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3.2 It is the responsibility of all VTA departments and personnel to support the Procurement process in accordance with the VPP/VPPR and Applicable Law.

4.0 Policy

4.1 Standard of Conduct and Personal Conflicts of Interest

- (a) It is the policy of VTA that all of VTA's officers, employees, Board members, and agents involved in the Procurement process conduct themselves in accordance with the highest ethical and professional standards. To this end, VTA's officers, employees, Board members, and agents will perform their official duties in accordance with the provisions of the Code of Ethics, Chapter 2, Article VII of the VTA Admin. Code and other personnel or administrative policies as appropriate. VTA's Code of Ethics is attached here to the VTA Procurement Policy as Attachment A and made a part of the VTA Procurement Policy.
- (b) VTA prohibits both real and apparent personal conflicts of interest, which includes the following prohibitions:
 - (i) no VTA employee, officer, agent, or Board member may participate in any selection, award or administration of a Contract if the individual has a conflict of interest, real or apparent. A personal conflict of interest, or at least an apparent conflict of interest, exists when the interests, investments, outside employment or personal enterprises of the VTA employee or a member of his or her immediate family could compromise the VTA employee's duty of loyalty, or otherwise conflict with, or appear to conflict with his or her job performance, objectivity, impartiality, or ability to make fair business decisions in the best interest of VTA. A conflict of interest may arise in any situation in which a VTA employee is in a position where he or she could use his or her contacts or position in the agency to advance the private business or financial interests of the VTA employee or his or her immediate family, whether or not at the expense of VTA. A VTA employee may also have a personal conflict of interest if called upon to make a decision concerning a former employer of that VTA employee or of a member of his or her immediate family;

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- (ii) no VTA employee, officer, agent, or Board member, or their immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals may participate in the selection, award, or administration of a Contract supported with Federal Transit Administration (FTA) assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those individuals previously listed has a financial or other interest in the firm selected for award;
 - (iii) no VTA employees, officer, agent, or Board member may solicit or accept gifts, gratuities, favors, or anything of monetary value from Contractors, Offerors, or parties to subcontracts, except an unsolicited gift of nominal intrinsic value as defined in the Code of Ethics; and
 - (iv) a VTA employee, officer, or Board member shall not take any action or provide any information for or on behalf of any prospective contractor or vendor which interferes with free and open competition for VTA contracts.
- (c) A VTA employee who may have a personal conflict of interest relative to a prospective Contractor, Offeror, or subcontractor shall immediately report the nature of the matter and the existence of a conflict to his or her superior so that the work may be assigned to another.
- (d) Any violation of these standards may be cause for disciplinary action or penalties as set forth in the Code of Ethics, including termination of employment or Contract, as appropriate.

4.2 Organizational Conflicts of Interest

VTA must comply with the procedures set out in the VTA Organizational Conflict of Interest Procedures for identifying and preventing real and apparent organizational conflicts of interest.

The VTA Organizational Conflict of Interest Procedures shall be made available to the public and is included as Attachment J of the VTA Procurement Procedures and Requirements (VPPR).

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9.0 Attachment A

**Santa Clara Valley Transportation Authority
Code of Ethics
(VTA Admin. Code, Chapter 2, Article VII)**

Sec. 2-66. Responsibilities of Public Office

The proper operation of democratic government requires that public officials be responsible to the people; that public office or employment not be improperly influenced or used for personal gain; and that the public have confidence in the integrity of government.

The members of the Board of Directors hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the State of California and to carry out impartially the laws of the nation, state, and VTA. Public officials are bound to observe the highest standards of performance and to discharge faithfully the duties of their office, regardless of personal considerations.

Sec. 2-67. Responsibilities of Directors

The primary responsibility of each Director is to promote the best interest of the public in determining VTA policy. Each Director shall carry out his or her duties in the interest of the agency and not in his or her own interest or in the interest of another person or entity. Directors shall consider the interests of their constituency during deliberations by the Board but shall act in the best interest of all stakeholders.

Sec. 2-68. Purpose of Code of Ethics

The purpose of this Code of Ethics is to recognize the ethical responsibilities of public officials under existing law and to prescribe ethical standards of conduct, which will assure that their actions will not be in conflict or incompatible with the best interests of VTA. The provisions of this Code of Ethics are hereby declared to be in the best interest of VTA and for the protection of the public interest.

This Code of Ethics shall be construed broadly in order to effectuate its purposes. To the extent that the provisions of this Code of Ethics overlap existing general law or regulations, the more stringent provisions shall control.

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Sec. 2-69. Existing Standards of Conduct for Public Officials

There are numerous laws and regulations that govern the conduct of public officials and that are applicable to VTA. Because they are contained in various state statutes as well as federal regulations, the following attempts to set them forth in one document for ready reference. When in doubt as to the applicability of any law or regulation, or provision of this Code of Ethics to any particular situation, the potentially affected public official should request an advisory opinion from the Office of the General Counsel. Public officials shall ultimately be responsible for ensuring that they are in compliance with all federal, state, and local rules that apply to them.

The following sections, which summarize the applicable laws and regulations, govern the conduct of all public officials. All persons subject to this Code shall be familiar with its provisions:

Public officials shall disqualify themselves from making, or participating in the making of, or in any way attempting to use their official position to influence, a governmental decision in which they know or have reason to know they have a financial interest. (Government Code § 87100).

- (a) Directors shall not accept, solicit, or direct a contribution of more than \$250 from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before VTA and for 3 months following the date a final decision is rendered in the proceeding if the Director knows or has reason to know that the participant has a financial interest. Directors shall not make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or entitlement for use pending before VTA if the Director has willfully or knowingly received a contribution in an amount of more than \$250 within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the Director knows or has reason to know that the participant has a financial interest in the decision. This provision shall not apply competitively bid, labor, or personal employment contracts. (Government Code § 84308).

Public officials shall not be financially interested in any contract made by them in their official capacity. They shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity. A contract made in violation of these sections may be voided by the Board of Directors. (Government Code § 1090 et seq.)

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- (b) Personal Conflicts of Interest. As provided in the Common Grant Rules and in the Federal Transit Administration (FTA) Master Agreement, no employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those individuals previously listed has a financial or other interest in the firm selected for award. (Federal Circular 4220.1F)
- (c) Directors and employees shall not engage in any employment or activity for compensation which is inconsistent or incompatible or in conflict with his or her duties as a Director or employee, or with the duties of his or her appointing power or the agency by which he or she is employed (that is, which would interfere with the official’s ability to carry out official duties or exercise independent judgment on behalf of the public interest) (Government Code §§1126, 1128); and shall not engage in outside employment or provide services for compensation where any part of those efforts will be subject to approval by the Board of Directors, or any other board, officer, or employee acting on behalf of VTA. (Government Code § 1126(a)).

A public official shall not participate in a government decision in which he or she has a close personal interest which would tend to impair the exercise of independent judgment in the public interest.

- (d) A public official shall not hold another public office where the two offices are incompatible.

A Director, officer, employee, or agent of VTA shall not solicit or accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements, except an unsolicited gift of nominal intrinsic value. “Nominal intrinsic value” for purposes of this section shall mean a value of less than \$50. (FTA Circular 4220.1F, Chapter III sec. 1b.)

A public official shall not disclose or otherwise use confidential information acquired by virtue of his or her position or employment with VTA for his or her or another person’s private gain. A Director or employee shall not reveal information received in lawful closed session unless such information is required by law to be disclosed. A Director or employee shall not take any action or provide any information for or on behalf of any prospective contractor or vendor which interferes with free and open competition for VTA contracts.

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Sec. 2-70. Incompatible Uncompensated Activities

- (e) Directors may participate in outside activities for which they are not compensated, but are discouraged from participating in such non-compensated activities which:
 - (1) Involve a substantial commitment of time that interferes with the Director’s ability to timely discharge his or her official duties; or
 - (2) Involve matters which come regularly before the Board and would create a substantial conflict between the private interests and the exercise of Board authority in the public interest.
- (f) A Director may disqualify himself or herself in matters coming before the Board where the Director concludes that participation would create the appearance of a conflict of interest.

Sec. 2-71. Prohibitions Against Use of Office for Personal Gain

A public official shall not use for personal gain or advantage VTA facilities, equipment, supplies, personnel, or other things of value; or his or her office to secure, for personal benefit, gifts, special privileges, or exemptions.

Sec. 2-72. Conduct When There May Be a Financial Interest

Directors, employees, and consultants shall conduct themselves as follows whenever the Director, employee or consultant has, or may have, a financial interest in making or participating in the making of, any governmental decision:

- (g) Directors: Unless his or her participation is legally required, when the matter comes up on the agenda, the Director shall disclose his or her interest, refrain from participating in any way in the decision-making process and withdraw from the room if the subject is being discussed in closed session.

Employees: The employee shall immediately report the nature of the matter and the existence of a conflict to his or her superior so that the work may be assigned to another.

Consultants: The consultant shall immediately report the nature of the matter and the existence of the conflict to the General Manager, who shall determine the action to be taken.

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Sec. 2-73. Undue Influence or Favor

A public official shall not, by his or her conduct, give reasonable basis for the impression that any person improperly can influence him or her or unduly enjoy his or her favor in the performance of his or her official acts or actions, or that he or she is affected unduly by the kinship, rank, position of, or association with, any person.

Sec. 2-74. Violations: Procedure

Alleged violations of the provisions of this Code of Ethics by a Director, advisory board member, committee member, vendor, or contractor/consultant may be referred to the Auditor General for investigation and initial assessment. The Auditor General, in consultation with General Counsel, shall promptly provide notice to the alleged violator of the allegation, unless the Auditor General determines either that (1) the allegation, on its face, does not amount to a violation of the Code of Ethics or warrant even an initial evaluation, or (2) notice of the allegation must be delayed in order not to compromise an initial evaluation. If the Auditor General determines after an initial evaluation that sufficient cause exists to conduct an investigation into the allegations, the Auditor General may either instigate and/or assign an investigation, and shall give the alleged violator notice of such. The Auditor General or assigned investigator(s) shall provide the alleged violator with a reasonable opportunity to be interviewed concerning the allegations. The Auditor General or assigned investigator(s) shall report the findings of the investigation and any recommendations to the Board. The Board shall either approve the findings and recommendations or else take other appropriate action consistent with the provisions of the Administrative Code. The Board may not approve a finding of an Ethics Code violation or impose any penalties unless the alleged violator is provided a reasonable opportunity to be publicly heard concerning the allegations or findings and to present evidence in rebuttal.

Alleged violations of the provisions of this Code of Ethics by a VTA employee may be referred to the Auditor General, the General Manager, or the General Counsel for initial evaluation, referral, investigation, and action, as appropriate. Investigations of employees shall be performed in accordance with the VTA’s standard practice for conducting employee misconduct investigations, consistent with applicable law, labor agreements, and/or personnel procedures.

Ethics complaints against the Auditor General may be reported to the General Counsel, who shall take actions consistent with this Section’s requirement of providing notice and conducting or assigning an investigation.

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Directors and other individuals may also report any ethics allegations to officials responsible by law for enforcement of this Code or the other provisions of law pertaining to conflicts of interest or standards of conduct for public officials.

Sec. 2-75. Penalties for Violation

- (h) An employee who violates any of the standards of conduct set forth herein is subject to discipline, up to and including discharge, in addition to any penalties provided by law.

Directors and consultants/contractors who violate any of the standards of conduct set forth herein are subject to the following sanctions in addition to any penalties provided by law:

- (1) Expulsion from the Board or public censure by the Board.
- (2) An official finding of misconduct in office and removal from office upon an accusation proceeding instituted by the grand jury.
- (3) Forfeiture into VTA’s general fund of any amounts or things of value given or paid in violation of this Code of Ethics.
- (4) A penalty assessment to be deposited into VTA’s general fund of \$500 per violation of this Code of Ethics or an amount equal to three times the amount given, paid or expended in violation of this Code of Ethics, whichever amount is greater.

Sec. 2-76. Post Employment Restrictions

- (a) Post employment restriction for Directors/Alternates.

VTA shall not employ or retain under contract for compensation any individual who has served as a Director/alternate within the previous two years. No Director/alternate who leaves his or her office and accepts a position of employment with a current or future VTA contractor/consultant may participate in a project or provide any goods or services to the VTA, through the consultant/contractor, for a period of two years.

- (b) Post employment restrictions for employees.

No employee who leaves his or her VTA position and accepts a position of employment with a current or future VTA contractor (consultant, vendor, developer) may participate in a project or provide any goods or services to the VTA, through the contractor, for a period of two years, except where VTA determines that the employee (1) does not hold a key

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position on the project, (2) has not previously participated in any meaningful way in developing or managing the contract, (3) and has not held a position of substantial responsibility in the area of service to be performed under the contract.

The General Manager may, when it is in the overall best interests of VTA, make exceptions in the case of employees who leave due to retirement or layoff.