

**SERVICE AGREEMENT**  
**BETWEEN**  
**PENINSULA CORRIDOR JOINT POWERS BOARD**  
**AND [COUNTERPARTY]**  
**FOR**  
**[PROJECT]**

THIS SERVICE AGREEMENT (“Agreement”) is effective on the date of the last signature set forth in the signature blocks and is between the Peninsula Corridor Joint Powers Board (“PCJPB” or “CALTRAIN”) and [Counterparty] (“[shorthand]”), collectively referred as “the parties.”

**RECITALS**

- Recitals should be simple, direct, and succinct.
- They are in a contract, if at all, to provide background and to explain the transaction’s purpose.
- They are not the place for operative contractual language.

WHEREAS, [text]; and

NOW, THEREFORE, in consideration of the recitals and the mutual promises contained herein, CALTRAIN and [COUNTERPARTY] agree as follows:

**TERMS OF AGREEMENT**

**1. Scope of Services**

The Scope of Services for this Agreement shall be as set forth in Appendix A, which is subject to change upon mutual agreement in writing as described in [section].

**2. Project Delivery Process & Schedules**

**2.1 Capital Projects Delivery**

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CALTRAIN has an internal capital projects delivery process that defines distinct phases and periodic check-ins after each project phase, which is set forth in Appendix B. This methodology is used as quality control oversight by CALTRAIN leadership to ensure that projects proceed in alignment with scope, budget, and schedule as approved in the capital budget. The span of this Agreement is included as part of Phase Gate 2.

### 2.2 Milestones

As project-specific schedules are developed, the following check-in points will be identified as milestones in accordance with this process. For this project, initial estimated milestone dates are:

[Phase Gate Chart]

As it relates to Agreement tasks, the timelines and milestones are included in Appendix C. These timelines may be adjusted as circumstances require upon the written agreement of the parties, which shall not be unreasonably withheld.

### **3. Work Product Review Periods**

The estimated timelines in Appendix C include [COUNTERPARTY] and CALTRAIN review periods.

CALTRAIN will require three weeks to perform review of each design option. Rounds of review will include the technical and constructability evaluation, CALTRAIN's consolidated comments that integrate as applicable engineering, environmental, operations and maintenance needs, urban design and pedestrian, bicycling, and bus/shuttle access improvement considerations, community outreach, and review of cost estimates. The durations of these reviews are an estimation based upon the size and complexity of the project, and CALTRAIN will endeavor to meet the timeframes.

[COUNTERPARTY] will require up to three weeks to review documents produced by CALTRAIN. CALTRAIN will require up to three weeks to incorporate the comments of [COUNTERPARTY] into the deliverables.

### **4. Budget, Reporting, and Payment**

As consideration for the services provided by CALTRAIN under this Agreement, [COUNTERPARTY] will pay the costs for CALTRAIN's services, as provided herein. Costs associated with activities described within this Agreement have been calculated based on CALTRAIN's current understanding of the project to date and information provided by [COUNTERPARTY]. Every effort will be made by the parties to keep the

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overall project's cost as low as reasonably possible while delivering the intended scope and objectives within schedule.

### 4.1 Budget

The estimated budget for this Agreement is set forth in Appendix D. The parties agree that this is an estimate and that the actual amount invoiced may be less than or exceed the estimate. CALTRAIN will give [COUNTERPARTY] adequate notice if the amount to be invoiced exceeds the estimate. Specifically, within [X] days after CALTRAIN's invoices meet or exceed [X%] of the estimated budget, the parties will meet and confer to discuss whether the remaining portion of the estimated budget is sufficient to cover the anticipated costs for the remaining work on the project. If the remaining portion of the estimated budget is insufficient to cover the remaining work, the parties shall work together in good faith to revise the estimated budget, the Scope of Services, or other aspects of the project to ensure the project can conclude on mutually agreeable terms.

### 4.2 CALTRAIN Fully Burdened Unit Cost Rates and Contingency Funds

CALTRAIN's billing rates are designed to ensure reimbursement of actual costs to CALTRAIN for provided services on third-party projects.

CALTRAIN's billing rates include actual salaries and fringe benefit costs, which are billed as direct labor costs. Additionally, CALTRAIN rates also include indirect labor costs in the form of Internal Cost Allocation Plan (ICAP) rates, which reflect actual overhead costs that are not efficient to charge directly to the project, such as financial services.

Both fringe benefit costs and estimated ICAP rate are updated on a fiscal year basis. More details on the current rates applied to San Mateo County Transit District labor including CALTRAIN, Consultants and Non-labor, is in Appendix E.

CALTRAIN may submit a written request to [COUNTERPARTY] for annual labor rate escalation, no later than 30 days before the start of the succeeding fiscal year, to be effective the first day of the subsequent fiscal year, or the date of CALTRAIN's request, whichever date is later. CALTRAIN may also submit a written request to [COUNTERPARTY] for labor rate changes upon staff changes. Increases in future negotiated fully burdened billing rates, if requested, shall be limited to an annually negotiated, not-to-exceed percentage, according to the Construction Cost Index from the Engineering News Record for the San Francisco Bay Area. CALTRAIN's requests for new rates shall be subject to approval by [COUNTERPARTY], which approval shall not be unreasonably withheld.

### 4.3 Invoices

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CALTRAIN will invoice [COUNTERPARTY] for work performed under this Agreement quarterly in arrears, via electronic mail. When applicable, copies of pertinent financial records will be included with the submission of billing(s) for all direct reimbursables. All invoices shall be sent to [COUNTERPARTY], attention [text]. Payment by [COUNTERPARTY] is due 45 calendar days following the date of each invoice.

### 5. Term of Agreement

It is understood by all parties that this Agreement will terminate on [date], unless CALTRAIN and [COUNTERPARTY] mutually agree to extend the duration of this Agreement, or the Agreement is terminated pursuant to [section] below.

### 6. Confidentiality of Materials

All ideas, memoranda, specifications, plans, calculations, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for CALTRAIN and all other written information submitted to CALTRAIN in connection with the performance of this Agreement shall be held confidential by CALTRAIN and shall not, without the prior written consent of [COUNTERPARTY], be used for any purposes other than the performance of the project services, nor be disclosed to an entity not connected with the performance of the project services. Nothing furnished to CALTRAIN which is otherwise known to CALTRAIN or is or becomes generally known to the related industry shall be deemed confidential. CALTRAIN shall not use [COUNTERPARTY's] name, insignia or distribute exploitative publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of [COUNTERPARTY].

### 7. Ownership of Materials

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared, under this Agreement shall be the property of [COUNTERPARTY], but CALTRAIN may retain and use copies thereof.

[COUNTERPARTY] shall not be limited, in any way, in its use of said material, at any time, for work associated with project. However, CALTRAIN shall not be responsible for damages resulting from the use of said material for work other than project,

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including, but not limited to the release of this material to third parties for work other than on project.

### **8. Records, Reports and Documentation**

CALTRAIN shall maintain complete and accurate records of its operation, including any additional records required by [COUNTERPARTY] in writing. CALTRAIN shall submit to [COUNTERPARTY] any report concerning its performance under this Agreement that may be requested by [COUNTERPARTY] in writing. CALTRAIN agrees to assist [COUNTERPARTY] in meeting [COUNTERPARTY's] reporting requirements to the state and other agencies with respect to CALTRAIN's work hereunder. All records, reports and documentation relating to the work performed under this Agreement shall be made available to [COUNTERPARTY] during the term of this Agreement.

### **9. Hold Harmless/Indemnification**

To the extent permitted by law (including, without limitation, California Civil Code section 2782.8), CALTRAIN agrees to indemnify, defend, and hold harmless [COUNTERPARTY], its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property to the extent arising out of any negligence, recklessness or willful misconduct of CALTRAIN, its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to CALTRAIN's performance under this Agreement. Such defense and indemnification shall not apply in any instance of and to the extent caused by the sole negligence, recklessness or willful misconduct of [COUNTERPARTY], its officers, employees, agents or representatives.

To the extent permitted by law (including, without limitation, California Civil Code section 2782.8), [COUNTERPARTY] agrees to indemnify, defend and hold harmless the CALTRAIN, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property to the extent arising out of any negligence, recklessness or willful misconduct of [COUNTERPARTY], its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to [COUNTERPARTY's] performance and/or obligations under this Agreement. Such defense and indemnification shall not apply in any instance of and to the extent caused by the sole negligence, recklessness or willful misconduct of CALTRAIN, its officers, employees, agents or representatives.

### **10. Insurance Requirements**

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[Text – should have a reference to the Insurance Appendix H].

### 11. Termination

(a) If CALTRAIN defaults in the performance of this Agreement, or materially breaches any of its provisions, then [COUNTERPARTY] may terminate this Agreement by giving written notice to CALTRAIN. In the event of such termination, CALTRAIN shall be compensated in proportion to the percentage of satisfactory services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from [COUNTERPARTY] to terminate. CALTRAIN shall present [COUNTERPARTY] with any work product completed at that point in time.

(b) Without limitation to such rights or remedies as either party shall otherwise have by law, either party also shall have the right to terminate this Agreement for any reason upon ten days' written notice to CALTRAIN. In the event of such termination, CALTRAIN shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from [COUNTERPARTY] to terminate. CALTRAIN shall present [COUNTERPARTY] with any work product completed at that point in time.

(c) If [COUNTERPARTY] fails to pay CALTRAIN, CALTRAIN may terminate this Agreement if the failure is not remedied by [COUNTERPARTY] within 30 days after written notification of failure to pay.

### 12. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and sent by email or by first class with postage prepaid or commercial courier to an address below.

Nothing in this provision shall be construed to prohibit communication by more expedient means to accomplish timely communication. Each party may change its address below by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; emailed notices shall be deemed communicated as of sent time; and mailed notices shall be deemed communicated as of three business days after mailing.

To [COUNTERPARTY]:   NAME  
                                  ADDRESS

To CALTRAIN:           NAME  
                                  ADDRESS

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### **13. Appendices**

All Appendices referenced herein are attached hereto and incorporated herein.

### **14. Compliance with Laws**

The parties shall observe and comply with all Federal, State, and local laws, rules, ordinances, and regulations affecting the conduct of services provided and the performance of all obligations undertaken by this Agreement.

### **15. Relationship of the Parties**

This Agreement does not create a partnership, joint venture, or employment, agency, or fiduciary relationship between the parties. The parties have no power to act for or bind the other, or to assume or create an obligation on behalf of the other.

All persons employed by each respective party in connection with this Agreement are not employees of the other party in any respect. Each party is responsible for obtaining statutory Workers' Compensation coverage for its employees.

### **16. Conflict of Interest**

CALTRAIN shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to notify [COUNTERPARTY] within 7 days of knowing any facts that may give rise to a conflict of interest. CALTRAIN is aware of the prohibition that no officer of [COUNTERPARTY] shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement, CALTRAIN shall not accept employment or an obligation which is inconsistent or incompatible with CALTRAIN's obligations under this Agreement.

### **17. Other Agreements**

This Agreement shall not prevent either party from entering into similar agreements with others.

### **18. No Third Party Beneficiary**

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.



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### **19. Waiver**

No failure or delay by a party to exercise a right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, and no such failure or delay shall prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of a right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

### **20. Governing Law**

This Agreement shall be interpreted, construed, and enforced in accordance with the laws of California.

### **21. Amendments**

This Agreement may be amended at any time and from time to time, provided that such amendments are in writing and executed by both parties.

### **22. Severability**

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

### **23. Captions**

The captions of the various sections, paragraphs and subparagraphs, of the contract are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

### **24. Miscellaneous**

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

### **25. Entire Agreement**

This Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes any prior oral or written understanding on the same subject.



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The individuals executing this Agreement state that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of CALTRAIN and [COUNTERPARTY]. This Agreement shall insure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

REMAINDER OF PAGE INTENTIONALLY BLANK.

**Service Agreement**

IN WITNESS WHEREOF, PCJPB and [COUNTERPARTY] execute this Agreement as follows with the intent to be legally bound:

PENINSULA CORRIDOR  
JOINT POWERS BOARD ("PCJPB or  
"Caltrain")

[COUNTERPARTY]

By:

By:

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Michelle Bouchard  
Executive Director

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[Name]  
[Title]

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Date

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Date

Approved as to Form:

Approved as to Form:

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James C. Harrison  
General Counsel

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[Name]  
[Title]

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Date

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Date