of the insurance policies required hereunder.
  - 4) The Contractor's insurance shall 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.

**B. Workers' Compensation and Employers Liability:** The insurer shall agree to provide a waiver of all rights of subrogation in favor of VTA, its officers, officials, employees, and volunteers via a blanket endorsement for losses arising from work performed by the Contractor for VTA.

4. **ACCEPTABILITY OF INSURERS:** Insurance and bonds are to be placed with insurers with a Best's rating of no less than A-/VII, unless specific prior written approval has been granted by VTA.
5. **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 or something substantially similar thereto. The Contractor shall submit all insurance certificates and required notices electronically in PDF format to [Insurance.Certificates@VTA.org](mailto:Insurance.Certificates@VTA.org).

The certificates will (1) identify the underwriters, the types of insurance, the insurance limits and the policy term, and 2) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority  
Procurement and Contracts Department  
3331 North First Street  
San Jose, CA 95134-1906  
Ref: Contract No. S16083

All certificates are to be received and approved by VTA before work commences. In the event of a legal claim or the commencement of litigation by VTA ("Legal Proceeding") against Contractor, VTA reserves the right, subject to any restriction or limitation imposed or provided by the applicable law in the governing jurisdiction, including, but not limited to, the Contractor and/or insurer's right to redact confidential and/or proprietary information set forth in an insurance policy, to request through formal discovery in such Legal Proceeding a complete, certified copy of all required insurance policies hereunder.



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Contractor shall provide VTA, within thirty (30) days, written notice of any cancellation or material change to the insurance policies required hereunder where such cancellation or material change does not result in equal or better coverage. If the Contractor receives any notice that any of the insurance policies required by this Exhibit may be cancelled or coverage reduced for any reason whatsoever, Contractor shall provide thirty (30) days' written notice to VTA that such insurance policy required by this Exhibit is canceled or coverage is reduced.

- C. MAINTENANCE OF INSURANCE:** If Contractor fails to maintain such insurance as is called for herein, VTA, at its option, may suspend payment for work performed and/or may order the Contractor to suspend work at Contractor's expense until a new policy of insurance is in effect.
- D. LIMITATION OF LIABILITY: TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT TO THE EXTENT CAUSED BY CONTRACTOR'S, OR ITS SUBCONTRACTOR'S, GROSS NEGLIGENCE, FRAUD, OR INTENTIONAL MISCONDUCT, THE TOTAL AGGREGATE LIABILITY OF CONTRACTOR, AND ITS PARTNERS, PRINCIPALS, OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, SUBSIDIARIES, SUBCONTRACTORS, AGENTS, AND REPRESENTATIVES, TO THE VTA FOR ANY AND ALL CLAIMS WHATSOEVER RELATED TO THE DELIVERABLES, THE SERVICES PROVIDED HEREUNDER, A TASK ORDER, OR THIS CONTRACT, INCLUDING ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED THE TOTAL AMOUNT OF THE FEES PAID TO CONTRACTOR BY VTA UNDER THE TASK ORDER(S) THAT GAVE RISE TO SUCH LIABILITY.**

IN NO EVENT WILL CONTRACTOR, OR ITS PARTNERS, PRINCIPALS, OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, SUBSIDIARIES, SUBCONTRACTORS, AGENTS, OR REPRESENTATIVES, BE LIABLE TO VTA FOR ANY LOSS OF PROFITS, DATA (OR USE OF), GOODWILL, OR REVENUES (WHETHER OR NOT DEEMED TO CONSTITUTE DIRECT DAMAGES), NOR INCIDENTAL, INDIRECT, CONSEQUENTIAL PUNITIVE, EXEMPLARY, OR SIMILAR SUCH DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE FOREGOING LIMITATION ON LIABILITY SHALL NOT APPLY: (I) TO CONTRACTOR'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION A OF THIS EXHIBIT F; OR, (II) IN ANY MANNER TO, OR AFFECT, THE INSURANCE COVERAGES SPECIFIED IN THIS EXHIBIT F, AND THE FULL AMOUNT OF SUCH INSURANCE SHALL REMAIN AVAILABLE TO VTA FOR ANY COVERED CLAIMS, SUBJECT TO THE PROVISIONS OF THIS SECTION D.