



Date: August 22, 2011
 Current Meeting: September 1, 2011
 Board Meeting: September 1, 2011

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
 Board of Directors

THROUGH: General Manager, Michael T. Burns

FROM: Chief SVRT Program Officer, Carolyn M. Gonot

SUBJECT: Silicon Valley Berryessa Extension Project Labor Agreement

Policy-Related Action: Yes

Government Code Section 84308 Applies: No

ACTION ITEM

RECOMMENDATION:

Adopt a resolution of findings that use of a Project Labor Agreement for the Line, Track, Stations and Systems Design-Build contract (VTA contract C700) of the Silicon Valley Berryessa Extension Project will ensure the availability and stability of labor resources throughout the duration of the project; and authorize the General Manager to enter into a Project Labor Agreement with the Santa Clara & San Benito Counties Building & Construction Trades Council for the Line, Track, Stations and Systems Design-Build contract of the Silicon Valley Berryessa Extension Project.

BACKGROUND:

On November 19, 2001, VTA and BART executed the Comprehensive Agreement for the Santa Clara County BART Extension. This agreement provides the essential framework for implementing the BART extension in Santa Clara County. VTA is building this extension in stages under its Silicon Valley Rapid Transit (SVRT) Program. The first stage has been identified as the Silicon Valley Berryessa Extension (SVBX) Project that includes two stations, Milpitas and Berryessa, and extends approximately 10 miles from the planned Warm Springs Station being constructed by BART in Alameda County, to the planned Berryessa Station in the City of San José. The SVBX project is estimated to cost \$2.5 billion.

In December 2009, the Federal Transit Administration (FTA) accepted the Silicon Valley Berryessa Extension Project into its New Starts funding program, approved the Environmental Impact Statement and issued a Record of Decision in June 2010 enabling VTA to proceed with real estate acquisition and other early activities. On April 1, 2011, FTA approved the SVBX

project for final design, allowing the project to initiate final design, demolition and remediation, and procurement of long lead time items. FTA is currently working with VTA to move the project toward a Full Funding Grant Agreement (FFGA), anticipated to be executed in January 2012.

On February 6, 2011, President Obama signed Executive Order 13502 encouraging federal grant recipients to consider the use of Project Labor Agreements on large-scale construction projects. The order explained that the use of a Project Labor Agreement (PLA) may ensure a steady supply of labor, prevent labor disputes and uncertainty about the terms and conditions of employment and promote the efficient and timely completion of construction projects.

On March 25, 2011, VTA released its Request for Proposal (RFP) to begin procurement of a Design-Builder to implement the design and construction of the BART-related elements of the SVBX project designated as the C700 Line, Track, Stations and Systems Design Build Contract. Included in the RFP are provisions that VTA would incorporate a Project Labor Agreement (PLA) into the RFP by Addendum should a PLA be negotiated and adopted by the VTA Board.

DISCUSSION:

The successful and timely completion of the SVBX project is important to VTA and the public. Because of the large cost of the project, delays can amount to substantial additional expense. VTA has been taking measures to minimize the risks of delays, including the major risk of workforce disruption. Large numbers of workers of various skills will be required to construct the extension. On a project of this magnitude, with multiple contractors and bargaining units on the job site at the same time over an extended period, the potential for work disruption is substantial, unless there is an overriding commitment to maintain continuity of work. To avoid such a delay and its costs, VTA has moved toward making this commitment through development of a PLA.

Other recent local public works projects utilizing a project labor agreement include the San Jose International Airport Expansion and the Santa Clara Valley Medical Center expansion and seismic upgrade.

Pursuant to case law, VTA is required to demonstrate objectively that the PLA furthers a legitimate government interest, in this case, to promote efficiency of construction operations in the SVBX project. The VTA Board's adoption of a resolution of findings (Attachment B) will define the benefits of the PLA. The PLA provides for the orderly and peaceful settlement of labor disputes and grievances without strikes, work stoppages or lockouts and ensures the availability and stability of labor resources throughout the duration of the project, thereby reducing the risk of significant economic loss to VTA, disruption to the community, and delays to the completion of the project. The PLA will promote the public interest in assuring the timely and economical completion of the SVBX project.

VTA staff has entered into and completed negotiations of a Draft PLA (Attachment A) with the Santa Clara & San Benito Counties Building & Construction Trades Council and all designated and signatory unions. VTA's role is to ensure that the PLA's terms are requirements of the C700 Design-Build contractor and its subcontractors. The Trades Council's role is to ensure that the

terms are respected by the applicable trade unions. Through the PLA, VTA had made arrangements with the Trades Council to obligate the C700 Design-Build contractor to meet the terms of the agreement until revenue service commences. This PLA is designed exclusively to govern the Line, Track, Stations and Systems Contract due to its size, complexity and importance to the public. VTA contracts outside of the Line, Track, Stations and Systems Contract are not governed or affected by this agreement.

Key elements of the recommended Project Labor Agreement are as follows:

- The Project Labor Agreement prohibits strike, work stoppages, work slow-downs, picketing and lock-outs.
- Provides a structure for the resolution of labor disputes.
- Provides a common set of work rules for all craft labor on the project.
- Representative crafts covered by the Project Labor Agreement include asbestos workers, bricklayers, carpenters, iron workers, plumbers, laborers, roofers, sheet metal workers, electricians, sprinkler fitters, painters, and others.
- Eliminates potential conflicts between existing labor agreements with contractors and subcontractors.
- Provides for the orderly resolution of jurisdictional disputes among individual unions.
- Increases the availability of craft labor to all contractors and sub-contractors.
- Craft labor wages for public works projects are governed by their labor classification under the California Labor Code, and are not changed by the Project Labor Agreement.

Staff recommends that it is in the best interests of VTA and the SVBX project to enter into the PLA with the C700 Design-Build contractor and the Santa Clara & San Benito Counties Building & Construction Trades Council and designated signatory labor unions.

ALTERNATIVES:

VTA can proceed with VTA contract C700 without using a Project labor Agreement, by issuing an addendum to the prequalified proposers indicating that no PLA will be used. This may delay the award of the contract a month or more, and increase the pricing for the proposals submitted.

FISCAL IMPACT:

The absence of a PLA poses significant risks to the timely and cost-effective completion of the project.

STANDING COMMITTEE DISCUSSION/RECOMMENDATION:

The Administration & Finance Committee, Transit Planning & Operations Committee and

Congestion Management Programming & Planning received this item at their scheduled August 2011 meetings. The Administration & Finance Committee supported the staff recommendation. The Transit Planning & Operations Committee requested clarification as to how the PLA informs VTA consideration's of wage rates. Staff noted that labor pay is based on prevailing wages as required for federal contracts. In addition, staff noted how the uniform work rules would provide some stability for the contractor that would inform their bid pricing and schedule. The Transit Planning & Operations Committee as a Committee of the Whole supported the staff recommendation.

At the Congestion Management Planning and Programming Committee, VTA staff explained the considerations in the decision to establish a PLA on a project, since VTA has not been a participant to one in the past. Staff also responded to a question regarding the penalties to a union for a violation of the PLA. Neil Struthers of the Building & Construction Trades Council also noted that about \$6 billion of construction projects have been constructed in Santa Clara County with a PLA in place and there has never been a need to use the arbitrators for disputes. The Congestion Management Planning & Programming Committee unanimously approved staff's recommendation.

Prepared by: Carolyn M. Gonot
Memo No. 2936

PROJECT LABOR AGREEMENT

relating to

**C700 LINE, TRACK, STATIONS AND SYSTEMS DESIGN BUILD
CONTRACT (DB11002F)**

SILICON VALLEY BERRYESSA EXTENSION PROJECT

Dated: _____, 2011

PROJECT LABOR AGREEMENT
relating to the C700 LINE, TRACK, STATIONS AND SYSTEMS DESIGN BUILD
CONTRACT (DB11002F)

SILICON VALLEY BERRYESSA EXTENSION PROJECT

This Project Labor Agreement (“**Agreement**”) is made and entered into this ____ day of _____, 2011 (“**Effective Date**”), among the Santa Clara Valley Transportation Authority (“**VTA**”), the contractors and/or subcontractors (collectively, the “**Contractors**”) that sign the “Agreement to be Bound” (attached hereto as Appendix A), the unions that are signatories hereto (the “**Unions**”), and the Santa Clara-San Benito Counties Building and Construction Trades Council (the “**Council**” and, collectively with VTA, the Contractors, the Unions, the “**Parties**”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in Article 1 of this Agreement.

PURPOSE

The purpose of this Agreement is to promote efficiency of construction operations during construction of the Project (defined below) by providing for the orderly and peaceful settlement of labor disputes and grievances without strikes, work stoppages or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the Project.

RECITALS

WHEREAS, VTA is developing a 16-mile extension of the existing Bay Area Rapid Transit District (“**BART**”) regional heavy rail system from the future Warm Springs Station through Milpitas, San Jose and Santa Clara through a 2-phased approach; and

WHEREAS, this Agreement is intended solely for phase 1, known as the Silicon Valley Berryessa Extension, consisting of the construction of a 10-mile extension of the BART system that will begin south of the future BART Warm Springs Station in Fremont and proceed alongside the Union Pacific Railroad through Milpitas ending in the Berryessa area of north San Jose at Las Plumas Avenue (the “**Project**”); and

WHEREAS, the successful and timely completion of the Project is of the utmost importance to the general public; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the construction work, including those to be represented by unions affiliated with the Council and any other craft labor organization which is signatory to this Agreement, or employed by Contractors who are signatory to agreements with said labor organizations; and

WHEREAS, it is recognized that on projects of this magnitude with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

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WHEREAS, the interests of the general public, VTA, the Unions and Contractors will be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, VTA, the Contractors and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the Project by the Contractors, and further, to encourage close cooperation among the Contractors and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist among the Parties to this Agreement; and

WHEREAS, this Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of this Agreement, insofar as a legally binding agreement exists between a Contractor and the affected Unions; provided, however, that in no event shall any such agreements conflict with the provisions of Article 4 of this Agreement; and

WHEREAS, the Parties hereto are committed to constructing the Project safely and efficiently and the Unions are committed to staffing Project Work with qualified craft workers; and

WHEREAS, since a portion of the Project will be funded with federal monies, the entire Project is subject to, and must comply with, all applicable federal regulations imposed as a result of such funding sources; and

WHEREAS, this Agreement is an exhibit to the Design Build Contract for the construction of the Project to be awarded by VTA in accordance with the applicable provisions of the California Public Contract Code, and Federal, State and local regulations, ordinances and laws; and

WHEREAS, this Agreement is not intended to have an adverse impact on the policy of VTA with respect to providing business opportunities for disadvantaged or small business entities in connection with any contracts for the Project; and

WHEREAS, VTA has the absolute right to select as its Prime Contractor the entity offering the best value to VTA; and

WHEREAS, the Parties signatory to this Agreement pledge their full good faith and trust to work towards a mutually satisfactory completion of the Project;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

ARTICLE 1 **DEFINITIONS**

1.1 **"Agreement"** means this Project Labor Agreement.

1.2 **"Agreement to be Bound"** means collectively, each agreement (attached hereto and incorporated herein as Appendix A) executed by a Contractor.

- 1.3 **“Completed”** or **“Completion”** means, with respect to a Construction Contract, that point VTA commences revenue service of the Project.
- 1.4 **“Construction Contract”** means any contract entered into by the Prime Contractor or a Contractor for construction of Project Work.
- 1.5 **“Contractor(s)”** includes the Prime Contractor and all of its Subcontractors, including owner operators of any tier, and any individual, firm, partnership or corporation, or combination thereof, including joint ventures, which is an independent business enterprise and has entered into a contract with VTA, the Prime Contractor or any of its contractors or subcontractors of any tier, with respect to Project Work.
- 1.6 **“Core Worker”** means an employee: (i) who appears on a Contractor’s active payroll for 90 of the 120 working days before award of a Construction Contract; (ii) who possesses all licenses required by applicable state and federal law for the Project Work; and (iii) who has the ability to safely perform the basic functions of the applicable trade as required by California Labor Code Section 3071 and following and Title 8, Chapter 2, of the California Administrative Code; and has worked at least one thousand (1,000) hours in the appropriate construction craft.
- 1.7 **“Council”** means the Santa Clara-San Benito Counties Building and Construction Trades Council, AFL-CIO.
- 1.8 **“Design Build Contract”** means the C700 Line, Track, Station and Systems Design Build Contract (DB11002F) - Silicon Valley Berryessa Extension Project, as amended.
- 1.9 **“Prime Contractor”** means the individual firm, partnership, owner operator, or corporation, or combination thereof, including joint ventures, which is an independent business enterprise that has entered into the Design Build Contract with VTA.
- 1.10 **“Project”** is defined in Section 2.2 of this Agreement.
- 1.11 **“Project Manager”** means the person or persons or business entity, if any, designated by VTA to oversee the construction on the Project.
- 1.12 **“Project Site”** means the property or area made available to a Contractor by VTA for the sole purpose of construction of the Project.
- 1.13 **“Schedule A”** means the local master labor agreement of a Union signatory to this Agreement and which is attached hereto as Appendix C.
- 1.14 **“Union”** or **“Unions”** means the Council and any other craft labor organization signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.
- 1.15 **“VTA”** means the Santa Clara Valley Transportation Authority, an independent public agency duly formed and organized in accordance with the laws of the State of California.

ARTICLE 2

SCOPE OF AGREEMENT

2.1 **Parties.** This Agreement shall apply solely to and is limited to all Contractors performing construction on the Project, VTA, and the Unions.

2.2 **Project Description.** Except for the activities covered by Section 2.3, this Agreement shall apply and is limited to construction, and capital improvement work as described in the Design Build Contract, performed by those Contractors of whatever tier which have contracts with the Prime Contractor for such work, all of which is hereinafter referred to as the “**Project**” or “**Project Work**.” VTA has the absolute right to combine, consolidate or cancel the Design Build Contract or portions thereof identified as part of the Project. Should VTA remove any portion of the Design Build Contract from the Project for reasons unrelated to the Project Labor Agreement and thereafter authorize that construction work be commenced on such portion of said contract, then such contract may, if feasible, be performed under the terms of this Agreement. Once a Construction Contract is completed it is no longer covered by this Agreement except when a Contractor is directed to engage in repairs, warranty work or modifications required by its construction Contract with VTA. For the purposes of this Agreement, a construction Contract shall be considered completed as set forth in Section 1.3 of this Agreement. Nothing in this Project Description or Agreement should be interpreted to exclude any on-site construction, demolition, alteration, painting or repair of buildings, structures, landscaping, temporary fencing and other works and related activities for the Project that is within the craft jurisdiction of one of the Unions and that is part of the Project, including, without limitation, pipelines (including those in linear corridors built to serve the Project), site preparation, survey work, demolition of existing structures and all construction, demolition or improvements required to be performed as a condition of approval by any public agency. This scope of work includes all construction related soils and materials testing and inspection where such testing and inspection is a classification as to which a prevailing wage determination has been published. It is understood by the Parties that VTA may at anytime, and in its sole discretion, build segments of the Project falling within the terms of this Agreement, or modify or not build the Project or any part of the Project that would be covered in this Agreement.

2.2.1 The Project includes all work necessary for the Project and/or in temporary yards or areas adjacent to and solely dedicated to the Project, and at any dedicated on-site batch plant constructed exclusively to supply materials to the Project. This Agreement covers all on-site fabrication work over which VTA or the Prime Contractor possesses the right of control (including work done for the Project in any temporary yard or area established for the Project). This Agreement does not cover any off-site fabrication work performed by the Unions unless such off-site fabrication work is covered by a provision of a current collective bargaining agreement involving the applicable Union(s).

2.2.2 The furnishing of supplies, equipment or materials which are stockpiled for later use shall in no case be considered subcontracting. Construction trucking work, such as the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are directly incorporated into the construction process as well as the off-hauling of debris and excess fill material and/or mud, shall be covered by the terms and conditions of this Agreement, to the fullest extent provided by law and by prevailing wage determinations of the California Department of Industrial Relations.

2.2.3 The on-site installation or application of all items shall be performed by the craft having jurisdiction over such work. However, (a) it is recognized that installation of specialty items which may be furnished by the Prime Contractor shall be performed by construction persons employed under this

Agreement who may be directed by other personnel in a supervisory role; and (b) work may be performed by construction persons of the vendor or other companies where necessary to protect a manufacturer's warranty. The decision of whether it is necessary to use construction persons of the vendor or other companies to protect the manufacturer's warranty shall be supported by written statement from the Contractor indicating that the work must be performed by construction persons of the vendor or other companies to protect the particular manufacturer's warranty, that this requirement is consistent with the original equipment manufacturer's or vendor's standard warranty agreement for such equipment and is consistent with industry practice regarding the particular material or equipment involved. In such instances all other provisions of this Agreement shall apply.

2.3 Exclusions. The following shall be excluded from Project Work:

2.3.1 This Agreement shall be limited to construction work necessary for the Project and is not intended to, and shall not govern other construction work performed by VTA at any time prior to the Effective Date and during or after the expiration or termination of this Agreement.

2.3.2 This Agreement is not intended to, and shall not affect or govern the award of public works contracts by VTA that are outside the scope of the Project.

2.3.3 This Agreement is not intended to, and shall not affect the operation or maintenance of any of VTA's facilities or rail system.

2.3.4 This Agreement shall not apply to a Contractor's executives, managerial employees, engineering employees, design employees, supervisors (except those covered by existing building and construction trades collective bargaining agreements), office and clerical employees, or any other employee not performing construction craftwork.

2.3.5 This Agreement shall not apply to any work performed on or near or leading to the site of the Project Work covered by this Agreement that is undertaken by state, county or other governmental bodies or their contractors; or by public or private utilities or their contractors; or by VTA or its contractors for work not under the scope of the Prime Contractor.

2.3.6 This Agreement shall not apply to the off-site maintenance of leased equipment or the on-site supervision of such work.

2.3.7 This Agreement shall not apply to any start-up, calibration, performance testing, repair, maintenance, operational revisions to systems and/or subsystems performed after Completion.

2.3.8 This Agreement shall not apply to any activity undertaken or managed by the Prime Contractor relating to all design services and/or Project management activities.

2.3.9 This Agreement shall not apply to VTA, BART and Union Pacific Railroad employees.

2.3.10 This Agreement shall not apply to superintendents, supervisors, professional engineers and/or licensed architects engaged in inspection and testing, quality control/assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, technicians, non-manual employees, and all professional, engineering, administrative and management persons. However soils and

materials testing and inspection related to construction where such testing and inspection is a classification as to which a prevailing wage determination has been published is covered by this Agreement and not excluded by this section.

2.3.11 This Agreement shall not apply to persons engaged in on-site equipment warranty work, unless a current employee of a Contractor is on-site and certified by the relevant manufacturer to make warranty repairs on the Contractor's equipment.

2.3.12 This Agreement shall not apply to persons engaged in geophysical testing other than boring for core samples.

2.3.13 This Agreement shall not apply to persons engaged in work, which is ancillary to Project Work and performed by third parties (such as utility companies) who shall install their work only to certain demarcation points identified by the Prime Contractor.

2.3.14 Work covered by this Agreement within the craft jurisdiction of the Elevator Constructors will be performed under the terms and conditions of the National Agreement of the International Union of Elevator constructors except that Articles 4, 12, and 13 of this Agreement shall prevail and shall apply to such work.

ARTICLE 3

EFFECT OF AGREEMENT/CONTRACTORS

3.1 Binding Upon Execution. Notwithstanding anything to the contrary in this Agreement, this Agreement shall not become effective until this Agreement is approved and signed by: VTA, the Unions and the Council. By executing this Agreement, all Parties agree to be bound by each and every provision of this Agreement. By accepting the award of a Construction contract for the Project, whether as a contractor or subcontractor at any tier, the Contractor/Subcontractor agrees to be bound by each and every provision of this Agreement.

3.2 Scope. This Agreement shall be binding on the signatory parties hereto. Any parents, affiliates, subsidiaries, or other ventures of any such party performing work on the Project must execute an Agreement to be Bound prior to commencing any work on the Project.

3.3 Contractors. The Prime Contractor agrees that neither it nor any of its contractors or subcontractors of whatever tier will subcontract work to be done on the Project except to an entity that is party to this Agreement. Any Contractor or Subcontractor working on the Project shall as a condition of working on the Project, become signatory to and perform work on the Project and pursuant to the terms and conditions of this Agreement.

3.3.1 Each Contractor shall evidence its agreement to be bound to this Agreement by executing an Agreement to be Bound. If a Contractor refuses to execute an Agreement to be Bound, then such Contractor or Subcontractor shall not be awarded a construction contract to perform Project Work. Any Contractor or Subcontractor that executes an Agreement to be Bound agrees that it shall be considered a signatory party to this Agreement.

3.4 Liability. It is understood that the liability of each Contractor and Subcontractor and the liability of each Union under this Agreement shall be several and not joint.

3.5 Subcontracts. With regard to any Contractor or Subcontractor that is independently signed to any Schedule A Agreement, this Agreement shall in no way supersede or prevent the enforcement of any subcontracting clause contained in such Schedule A Agreement. Any such subcontracting clause in a Schedule A Agreement shall remain and be fully enforceable between each craft union and its signatory employers and no provision of this Agreement shall be interpreted and/or applied in any manner that would give this Agreement precedence over subcontracting obligations and restrictions that exist between craft Unions and their respective signatory employers under a Schedule A Agreement.

ARTICLE 4

WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

4.1 The Unions, VTA and Contractors agree that for the duration of the Project:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, handbilling, slowdowns, withholding of work, refusal to work, lockout, sickout, walk-off, sit-downs, stand-in, wobble, boycott or other work stoppage, disruption advising the public that a labor dispute exists, or other impairment of any kind, for any reason, by the Unions or construction persons employed on the Project, at the Project Site or at any other VTA facility because of and related to a dispute on or /at the Project Site. The withholding of labor, but not picketing, because of a Contractor's or Subcontractor's failure to make fringe benefit Trust Fund payments or failure to meet its weekly payroll shall not be considered a violation of this Section 4.1.1; provided, however, that in each instance said impacted Union or construction persons provide not less than forty-eight (48) hours prior written notice to VTA and the Design Build Contractor of its/their intent to withhold labor. Disputes arising between the Unions and Contractors on other Agency projects are not governed by the terms of this Agreement. Failure by any Union, local union or employee to cross any picket line established at a Project Site is a violation of this Article.

4.1.2 As to construction persons employed on the Project, there shall be no lockout of any kind by any Contractor covered by this Agreement.

4.1.3 The Union and its applicable local union shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at a Project Site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the same project for a period of not less than ninety (90) days.

4.1.4 The Union shall not be liable for acts of employees for which it has no responsibility. A local union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of a Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

4.1.5 The Union(s) agrees that if any union or any other persons, whether parties to this Agreement or otherwise, engage in any picketing or work stoppage, the signatory Unions shall consider such work stoppage or picketing to be illegal, and refuse to honor such picket line or work stoppage.

4.1.6 In the event of any work stoppage, strike, sympathy strike, picketing, interference with the work or other disruptive activity in violation of this Article, the Contractor may suspend all or any portion of the project work affected by such activity at the Contractor's discretion and without penalty.

4.1.7 There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns, interference or lockouts with the work or other disruptive activity affecting any Project Site during the term of this Agreement. Any Union or Contractor which initiates or participates in such work stoppage or lockout in violation of this Article, or which recognizes or supports the work stoppage of another Union or lockout by a Contractor which is in violation of this Article, agrees as a remedy for said violation, to pay liquidated damages in accordance with Section 4.5.

4.2 Expiration of Local Agreements. If any local, regional, or other applicable collective bargaining agreements expire during the term of the Project, the Union(s) agree that there shall be no work disruption of any kind as described in Section 4.1 above as a result of the expiration of any such agreement(s) having application on the Project and/or failure of the involved Parties to that agreement to reach a new contract. Otherwise to the extent that such agreement does expire and the Parties to that agreement have failed to reach concurrence on a new contract, work will continue on the Project on one of the following two (2) options, both of which will be offered by the Unions involved to the Contractors affected:

4.2.1 Option 1: Each of the Unions with a contract expiring must offer to continue working on the Project under interim agreements that retain all the terms of the expiring contract, except that the Unions involved in such expiring contract(s) may each propose wage rates and employer contribution rates to employee benefit funds under the prior contract different from what those wage rates and employer contributions rates were under the expiring contracts. The terms of the Union's interim agreement offered to Contractors will be no less favorable than the terms of any other interim agreement offered by the Unions to any other employer or group of employers covering the same type of construction work in Santa Clara County; or

4.2.2 Option 2: Each of the Unions with a contract expiring must offer to continue working on the Project under all the terms of the expiring contract, including the wage rates and employer contribution rates to the employee benefit funds, if the Contractors affected by that expiring contract agree to the following retroactivity provisions: if a new local, regional or other applicable labor agreement for the industry having application at the Project is ratified and signed during the term of this Agreement and if such new labor agreement provides for retroactive wage and benefit increases, then each affected Contractor shall pay to its employees who performed work covered by this Agreement at the Project during the hiatus between the effective dates of such expired and new labor agreements, an amount equal to any such retroactive wage increases established by such new labor agreement, retroactive to whatever date is provided by the new labor agreement for such increases to go into effect, for each employee's hours worked on the Project during the retroactive period. All Parties agree that such affected Contractors shall be solely responsible for any retroactive payment to their employees and that neither the Project, nor VTA, nor VTA's designee, nor any other Contractor(s) has any obligation, responsibility or liability whatsoever.

4.3 Expedited Arbitration. Expedited Arbitration will be utilized for all work stoppages and lockouts. In

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lieu of or in addition to any other action at law or equity, any party may institute the following procedure when a breach or violation of this Article 4 is alleged to have occurred:

4.3.1 The Party invoking this procedure shall notify the permanent arbitrator next in sequence from the following list:

1. Thomas Angelo
2. Robert Hirsch
3. Barry Winograd
4. William Riker
5. John Kagel

The Parties agree these shall be the five permanent Arbitrators under this procedure. In the event that none of the five permanent Arbitrators are available for a hearing within 24 hours, the party invoking the procedure shall have the option of delaying until one of the five permanent Arbitrators is available or of asking the permanent Arbitrator that would normally hear the matter to designate an arbitrator to sit as a substitute Arbitrator for this dispute. If any of the permanent Arbitrators ask to be relieved from their status as a permanent Arbitrator, the Parties shall mutually select a new permanent Arbitrator from the following list of arbitrators:

1. Ernest C. Brown
2. Norman Brand
3. Alexander Cohn

Selection shall be made by each party alternately striking from the foregoing list until one name remains who shall be the replacement permanent Arbitrator. Expenses incurred in arbitration shall be borne equally by the Union and the Contractor involved and the decision of the Arbitrator shall be final and binding on both Parties, provided, however, that the Arbitrator shall not have the authority to alter or amend or add to or delete from the provisions of this Agreement in any way. Notice to the Arbitrator shall be by the most expeditious means available, including by telephone and by facsimile and email (with same day confirmation received by sender), to the party alleged to be in violation and to the Council and involved local Union if a Union is alleged to be in violation.

4.3.2 Upon receipt of said notice, the Arbitrator shall convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

4.3.3 The Arbitrator shall notify the Parties by telephone and by facsimile and email with same day confirmation received by sender of the place and time for the hearing. Notice shall be given to the individual Unions or Contractors alleged to be involved and the Council. Said hearing shall be completed in one session, which, with appropriate recesses at the Arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all Parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of any decision by the Arbitrator.

4.3.4 The sole issue at the hearing shall be whether or not a violation of Section 4.1 or 4.2 of this Article 4 has in fact occurred. The Arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The decision shall be issued in writing within three (3) hours after the close of the

hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) calendar days, but its issuance shall not delay compliance with or enforcement of the decision. The Arbitrator may order cessation of the violation of this Article and other appropriate relief and such decision shall be served on all Parties by hand or registered mail upon issuance.

4.3.5 Such decision may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's decision as issued under Section 4.2 of this Article, all Parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the Arbitrator's decision shall be served on all Parties by hand or delivered by registered mail.

4.3.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance therewith are hereby waived by the Parties to whom they accrue.

4.4 Application. The procedures contained in Section 4.3 shall be applicable to alleged violations of Article 4 to the extent any conduct described in Section 4.1 or 4.2 occurs on the Project. Disputes alleging violation of any other provision of this Agreement, including any underlying disputes alleged to be in justification, explanation, or mitigation of any violation of Section 4.1 or 4.2 or Article 4, shall be resolved under the applicable grievance adjudication procedures for these other Articles.

4.5 Liquidated Damages. If the Arbitrator determines that a violation of Section 4.1 or Section 4.2 has occurred, each breaching party shall immediately take all steps necessary to immediately cease such activities and return to work. If the breaching parties involved do not cease such activities by the beginning of the next regularly scheduled shift following the Arbitrator's issuance of the decision, then each breaching party shall pay the sum of twenty-five thousand dollars (\$25,000) as liquidated damages to VTA per shift until the breach is remedied. The Arbitrator shall retain jurisdiction for the sole purpose of determining compliance with this obligation and determining the amount of liquidated damages, if any; but such retention shall not prevent the moving party from seeking judicial enforcement of the initial decision.

ARTICLE 5

PRE-JOB CONFERENCES

5.1 Timing. The Prime Contractor agrees to hold and conduct a pre-job conference with representatives of all involved, Subcontractors, the Council and the Unions at least twenty-one (21) calendar days prior to (a) the commencement of any Project Work, and (b) the commencement of Project Work on each subsequently awarded construction contract.

The pre-job conference shall consist of: (a) a listing of each Contractor's scope of work; (b) the craft assignments; (c) the estimated number of craft workers required to perform the work; (d) transportation arrangements; (e) the estimated start and completion dates of the work; and (f) discussion of pre-fabricated materials.

Work shall not commence for any Contractor until an Agreement to be Bound has been signed and submitted by a duly authorized representative of the Contractor (at any tier) to the Council and Unions.

ARTICLE 6 **NO DISCRIMINATION**

6.1 Provision. The Contractors and Unions agree not to engage in any form of discrimination on the ground or because of race, color, religion, creed, national origin, ancestry, age, sex, sexual orientation, marital status, medical condition, physical disability, or mental disability against any person, or applicant for employment on the Project.

ARTICLE 7 **UNION SECURITY**

7.1 Collective Bargaining. The Contractors recognize the Union as the sole and exclusive bargaining representative of all construction persons engaged in Project Work.

7.2 Compliance. No employee covered by this Agreement shall be required to join any Union as a condition of being employed, or remaining employed, for the completion of Project Work. All employees shall, however, be required to tender dues and fees uniformly required to be paid by members to the appropriate Union on or before the eighth (8th) day of consecutive or cumulative employment on a Construction Contract subject to this Agreement.

ARTICLE 8 **REFERRAL**

8.1 Referrals. The Union(s) shall be the primary source of all craft labor employed on the Project. Contractors shall be bound by and utilize the registration facilities and referral systems established or authorized by the signatory Unions when such procedures are not in violation of applicable law. However, in the event that Contractor has his/her own core workforce, and wishes to employ such Core Workers to perform covered work, the Contractor shall employ such Core Workers in accordance with the provisions of this Article 8.

8.2 A Contractor may request by name, and the local will honor, referral of core workforce employees who have applied to the local Union for Project work and who demonstrate to the local union dispatcher and provide satisfactory proof of all of the following qualifications:

- (i) who appears on a Contractor's active payroll for 90 of the 120 working days before award of a Construction Contract;
- (ii) who possesses all licenses required by applicable state and federal law for the Project Work; and
- (iii) who has the ability to safely perform the basic functions of the applicable trade as required by California Labor Code Section 3071 and following, and Title 8, Chapter 2, of the California Administrative Code; and

- (iv) has worked at least one thousand (1,000) hours in the appropriate construction craft.

The Unions will first refer to such Contractor one of the Contractor's core workforce employees and will then refer one employee from the hiring hall out of work list for each affected craft. The alternating referral process then will be repeated, until a maximum of five (5) core workforce employees have been hired, after which point hiring will be done in accordance to Section 8.1 above. Employees shall be laid off in the same one-for-one manner in inverse order of their hiring

8.3 Good Faith. In the event that referral facilities maintained by the Unions are unable to fill the requisition of a Contractor within a forty-eight (48) hour period after such requisition is made by the Contractor, said Contractor shall be free to obtain qualified workers from other sources. Any employee(s) hired under this Section 8.3, as well as all other employees hired under this Article 8, shall be obligated to comply with the Union security provisions of this Agreement and have a Transportation Worker Identification Credential.

8.4 Recruitment. Unions will exert their best efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of all Contractors. In recognition of the fact that the communities closest to the Project will be impacted by the construction of the Project, the Parties agree to support the development of increased numbers of construction workers from residents of these communities.

8.5 Apprenticeship. The Unions will exert their best efforts to recruit and identify local residents, and to assist individuals in qualifying and becoming eligible for apprenticeship programs.

8.5.1 Tracking. Unions shall track retention of Apprentices hired through this program for as long as those Apprentices participate in a joint labor-management apprenticeship program. The Council shall collect the tracking information from the Unions and shall submit bi-annual retention reports to the Prime Contractor.

8.5.2 Documentation. Unions shall document reasons for not accepting referred candidates from target populations into Apprenticeship programs, if applicable.

8.5.3 Standards. All apprentices employed under this Agreement shall be indentured and registered in a State of California Division of Apprenticeship Standards approved joint labor/management apprenticeship program with the appropriate craft union.

8.6 Veterans. The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and the Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter the "**Center**") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the Parties.

8.6.1 The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on the Project and of apprenticeship and employment opportunities for the Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

8.7 Craft Request Form. Contractors agree to use the hiring hall procedures of the applicable Union which may include, where allowed, telephone requests. Contractors agree to use the Craft Request Form (attached hereto as Appendix B) for record-keeping purposes to track the request of any and all workers from Unions and to provide copies of such Craft Request Forms to the applicable Union. Contractors and Unions agree to maintain copies of all Craft Request Forms used on the Project submitted or received including transmission verification documents that are date/time imprinted. All Craft Request Forms and transmission verification documents shall be available for inspection upon request by the Prime Contractor and/or an authorized representative of VTA as described in Article 19 of this Agreement.

ARTICLE 9

EMPLOYEE GRIEVANCE PROCEDURE

9.1 All employee grievances concerning the imposition of discipline shall be governed by the grievance and arbitration provisions of the applicable Schedule A Agreement. Any Contractor which is not otherwise bound through an agreement with a Union to a grievance procedure which has jurisdiction to consider and resolve disputes over the imposition of discipline or dismissal of its construction persons working on this Project shall be bound to the grievance procedure contained in the Schedule A Agreement of the craft representing the employee(s) involved in the dispute. For the purposes of this Article, such grievance procedure shall be limited to disputes regarding the imposition of discipline or dismissal arising from work covered by the Agreement. Such Contractor shall not impose discipline or dismissal on its construction persons covered by this Agreement without just cause.

ARTICLE 10

JOINT ADMINISTRATIVE COMMITTEE

10.1 Membership. The parties to this Agreement shall establish a five (5) person Joint Administrative Committee ("**Committee**"). This Committee shall comprise two (2) representatives selected by VTA; two (2) representatives of the signatory Unions and/or the Council; and one (1) representative selected by the prime contractor for the Project selected by VTA from within its organization; provided, however, such representative selected shall be subject to the approval of VTA and the Council, which approval shall not be unreasonably withheld. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement.

10.2 Meetings. The Committee shall meet as required, but not less than once each calendar quarter, to review the implementation of the Agreement and the progress of the Project including, but not limited to, compliance with prevailing wage, this Agreement, safety, craft workforce levels, construction progress, and safety and security issues. It is intended that the Committee serve as a forum to foster communication between management and labor, and assist the Unions and the Contractors to complete the Project in an economic and efficient manner without interruption, delays or work stoppages. The Committee shall have no authority to review grievances or disputes involving this Agreement.

ARTICLE 11

GRIEVANCE AND ARBITRATION PROCEDURE

11.1 Disputes. It is understood that this Agreement, together with the referenced Schedule A Agreements, constitutes an integrated, self-contained, stand-alone agreement, and that by virtue of this

Agreement, a Contractor will not be obligated to sign any other local, area, or national agreement as a condition of performing Project Work. It is specifically agreed that in the event any disputes arise out of the interpretation or application of this Agreement, including the Schedule A Agreements, excluding violations of Article 4, the same shall be settled by means of the procedure set out herein, provided, however, that should a dispute involve a single Schedule A and a Contractor signatory thereto, and not involve interpretation or application of this Agreement, then such dispute shall be processed and resolved pursuant to the grievance provisions of that Schedule A. Should there be a dispute in the first instance as to whether the provisions of this Article 11 or the grievance procedures of a Schedule A apply, the dispute shall be presented initially to arbitrator Thomas Angelo or, if Thomas Angelo is unavailable, Robert Hirsch, for resolution as to the applicable procedure. Such referral of a dispute as to the applicable procedures shall be done by an immediate conference call among the parties and the arbitrator, and heard and decided within three (3) calendar days. Should the arbitrator hold that Article 11 applies, the parties may, by mutual agreement, submit the issue to the same arbitrator pursuant to the provisions of Article 11, or, absent mutual agreement, commence processing the dispute at Step 1 below.

When a Union or a Contractor feels aggrieved by a violation of this Agreement, the grieving party shall, within seven (7) calendar days after occurrence of the violation, give notice to the work site representative of the involved Contractor or the business representative of the involved Union stating the provision(s) alleged to have been violated. The business representative or the job steward, as the case may be, and the work site representative of the involved Contractor shall meet and endeavor to adjust the matter within seven (7) calendar days after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party may, within seven (7) calendar days thereafter, pursue Step 2 of the grievance procedure set forth below provided the grievance is reduced to writing setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of this Agreement alleged to have been violated. Grievances and disputes settled pursuant solely to the provisions of this Section 11.1 shall be non-precedential except as to the parties directly involved.

In all instances, no such grievance shall be recognized unless called to the attention of the Contractor by the Union or to the attention of the Union by the Contractor within seven (7) calendar days after becoming aware of the alleged violation, but in no event more than thirty (30) calendar days after it reasonably should have become aware of the event giving rise to the dispute. The limits in this Section 11.1 may be extended by mutual written agreement of the parties.

Grievances shall be settled according to the following procedure:

Step 1: The dispute shall be referred to the business representative of the local union involved or his designated representative and the Contractor's representative at the construction project.

Step 2: In the event that the business representative of the local union and the Contractor's representative at the construction site cannot reach agreement within seven (7) calendar days after a meeting is arranged and held, either involved party may submit it within three (3) calendar days to a subcommittee of the Joint Administrative committee consisting of one (1) person selected by VTA and one (1) person selected by the Council, which shall meet within seven (7) calendar days after such referral (or such longer time as mutually agreed upon by all representatives of the subcommittee), to confer in an attempt to resolve the grievance. If

the dispute is not resolved within such time (seven (7) calendar days after its referral or such longer time as mutually agreed upon) it may be referred within seven (7) calendar days by either party to step 3.

Step 3: If the dispute is not resolved within ten (10) calendar days after completion of Step 2, the Contractor and the Union shall choose a mutually agreed upon arbitrator for final and binding arbitration. The impartial Arbitrator, who shall have experience in Labor arbitrations involving construction in Northern California, shall be selected from a panel of arbitrators submitted by and in accordance with the rules and regulations of the American Arbitration Association.

The decision of the Arbitrator shall be binding upon all parties. The Arbitrator shall have no authority to change, amend, add to, or detract from any of the provisions of this Agreement. The expense of the impartial Arbitrator shall be borne equally by the Contractor and the involved Union.

11.2 Time Limits. The time limits specified in any step of the Grievance Procedure may be extended by mutual agreement of the parties initiated by the written request of one party to the other, at the appropriate Step of the Grievance Procedure. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without a request for an extension of time, shall be deemed a waiver of such grievance to the other without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes.

11.3 No Precedent. In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent-setting.

ARTICLE 12

JURISDICTIONAL DISPUTES

12.1 The assignment of Covered Work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (the "**Plan**") or any successor Plan.

12.2 All jurisdictional disputes on this Project, between or among the building and construction trades Unions and the Contractors parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement.

12.2.1. For the convenience of the parties, and in recognition of the expense of travel between Northern California and Washington, DC, at the request of any party to a jurisdictional dispute under this Agreement an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan , and the Arbitrator's hearing on the dispute shall be held at the offices of the applicable Building and Construction Trades Council. All other procedures shall be as specified in the Plan.

12.3. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge. Each Contractor will conduct a pre-job conference with the Local Council prior to commencing work. The Prime Contractor and VTA will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Contractors may be held together.

ARTICLE 13 **MANAGEMENT RIGHTS**

13.1 Management. The Prime Contractor shall retain full and exclusive authority for the management of its operations. This includes, but is not limited to, the right to direct their working force and to establish coordinated working hours and starting times.

13.2 No Restrictions. There shall be no limit on production by workers or restrictions on the full use of tools or equipment. Craftsmen using tools shall perform any of the work of the trades and shall work under the direction of the craft foremen. There shall be no restrictions on efficient use of manpower other than as may be required by safety regulations and the lawful manning provisions of a Schedule A Agreement. The Prime Contractor may utilize the most efficient methods or techniques of construction, tools or other labor-saving devices to accomplish the work.

13.3 Classifications. The Prime Contractor shall be the sole judge of the number and classifications of employees required to perform work subject to this Agreement. The Prime Contractor shall have the absolute right to hire, promote, suspend, discharge for cause or layoff employees at their discretion and to reject any applicant for employment, subject to the provisions of this Agreement.

13.4 No Limits. Nothing in this Agreement shall be construed to limit the right of the Prime Contractor to select the lowest bidder it deems qualified for the award of contracts or subcontracts or material, supplies, or equipment purchase orders on the Project. The right of ultimate selection remains solely with the Prime Contractor in accordance with the Construction Contract.

13.5 Materials. It is recognized that certain materials, equipment and systems of a highly technical and specialized nature will have to be installed at the Project. The nature of the materials or the nature of the equipment and systems, together with requirements of manufacturer's warranty, dictate that it will be pre-fabricated, pre-piped, pre-wired and/or installed by employees covered by this Agreement pursuant to Section 2.2.3 under the supervision and direction of the Prime Contractor, and/or manufacturer's personnel. The Unions agree that such materials, equipment and systems shall be installed without the occurrence of any conduct described in Section 4.1 or 4.2.

ARTICLE 14 **WAGES, BENEFITS, HOURS & HOLIDAYS**

14.1 Wages. All persons covered by this Agreement shall be classified in accordance with work performed and paid the hourly wage rates for those classifications as determined pursuant to the California Labor Code by the Department of Industrial Relations.

14.2 Benefits. Contractors shall pay contributions into the established employee benefit funds in

accordance with applicable laws and collective bargaining agreements. Nothing in this Agreement, however, shall be construed to limit or prevent the Unions or Trust funds from asserting or enforcing legal rights to collect delinquent wages or benefit contributions.

14.2.1 The Contractor adopts and agrees to be bound by the written terms of the appropriate collective bargaining agreements and employee benefit trust agreements for the applicable crafts.

14.3 Workday and Workweek. Forty (40) hours per week shall constitute a week's work, Monday through Friday inclusive. The Prime Contractor shall designate the starting and quitting times for all employees. Any starting time put in effect on Monday shall remain in effect for the workweek unless a change is mutually agreed upon. Nothing herein shall be construed as guaranteeing any employee eight (8) hours per day or forty (40) hours per week.

It is recognized and acknowledged that VTA maintains the sole authority to prohibit some or all work on certain days or certain times during the day because of traffic, noise, environmental conditions or other conditions which require mitigation procedures. VTA will provide reasonable notice to the parties of any changes required under this provision.

14.4 Starting Times. Starting times shall be established by the Prime Contractor. Employees shall be at their place of work at the starting time (as designated by the Prime Contractor) There shall be no pay for time not worked unless the employee is otherwise engaged at the direction of a Contractor.

14.5 Overtime. Overtime shall be paid in accordance with the requirements of the general prevailing wage determination applicable to the Project. There shall be no pyramiding of overtime pay under any circumstance.

14.6 Holidays.

Recognized holidays shall be:

- New Year's Day
- Martin Luther King, Jr. Day
- Presidents' Day
- Memorial Day
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day
- The Day after Thanksgiving
- Christmas Day

The holidays will be observed as set forth on the calendar.

All holidays, with the exception of Labor Day, may be worked at the applicable holiday rate of pay established by the applicable collective bargaining agreement. No work may be performed or scheduled on Labor Day unless an emergency situation exists.

14.7 Shift Work. Shift work may be performed at the option of the Prime Contractor. The Prime Contractor shall have the sole right to establish the starting time and duration of a shift, to designate the craft or crafts performing work on a shift basis on the Project or any portion thereof, and to determine the number of employees required. The Prime Contractor shall provide no less than three (3) days notice to any changes to the starting time and duration of a shift. Any time worked in excess of the regular shift shall be paid for at the normal overtime rate.

On two- or three-shift operations, the work starting time for the first shift will not be established earlier than 5:00 a.m., unless an earlier starting time is mutually agreed upon. If an earlier starting time is established without such mutual consent, overtime for those hours earlier than 5:00 a.m. will be paid. When an employee is moved from one shift to another, they shall be allowed a minimum of eight consecutive hours off duty before they are required to begin work on the shift. An employee not having an eight-hour break between shifts shall be paid the overtime rate until such time as they receive an eight-hour break.

Scheduling and premium pay for two- or three-shift operations shall be in accordance with the appropriate local Union agreement and its Schedule A.

When two or three shifts are regularly established and the first or second shift cannot be worked due to conditions caused by weather, either shift may be worked in accordance with the applicable local Union agreement and its Schedule A. In addition, because of operational necessities, the second and/or third shifts may, at the Prime Contractor's direction, be scheduled without the preceding shift(s) having been worked.

Notwithstanding anything to the contrary, the Prime Contractor may elect to establish a 4-10 schedule consistent with the provisions of the Schedule As of the affected Unions and the California prevailing wage law.

14.8 Reporting Pay. Any employee, applicant, or new hire who reports to work for a regular or assigned shift, and, weather permitting, is not put to work, shall be paid two hours reporting time and shall remain at the job site for the two hours if required by the Contractor.

An employee who starts to work shall be paid for not less than two hours unless otherwise specified by the applicable Schedule A, and if the employee works beyond two hours, the employee shall be paid for actual time worked, but not less than four hours. It shall be the employer's prerogative whether or not to stop work.

Any employee who has completed a scheduled shift and is "called out" to perform special work of a casual, incidental or irregular nature, shall receive overtime pay in accordance with the applicable local Union agreement and its Schedule A.

14.9 Travel and Subsistence. There shall be no travel, daily travel, subsistence, or zone pay required under the provisions of this Agreement, but nothing in this Agreement prohibits the Prime Contractor from providing any of the aforementioned items necessary to employ workers.

14.10 Work and Conduct Rules. The Prime Contractor may promulgate and post reasonable rules and regulations governing the performance of work and conduct of employees at the work site. Failure to observe the posted rules and regulations by an employee shall be grounds for discipline, including

discharge.

14.11 Foreman and General Foreman. The selection of craft foreman and general foremen shall be the exclusive responsibility of the Contractor(s). Foremen and general foremen shall take directions from authorized representatives of the Contractor(s).

Craft foremen and general foremen shall be paid at the applicable craft foremen and general foremen rate.

ARTICLE 15

MODIFIED AGREEMENTS TO BE BOUND

15.1 Certain Provisions Shall Not Apply. Provisions negotiated into a new or modified Collective Bargaining Agreement which may be construed to apply exclusively or predominately to work covered by this Agreement shall not apply to work covered by this Agreement. Any disagreement between the parties regarding the application of the provisions of any new or modified collective bargaining agreement to work covered by this Agreement shall be resolved under the grievance and arbitration procedures set forth in Section 11 hereof.

ARTICLE 16

SAFETY PROTECTION OF PERSON AND PROPERTY

16.1 Rules. Employees shall be bound by the safety, security and visitor rules established by the Contractor and VTA. These rules will be published and posted in conspicuous places throughout the work site. An employee's failure to satisfy his obligations under this Section will subject him to discipline, including discharge.

16.2 Drug Free Work Place. The Parties agree that the work site shall be a drug free workplace and that all employees shall adhere to the substance abuse policy established for the worksite.

16.3 Project Site Health and Safety. The Prime Contractor and all Contractors shall comply with all applicable provisions of the United States Labor Department's Occupational Safety and Health Administration (OSHA) and the Federal Railroad Safety Act (FRSA) and any other federal, state and local laws, rules and regulations that may apply to the Project Site.

ARTICLE 17

SAVINGS CLAUSE

17.1 Severability. The parties agree that in the event any article, provision, clause, sentence or word of this Agreement is determined to be illegal or void as being in contravention of any applicable law by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of this Agreement is determined to be illegal or void, by the court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or word in question.

17.2 Void. The parties also agree that in the event that a decision of a court of competent jurisdiction materially alters the terms of this Agreement such that the intent of the Parties is defeated, then the entire Agreement shall be null and void.

ARTICLE 18 **ENTIRE AGREEMENT**

18.1 Entire Agreement. This Agreement represents the complete understanding of the parties. The provisions of this Agreement, including the Schedule A Agreements and the Agreements to be Bound, shall apply to the work covered by this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a Schedule A, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a Schedule A and is not covered by this Agreement, the provisions of the applicable Schedule A shall prevail. Nothing contained in a Schedule A, working rule, by-laws, constitution or other similar document of the Unions shall in any way affect, modify or add to this Agreement unless otherwise specifically set forth in this Agreement or mutually agreed to in writing executed by the parties.

18.2 No Further Negotiations. The Parties agree that this Agreement is intended to cover all matters affecting wages, hours, and other terms and conditions of employment and that during the term of this Agreement the parties will not be required to negotiate on any further matters affecting these or any other subject not specifically set forth in this Agreement except by mutual agreement of the parties.

18.3 Counterparts. This Agreement may be executed in counterparts, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Facsimile signature pages transmitted to other parties to this Agreement shall be deemed the equivalent to original signatures.

18.4 Modifications. Except as otherwise provided herein, this Agreement may not be amended, rescinded or modified except by a written instrument signed on behalf of all the Parties hereto.

ARTICLE 19 **COMPLIANCE**

It shall be the responsibility of the Contractors and the Unions to investigate and monitor compliance with the provisions of the Agreement contained in Article 8 and to provide any information as requested to VTA regarding Compliance. The provisions of this Article shall not substitute for or preclude any employee or Union from filing a grievance under the Grievance and Arbitration provisions of Article 11.

ARTICLE 20 **STEWARDS AND REPRESENTATIVES**

20.1 Stewards. Each Union shall have the right to designate a working craft employee as steward for each Contractor employing such craft on the Project. Such designated steward shall be a qualified workman assigned to a crew and shall perform the work of the craft. The steward shall not perform supervisory duties. Under no circumstances shall there be nonworking stewards. Stewards shall be permitted a reasonable amount of time during working hours to perform applicable Union duties related to

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the work being performed by the craft employees of his Contractor and not to the work being performed by other Contractors or their employees.

20.2 Union Representatives. Representatives of the Unions shall have access to the Project site, provided they do not interfere with the work and provided that they comply with visitor security and safety rules, including checking in with the Contractor's and VTA's on-site representatives prior to entering the Project site. The Contractor recognizes the right of access set forth in this subsection and such access will not be unreasonably withheld from an authorized representative of the Union.

ARTICLE 21
TERM/CONFLICTS

21.1 Term. This Agreement shall be included as a condition of the award of the Design Build Contract for the Project and shall continue in full force and effect until the Completion of the Project as defined in Section 1.3 of this Agreement. Provided, however, notwithstanding anything to the contrary in this Agreement, this Agreement shall terminate the earlier of (a) twenty-four (24) months after execution if the Design-Build Contract is not awarded by VTA or (b) the day the Design Build Contract is terminated by VTA for any reason.

Santa Clara Valley Transportation Authority

By: _____ Date:
Michael T. Burns, General Manager

Approved as to form:

By: _____ Date:
Kevin D. Allmand, General Counsel

**Santa Clara-San Benito Counties Building and Construction
Trades Council**

By: _____ Date:
Neil Struthers, Executive Officer

Aug 22, 2011

Signatory Unions

Aug 22, 2011

APPENDIX A AGREEMENT TO BE BOUND

The undersigned, as a contractor or subcontractor on the C700 Line, Track, Stations and Systems Design Build Contract (DB11002F) relating to the Silicon Valley Berryessa Extension Project ("**Project**"), for and in consideration of the award to it of a contract to perform work on said Project, and in further consideration of the mutual promises made in that certain Project Labor Agreement relating to the C700 Line, Track, Stations and Systems Design Build Contract (DB11002F) Silicon Valley Berryessa Extension Project dated _____, 2011 by and among the Santa Clara Valley Transportation Authority, the Unions that are signatories thereto and the Santa Clara-San Benito Counties Building and Construction Trades Council ("**Agreement**"), a copy of which is fully incorporated herein by this reference and was received and is acknowledged, hereby:

1. Accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made to said Agreement.
2. Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said Agreement.
3. Agrees to secure from any Contractor (as defined in the Agreement) which is or becomes a subcontractor (of any tier) to it, and from any successors, a duly executed "agreement to be bound" in form identical to this document.
4. The undersigned agrees that it shall be bound by all applicable trust agreements and plans for the provision of such fringe benefits as accrue to the direct benefit of the construction persons, including health and welfare, pension, training, vacation, and/or other direct benefits provided pursuant to the appropriate Schedule A craft agreement set forth in the Agreement.
5. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to said terms in the Agreement.

Date _____

Company Name
Address, Telephone No: and FAX No:

Name of Prime Contractor__ [FILL-IN] _____

Higher Level Subcontractor _____

Signature: _____ Print Name: _____

Title: _____ Contractor's License #: _____

Motor Carrier Permit (CA) #: _____

APPENDIX B

**C700 Line, Track, Stations and Systems Design Build Contract (DB11002F)
Silicon Valley Berryessa Extension Project
REQUEST/VERIFICATION FOR CRAFT EMPLOYEES**

INSTRUCTIONS

To the Contractor: Please complete and fax this form to the applicable union to request craft workers that fulfill all hiring requirements for the Project. After faxing your request, call the Local to verify receipt and substantiate their capacity to furnish local, at-risk or general dispatch as requested. Contact information for Locals is listed on back of form. Please print your Fax Transmission Verification Report and keep a copy of this request for your records.

To the Union: Please complete the **“Union Use Only”** section and fax form back to the requesting Contractor. Retain form for your records.

To:	Local _____	Fax No. () _____	Date: _____
From: [Company Name]	_____		
Person Sending	_____	Contact No. () _____	

Please provide me with union craft workers per the PLA for the above-referenced Project that fulfills the requirements for this project as defined below:

Craft Employees Requested

Job Description	Journeyman/Apprenticeship Level	Numbers Requested	Report Date	Report Time

Total Workers Requested _____

Please have worker(s) report to the following address indicated below:

Site Address: _____ Report to (On-Site Contact): _____

On-Site Tel.#: () _____ Fax: () _____

Comments or special requirements:

**Union Use Only
(Fax the Completed Form Back to Contractor)**

Reception Date: _____ Dispatch Date: _____ Received by _____

Requested Dispatch Available for Dispatch Unavailable for Dispatch

Comments: _____

APPENDIX C
SCHEDULE A AGREEMENTS

RESOLUTION NO. _____

RESOLUTION OF THE SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY BOARD OF DIRECTORS
FINDING THAT USE OF A PROJECT LABOR AGREEMENT FOR THE
SILICON VALLEY RAPID TRANSIT BERRYESSA EXTENSION PROJECT
DESIGN-BUILD CONTRACT
WILL RESULT IN REDUCED PROJECT COST AND
EXPEDITED PROJECT COMPLETION

WHEREAS, pursuant to California Public Contract Code Section 20209.6, VTA is authorized to enter into a design-build contract for a project that will result in, among other things, reduced project costs; and

WHEREAS, the VTA Board previously found that use of the design-build process for the Silicon Valley Berryessa Extension (SVBX) Project would reduce costs and expedite the project's completion and authorized the General Manager to proceed with the solicitation of design-build contractors for the SVBX Project; and

WHEREAS, the United States Supreme Court held in Building & Const. Trades Council of Metropolitan Dist. v. Associated Builders Contractors of Massachusetts/Rhode Island, Inc., 507 U.S. 218 (1993) that state and local governments, when acting as market participants, are permitted under the National Labor Relations Act (NLRA) (29 U.S.C. § 151 et seq.) to enforce bid specifications requiring contractors to abide by project labor agreements with labor organizations for construction projects owned by those state and local governments; and,

WHEREAS, the United States Supreme Court in the aforementioned case also commented that when a state or local governmental agency utilizes bid specifications containing a project labor agreement for a construction project owned by the agency, the agency "does not regulate the workings of market forces" in violation of NLRA pre-emption of such regulation, but is acting as a market participant and "exemplifies" the workings of market forces, and therefore is not prevented from doing so by the NLRA; and

WHEREAS, it is the policy of the Federal Government to encourage agencies receiving federal monies to consider requiring the use of project labor agreements in connection with large-scale construction projects in order to promote economy and efficiency in their procurement process under Executive Order 13502, which provides that the use of a project labor agreement may avoid (i) challenges to efficient and timely procurement; (ii) difficulty in predicting labor costs when bidding on contracts and ensuring a steady supply of labor on contracts being performed; (iii) challenges due to the fact that construction projects typically involve multiple employers at a single location; (iv) labor disputes, and (v) lack of coordination among various employers or uncertainty about the terms and conditions of employment of various groups of workers, thereby promoting the efficient and expeditious completion of Federal construction contracts; and

WHEREAS, the California Supreme Court held in Associated Builders and Contractors v. San Francisco Airports Commission, 21 Cal.4th 352 (1999), that a public agency may use a project labor agreement, concluding that the Commission's decision to require a project labor agreement was "in furtherance of legitimate government interests. . .these interests include those of preventing costly delays and assuring contractors access to skilled craft workers";

NOW, THEREFORE BE IT RESOLVED, by the Board of Directors of the Santa Clara Valley Transportation Authority, that based on the foregoing, the Board of Directors of the Santa Clara Valley Transportation Authority hereby:

A. Finds and declares that:

1. The Line Track Stations and Systems Design-Build contract (LTSS Contract) for the Silicon Valley Berryessa Extension Project will require significant availability and stability of labor resources over an estimated contract duration in excess of four years;
2. An occurrence of labor disruption during the construction of the LTSS Contract would result in economic loss to VTA, disruption to the operations of local municipalities and to the community, and delay to the completion of the project;
3. The cost of delay in completing the LTSS Contract is estimated to be in excess of \$75,000 per day;
4. The cost of delay in completing certain milestones defined in the LTSS Contract are estimated to be in excess of \$50,000 per day;
5. Time is of the essence for the LTSS contract, with a stated value of \$100,000 per day for early completion, up to a maximum of \$15,000,000;
6. The estimated costs of delays and the value of early completion to VTA are evidence of VTA's compelling interest in having labor disputes in connection with the LTSS Contract resolved without the disruptions of strikes, lock-outs, or slowdowns, and that entering into a project labor agreement will make it possible to legally enforce guarantees that construction under the LTSS Contract will be carried out in an orderly and timely manner, without strikes, lock-outs, or slowdowns, and provide for peaceful, orderly, and mutually binding procedures for resolving labor issues;
7. Use of a project labor agreement in connection with the LTSS Contract will result in reduced project costs and expedited delivery of the SVBX Project by (a) establishing the specific terms and conditions that govern the employment of

RESOLUTION NO. _____

- labor; (b) ensuring labor stability by coordinating wages, work rules, mechanisms for resolving grievances, and other terms of employment; (c) ensuring labor availability by enabling the prime contractor and all subcontractors wishing to compete for contracts and subcontracts to do so without regard to whether they are otherwise parties to collective bargaining agreements; and (d) preventing work stoppages by establishing guarantees against strikes, lockouts, and similar job disruptions.
- B. Approves the use of a project labor agreement for the LTSS contract for the SVBX Project and authorizes the General Manager to enter into a Project Labor Agreement with the Santa Clara & San Benito Counties Building & Construction Trades Council for the LTSS Contract for the SVBX Project.

AYES:

NOES:

ABSENT:

Margaret Abe-Koga, Chairperson
Board of Directors

Sandra Weymouth, Board Secretary

APPROVED AS TO FORM:

Kevin D. Allmand, General Counsel