



JPB Finance Committee
Meeting of May 19, 2025

Supplemental Reading File

Subject

1. Related to Item 8 - 25-S-J-T-P-015 SAMPLE Agreement On-Call Coaching and Leadership Development Services
2. Related to Item 9 - 25-S-J-T-P-014 SAMPLE Agreement On-Call Temporary Staffing Services
3. JPB Fuel Hedge Quarterly Report Quarter 3 Fiscal Year 2025

AGREEMENT 25*S-J-T-P-015

BETWEEN

**SAN MATEO COUNTY TRANSIT DISTRICT, PENINSULA CORRIDOR JOINT
POWERS BOARD, OR SAN MATEO COUNTY TRANSPORTATION AUTHORITY
(AGENCY)**

AND

NAME OF THE CONSULTANT (CONSULTANT)

AGREEMENT SUMMARY*

Board of Directors' Date of Award:

Resolution Number:

Effective Date of Agreement:

Services to be Performed:

Term of Agreement:

Consultant's Key Representative: Name:
Title:
Company:
Address:
Phone:
Email:

Compensation: Board-approved aggregate amount of \$

**This Summary is provided for convenience only and is qualified by the specific terms and conditions of the Agreement that will control any conflict between this Summary and the terms of the Agreement*

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EXHIBITS

- EXHIBIT A, SCOPE OF SERVICES
- EXHIBIT B, CONSULTANT’S PROPOSAL
- EXHIBIT C, SBE REQUIREMENTS (N/A FOR TA)
- EXHIBIT D, INSURANCE REQUIREMENTS
- EXHIBIT E, WORK DIRECTIVES
- EXHIBIT F, APPROVED SUBCONSULTANTS

This AGREEMENT for On-Call Coaching & Leadership Development Services (Agreement) is entered into by and between the **San Mateo County Transit District, Peninsula Corridor Joint Powers Board, or San Mateo County Transportation Authority** (AGENCY) located at 1250 San Carlos Avenue, San Carlos, CA 94070 and **NAME OF THE CONSULTANT** (CONSULTANT), a [State] [entity type] located at [address], (collectively referred to as “the Parties”).

WHEREAS, on July 17, 2024, the San Mateo County Transit District, Peninsula Joint Powers Board (JPB), and the San Mateo County Transportation Authority (TA), collectively referred to as “Agencies”, issued a joint a Request for Proposals (RFP 25-S-J-T-P-015) for On-Call Coaching & Leadership Development Services; and

WHEREAS, the CONSULTANT was awarded a contract to provide the On-Call Coaching & Leadership Development Services for the **District , JPB, or TA** pursuant to the RFP; and

WHEREAS, the CONSULTANT possesses the necessary skills and knowledge to perform the work.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

1. **SCOPE OF SERVICES**

This is an Agreement to provide an On-Call Coaching & Leadership Development Services. The CONSULTANT agrees to provide these services to the AGENCY in accordance with the terms and conditions of this Agreement. In the performance of its work, the CONSULTANT represents that it (1) has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing an On-Call Coaching & Leadership Development Services; (2) carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and (3) will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.

The scope of the CONSULTANT’s services will consist of the services set forth in the Request for Proposals dated Month, XX, 2024, the Scope of Services of which is attached hereto and incorporated herein as **Exhibit A**, as supplemented by CONSULTANT’s written proposal dated Month, XX, 2024, attached hereto and incorporated herein as **Exhibit C**.

2. **AGREEMENT DOCUMENTS**

This Agreement consists of the following documents:

- A. This Agreement
- B. Exhibit A, Scope of Services
- C. Exhibit B, CONSULTANT’s Proposal, as accepted by the Agency.
- D. Exhibit C, SBE Requirements

- E. Exhibit D, Insurance Requirements
- F. Exhibit E, Work Directives
- G. Exhibit F, Approved Subconsultants (*if applicable*)

In the event of conflict between or among the terms of the Agreement documents, the order of precedence will be the order of documents listed above, with the first-listed document having the highest precedence and the last-listed document having the lowest precedence.

3. TERM OF AGREEMENT

The term of this Agreement will be for a **five (5) year** term commencing upon **Month XX, 2024** and ending on **Month XX, 2029**. The CONSULTANT will furnish the AGENCY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Solicitation Documents.

The AGENCY reserves the right, in its sole discretion, to exercise up **two (2) one-year** option term(s) to extend the Agreement, pursuant to the terms of this Agreement. If the AGENCY determines to exercise the option term(s), the AGENCY will give the CONSULTANT at least **thirty (30)** days' written notice of its determination.

It is understood that the term of the Agreement and any option term granted thereto as specified herein are subject to the AGENCY'S right to terminate the Agreement in accordance with **Section 24** of this Agreement.

4. CONSULTANT'S REPRESENTATIVE

At all times during the term of this Agreement, **Name of Consultant's Representative**, will serve as the primary staff person of CONSULTANT to undertake, render, and oversee all of the services under this Agreement. Upon written notice by the CONSULTANT and approval by the AGENCY, which will not be unreasonably withheld, the CONSULTANT may substitute this person with another person, who will possess similar qualifications and experience for this position.

5. COMPENSATION

The CONSULTANT agrees to perform the services to be specified in each Work Directive. Compensation for satisfactory performance of services performed under Work Directives will be as stated in each Work Directive and, unless specifically stated otherwise in the Work Directive, will be in accordance with the hourly labor rates set forth in **Exhibit B, Consultant's Proposal**.

It is expressly understood and agreed that in no event will the CONSULTANT be compensated in an amount greater than the amount specified in any individual Work Directive for the services performed under such Work Directive. Any change order must be in writing and approved by the AGENCY'S Project Manager and the Office of Contracts and Procurement.

There is no guaranteed compensation to the CONSULTANT under this Agreement. However, the maximum compensation that the AGENCY has authorized to be expended for this Contract will not exceed an aggregate amount of **DOLLAR AMOUNT (\$XXX)** plus ten percent (10%) contingency, which may be used at the Agency's discretion if necessary for unforeseen work only. The AGENCY will pay the CONSULTANT in accordance with Section 6.

On an annual basis, no later than sixty (60) days before the start of a succeeding Agreement year, CONSULTANT may make a written request to increase its labor rates for the following year of the Agreement. Increases, if timely requested, in future labor rates shall be limited to the lesser of either (a) the previous published twelve (12) months Consumer Price Index for All Urban (CPI-U) for the San Francisco/Oakland/Hayward, CA area, or (b) the actual increases in employees' labor rates. Such actual increases must be demonstrated to the Agency's satisfaction.

In extenuating circumstances, and with approval at the sole discretion of the Agency, CONSULTANT may submit a written request to deviate from the methodology set forth in the above paragraph. Such request must include: (1) a justifiable explanation for the deviation, (2) an independently conducted and CONSULTANT-funded market analysis with comparable data from other public agencies in the Bay Area, preferably from other transit agencies, with sufficient completeness to pass audit scrutiny from an independent third-party, and (3) an attestation regarding the accuracy of the information presented from the CONSULTANT's Owner, President, Vice President, Chair of the Board, or Chief Financial Officer.

The effective date of the labor rates increase, if any, will commence either (1) the first day of the second and/or subsequent year(s) of the Agreement, or (2) the date of the CONSULTANT's request, whichever event is later. Upon written approval by the AGENCY, the negotiated changes shall remain in effect for the following Agreement year. If the CONSULTANT does not submit a request at least 60 days before the start of the succeeding Agreement year, the CONSULTANT waives any labor rates increase for that following year.

6. MANNER OF PAYMENT

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, the contract number (**25-S-J-T-P-015**), and purchase order number (**TBD**). The AGENCY will endeavor to pay approved invoices/billing statements within 30 calendar days of their receipt. The AGENCY reserves the right to withhold payment to the CONSULTANT if the AGENCY determines that the quantity or quality of the work performed is unacceptable. The AGENCY reserves the right to withhold payment for any invoice that does not match the PO lines until CONSULTANT resubmits a corrected invoice. The AGENCY will provide written notice to the CONSULTANT within 10 calendar days of the AGENCY'S decision not to pay and the reasons for non-payment. Final payment will be withheld until CONSULTANT performs all required Agreement expiration or termination obligations. If

CONSULTANT disagrees with the AGENCY'S decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes the AGENCY'S decision to the AGENCY within 30 calendar days of the AGENCY'S notice. If CONSULTANT does not provide written notice in accordance with this section, it waives all rights to challenge the AGENCY'S decision.

Submit one copy of each invoice as a PDF via email to:

AccountsPayable@SamTrans.com

7. **NOTICES**

All communications relating to the day-to-day activities of the provided services will be exchanged between the AGENCY'S **Project Manger's Name** or designee, and the CONSULTANT's **Consultant's Name**.

Notices informing CONSULTANT of the AGENCY'S decision to exercise Agreement options (that were exercisable in the AGENCY'S sole discretion) will be exchanged between the AGENCY'S **Project Manger's Name** or designee, and the CONSULTANT's **Consultant's Name** via electronic mail to: email address.

All other notices and communications deemed by either party to be necessary or desirable to be given to the other party will be in writing and may be given by personal delivery to a representative of the parties or by mailing the same postage prepaid, addressed as follows:

If to the AGENCY: Board Secretary
San Mateo County Transit District,
Peninsula Corridor Joint Powers Board, or
San Mateo County Transportation Authority
1250 San Carlos Avenue
San Carlos, CA 94070

With a copy to: Director, Contracts and Procurement
San Mateo County Transit District
Peninsula Corridor Joint Powers Board, or
San Mateo County Transportation Authority
1250 San Carlos Avenue
San Carlos, CA 94070

If to the CONSULTANT: Consultant
Attn:
Street
City, State Zip

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail will be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

8. OWNERSHIP OF WORK

All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared for the services to be performed by CONSULTANT will be and are the property of the AGENCY. The AGENCY will be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the CONSULTANT or in the hands of any subconsultant upon completion or termination of the work will be immediately delivered to the AGENCY. If any materials are lost, damaged, or destroyed before final delivery to the AGENCY, the CONSULTANT will replace them at its own expense and the CONSULTANT assumes all risks of loss, damage, or destruction of or to such materials. The CONSULTANT may retain a copy of all material produced under this Agreement for its use in its general business activities.

Any and all rights, title, and interest (including without limitation copyright and any other intellectual-property or proprietary right) to materials prepared under this Agreement are hereby assigned to the AGENCY. The CONSULTANT agrees to execute any additional documents that may be necessary to evidence such assignment.

The CONSULTANT represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual property or proprietary right of any third party.

9. CONFIDENTIALITY

Any AGENCY materials that the CONSULTANT has access or materials prepared by the CONSULTANT during the course of this Agreement (“confidential information”) will be held in confidence by the CONSULTANT, which will exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the CONSULTANT as necessary to accomplish the rendition of services set forth in Section 1 of this Agreement.

The CONSULTANT, its employees, subconsultants and agents, will not release any reports, information, or other materials prepared in connection with this Agreement, whether deemed confidential or not, without the approval of the AGENCY’S **General Manager/CEO or Executive Director** or designee.

10. USE OF SUBCONTRACTORS/SUBCONSULTANTS

The CONSULTANT must not subcontract any services to be performed by it under this Agreement without the prior written approval of the AGENCY, except for service firms engaged in drawing, reprographics, typing, and printing and subconsultants identified in **Exhibit F**.

Any subcontractors/subconsultants must be engaged under written contract with the CONSULTANT with provisions allowing the CONSULTANT to comply with all

requirements of this Agreement, including without limitation the "Ownership of Work" provisions in Section 8. The CONSULTANT will be solely responsible for reimbursing any subcontractors/subconsultants and the AGENCY will have no obligation to them.

11. CHANGES

The AGENCY may at any time, by written order, make changes within the scope of work and services described in this Agreement. If such changes cause an increase or decrease in the budgeted cost of or the time required for performance of the agreed-upon work, an equitable adjustment as mutually agreed will be made in the limit on compensation as set forth in Section 5 or in the time of required performance as set forth in Section 3, or both. In the event that CONSULTANT encounters any unanticipated conditions or contingencies that may affect the scope of work or services and result in an adjustment in the amount of compensation specified herein, or identifies any AGENCY conduct (including actions, inaction, and written or oral communications other than a formal contract modification) that the CONSULTANT regards as a change to the contract terms and conditions, CONSULTANT will so advise the AGENCY immediately upon notice of such condition or contingency. The written notice will explain the circumstances giving rise to the unforeseen condition or contingency and will set forth the proposed adjustment in compensation. This notice will be given to the AGENCY prior to the time that CONSULTANT performs work or services related to the proposed adjustment in compensation. The pertinent changes will be expressed in a written supplement to this Agreement issued by the Contracts and Procurement Department prior to implementation of such changes. Failure to provide written notice and receive AGENCY approval for extra work prior to performing extra work may, at the AGENCY'S sole discretion, result in non-payment of the invoices reflecting such work.

12. RESPONSIBILITY: INDEMNIFICATION

[The provisions below apply to the District & TA only]

The CONSULTANT will indemnify, keep and save harmless the AGENCY and its directors, officers, agents and employees against any and all suits, claims or actions arising out of any of the following:

- A. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the CONSULTANT caused by a negligent act or omission or wilful misconduct of the CONSULTANT or its employees, subcontractors, subconsultants or agents; or
- B. Any allegation that materials or services provided by the CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

The CONSULTANT further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defense as they are incurred. If any judgment is rendered against the AGENCY or any of the other

individuals enumerated above in any such action, the CONSULTANT will, at its expense, satisfy and discharge the same. This indemnification will survive termination or expiration of the Agreement.

[The provisions below apply to the JPB only]

The CONSULTANT will indemnify, keep and save harmless the AGENCY, the San Mateo County Transit District, the City and County of San Francisco, the Santa Clara Valley Transportation Authority, TransitAmerica Services, Inc. (TASI) or successor Operator of Record, the Union Pacific Railroad Company, and their directors, officers, agents and employees (Indemnitees) against any and all suits, claims or actions arising out of any of the following:

- A. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the CONSULTANT caused by a negligent act or omission or wilful misconduct of the CONSULTANT or its employees, subcontractors, subconsultants or agents; or
- B. Any allegation that materials or services provided by the CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

The CONSULTANT further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defense as they are incurred. If any judgment is rendered against the Indemnitees in any such action, the CONSULTANT will, at its expense, satisfy and discharge the same. This indemnification will survive termination or expiration of the Agreement.

13. INSURANCE

Refer to *Exhibit D*, appended hereto, for the Insurance Requirements.

14. CONSULTANT'S STATUS

Neither the CONSULTANT nor any party contracting with the CONSULTANT will be deemed to be an agent or employee of the AGENCY. The CONSULTANT is and will be an independent CONSULTANT and the legal relationship of any person performing services for the CONSULTANT will be one solely between that person and the CONSULTANT.

15. ASSIGNMENT

The CONSULTANT must not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the AGENCY.

16. OTHER GOVERNMENTAL AGENCIES

In the event that one or more other governmental agencies may wish to utilize this Agreement to purchase services in accordance with the terms and costs indicated herein, the following provisions apply. Each public agency must formulate a separate contract with the CONSULTANT, incorporating the terms and conditions of this Agreement with the AGENCY. CONSULTANT shall invoice such public agencies as separate entities. The AGENCY will incur no liability in connection with such contracts or purchases by other public agencies thereunder. CONSULTANT will release, defend (with counsel reasonably satisfactory to AGENCY) and indemnify AGENCY and its directors, officers, employees and agents (collectively, "Indemnitees"), from and against all liability, cost, and expense for loss of or damage to property and for injuries to any person when arising or resulting from acts or omissions of CONSULTANT in connection with such contracts or purchases by other public agencies.

17. LITIGATION SUPPORT

The CONSULTANT must be willing to provide litigation support related to the performance of this Agreement, including serving as an expert witness if required by the AGENCY. In the event that litigation relating to the performance of this Agreement arises, the CONSULTANT will ensure that at least one individual has the appropriate expertise to act as an expert witness and will make that individual or individuals available to consult on issues related to litigation. The CONSULTANT may additionally be required to form expert opinions, draft expert witness reports, and provide expert witness testimony for depositions and other legal proceedings, including mediation, arbitration, and trials.

18. AGENCY WARRANTIES

The AGENCY makes no warranties, representations, or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

19. AGENCY REPRESENTATIVE

Except when approval or other action is required to be given or taken by the Board of Directors of the AGENCY, the AGENCY'S **General Manager/CEO or Executive Director**, or such person or persons as they will designate in writing from time to time, will represent and act for the AGENCY.

20. WARRANTY OF SERVICES

- A. CONSULTANT warrants that its professional services will be performed in accordance with the professional standards of practices of comparable Coaching & Leadership Development Services firms at the time the services are rendered.
- B. In the event that any services provided by the CONSULTANT hereunder are deficient because of CONSULTANT's or subconsultants failure to perform said services in accordance with the warranty standards set forth

above, the AGENCY will report such deficiencies in writing to the CONSULTANT within a reasonable time. The AGENCY thereafter will have:

- i. The right to have the CONSULTANT re-perform such services at the CONSULTANT's expense; or
 - ii. The right to have such services done by others and the costs thereof charged to and collected from the CONSULTANT if, within 30 days after written notice to the CONSULTANT requiring such re-performance, CONSULTANT fails to give satisfactory evidence to the AGENCY that it has undertaken said re-performance.
 - iii. The right to terminate the Agreement for default.
- C. CONSULTANT will be responsible for all errors and omissions and is expected to pay for all work as a result of errors and omissions.

21. CLAIMS OR DISPUTES

The CONSULTANT will be solely responsible for providing timely written notice to AGENCY of any claims for additional compensation and/or time in accordance with the provisions of this Agreement. It is the AGENCY'S intent to investigate and attempt to resolve any CONSULTANT claims before the CONSULTANT has performed any disputed work. Therefore, CONSULTANT's failure to provide timely notice will constitute a waiver of CONSULTANT's claims for additional compensation and/or time.

The CONSULTANT will not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the AGENCY, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given the AGENCY due written notice of a potential claim. The potential claim will set forth the reasons for which the CONSULTANT believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

If based on an act or failure to act by the AGENCY, such notice will be given to the AGENCY prior to the time that the CONSULTANT has started performance of the work giving rise to the potential claim for additional compensation. In all other cases, notice will be given within 10 days after the happening of the event or occurrence giving rise to the potential claim.

If there is a dispute over any claim, the CONSULTANT will continue to work during the dispute resolution process in a diligent and timely manner as directed by the AGENCY and will be governed by all applicable provisions of the Agreement. The CONSULTANT will maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached that resolves the CONSULTANT claim, the parties will execute an Agreement modification to document the resolution of the claim. If the

parties cannot reach an agreement with respect to the CONSULTANT claim, they may choose to pursue a dispute resolution process or termination of the Agreement.

22. REMEDIES

In the event the CONSULTANT fails to comply with the requirements of this Agreement in any way, the AGENCY reserves the right to implement administrative remedies which may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

23. TEMPORARY SUSPENSION OF WORK

The AGENCY, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as AGENCY may deem necessary. The suspension may be due to the failure on the part of the CONSULTANT to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of the CONSULTANT. The CONSULTANT will comply immediately with the written order of AGENCY to suspend the work wholly or in part. The suspended work will be resumed when the CONSULTANT is provided with written direction from AGENCY to resume the work.

If the suspension is due to the CONSULTANT's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of the CONSULTANT, all costs will be at CONSULTANT's expense and no schedule extensions will be provided by AGENCY.

In the event of a suspension of the work, the CONSULTANT will not be relieved of the CONSULTANT's responsibilities under this Agreement, except the obligations to perform the work that the AGENCY has specifically directed CONSULTANT to suspend under this section.

If the suspension is not the responsibility of the CONSULTANT, suspension of all or any portion of the work under this Section may entitle the CONSULTANT to compensation and/or schedule extensions subject to the Agreement requirements.

24. TERMINATION

A. Termination for Convenience

The AGENCY may terminate this Agreement for convenience at any time by giving sixty days written notice to the CONSULTANT. Upon receipt of such notice, the CONSULTANT may not commit itself to any further expenditure of time or resources, except for costs reasonably necessary to effect the termination. If the AGENCY terminates the Agreement for convenience, the AGENCY agrees to pay the CONSULTANT, in accordance with the provisions of Sections 5 and 6, all sums actually due and owing from the AGENCY upon the effective date of termination, plus any costs reasonably necessary to effect the termination. CONSULTANT

is not entitled to any payments for lost profit on work to be performed after the date of termination, including, without limitation, work not yet performed, and milestones not yet achieved. All finished or unfinished documents and any material procured for or produced pursuant to this Agreement as of the date of termination are the property of the AGENCY upon the effective date of the termination for convenience. CONSULTANT and its subcontractors must cooperate in good faith in any transition to other vendors or consultants as the AGENCY deems necessary. Failure to so cooperate is a breach of the Agreement and grounds for the termination for convenience to be treated as a termination for default.

B. Termination for Default

If the CONSULTANT fails to perform any of the provisions of this Agreement, the AGENCY may find the CONSULTANT to be in default. After delivery of a written notice of default AGENCY may terminate the Agreement for default if the CONSULTANT 1) does not cure such breach within seven calendar days; or 2) if the nature of the breach is such that it will reasonably require more than 7 days to commence curing, as determined in the AGENCY'S discretion, provide a plan to cure such breach which is acceptable to the AGENCY within 7 calendar days. If the CONSULTANT cures the default within the cure period but subsequently defaults again, the AGENCY may immediately terminate the Agreement without further notice or right to cure. In the event of the filing a petition for bankruptcy by or against the CONSULTANT or for appointment of a receiver for CONSULTANT'S property, AGENCY may terminate this Agreement immediately without the thirty-day cure period.

Upon receipt of a notice of termination for default, the CONSULTANT may not commit itself to any further expenditure of time or resources. The AGENCY agrees to remit final payment to the CONSULTANT in an amount to cover only those sums actually due and owing from the AGENCY for work performed in full accordance with the terms of the Agreement as of the effective date of termination. The AGENCY is not in any manner liable for the CONSULTANT's actual or projected lost profits had the CONSULTANT completed the services required by this Agreement, including, without limitation, services not yet performed, expenses not yet incurred, and milestones not yet achieved. All finished or unfinished documents, and any equipment or materials procured for or produced pursuant to this Agreement become the property of the AGENCY upon the effective date of the termination for default.

- C. The rights and remedies of the AGENCY provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

25. LIQUIDATED DAMAGES

Not Applicable

26. PREVAILING WAGE

Not Applicable

27. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

All CONSULTANT and subcontractor/subconsultant costs incurred in the performance of this Agreement will be subject to audit. The CONSULTANT and its subcontractors/subconsultants will permit the AGENCY, the State Comptroller, and their authorized representatives, to inspect, examine, take excerpts from, transcribe, and copy the CONSULTANT's books, work, documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Agreement at any reasonable time, and to audit and verify statements, invoices or bills submitted by the CONSULTANT pursuant to this Agreement. The CONSULTANT will also provide such assistance as may be required in the course of such audit. The CONSULTANT will retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Agreement.

If, as a result of the audit, it is determined by the AGENCY'S auditor or staff that reimbursement of any costs including profit or fee under this Agreement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the CONSULTANT agrees to reimburse the AGENCY for those costs within sixty (60) days of written notification by the AGENCY.

28. UKRAINE/RUSSIA RELATED SANCTIONS

As a public agency with contracts with state and federal departments and agencies, the AGENCY is required to avoid transactions with any persons or entities subject to economic sanctions. For the purpose of this section, "Economic Sanctions" are defined as those imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. Accordingly, should the AGENCY determine CONSULTANT is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The AGENCY shall provide CONSULTANT advance written notice of such termination, allowing CONSULTANT at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the AGENCY.

29. NON-DISCRIMINATION ASSURANCE - TITLE VI OF THE CIVIL RIGHTS ACT

The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, the CONSULTANT agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the

Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. The CONSULTANT shall obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this Agreement. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the AGENCY deems appropriate.

30. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

In connection with the performance of this Agreement, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The CONSULTANT shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause. The CONSULTANT further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

The CONSULTANT will, in all solicitations or advancements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

The CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT's legal duty to furnish information.

The CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the AGENCY'S Contract Officer, advising the labor union or workers' representative of the CONSULTANT's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The CONSULTANT will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. The CONSULTANT will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the AGENCY and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the CONSULTANT's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The CONSULTANT will include the provisions of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

31. SMALL BUSINESS ENTERPRISES (SBE) REQUIREMENTS

See *Exhibit C* for SBE, prompt payment and reporting requirements.

32. CONFLICT OF INTEREST

A. General

Depending on the nature of the work performed, a CONSULTANT of the AGENCY may be subject to the same conflict of interest prohibitions established by California law that govern AGENCY'S employees and officials (Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section

87100 et seq.). During the proposal process or the term of the Agreement, CONSULTANT and its employees may be required to disclose their financial interests (Fair Political Practices Commission Form 700). Under Section 18700.3 of Title 2, Division 6, of the California Code of Regulations, an employee of CONSULTANT is required to disclose their financial interests on Form 700 if: (1) the person makes certain governmental decisions; or (2) the person serves in a staff capacity with the AGENCY and in that capacity participates in making governmental decisions or performs the same duties for the AGENCY that would typically be performed by an AGENCY employee who is required to file Form 700.

The CONSULTANT warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §1090 et seq. or §87100 et seq. during the performance of services under this Agreement. The CONSULTANT further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, CONSULTANT may be required to publicly disclose financial interests under the AGENCY'S Conflict of Interest Code. Upon receipt, the CONSULTANT agrees to promptly submit a Statement of Economic Interest on the form provided by AGENCY.

No person previously in the position of Director, Officer, employee or agent of the AGENCY during his or her tenure or for one (1) year after that tenure will have any interest, direct or indirect, in this Agreement or the proceeds under this Agreement, nor may any such person act as an agent or attorney for, or otherwise represent the CONSULTANT by making any formal or informal appearance, or any oral or written communication, before the AGENCY, or any Officer or employee of the AGENCY, for a period of one (1) year after leaving office or employment with the AGENCY if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant, or contract.

B. Organizational Conflicts of Interest

CONSULTANT will take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement and other solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to the AGENCY; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a

contract as a result of information gained in performance of this or some other Agreement.

CONSULTANT will not engage the services of any Subconsultant or independent consultant on any work related to this Agreement if the Subconsultant or independent consultant, or any employee of the Subconsultant or independent consultant, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement CONSULTANT becomes aware of an organizational conflict of interest in connection with the work performed hereunder, CONSULTANT immediately will provide the AGENCY with written notice of the facts and circumstances giving rise to this organizational conflict of interest. CONSULTANT's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest.

If at any time during the term of this Agreement, AGENCY becomes aware of an organizational conflict of interest in connection with CONSULTANT's performance of the work hereunder, AGENCY will similarly notify CONSULTANT.

In the event a conflict is presented, whether disclosed by CONSULTANT or discovered by AGENCY, the AGENCY will consider the conflict presented and any alternatives proposed and meet with the CONSULTANT to determine an appropriate course of action. The AGENCY'S determination as to the manner in which to address the conflict will be final.

During the term of this Agreement, CONSULTANT must maintain lists of its employees, and the Subconsultants and independent consultants used and their employees. CONSULTANT must provide this information to the AGENCY upon request. However, submittal of such lists does not relieve the CONSULTANT of its obligation to assure that no organizational conflicts of interest exist. CONSULTANT will retain this record for five (5) years after the AGENCY makes final payment under this Agreement. Such lists may be published as part of future AGENCY solicitations.

CONSULTANT will maintain written policies prohibiting organizational conflicts of interest and will ensure that its employees are fully familiar with these policies. CONSULTANT will monitor and enforce these policies and will require any subconsultants and affiliates to maintain, monitor, and enforce policies prohibiting organizational conflicts of interest.

Failure to comply with this section may subject the CONSULTANT to damages incurred by the AGENCY in addressing organizational conflicts that arise out of work performed by CONSULTANT, or to termination of this Agreement for breach.

33. SUBSTANCE ABUSE PROGRAM

Not Applicable

34. CALIFORNIA PUBLIC RECORD ACT REQUESTS (CPRA)

CONSULTANT consents to the release of this Agreement, the redacted version of its proposal, and the release of any portion of its proposal not included in its confidentiality index, and waives all claims against the AGENCY, its directors, officers, employees, and agents, for the disclosure of such information. If the CONSULTANT did not include a confidentiality index in its proposal, the AGENCY will have no obligation to withhold any information from disclosure and may release the information sought without liability to the AGENCY.

Upon receipt of a request pursuant to the CPRA seeking this Agreement, proposal material relating to this RFP, the AGENCY may provide the Agreement, redacted version of the proposal, or may withhold material designated in the confidentiality index that is exempt from disclosure. If the AGENCY determines that information in the confidentiality index is not exempt from disclosure, the AGENCY will give reasonable notice to the Proposer prior to releasing any material listed in the confidentiality index.

CONSULTANT agrees to indemnify, defend, and hold harmless the AGENCY, its directors, officers, employees, and agents, from any and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the proposer information), and pay any and all cost and expenses, including attorneys' fees, related to the withholding of the information included in the confidentiality index or in the redacted version of the proposal or in this Agreement. If CONSULTANT fails to accept a tender of a defense, the AGENCY reserves the right to resolve all claims at its sole discretion, without limiting any rights stated herein.

35. ATTORNEYS' FEES

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding will recover reasonable attorneys' fees, in addition to all court costs.

36. WAIVER

Any waiver of any breach or covenant of this Agreement must be in a writing executed by a duly authorized representative of the party waiving the breach. A waiver by any of the parties of a breach or covenant of this Agreement will not be construed to be a waiver of any succeeding breach or any other covenant unless specifically and explicitly stated in such waiver.

37. SEVERABILITY

If any provision of this Agreement is deemed invalid or unenforceable, that provision will be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event, the remaining provisions of this Agreement will remain in full force and effect.

38. NO THIRD PARTY BENEFICIARIES

This Agreement is not for the benefit of any person or entity other than the parties.

39. APPLICABLE LAW

This Agreement, its interpretation, and all work performed under it will be governed by the laws of the State of California. The CONSULTANT must comply with all Federal, State, and Local Laws, rules, and regulations applicable to the Agreement and to the work to be done hereunder, including all rules and regulations of the AGENCY.

40. RIGHTS AND REMEDIES OF THE AGENCY

The rights and remedies of the AGENCY provided herein will not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.

41. BINDING ON SUCCESSORS

All of the terms, provisions, and conditions of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors, assigns, and legal representatives.

42. ENTIRE AGREEMENT; MODIFICATION

This Agreement for Services, including any attachments, constitutes the complete Agreement between the parties and supersedes any prior written or oral communications. This Agreement may be modified or amended only by written instrument signed by both the CONSULTANT and the AGENCY. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the Effective Date.

SAN MATEO COUNTY TRANSIT DISTRICT:

PENINSULA CORRIDOR JOINT POWERS BOARD:

SAN MATEO COUNTY TRANSPORTATION AUTHORITY

Signature: _____

Name: _____

Title: _____

Date: _____

CONSULTANT:

Signature: _____

Name: _____

Title: _____

Date: _____

*Signature: _____

Name: _____

Title: _____

Date: _____

ATTEST:

By: _____
Agency Secretary

APPROVED AS TO FORM:

By: _____
Attorney for the Agency

* Note: If Consultant is a Corporation, this Agreement must be executed by two officers of the corporation, consisting of one officer from each of the two separate categories:
(1) the President, Vice President, or Chair of the Board; and
(2) the Secretary, Assistant Secretary, Treasurer or Chief Financial Officer.

In the alternative, this Agreement may be executed by a single Officer or a person other than an Officer provided demonstrating that such individual is authorized to bind the Corporation (e.g. – a copy of a certified resolution from the Corporation's bylaws).

If the Consultant is a limited liability company (LLC), the Agreement must be executed by an officer or member who has the full and proper authorization to bind the LLC. The Officer or member must provide evidence satisfactory to the AGENCY indicating the individual's authority to bind the LLC, such as a certified copy of a resolution authorizing the individual to execute written contracts or a copy of the LLC operating agreement.

EXHIBIT A

SCOPE OF SERVICES

1. INTRODUCTION

The San Mateo County Transit District (District), formed in 1976, provides public transportation services within and without San Mateo County, California, a 455 square-mile area with a population of approximately 771,410. The District has taken a leadership role in planning, developing and managing a multi-modal public transportation system that includes buses, trains, shuttles and paratransit services. Currently, the District operates 312 fixed-route revenue buses, 67 Paratransit vehicles, and administers a Shuttle program of 27 buses plus 68 shuttle buses partially subsidized by the District. In addition, the District serves as the Managing Agency for the San Mateo County Transportation Authority, which administers the one half of one percent voter-approved sales tax that funds projects in the voter-approved Expenditure Plan, and the Peninsula Corridor Joint Powers Board, which owns, manages and operates the Caltrain commuter rail system.

2. OBJECTIVE

Through coaching, the San Mateo County Transit District (District) wants to develop a greater level of learning and understanding on how to improve employee overall leadership skills and behaviors, leading to greater organizational effectiveness.

3. SCOPE OF SERVICES

The scope of services to provide skilled-based coaching on performance services, in general, will consist of the following:

- A. Develop action planning and/or assessment tools before engaging with the District employees.
- B. Develop coaching methodology.
- C. Develop and define the length of the coaching period, frequency of sessions.
- D. Establish the coaching meetings methods, e.g., in person, by phone, MS Teams, or Zoom meetings.
- E. Provide a model of practice to be used for individual and group coaching as needed. Coaching should include methodologies to improve trust and working relationships between the coachee and direct reports. Identify specific outputs and behavior changes required by the employee in a manner that is measurable and clear, including time, cost, and quality; milestones and timing must be clearly articulated.

- F. Develop objectives, goals and expectations of the Consultant and the District to be held accountable in the coaching sessions.
- G. The coach must be available to the District employee by e-mail, telephone, video, or voicemail between scheduled meetings as agreed upon by the District.
- H. Coach and employee will mutually agree on the coaching meetings' date, time, and locations.
- I. Each coaching session should have an agreed-upon agenda listing the themes, goals and issues on which the employee wishes to focus and the time allotted to each item. Individual sessions should support the initial contracting agreement.
- J. Both the Coach and the District employee should put into place an agreed-upon accountability process to ensure both are responsible for their words and actions, or non-action, and support overall commitments and implementation action plans.
- K. The coaching relationship between the Coach, the employee, and the District or the employee's manager or HR should be clearly articulated before the Coach enters into a contracting agreement. All parties need to have clearly defined goals and agreed-upon measurable results. The Coach may need to bridge conflicting goals of the Direct Manager/HR and the Employee.
- L. Provide regular, perhaps quarterly review sessions with the Employee, the Coach and their direct manager or HR to review coaching goals and outcomes.
- M. Develop agreed-upon specific evaluation criteria for the intervention and how the evaluation criteria will be rated by all stakeholders on what satisfactory completion of a coaching intervention looks like. The District Human Resources Representative will identify and provide the names of the stakeholders to the coach.
- N. This coaching relationship, as well as all information (documented or verbal) that the employee shares with the Coach as part of this relationship, is confidential.
- O. The Coach agrees not to disclose any information pertaining to the Employee without his/her written consent.
- P. The Coach will not disclose the employee's name as a reference without the District's consent.

- Q. The Coach also acknowledges their continuing obligation to raise any confidentiality questions or concerns with the employee in a timely manner.
- R. Any illegal or unethical behavior shared by the employee will not be considered confidential and must be reported to the District upon receipt.

EXHIBIT B
CONSULTANT'S PROPOSAL, AS ACCEPTED BY THE AGENCY

[CONSULTANT'S PROPOSAL WILL BE INSERTED HERE]

EXHIBIT C

SMALL BUSINESS ENTERPRISE (SBE) REQUIREMENTS

It is the policy of the Agency to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which SBEs and DBEs can compete fairly for contracts and subcontracts relating to construction, procurement, and services activities. To this end, the Agency has developed procedures to remove barriers to participation in the bidding and award process and to assist small and disadvantaged businesses to develop and compete successfully outside of the DBE Program. In connection with the performance of this Agreement, the Proposer will cooperate with the Agency in meeting these SBE commitments and objectives.

The Agency implements its DBE program in accordance with U.S. DOT regulations, and no contract-specific DBE participation goal has been established for this Agreement. However, CONSULTANT must cooperate with the Agency in meeting its commitments and objectives with regard to ensuring nondiscrimination in the award and administration of contracts and must use its best efforts to ensure that barriers to DBE's participation do not exist.

1. SBE POINT PREFERENCE

The Agency has established a contract specific SBE point preference of five points. The point preference will be granted to Proposers that are either (1) an SBE self-performing at least 30% of the contract; or (2) committed to subcontracting with one or more certified SBEs. The actual preference is calculated with the Proposer that has the highest SBE utilization rate receiving the full five points and other Proposers receiving points relative to the highest proposed SBE utilization.

Points received through the SBE preference will be added to each Proposer's total evaluation score. Preference points will be aggregated with proposal evaluation scoring to determine the highest ranked Proposer. Each Proposer must provide the **SBE Preference Form** with their proposal to receive a point preference. If a Proposal fails to submit this form, no SBE preference points will be added to the evaluation of the proposal.

2. SBE EVALUATION

The Office of Civil Rights (OCR) shall review all the information submitted by Proposers in accordance with the solicitation documents to determine a recommendation regarding compliance with the SBE point preference requirements for award of a contract to the Proposer. The Proposers shall cooperate with OCR if a request for additional information is made during this evaluation process.

3. ASSURANCE

Pursuant to 49 CFR §26.13, and as a material term of any Agreement with the Agency, the CONSULTANT hereby makes the following assurance and agrees to include this assurance in any contracts it makes with Subconsultants in the performance of this Agreement:

“The Consultant or Subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted Contracts. Failure by the CONSULTANT or sub-consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Agency deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the CONSULTANT from future bidding as non-responsible.”

By entering into the Agreement, the CONSULTANT is deemed to have made the foregoing assurance and to be bound by its terms.

4. AVAILABLE SBE/DBE RESOURCES

The Agency recognizes SBE certifications performed by the following:

- A. DBE pursuant to U.S. DOT regulations, 49 CFR Part 26. This includes DBE certifications performed by the California Unified Certification Program, or any other state Unified Certification Program. A statewide directory of DBEs is available at <https://caltrans.dbesystem.com>.
- B. Small Business Administration (SBA) 8(a) provided that a firm’s average annual gross receipts do not exceed the cap of \$30.4 million.
- C. Small Business certification performed by the California Department of General Services (DGS) for the following industries only: (a) Construction (NAICS 230000); (b) Manufacturing (NAICS 310000-330000); (c) Wholesaling (NAICS 420000); and (d) Trucking (NAICS 484000).
- D. All Microbusiness (MB) certifications by the DGS for ALL industries.
- E. SBE certification by the Santa Clara Valley Transportation Authority.
- F. SBE certification by the Los Angeles County Metropolitan Transportation Authority.

5. SBE ELIGIBILITY

To participate as an eligible small business, a firm must meet both of the following requirements:

- A. A firm (including affiliates) must be an existing small business as defined by SBA regulations, 13 CFR Part 121, for the appropriate type(s) of work that your firm performs.
- B. Even if your firm meets the above requirement, your firm’s (including affiliates’) average annual gross receipts over the previous three years cannot exceed a maximum cap of \$30.4 million.

Note: SBA size standards vary by industry and certain industries, such as general construction contracting, exceed the cap of \$30.4 million. A general construction contractor meeting the SBA size standard but exceeding the cap of \$30.4 million, for example, is ineligible to participate as a small business on Agency' contracts. Please verify a firm's industry size standard by visiting SBA at: <http://www.sba.gov/content/determining-size-standards>.

6. COUNTING SBE PARTICIPATION

SBE participation shall be counted and enforced in accordance with Title 49 CFR Part 26 and the Agency's DBE Program. SBE participation includes that portion of the Agreement actually performed by a certified SBE with its own forces. SBEs may participate as a consultant, subconsultant, joint venture partner, vendor or supplier of materials or services required by the Agreement. An SBE's participation can only be counted if it performs a commercially useful function on the Agreement. An SBE performs a commercially useful function when it actually performs, manages and supervises a portion of the work involved. There is a rebuttable presumption that if the SBE is not responsible for at least 30% of the work with its own forces, or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function. An SBE trucking company performs a commercially useful function if it is responsible for the overall management and supervision of the transportation services involved and uses at least one truck that it owns, insures, and operates with its own employees on the Agreement.

The CONSULTANT shall determine the amount of SBE participation for each SBE performing work on the Agreement in terms of the percentage of the total Agreement amount. The CONSULTANT shall also determine the total amount of SBE participation for the entire Agreement. The CONSULTANT shall count SBE participation according to the following guidelines:

A. SBE CONSULTANT

Count the entire dollar amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as SBE participation by the SBE CONSULTANT.

B. SBE Subconsultant

Count the entire amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work, except for materials and supplies purchased or leased from the CONSULTANT, and reasonable fees and commissions charged for the services.

Do not count any work subcontracted by an SBE to another firm as SBE participation by said SBE. If the work has been subcontracted to another SBE, it will be counted as SBE participation for that other SBE.

C. SBE Joint Venture Partner

Count the portion of the work that is performed solely by the SBE's forces or, if the work is not clearly delineated between the SBE and the joint venture partner, count the portion of the work equal to the SBE's percentage of ownership interest in the joint venture.

D. SBE Manufacturer

Count 100% of the costs of materials and supplies obtained from an SBE manufacturer that operates or maintains a factory that produces the materials and supplies on the premises. This applies whether the SBE is a CONSULTANT or Subconsultant.

E. SBE Regular Dealer

Count 60% of the costs of materials and supplies obtained from an SBE regular dealer that owns, operates, or maintains a store or warehouse in which the materials and supplies are regularly brought, kept in stock and sold or leased to the public in the usual course of business, except regular dealers of bulk items such as petroleum, cement, and gravel who own and operate distribution equipment in lieu of maintaining a place of business. This applies whether an SBE is a prime CONSULTANT or Subconsultant.

F. Other SBEs

Count the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from an SBE that is not a manufacturer or regular dealer. Do not count the cost of the materials and supplies.

G. SBE Trucking Company

Count the entire amount of the transportation services provided by an SBE trucking company that performs the work using trucks it owns, insures and operates with its own employees on the Agreement. Count the entire amount of the transportation services provided by an SBE trucking company that performs the work using trucks it leases from another SBE, including an owner-operator, provided that it is responsible for the overall management and supervision of the service and that it uses at least one truck that it owns, insures and operates with its own employees on the Agreement.

Count the entire amount of fees and commissions charged for providing the management and supervision of transportation services using trucks it leases from a non-SBE trucking company, including owner-operator, provided that it is responsible for the overall management and supervision of the service and that it uses at least one truck that it owns, insures and operates with its own employees on the Agreement.

7. CONTRACT COMPLIANCE

A. Substitution of Subconsultants

The CONSULTANT shall not terminate an SBE Subconsultant at any tier without prior written consent from the Agency. The CONSULTANT shall notify OCR in writing of its intention to substitute an SBE Subconsultant before any substitution of an SBE Subconsultant takes place. The CONSULTANT must provide appropriate documentation to substantiate the request for substitution as defined by applicable federal and/or state law.

The CONSULTANT shall utilize the specific SBEs listed to perform the work and supply the materials for which each is listed unless the CONSULTANT obtains prior written consent. Unless prior consent is given, the CONSULTANT shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed SBE.

B. Change to a Firm's SBE Status

If an SBE Subconsultant is either decertified as an SBE or a Subconsultant is certified as an SBE during the life of the Contract, such Subconsultant shall notify the CONSULTANT in writing with the date of decertification or certification. The CONSULTANT shall notify the Agency of such an event and shall furnish the written documentation to the Agency.

C. Prompt Payment to Subconsultants

The CONSULTANT shall pay any Subconsultants approved by the Agency for work that has been satisfactorily performed no later than seven calendar days from the date of CONSULTANT's receipt of progress payments by the Agency.

The Agency shall withhold retainage from the CONSULTANT, make prompt and regular incremental inspections and approvals of portions of the work and, promptly release retainage to the CONSULTANT based on these inspections and approvals. The Agency's incremental approvals and release of a portion of the retainage under this section does not constitute Acceptance of the work.

Within seven calendar days after the Agency has made a retainage payment to the CONSULTANT, the CONSULTANT shall release to any Subconsultant, who has satisfactorily completed work covered by the Agency's inspection and approval, the retainage owed to the Subconsultant for such work. For purposes of this section, a Subconsultant's work is satisfactorily completed when the CONSULTANT certifies to the Agency that all the tasks called for in the subcontract related to the work covered by the Agency's incremental inspection and approval have been satisfactorily completed.

Any delay or postponement of payment by the CONSULTANT to a Subconsultant may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the CONSULTANT to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or Subconsultants in the event of a dispute involving late payment or nonpayment by the CONSULTANT; deficient Subconsultant performance; and/or noncompliance by a Subconsultant. This clause applies to all Subconsultants. In the event CONSULTANT does not make progress payments or release retentions to the Subconsultant in accordance with the time periods specified herein, the CONSULTANT will be subject to a charge of 2% per month on the untimely or improperly withheld payment.

The CONSULTANT shall cooperate with the Project Manager or the Resident Engineer and OCR to identify, report and effectuate the prompt and regular approvals of the work.

D. Monthly Electronic Reporting Requirements

The CONSULTANT shall maintain records of all subcontractor participation in the performance of the contract. This includes subcontracts entered into with both certified SBEs and non-SBEs and all materials purchased from both certified SBEs and non-SBEs.

The CONSULTANT is required to report payments to all subcontractors, sub-consultants, suppliers, manufacturers, and truckers (Subconsultants) in the Diversity Management and Compliance System (System) on a monthly basis. The System, a web-based electronic reporting system, is designed to record Agency payments made to the CONSULTANT and prompt payments made by the CONSULTANT to its Subconsultants. The CONSULTANT and every Subconsultant will receive payment notifications via email. The CONSULTANT must report a payment made to Subconsultant(s) within five calendar days of an email notification. The Subconsultant(s) must confirm receipt of payment from the CONSULTANT within five calendar days of an email notification.

It is the CONSULTANT's responsibility to ensure that Subconsultant(s) confirm payments in the System in accordance with the requirements set forth above.

If the CONSULTANT fails to comply with the monthly electronic reporting requirements within the time period required in this section and has not received written approval for an extension, the CONSULTANT agrees to pay a sum of \$50 each day the monthly report is late as liquidated damages. The amount of liquidated damages is not a penalty and covers reasonable damages that the Agency will sustain and which are impractical to

determine in advance. The Agency may deduct the amount of liquidated damages from monies due to the CONSULTANT.

8. ADMINISTRATIVE REMEDIES

In the event the CONSULTANT fails to comply with the SBE requirements of this Agreement in any way, the Agency reserves the right to implement administrative remedies which may include, but are not limited to, withholding of progress payments and Agreement retentions, imposition of liquidated damages, and termination of the Agreement in whole or in part.

END OF SBE REQUIREMENTS

EXHIBIT D
INSURANCE REQUIREMENTS

Exhibit D-1 – Insurance requirements for San Mateo County Transit District

Exhibit D-2 – Insurance requirements for Peninsula Corridor Joint Powers Board

Exhibit D-3 – Insurance requirements for San Mateo County Transportation Authority

EXHIBIT D-1
INSURANCE REQUIREMENTS (DISTRICT)

The insurance requirements specified in this Section shall cover CONSULTANT's own liability and any liability arising out of work or services performed under this Agreement by any subconsultants, subconsultants, suppliers, temporary workers, independent CONSULTANTS, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") that CONSULTANT authorizes to work under this Agreement. CONSULTANT is required to procure and maintain at its sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement. CONSULTANT is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks; the limit for the Commercial General Liability insurance in each subcontract shall not be less than \$2 million. To the extent that any Agent does not procure and maintain such insurance coverage, CONSULTANT shall assume any and all costs and expenses that may be incurred in fulfilling CONSULTANT's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event CONSULTANT or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the CONSULTANT's insurance be primary without any right of contribution from the DISTRICT. Prior to beginning work under this Agreement, CONSULTANT shall provide the DISTRICT's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS) with satisfactory evidence of compliance with the insurance requirements of this Section by submitting such evidence of compliance to the address indicated in C.1. below.

A. MINIMUM TYPES AND SCOPE OF INSURANCE

1. Workers' Compensation and Employer's Liability Insurance
 - a. Workers' Compensation with Statutory Limits, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto, governing the liability of employers to their employees.
 - b. Employer's Liability coverage with minimum limits of **\$2 million**.
 - c. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:
 - Waiver of Subrogation.
2. Commercial General Liability Insurance

Commercial General Liability insurance for bodily injury and property

damage coverage of at least **\$2 million** per occurrence or claim and a general aggregate limit of at least **\$2 million**. Such insurance shall cover all of CONSULTANT's operations both at and away from the project site. Such insurance shall not have any exclusion for Cross Liability or Cross-Suits. In addition, for any construction and public works projects, the insurance shall not have any exclusion for Explosion, Collapse and Underground perils (xcu) and for construction or demolition work within 50 feet of railroad tracks, the contractual liability exclusion for liability assumed shall be deleted.

- a. This insurance shall include coverage for, but not be limited to:
 - Premises and operations.
 - Products and completed operations.
 - Personal injury.
 - Advertising injury.
- b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
 - Additional Insured.
 - Separation of Insureds Clause.
 - Primary and Non-Contributory wording.
 - Waiver of Subrogation.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

3. Business Automobile Liability Insurance

Business Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least **\$2 million** per accident or loss.

- a. This insurance shall include coverage for, but not be limited to:
 - All owned vehicles.
 - Non-owned vehicles.
 - Hired or rental vehicles.
- b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
 - Additional Insured.
 - Primary and Non-Contributory wording.
 - Waiver of Subrogation.

4. Property Insurance

Property insurance with Special Form coverage including theft, but excluding earthquake, with limits at least equal to the replacement cost of the property described below.

a. This insurance shall include coverage for, but not be limited to:

- CONSULTANT's own business personal property and equipment to be used in performance of this Agreement.
- Materials or property to be purchased and/or installed on behalf of the DISTRICT, if any.
- Builders risk for property in the course of construction.

b. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

- Waiver of Subrogation.

5. Professional Liability Insurance

A Professional Liability insurance policy covering errors and omissions and the resulting damages including, but not limited to, economic loss to the DISTRICT and having minimum limits of liability of **\$2 million** per claim or occurrence and **\$2 million** annual aggregate. The policy shall include coverage for all services and work performed under this Agreement.

B. ENDORSEMENTS

1. Additional Insured

The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds the San Mateo County Transit District and its directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

2. Waiver of Subrogation

The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of the San Mateo County Transit District and its officers, directors, employees, volunteers and agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

3. Primary Insurance

The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the San Mateo County Transit District.

4. Separation of Insureds

The referenced policies and any Excess or Umbrella policies shall contain a Separation of Insureds Clause and stipulate that inclusion of the San Mateo County Transit District as an Additional Insured shall not in any way affect DISTRICT's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the CONSULTANT. The purpose of this coverage is to protect CONSULTANT and the San Mateo County Transit District in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

C. EVIDENCE OF INSURANCE

1. All Coverages

Prior to commencing work or entering onto the Property, CONSULTANT shall provide to Insurance Tracking Services, Inc. (ITS), the DISTRICT's authorized insurance consultant, a certificate of insurance with respect to each required policy to be provided by the CONSULTANT under the Agreement. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate. **The DISTRICT Contract number and Project name shall be clearly stated on the face of each Certificate of Insurance.**

Submit Certificates of Insurance to:
San Mateo County Transit District
C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 198
Long Beach, CA 90801

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

In addition, the CONSULTANT shall promptly deliver to ITS a Certificate of Insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than three business days after the expiration date of any policy.

D. GENERAL PROVISIONS

1. Notice of Cancellation

Each insurance policy supplied by the CONSULTANT shall provide at least 30 days' written notice to CONSULTANT of cancellation or non-renewal. CONSULTANT must then provide at least 30 days' prior written notice to the DISTRICT's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS), if any of the above policies are non-renewed or cancelled.

Submit written notice to:
San Mateo County Transit District
C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 198
Long Beach, CA 90801

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

2. Acceptable Insurers

All policies will be issued by insurers acceptable to the DISTRICT (generally with a Best's Rating of A- 10 or better).

3. Self-insurance

Upon evidence of financial capacity satisfactory to the DISTRICT and CONSULTANT's agreement to waive subrogation against the DISTRICT respecting any and all claims that may arise, CONSULTANT's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

4. Failure to Maintain Insurance

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of CONSULTANT's personnel and equipment have been removed from the DISTRICT property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

5. Claims Made Coverage

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the CONSULTANT's start of work (including subsequent policies purchased as renewals or replacements).
- b. CONSULTANT shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds.
- c. If insurance is terminated for any reason, CONSULTANT agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this Agreement.
- d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

6. Deductibles and Retentions

CONSULTANT shall be responsible for payment of any deductible or retention on CONSULTANT's policies without right of contribution from the DISTRICT. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that the policy of the CONSULTANT or any subconsultant contains a deductible or self-insured retention, and in the event that the DISTRICT seeks coverage under such policy as an additional insured, CONSULTANT shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of CONSULTANT, subconsultant, or any of their officers, directors, employees, agents, or suppliers, even if CONSULTANT or subconsultant is not a named defendant in the lawsuit.

EXHIBIT D-2
INSURANCE REQUIREMENTS (JPB)

The insurance requirements specified in this Section shall cover CONTRACTOR's own liability and any liability arising out of work or services performed under this Agreement by any subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") that CONTRACTOR authorizes to work under this Agreement. CONTRACTOR is required to procure and maintain at its sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement. CONTRACTOR is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks; the limit for the Commercial General Liability insurance in each subcontract shall not be less than \$2 million. To the extent that any Agent does not procure and maintain such insurance coverage, CONTRACTOR shall assume any and all costs and expenses that may be incurred in fulfilling CONTRACTOR's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event CONTRACTOR or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the CONTRACTOR's insurance be primary without any right of contribution from the JPB. Prior to beginning work under this Agreement, CONTRACTOR shall provide the JPB's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS), with satisfactory evidence of compliance with the insurance requirements of this Section, by submitting such evidence of compliance to the address indicated in C.1. below.

A. MINIMUM TYPES AND SCOPE OF INSURANCE

1. Workers' Compensation and Employer's Liability Insurance
 - a. Workers' Compensation with Statutory Limits and/or Federal Employer's Liability ("FELA") coverage (whichever is applicable) to its employees, as required by the Federal Employer's Liability Act of 1908, applying to Interstate railroad employees, or, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto, governing the liability of employers to their employees.
 - b. If FELA applies, it shall be in accordance with federal statutes and have minimum limits of \$10,000,000 per occurrence.
 - c. If the California Labor Code requiring Workers' Compensation applies, the CONTRACTOR shall also maintain Employer's Liability coverage with minimum limits of \$2 million.

d. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

- Waiver of Subrogation.

2. Commercial General Liability Insurance

Commercial General Liability insurance for bodily injury and property damage coverage of at least **\$2 million** per occurrence or claim and a general aggregate limit of at least **\$2 million**. Such insurance shall cover all of CONTRACTOR's operations both at and away from the project site. Such insurance shall not have any exclusion for Cross Liability or Cross-Suits. In addition, for any construction and public works projects, the insurance shall not have any exclusion for Explosion, Collapse and Underground perils (xcu) and for construction or demolition work within 50 feet of railroad tracks, the contractual liability exclusion for liability assumed shall be deleted.

a. This insurance shall include coverage for, but not be limited to:

- Premises and operations.
- Products and completed operations.
- Personal injury.
- Advertising injury.

b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

- Additional Insured.
- Separation of Insureds Clause.
- Primary and Non-Contributory wording.
- Waiver of Subrogation.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

3. Business Automobile Liability Insurance

Business Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least **\$2 million** per accident or loss.

a. This insurance shall include coverage for, but not be limited to:

- All owned vehicles.
- Non-owned vehicles.
- Hired or rental vehicles.

b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

- Additional Insured.
- Primary and Non-Contributory wording.
- Waiver of Subrogation.

4. Property Insurance

Property insurance with Special Form coverage including theft, but excluding earthquake, with limits at least equal to the replacement cost of the property described below.

a. This insurance shall include coverage for, but not be limited to:

- CONTRACTOR's own business personal property and equipment to be used in performance of this Agreement.
- Materials or property to be purchased and/or installed on behalf of the JPB, if any.
- Builders risk for property in the course of construction.

b. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

- Waiver of Subrogation.

5. Professional Liability Insurance

A Professional Liability insurance policy covering errors and omissions and the resulting damages including, but not limited to, economic loss to the JPB and having minimum limits of liability of **\$2** million per claim or occurrence and **\$2** million annual aggregate. The policy shall include coverage for all services and work performed under this Agreement.

B. ENDORSEMENTS

1. Additional Insured

The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, TransitAmerica Services, Inc. or any successor Operator of the Service, and the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors

or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

2. Waiver of Subrogation

The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, TransitAmerica Services, Inc. or any successor Operator of the Service, and the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

3. Primary Insurance

The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the JPB.

4. Separation of Insureds

The referenced policies and any Excess or Umbrella policies shall contain a Separation of Insureds Clause and stipulate that inclusion of the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, TransitAmerica Services, Inc. or any successor Operator of the Service, and the Union Pacific Railroad Company as Additional Insureds shall not in any way affect the JPB's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the CONTRACTOR. The purpose of this coverage is to protect CONTRACTOR and the JPB in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

C. EVIDENCE OF INSURANCE

1. All Coverages

Prior to commencing work or entering onto the Property, CONTRACTOR shall provide to Insurance Tracking Services, Inc. (ITS), the JPB's

authorized insurance consultant, a Certificate of Insurance with respect to each required policy to be provided by the CONTRACTOR under the Agreement. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate. **The JPB Contract number and Project name shall be clearly stated on the face of each Certificate of Insurance.**

Submit Certificates of Insurance to:

Peninsula Corridor Joint Powers Board
C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 198
Long Beach, CA 90801

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

In addition, the CONTRACTOR shall promptly deliver to ITS a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than three business days after the expiration date of any policy.

D. GENERAL PROVISIONS

1. Notice of Cancellation

Each insurance policy supplied by the CONTRACTOR shall provide at least 30 days' written notice to CONTRACTOR of cancellation or non-renewal. CONTRACTOR must then provide at least 30 days' prior written notice to the JPB's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS), if any of the above policies are non-renewed or cancelled.

Submit written notice to:

Peninsula Corridor Joint Powers Board
C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 198
Long Beach, CA 90801

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

2. Acceptable Insurers

All policies will be issued by insurers acceptable to the JPB (generally with a Best's Rating of A- 10 or better).

3. Self-insurance

Upon evidence of financial capacity satisfactory to the JPB and CONTRACTOR's agreement to waive subrogation against the JPB respecting any and all claims that may arise, CONTRACTOR's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

4. Failure to Maintain Insurance

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of CONTRACTOR's personnel and equipment have been removed from the JPB property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

5. Claims Made Coverage

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the CONTRACTOR's start of work (including subsequent policies purchased as renewals or replacements).
- b. CONTRACTOR shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds.
- c. If insurance is terminated for any reason, CONTRACTOR agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this Agreement.

- d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

6. Deductibles and Retentions

CONTRACTOR shall be responsible for payment of any deductible or retention on CONTRACTOR's policies without right of contribution from the JPB. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that the policy of the CONTRACTOR or any subcontractor contains a deductible or self-insured retention, and in the event that the JPB seeks coverage under such policy as an additional insured, CONTRACTOR shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of CONTRACTOR, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if CONTRACTOR or subcontractor is not a named defendant in the lawsuit.

EXHIBIT D-3
INSURANCE REQUIREMENTS (TA)

The insurance requirements specified in this Section shall cover CONTRACTOR's own liability and any liability arising out of work or services performed under this Agreement by any subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") that CONTRACTOR authorizes to work under this Agreement. CONTRACTOR is required to procure and maintain at its sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement. CONTRACTOR is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks; the limit for the Commercial General Liability insurance in each subcontract shall not be less than \$2 million. To the extent that any Agent does not procure and maintain such insurance coverage, CONTRACTOR shall assume any and all costs and expenses that may be incurred in fulfilling CONTRACTOR's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event CONTRACTOR or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the CONTRACTOR's insurance be primary without any right of contribution from the San Mateo County Transportation Authority (Transportation Authority). Prior to beginning work under this Agreement, CONTRACTOR shall provide the TRANSPORTATION AUTHORITY's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS) with satisfactory evidence of compliance with the insurance requirements of this Section by submitting such evidence of compliance to the address indicated in C.1. below.

A. MINIMUM TYPES AND SCOPE OF INSURANCE

1. Workers' Compensation and Employer's Liability Insurance
 - a. Workers' Compensation with Statutory Limits, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto, governing the liability of employers to their employees.
 - b. Employer's Liability coverage with minimum limits of **\$2 million**.
 - c. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:
 - Waiver of Subrogation.

2. Commercial General Liability Insurance

Commercial General Liability insurance for bodily injury and property damage coverage of at least **\$2 million** per occurrence or claim and a general aggregate limit of at least **\$2 million**. Such insurance shall cover all of CONTRACTOR's operations both at and away from the project site. Such insurance shall not have any exclusion for Cross Liability or Cross-Suits. In addition, for any construction and public works projects, the insurance shall not have any exclusion for Explosion, Collapse and Underground perils (xcu) and for construction or demolition work within 50 feet of railroad tracks, the contractual liability exclusion for liability assumed shall be deleted.

- a. This insurance shall include coverage for, but not be limited to:
 - Premises and operations.
 - Products and completed operations.
 - Personal injury.
 - Advertising injury.

- b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
 - Additional Insured.
 - Separation of Insureds Clause.
 - Primary and Non-Contributory wording.
 - Waiver of Subrogation.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

3. Business Automobile Liability Insurance

Business Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least **\$2 million** per accident or loss.

- a. This insurance shall include coverage for, but not be limited to:
 - All owned vehicles.
 - Non-owned vehicles.
 - Hired or rental vehicles.

- b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
 - Additional Insured.

- Primary and Non-Contributory wording.
- Waiver of Subrogation.

4. Property Insurance

Property insurance with Special Form coverage including theft, but excluding earthquake, with limits at least equal to the replacement cost of the property described below.

a. This insurance shall include coverage for, but not be limited to:

- CONTRACTOR's own business personal property and equipment to be used in performance of this Agreement.
- Materials or property to be purchased and/or installed on behalf of the TRANSPORTATION AUTHORITY, if any.
- Builders risk for property in the course of construction.

b. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

- Waiver of Subrogation.

5. Professional Liability Insurance

A Professional Liability insurance policy covering errors and omissions and the resulting damages including, but not limited to, economic loss to the TRANSPORTATION AUTHORITY and having minimum limits of liability of **\$2 million** per claim or occurrence and **\$2 million** annual aggregate. The policy shall include coverage for all services and work performed under this Agreement.

B. ENDORSEMENTS

1. Additional Insured

The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds The San Mateo County Transportation Authority, the San Mateo County Transit District, and its directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

2. Waiver of Subrogation

The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of San Mateo County Transportation

Authority, the San Mateo County Transit District, and its officers, directors, employees, volunteers and agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

3. Primary Insurance

The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the San Mateo County Transportation Authority.

4. Separation of Insureds

The referenced policies and any Excess or Umbrella policies shall contain a Separation of Insureds Clause and stipulate that inclusion of the San Mateo County Transportation Authority, the San Mateo County Transit District, as an Additional Insured shall not in any way affect TRANSPORTATION AUTHORITY's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the CONTRACTOR. The purpose of this coverage is to protect CONTRACTOR and the San Mateo County Transportation Authority in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

C. EVIDENCE OF INSURANCE

1. All Coverages

Prior to commencing work or entering onto the Property, CONTRACTOR shall provide to Insurance Tracking Services, Inc. (ITS), the TRANSPORTATION AUTHORITY's authorized insurance consultant, a certificate of insurance with respect to each required policy to be provided by the CONTRACTOR under the Agreement. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate. **The TRANSPORTATION AUTHORITY'S Contract number and Project name shall be clearly stated on the face of each Certificate of Insurance.**

Submit Certificates of Insurance to:
San Mateo County Transportation Authority
C/O Insurance Tracking Services, Inc. (ITS)

P.O. Box 198
Long Beach, CA 90801

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

In addition, the CONTRACTOR shall promptly deliver to ITS a Certificate of Insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than three business days after the expiration date of any policy.

D. GENERAL PROVISIONS

1. Notice of Cancellation

Each insurance policy supplied by the CONTRACTOR shall provide at least 30 days' written notice to CONTRACTOR of cancellation or non-renewal. CONTRACTOR must then provide at least 30 days' prior written notice to the TRANSPORTATION AUTHORITY's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS), if any of the above policies are non-renewed or cancelled.

Submit written notice to:
San Mateo County Transportation Authority, C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 198
Long Beach, CA 90801

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

2. Acceptable Insurers

All policies will be issued by insurers acceptable to the TRANSPORTATION AUTHORITY (generally with a Best's Rating of A- 10 or better).

3. Self-insurance

Upon evidence of financial capacity satisfactory to the TRANSPORTATION AUTHORITY and CONTRACTOR's agreement to waive subrogation against the TRANSPORTATION AUTHORITY respecting any and all claims that may arise, CONTRACTOR's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

4. Failure to Maintain Insurance

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of CONTRACTOR's personnel and equipment have been removed from the TRANSPORTATION AUTHORITY property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

5. Claims Made Coverage

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the CONTRACTOR's start of work (including subsequent policies purchased as renewals or replacements).
- b. CONTRACTOR shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds.
- c. If insurance is terminated for any reason, CONTRACTOR agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this Agreement.
- d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

6. Deductibles and Retentions

CONTRACTOR shall be responsible for payment of any deductible or retention on CONTRACTOR's policies without right of contribution from the TRANSPORTATION AUTHORITY. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to

the Named Insured is unacceptable.

In the event that the policy of the CONTRACTOR or any subcontractor contains a deductible or self-insured retention, and in the event that the TRANSPORTATION AUTHORITY seeks coverage under such policy as an additional insured, CONTRACTOR shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of CONTRACTOR, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if CONTRACTOR or subcontractor is not a named defendant in the lawsuit.

EXHIBIT E

WORK DIRECTIVES

Work Directives (WDs) will be issued to the Consultant at any time during the contract period of performance. Award of WDs will be based on the technical superiority of a Consultant's proposal in response to a Work Directive Proposal Request (WDPR). Services are to be provided on an as needed basis throughout the term of the contract and services must be completed within the period specified in the WD. Performance of under issued WDs must be completed within the term of the Agreement.

The Services to be furnished by the Consultant may vary according to the Agency's needs. The actual services to be provided shall be described in specific WDs. Each WD will contain a period of performance specific to the WD. The Agency expressly reserves the right to contract for performance of services with other consultant(s). There is no guaranteed minimum level of effort to be expended or compensation to be paid under this RFP.

Organizational conflicts of interest, if any, will be assessed at the WD level. Consultant shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under WDs. It is the Consultant's responsibility to assure that no organizational conflicts of interest exist. If the Consultant has a conflict of interest, real or apparent; it will not be allowed to provide services for those projects.

A. ISSUANCE

As needs arise, the Agency will issue a WDPR. Consultant is responsible for preparing and submitting a WD Technical and Cost Proposal within **ten (10) calendar days** of Consultant's receipt of Agency's request or by the due date as indicated in the specific WDPR. Upon review, negotiation (if any), and approval by the Agency Project Manager (or designee) of Consultant's WD Technical and Cost Proposal, the Agency will issue a WD.

If a DBE goal has been assigned to a WDPR, Consultant shall meet the DBE goal in its proposal or shall document that it has made sufficient good faith efforts to meet the goal. The Agency will evaluate the Consultant's good faith efforts to meet the DBE goal before a work directive is authorized. Good faith efforts may include the following:

- Advertising or other outreach to seek DBEs.
- The solicitation of proposals from DBEs.
- The selection of types and units of work for DBEs to participate in.
- Reasons and other evidence why DBEs were rejected for the WD.
- Efforts to help DBEs participate in the WD, such as loan assistance,

reduction in insurance requirements, etc.

- Contacting minority or women trade or other organizations to seek DBEs.
- Other data to support a demonstration of good faith efforts.

If a Consultant fails to meet a DBE goal on a WDPR and also fails to demonstrate that good faith efforts were made to meet the goal, the Consultant may be denied the award of the WD and the Consultant shall be afforded a reconsideration hearing.

B. AMENDMENTS AND COMPENSATION

WDs are governed by the terms and conditions of the contract, and by any other specific terms and conditions identified in the WD. Such additional terms and conditions, if any, will be identified in the WDPR. Work will be authorized by the Agency through the issuance of a WD.

Work performed by the Consultant prior to issuance of a WD is understood to be at-risk, and Consultant may not be reimbursed for said work.

WD Amendments:

Any addition to, reduction of, and/or other revision of the scope of work for a WD that is approved by the Agency requires a WD Amendment. A WDPR for the Amendment will be issued to WD Consultant by the Agency. Consultant is responsible for preparing and submitting a WD Technical and Cost Proposal within **ten (10) calendar days** of Consultant's receipt of Agency request or by the due date as indicated in that specific WDPR. The Agency reserves the right to determine in its sole discretion if completion of the WD amendment is needed. **Performance of work related to additional scope by the Consultant prior to authorization to perform such work by the Agency is understood to be at-risk, and Consultant may not be reimbursed for said work.**

WD Compensation and Rates:

WD cost will be based on rates established in the underlying contract, and the time and deliverable requirements in the WD. WDs will be issued on either a Not to Exceed (NTE), Firm-Fixed Price (FFP), Cost Plus Fixed Fee with a ceiling (CPFF) expenses, and/or Specified Rates of Compensation (SROC), depending on the WD scope of services. WD estimated total cost amounts will be negotiated based on estimated labor hours and previously approved Position Title and/or Labor Categories and other rates set forth in Consultant's Cost Proposal to this RFP and as set forth in each WD Technical and Cost Proposal. WDs may vary significantly in size. For example, one Work Directive may be for NEPA/CEQA clearance efforts while another Work Directive may be for providing a single support staff person (i.e., transportation planner) to a project for a limited duration of time.

Compensation is further described in **Section 8, Appendices, Appendix B, Section 5** “Compensation”, of this RFP.

C. WD REPORTING AND INVOICING

If required by a WD’s scope of work, the Consultant shall submit to the Agency an Earned Value Report within **seven (7) business days** after the end of the billing period. These reports shall contain the task/sub-task as set forth in the WD and will include, at a minimum, a description of all work performed within the reporting period; and the planned, forecasted, earned and actual costs for the reporting period and cumulative to date. The reporting period shall be identical to the billing period established for the work.

The report shall include a narrative status report containing work accomplished to date and a forecast for work to be completed within the billing period. The narrative report shall note significant milestones achieved. This report shall be supplied to the Project Manager (PM) and shall also be attached to the appropriate corresponding invoice. Consultant is required to submit invoices for services performed no later than **thirty (30) days** after the close of the calendar month in which such costs were incurred. Failure to submit invoices in a timely manner may result in the Agency rejecting such invoices.

The report will cover activities performed on all open WDs during the billing period and shall address the following topics:

- Summary of key issues, trends and risks which shall include identification of potential cost/schedule overruns including the reasons for such impact and the mitigation measures proposed. The summary shall also describe any outstanding responses that the Consultant has requested from the Agency or a 3rd Party Agency that may potentially impact the cost or schedule of the work;
- Summary of deliverables that includes a table showing original, revised forecast and actual dates for each deliverable. Any actual or revised forecast dates that deviate from the original plan shall be accompanied by an explanation of the causes for such deviations;
- Identify any WD Proposals or Amendments in process;
- Identify any out of scope work; and
- Compare the percent billing to percent work complete.

D. MEETINGS

The Agency and Consultant shall meet quarterly or at a time period as mutually agreed upon to review Consultant's performance under specific WDs and/or the contract.

E. AGENCY'S RIGHTS

Although it is the Agency's intention to satisfy its Services needs by contracting with Consultant, the Agency's expressly reserves the right to contract for future Services with other firms for projects that may arise. Such Services will be obtained through a separate competitive solicitation, and the Agency's shall solely determine how such specific projects will be awarded.

F. CONSULTANT'S KEY PERSONNEL

Consultant shall be responsible for the management of technical and administrative personnel used for each WD. Each WD will identify Agency staff representative as WD Manager and/or Project Manager. Consultant shall be responsible for any errors and omissions and is financially responsible to cover the cost of any and all deficient work resulting from the Consultant's errors and omissions, including re-performance of the work.

AGREEMENT 24-S-J-T-P-014

BETWEEN

**SAN MATEO COUNTY TRANSIT DISTRICT, PENINSULA CORRIDOR JOINT
POWERS BOARD, OR SAN MATEO COUNTY TRANSPORTATION AUTHORITY
(AGENCY)**

AND

NAME OF THE CONSULTANT (CONSULTANT)

AGREEMENT SUMMARY*

Board of Directors' Date of Award:

Resolution Number:

Effective Date of Agreement:

Services to be Performed:

Term of Agreement:

Consultant's Key Representative: Name:
Title:
Company:
Address:
Phone:
Email:

Compensation: Board-approved aggregate amount of \$

**This Summary is provided for convenience only and is qualified by the specific terms and conditions of the Agreement that will control any conflict between this Summary and the terms of the Agreement*

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- EXHIBIT E, WORK DIRECTIVES
- EXHIBIT F, APPROVED SUBCONSULTANTS

This AGREEMENT for On-Call Temporary Staffing Services (Agreement) is entered into by and between the **San Mateo County Transit District, Peninsula Corridor Joint Powers Board, or San Mateo County Transportation Authority (AGENCY)** located at 1250 San Carlos Avenue, San Carlos, CA 94070 and **NAME OF THE CONSULTANT (CONSULTANT)**, a [State] [entity type] located at [address], (collectively referred to as “the Parties”).

WHEREAS, on July 17, 2024, the San Mateo County Transit District, Peninsula Joint Powers Board (JPB), and the San Mateo County Transportation Authority (TA), collectively referred to as “Agencies”, issued a joint a Request for Proposals (RFP 25-S-J-T-P-014) for On-Call Temporary Staffing Services; and

WHEREAS, the CONSULTANT was awarded a contract to provide the On-Call Temporary Staffing Services for the **District , JPB, or TA** pursuant to the RFP; and

WHEREAS, the CONSULTANT possesses the necessary skills and knowledge to perform the work.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

1. SCOPE OF SERVICES

This is an Agreement to provide an On-Call Temporary Staffing Services. The CONSULTANT agrees to provide these services to the AGENCY in accordance with the terms and conditions of this Agreement. In the performance of its work, the CONSULTANT represents that it (1) has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing an On-Call Temporary Staffing Services; (2) carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and (3) will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.

The scope of the CONSULTANT’s services will consist of the services set forth in the Request for Proposals dated Month, XX, 2023, the Scope of Services of which is attached hereto and incorporated herein as **Exhibit A**, as supplemented by CONSULTANT’s written proposal dated Month, XX, 2023, attached hereto and incorporated herein as **Exhibit B**.

2. AGREEMENT DOCUMENTS

This Agreement consists of the following documents:

- A. This Agreement
- B. Exhibit A, Scope of Services
- C. Exhibit B, CONSULTANT’s Proposal, as accepted by the Agency.
- D. Exhibit C, SBE Requirements
- E. Exhibit D, Insurance Requirements

- F. Exhibit E, Work Directives
- G. Exhibit F, Approved Subconsultants (*if applicable*)

In the event of conflict between or among the terms of the Agreement documents, the order of precedence will be the order of documents listed above, with the first-listed document having the highest precedence and the last-listed document having the lowest precedence.

3. TERM OF AGREEMENT

The term of this Agreement will be for a **five (5) year** term commencing upon **Month XX, 2024** and ending on **Month XX, 2029**. The CONSULTANT will furnish the AGENCY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Solicitation Documents.

The AGENCY reserves the right, in its sole discretion, to exercise up two (2) one-year option term(s) to extend the Agreement, pursuant to the terms of this Agreement. If the AGENCY determines to exercise the option term(s), the AGENCY will give the CONSULTANT at least thirty (30) days' written notice of its determination.

It is understood that the term of the Agreement and any option term granted thereto as specified herein are subject to the AGENCY'S right to terminate the Agreement in accordance with **Section 24** of this Agreement.

Notwithstanding the term of the Agreement as stated above, upon expiration of this Agreement and following a competitive solicitation process, if CONSULTANT is not awarded a new contract with the AGENCY to provide temporary staffing services, CONSULTANT's temporary personnel assigned to the AGENCY at the date of termination shall be required to complete their individual assignment(s) at the agreed upon hourly rate plus mark-up fee unless otherwise negotiated and mutually agreed upon between the CONSULTANT and the AGENCY. The provisions, requirements, conditions, and sections of this Agreement shall govern the completion of any such temporary personnel assignments, and the AGENCY will issue a unilateral amendment extending the Agreement term to cover the length of said assignments.

4. CONSULTANT'S REPRESENTATIVE

At all times during the term of this Agreement, **Name of Consultant's Representative**, will serve as the primary staff person of CONSULTANT to undertake, render, and oversee all of the services under this Agreement. Upon written notice by the CONSULTANT and approval by the AGENCY, which will not be unreasonably withheld, the CONSULTANT may substitute this person with another person, who will possess similar qualifications and experience for this position.

5. COMPENSATION

The CONSULTANT agrees to perform the services to be specified in each Work Directive. Compensation for satisfactory performance of services performed under Work

Directives will be as stated in each Work Directive and, unless specifically stated otherwise in the Work Directive, will be in accordance with the hourly labor rates set forth in ***Exhibit B Consultant's Proposal***.

It is expressly understood and agreed that in no event will the CONSULTANT be compensated in an amount greater than the amount specified in any individual Work Directive for the services performed under such Work Directive. Any change order must be in writing and approved by the AGENCY'S Project Manager and the Office of Contracts and Procurement.

There is no guaranteed compensation to the CONSULTANT under this Agreement. However, the maximum compensation that the AGENCY has authorized to be expended for this Contract will not exceed an aggregate amount of **DOLLAR AMOUNT (\$XXX)** plus ten percent (10%) contingency, which may be used at the Agency's discretion if necessary for unforeseen work only. The AGENCY will pay the CONSULTANT in accordance with Section 6.

On an annual basis, no later than 60 days before the start of a succeeding Agreement year, CONSULTANT may make a written request to increase its labor rates for the following year of the Agreement. Increases, if timely requested, in future labor rates shall be limited to the lesser of either (a) the previous published twelve (12) months Consumer Price Index for All Urban (CPI-U) for the San Francisco/Oakland/Hayward, CA area, or (b) the actual increases in employees' labor rates. Such actual increases must be demonstrated to the Agency's satisfaction.

In extenuating circumstances, and with approval at the sole discretion of the Agency, CONSULTANT may submit a written request to deviate from the methodology set forth in the above paragraph. Such request must include: (1) a justifiable explanation for the deviation, (2) an independently conducted and CONSULTANT-funded market analysis with comparable data from other public agencies in the Bay Area, preferably from other transit agencies, with sufficient completeness to pass audit scrutiny from an independent third-party, and (3) an attestation regarding the accuracy of the information presented from the CONSULTANT's Owner, President, Vice President, Chair of the Board, or Chief Financial Officer.

The effective date of the labor rates increase, if any, will commence either (1) the first day of the second and/or subsequent year(s) of the Agreement, or (2) the date of the CONSULTANT's request, whichever event is later. Upon written approval by the AGENCY, the negotiated changes shall remain in effect for the following Agreement year. If the CONSULTANT does not submit a request at least 60 days before the start of the succeeding Agreement year, the CONSULTANT waives any labor rates increase for that following year.

6. MANNER OF PAYMENT

Temporary personnel are responsible for obtaining verification of their electronic or hard copy time cards from a designated AGENCY representative. Temporary personnel shall also be responsible for submitting their electronic or hard copy time cards

to the CONSULTANT each week. The CONSULTANT shall certify on each invoice that each individual has performed work for all hours claimed for reimbursement.

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, the contract number (**25-S-J-T-P-014**), purchase order number (**TBD**) and the AGENCY' **Project Manger's Name**. The AGENCY will endeavor to pay approved invoices/billing statements within 30 calendar days of their receipt. The AGENCY reserves the right to withhold payment to the CONSULTANT if the AGENCY determines that the quantity or quality of the work performed is unacceptable. The AGENCY reserves the right to withhold payment for any invoice that does not match the PO lines until CONSULTANT resubmits a corrected invoice. The AGENCY will provide written notice to the CONSULTANT within 10 calendar days of the AGENCY'S decision not to pay and the reasons for non-payment. Final payment will be withheld until CONSULTANT performs all required Agreement expiration or termination obligations. If CONSULTANT disagrees with the AGENCY'S decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes the AGENCY'S decision to the AGENCY within 30 calendar days of the AGENCY'S notice. If CONSULTANT does not provide written notice in accordance with this section, it waives all rights to challenge the AGENCY'S decision.

Submit one copy of each invoice as a PDF via email to:

AccountsPayable@SamTrans.com

7. **NOTICES**

All communications relating to the day-to-day activities of the provided services will be exchanged between the AGENCY'S **Project Manger's Name** or designee, and the CONSULTANT's **Consultant's Name**.

Notices informing CONSULTANT of the AGENCY'S decision to exercise Agreement options (that were exercisable in the AGENCY'S sole discretion) will be exchanged between the AGENCY'S **Project Manger's Name** or designee, and the CONSULTANT's **Consultant's Name** via electronic mail to: email address.

All other notices and communications deemed by either party to be necessary or desirable to be given to the other party will be in writing and may be given by personal delivery to a representative of the parties or by mailing the same postage prepaid, addressed as follows:

If to the AGENCY: Board Secretary
San Mateo County Transit District,
Peninsula Corridor Joint Powers Board, or
San Mateo County Transportation Authority
1250 San Carlos Avenue
San Carlos, CA 94070

With a copy to: Director, Contracts and Procurement
San Mateo County Transit District
Peninsula Corridor Joint Powers Board, or
San Mateo County Transportation Authority
1250 San Carlos Avenue
San Carlos, CA 94070

If to the CONSULTANT: Consultant
Attn:
Street
City, State Zip

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail will be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

8. OWNERSHIP OF WORK

All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared for the services to be performed by CONSULTANT will be and are the property of the AGENCY. The AGENCY will be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the CONSULTANT or in the hands of any subconsultant upon completion or termination of the work will be immediately delivered to the AGENCY. If any materials are lost, damaged, or destroyed before final delivery to the AGENCY, the CONSULTANT will replace them at its own expense and the CONSULTANT assumes all risks of loss, damage, or destruction of or to such materials. The CONSULTANT may retain a copy of all material produced under this Agreement for its use in its general business activities.

Any and all rights, title, and interest (including without limitation copyright and any other intellectual-property or proprietary right) to materials prepared under this Agreement are hereby assigned to the AGENCY. The CONSULTANT agrees to execute any additional documents that may be necessary to evidence such assignment.

The CONSULTANT represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual property or proprietary right of any third party.

9. CONFIDENTIALITY

Any AGENCY materials that the CONSULTANT has access or materials prepared by the CONSULTANT during the course of this Agreement (“confidential information”) will be held in confidence by the CONSULTANT, which will exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the

officers, employees and agents of the CONSULTANT as necessary to accomplish the rendition of services set forth in Section 1 of this Agreement.

The CONSULTANT, its employees, subconsultants and agents, will not release any reports, information, or other materials prepared in connection with this Agreement, whether deemed confidential or not, without the approval of the AGENCY'S **General Manager/CEO or Executive Director** or designee.

10. USE OF SUBCONTRACTORS/SUBCONSULTANTS

The CONSULTANT must not subcontract any services to be performed by it under this Agreement without the prior written approval of the AGENCY, except for service firms engaged in drawing, reprographics, typing, and printing and subconsultants identified in **Exhibit F**.

Any subcontractors/subconsultants must be engaged under written contract with the CONSULTANT with provisions allowing the CONSULTANT to comply with all requirements of this Agreement, including without limitation the "Ownership of Work" provisions in Section 8. The CONSULTANT will be solely responsible for reimbursing any subcontractors/subconsultants and the AGENCY will have no obligation to them.

11. CHANGES

The AGENCY may at any time, by written order, make changes within the scope of work and services described in this Agreement. If such changes cause an increase or decrease in the budgeted cost of or the time required for performance of the agreed-upon work, an equitable adjustment as mutually agreed will be made in the limit on compensation as set forth in Section 5 or in the time of required performance as set forth in Section 3, or both. In the event that CONSULTANT encounters any unanticipated conditions or contingencies that may affect the scope of work or services and result in an adjustment in the amount of compensation specified herein, or identifies any AGENCY conduct (including actions, inaction, and written or oral communications other than a formal contract modification) that the CONSULTANT regards as a change to the contract terms and conditions, CONSULTANT will so advise the AGENCY immediately upon notice of such condition or contingency. The written notice will explain the circumstances giving rise to the unforeseen condition or contingency and will set forth the proposed adjustment in compensation. This notice will be given to the AGENCY prior to the time that CONSULTANT performs work or services related to the proposed adjustment in compensation. The pertinent changes will be expressed in a written supplement to this Agreement issued by the Contracts and Procurement Department prior to implementation of such changes. Failure to provide written notice and receive AGENCY approval for extra work prior to performing extra work may, at the AGENCY'S sole discretion, result in non-payment of the invoices reflecting such work.

12. RESPONSIBILITY: INDEMNIFICATION

[The provisions below apply to the District & TA only]

The CONSULTANT will indemnify, keep and save harmless the AGENCY and its directors, officers, agents and employees against any and all suits, claims or actions arising out of any of the following:

- A. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the CONSULTANT caused by a negligent act or omission or wilful misconduct of the CONSULTANT or its employees, subcontractors, subconsultants or agents; or
- B. Any allegation that materials or services provided by the CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party; or
- C. Any claims, demands, causes of action or suits that may be alleged, made, instituted or maintained against the AGENCY, by or on behalf of any temporary personnel provided to the AGENCY by CONSULTANT or by any administrative agency, arising out of the work performed under this Agreement.

The CONSULTANT further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defense as they are incurred. If any judgment is rendered against the AGENCY or any of the other individuals enumerated above in any such action, the CONSULTANT will, at its expense, satisfy and discharge the same. This indemnification will survive termination or expiration of the Agreement.

[The provisions below apply to the JPB only]

The CONSULTANT will indemnify, keep and save harmless the AGENCY, the San Mateo County Transit District, the City and County of San Francisco, the Santa Clara Valley Transportation Authority, TransitAmerica Services, Inc. (TASI) or successor Operator of Record, the Union Pacific Railroad Company, and their directors, officers, agents and employees (Indemnitees) against any and all suits, claims or actions arising out of any of the following:

- A. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the CONSULTANT caused by a negligent act or omission or wilful misconduct of the CONSULTANT or its employees, subcontractors, subconsultants or agents; or
- B. Any allegation that materials or services provided by the CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party; or

- C. Any claims, demands, causes of action or suits that may be alleged, made, instituted or maintained against the AGENCY, by or on behalf of any temporary personnel provided to the AGENCY by CONSULTANT or by any administrative agency, arising out of the work performed under this Agreement.

The CONSULTANT further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defense as they are incurred. If any judgment is rendered against the Indemnitees in any such action, the CONSULTANT will, at its expense, satisfy and discharge the same. This indemnification will survive termination or expiration of the Agreement.

13. **INSURANCE**

Refer to *Exhibit D*, appended hereto, for the Insurance Requirements.

14. **CONSULTANT'S STATUS AND STATUS OF TEMPORARY PERSONNEL**

Neither the CONSULTANT nor any party contracting with the CONSULTANT will be deemed to be an agent or employee of the AGENCY. The CONSULTANT is and will be an independent CONSULTANT and the legal relationship of any person performing services for the CONSULTANT will be one solely between that person and the CONSULTANT.

All temporary personnel supplied under this Agreement are and shall remain employees of the CONSULTANT for the period during which they render services under this Agreement.

All temporary personnel referred to the AGENCY as candidates for work under this Agreement shall be the CONSULTANT'S employees or be legally bound to become CONTRACTOR'S employees immediately upon being found qualified to perform the required work.

The CONSULTANT shall provide, be responsible for and pay to all temporary personnel performing services under this Agreement, or on their behalf, all compensation and applicable fringe benefits.

The CONSULTANT shall accept exclusive liability for payment of any contributions, measured by the wages of its employees and agents, assessed by the Federal Unemployment Tax Act, the Federal Insurance Contributions Act, and any other applicable laws or statutes. The CONSULTANT shall indemnify and hold harmless the AGENCY on account of all such compensation and fringe benefit payments and such contributions. This indemnification shall survive termination or expiration of the Agreement.

It is understood that all temporary personnel utilized in connection with work performed under this Agreement shall be CONSULTANT'S employees, subject to

CONTRACTOR'S supervision and control and not subject to supervision or control by AGENCY employees or agents.

15. ASSIGNMENT

The CONSULTANT must not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the AGENCY.

16. OTHER GOVERNMENTAL AGENCIES

In the event that one or more other governmental agencies may wish to utilize this Agreement to purchase services in accordance with the terms and costs indicated herein, the following provisions apply. Each public agency must formulate a separate contract with the CONSULTANT, incorporating the terms and conditions of this Agreement with the AGENCY. CONSULTANT shall invoice such public agencies as separate entities. The AGENCY will incur no liability in connection with such contracts or purchases by other public agencies thereunder. CONSULTANT will release, defend (with counsel reasonably satisfactory to AGENCY) and indemnify AGENCY and its directors, officers, employees and agents (collectively, "Indemnitees"), from and against all liability, cost, and expense for loss of or damage to property and for injuries to any person when arising or resulting from acts or omissions of CONSULTANT in connection with such contracts or purchases by other public agencies.

17. LITIGATION SUPPORT

The CONSULTANT must be willing to provide litigation support related to the performance of this Agreement, including serving as an expert witness if required by the AGENCY. In the event that litigation relating to the performance of this Agreement arises, the CONSULTANT will ensure that at least one individual has the appropriate expertise to act as an expert witness and will make that individual or individuals available to consult on issues related to litigation. The CONSULTANT may additionally be required to form expert opinions, draft expert witness reports, and provide expert witness testimony for depositions and other legal proceedings, including mediation, arbitration, and trials.

18. AGENCY WARRANTIES

The AGENCY makes no warranties, representations, or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

19. AGENCY REPRESENTATIVE

Except when approval or other action is required to be given or taken by the Board of Directors of the AGENCY, the AGENCY'S **General Manager/CEO or Executive Director**, or such person or persons as they will designate in writing from time to time, will represent and act for the AGENCY.

20. WARRANTY OF SERVICES

- A. CONSULTANT warrants that its professional services will be performed in accordance with the professional standards of practices of comparable an Temporary Staffing Services at the time the services are rendered.
- B. In the event that any services provided by the CONSULTANT hereunder are deficient because of CONSULTANT's or subconsultants failure to perform said services in accordance with the warranty standards set forth above, the AGENCY will report such deficiencies in writing to the CONSULTANT within a reasonable time. The AGENCY thereafter will have:
 - i. The right to have the CONSULTANT re-perform such services at the CONSULTANT's expense; or
 - ii. The right to have such services done by others and the costs thereof charged to and collected from the CONSULTANT if, within 30 days after written notice to the CONSULTANT requiring such re-performance, CONSULTANT fails to give satisfactory evidence to the AGENCY that it has undertaken said re-performance.
 - iii. The right to terminate the Agreement for default.
- C. CONSULTANT will be responsible for all errors and omissions and is expected to pay for all work as a result of errors and omissions.

21. CLAIMS OR DISPUTES

The CONSULTANT will be solely responsible for providing timely written notice to AGENCY of any claims for additional compensation and/or time in accordance with the provisions of this Agreement. It is the AGENCY'S intent to investigate and attempt to resolve any CONSULTANT claims before the CONSULTANT has performed any disputed work. Therefore, CONSULTANT's failure to provide timely notice will constitute a waiver of CONSULTANT's claims for additional compensation and/or time.

The CONSULTANT will not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the AGENCY, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given the AGENCY due written notice of a potential claim. The potential claim will set forth the reasons for which the CONSULTANT believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

If based on an act or failure to act by the AGENCY, such notice will be given to the AGENCY prior to the time that the CONSULTANT has started performance of the work giving rise to the potential claim for additional compensation. In all other cases, notice will be given within 10 days after the happening of the event or occurrence giving rise to the potential claim.

If there is a dispute over any claim, the CONSULTANT will continue to work during the dispute resolution process in a diligent and timely manner as directed by the AGENCY and will be governed by all applicable provisions of the Agreement. The CONSULTANT will maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached that resolves the CONSULTANT claim, the parties will execute an Agreement modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to the CONSULTANT claim, they may choose to pursue a dispute resolution process or termination of the Agreement.

22. REMEDIES

In the event the CONSULTANT fails to comply with the requirements of this Agreement in any way, the AGENCY reserves the right to implement administrative remedies which may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

23. TEMPORARY SUSPENSION OF WORK

The AGENCY, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as AGENCY may deem necessary. The suspension may be due to the failure on the part of the CONSULTANT to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of the CONSULTANT. The CONSULTANT will comply immediately with the written order of AGENCY to suspend the work wholly or in part. The suspended work will be resumed when the CONSULTANT is provided with written direction from AGENCY to resume the work.

If the suspension is due to the CONSULTANT's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of the CONSULTANT, all costs will be at CONSULTANT's expense and no schedule extensions will be provided by AGENCY.

In the event of a suspension of the work, the CONSULTANT will not be relieved of the CONSULTANT's responsibilities under this Agreement, except the obligations to perform the work that the AGENCY has specifically directed CONSULTANT to suspend under this section.

If the suspension is not the responsibility of the CONSULTANT, suspension of all or any portion of the work under this Section may entitle the CONSULTANT to compensation and/or schedule extensions subject to the Agreement requirements.

24. TERMINATION

A. Termination for Convenience

The AGENCY may terminate this Agreement for convenience at any time by giving sixty days written notice to the CONSULTANT. Upon receipt of such notice, the CONSULTANT may not commit itself to any further

expenditure of time or resources, except for costs reasonably necessary to effect the termination. If the AGENCY terminates the Agreement for convenience, the AGENCY agrees to pay the CONSULTANT, in accordance with the provisions of Sections 5 and 6, all sums actually due and owing from the AGENCY upon the effective date of termination, plus any costs reasonably necessary to effect the termination. CONSULTANT is not entitled to any payments for lost profit on work to be performed after the date of termination, including, without limitation, work not yet performed, and milestones not yet achieved. All finished or unfinished documents and any material procured for or produced pursuant to this Agreement as of the date of termination are the property of the AGENCY upon the effective date of the termination for convenience. CONSULTANT and its subcontractors must cooperate in good faith in any transition to other vendors or consultants as the AGENCY deems necessary. Failure to so cooperate is a breach of the Agreement and grounds for the termination for convenience to be treated as a termination for default.

B. Termination for Default

If the CONSULTANT fails to perform any of the provisions of this Agreement, the AGENCY may find the CONSULTANT to be in default. After delivery of a written notice of default AGENCY may terminate the Agreement for default if the CONSULTANT 1) does not cure such breach within seven calendar days; or 2) if the nature of the breach is such that it will reasonably require more than 7 days to commence curing, as determined in the AGENCY'S discretion, provide a plan to cure such breach which is acceptable to the AGENCY within 7 calendar days. If the CONSULTANT cures the default within the cure period but subsequently defaults again, the AGENCY may immediately terminate the Agreement without further notice or right to cure. In the event of the filing a petition for bankruptcy by or against the CONSULTANT or for appointment of a receiver for CONSULTANT'S property, AGENCY may terminate this Agreement immediately without the thirty-day cure period.

Upon receipt of a notice of termination for default, the CONSULTANT may not commit itself to any further expenditure of time or resources. The AGENCY agrees to remit final payment to the CONSULTANT in an amount to cover only those sums actually due and owing from the AGENCY for work performed in full accordance with the terms of the Agreement as of the effective date of termination. The AGENCY is not in any manner liable for the CONSULTANT's actual or projected lost profits had the CONSULTANT completed the services required by this Agreement, including, without limitation, services not yet performed, expenses not yet incurred, and milestones not yet achieved. All finished or unfinished documents, and any equipment or materials procured for or produced pursuant to this Agreement become the property of the AGENCY upon the effective date of the termination for default.

- C. The rights and remedies of the AGENCY provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

25. LIQUIDATED DAMAGES

Not Applicable

26. PREVAILING WAGE

Not Applicable

27. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

All CONSULTANT and subcontractor/subconsultant costs incurred in the performance of this Agreement will be subject to audit. The CONSULTANT and its subcontractors/subconsultants will permit the AGENCY, the State Comptroller, and their authorized representatives, to inspect, examine, take excerpts from, transcribe, and copy the CONSULTANT's books, work, documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Agreement at any reasonable time, and to audit and verify statements, invoices or bills submitted by the CONSULTANT pursuant to this Agreement. The CONSULTANT will also provide such assistance as may be required in the course of such audit. The CONSULTANT will retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Agreement.

If, as a result of the audit, it is determined by the AGENCY'S auditor or staff that reimbursement of any costs including profit or fee under this Agreement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the CONSULTANT agrees to reimburse the AGENCY for those costs within sixty (60) days of written notification by the AGENCY.

28. UKRAINE/RUSSIA RELATED SANCTIONS

As a public agency with contracts with state and federal departments and agencies, the AGENCY is required to avoid transactions with any persons or entities subject to economic sanctions. For the purpose of this section, "Economic Sanctions" are defined as those imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. Accordingly, should the AGENCY determine CONSULTANT is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The AGENCY shall provide CONSULTANT advance written notice of such termination, allowing CONSULTANT at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the AGENCY.

29. NON-DISCRIMINATION ASSURANCE - TITLE VI OF THE CIVIL RIGHTS ACT

The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, the CONSULTANT agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. The CONSULTANT shall obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this Agreement. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the AGENCY deems appropriate.

30. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

In connection with the performance of this Agreement, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The CONSULTANT shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause. The CONSULTANT further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

The CONSULTANT will, in all solicitations or advancements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

The CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or

applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT's legal duty to furnish information.

The CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the AGENCY'S Contract Officer, advising the labor union or workers' representative of the CONSULTANT's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The CONSULTANT will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. The CONSULTANT will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the AGENCY and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the CONSULTANT's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The CONSULTANT will include the provisions of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

31. SMALL BUSINESS ENTERPRISES (SBE) REQUIREMENTS

See *Exhibit C* for SBE, prompt payment and reporting requirements.

32. CONFLICT OF INTEREST

A. General

Depending on the nature of the work performed, a CONSULTANT of the AGENCY may be subject to the same conflict of interest prohibitions established by California law that govern AGENCY'S employees and officials (Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq.). During the proposal process or the term of the Agreement, CONSULTANT and its employees may be required to disclose their financial interests (Fair Political Practices Commission Form 700). Under Section 18700.3 of Title 2, Division 6, of the California Code of Regulations, an employee of CONSULTANT is required to disclose their financial interests on Form 700 if: (1) the person makes certain governmental decisions; or (2) the person serves in a staff capacity with the AGENCY and in that capacity participates in making governmental decisions or performs the same duties for the AGENCY that would typically be performed by an AGENCY employee who is required to file Form 700.

The CONSULTANT warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §1090 et seq. or §87100 et seq. during the performance of services under this Agreement. The CONSULTANT further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, CONSULTANT may be required to publicly disclose financial interests under the AGENCY'S Conflict of Interest Code. Upon receipt, the CONSULTANT agrees to promptly submit a Statement of Economic Interest on the form provided by AGENCY.

No person previously in the position of Director, Officer, employee or agent of the AGENCY during his or her tenure or for one (1) year after that tenure will have any interest, direct or indirect, in this Agreement or the proceeds under this Agreement, nor may any such person act as an agent or attorney for, or otherwise represent the CONSULTANT by making any formal or informal appearance, or any oral or written communication, before the AGENCY, or any Officer or employee of the AGENCY, for a period of one (1) year after leaving office or employment with the AGENCY if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant, or contract.

B. Organizational Conflicts of Interest

CONSULTANT will take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement and other solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to the AGENCY; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

CONSULTANT will not engage the services of any Subconsultant or independent consultant on any work related to this Agreement if the Subconsultant or independent consultant, or any employee of the Subconsultant or independent consultant, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement CONSULTANT becomes aware of an organizational conflict of interest in connection with the work performed hereunder, CONSULTANT immediately will provide the AGENCY with written notice of the facts and circumstances giving rise to this organizational conflict of interest. CONSULTANT's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest.

If at any time during the term of this Agreement, AGENCY becomes aware of an organizational conflict of interest in connection with CONSULTANT's performance of the work hereunder, AGENCY will similarly notify CONSULTANT.

In the event a conflict is presented, whether disclosed by CONSULTANT or discovered by AGENCY, the AGENCY will consider the conflict presented and any alternatives proposed and meet with the CONSULTANT to determine an appropriate course of action. The AGENCY'S determination as to the manner in which to address the conflict will be final.

During the term of this Agreement, CONSULTANT must maintain lists of its employees, and the Subconsultants and independent consultants used and their employees. CONSULTANT must provide this information to the AGENCY upon request. However, submittal of such lists does not relieve the CONSULTANT of its obligation to assure that no organizational conflicts of interest exist. CONSULTANT will retain this record for five (5) years after the AGENCY makes final payment under this Agreement. Such lists may be published as part of future AGENCY solicitations.

CONSULTANT will maintain written policies prohibiting organizational conflicts of interest and will ensure that its employees are fully familiar with

these policies. CONSULTANT will monitor and enforce these policies and will require any subconsultants and affiliates to maintain, monitor, and enforce policies prohibiting organizational conflicts of interest.

Failure to comply with this section may subject the CONSULTANT to damages incurred by the AGENCY in addressing organizational conflicts that arise out of work performed by CONSULTANT, or to termination of this Agreement for breach.

33. SUBSTANCE ABUSE PROGRAM

Not Applicable

34. CALIFORNIA PUBLIC RECORD ACT REQUESTS (CPRA)

CONSULTANT consents to the release of this Agreement, the redacted version of its proposal, and the release of any portion of its proposal not included in its confidentiality index, and waives all claims against the AGENCY, its directors, officers, employees, and agents, for the disclosure of such information. If the CONSULTANT did not include a confidentiality index in its proposal, the AGENCY will have no obligation to withhold any information from disclosure and may release the information sought without liability to the AGENCY.

Upon receipt of a request pursuant to the CPRA seeking this Agreement, proposal material relating to this RFP, the AGENCY may provide the Agreement, redacted version of the proposal, or may withhold material designated in the confidentiality index that is exempt from disclosure. If the AGENCY determines that information in the confidentiality index is not exempt from disclosure, the AGENCY will give reasonable notice to the Proposer prior to releasing any material listed in the confidentiality index.

CONSULTANT agrees to indemnify, defend, and hold harmless the AGENCY, its directors, officers, employees, and agents, from any and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the proposer information), and pay any and all cost and expenses, including attorneys' fees, related to the withholding of the information included in the confidentiality index or in the redacted version of the proposal or in this Agreement. If CONSULTANT fails to accept a tender of a defense, the AGENCY reserves the right to resolve all claims at its sole discretion, without limiting any rights stated herein.

35. ATTORNEYS' FEES

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding will recover reasonable attorneys' fees, in addition to all court costs.

36. WAIVER

Any waiver of any breach or covenant of this Agreement must be in a writing executed by a duly authorized representative of the party waiving the breach. A waiver by any of the parties of a breach or covenant of this Agreement will not be construed to be a waiver of any succeeding breach or any other covenant unless specifically and explicitly stated in such waiver.

37. SEVERABILITY

If any provision of this Agreement is deemed invalid or unenforceable, that provision will be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event, the remaining provisions of this Agreement will remain in full force and effect.

38. NO THIRD PARTY BENEFICIARIES

This Agreement is not for the benefit of any person or entity other than the parties.

39. APPLICABLE LAW

This Agreement, its interpretation, and all work performed under it will be governed by the laws of the State of California. The CONSULTANT must comply with all Federal, State, and Local Laws, rules, and regulations applicable to the Agreement and to the work to be done hereunder, including all rules and regulations of the AGENCY.

40. RIGHTS AND REMEDIES OF THE AGENCY

The rights and remedies of the AGENCY provided herein will not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.

41. BINDING ON SUCCESSORS

All of the terms, provisions, and conditions of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors, assigns, and legal representatives.

42. ENTIRE AGREEMENT; MODIFICATION

This Agreement for Services, including any attachments, constitutes the complete Agreement between the parties and supersedes any prior written or oral communications. This Agreement may be modified or amended only by written instrument signed by both the CONSULTANT and the AGENCY. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the Effective Date.

SAN MATEO COUNTY TRANSIT DISTRICT:

PENINSULA CORRIDOR JOINT POWERS BOARD:

SAN MATEO COUNTY TRANSPORTATION AUTHORITY

Signature: _____

Name: _____

Title: _____

Date: _____

CONSULTANT:

Signature: _____

Name: _____

Title: _____

Date: _____

*Signature: _____

Name: _____

Title: _____

Date: _____

ATTEST:

By: _____
Agency Secretary

APPROVED AS TO FORM:

By: _____
Attorney for the Agency

* Note: If Consultant is a Corporation, this Agreement must be executed by two officers of the corporation, consisting of one officer from each of the two separate categories:

- (1) the President, Vice President, or Chair of the Board; and
- (2) the Secretary, Assistant Secretary, Treasurer or Chief Financial Officer.

In the alternative, this Agreement may be executed by a single Officer or a person other than an Officer provided demonstrating that such individual is authorized to bind the Corporation (e.g. – a copy of a certified resolution from the Corporation's bylaws).

If the Consultant is a limited liability company (LLC), the Agreement must be executed by an officer or member who has the full and proper authorization to bind the LLC. The Officer or member must provide evidence satisfactory to the AGENCY indicating the individual's authority to bind the LLC, such as a certified copy of a resolution authorizing the individual to execute written contracts or a copy of the LLC operating agreement.

EXHIBIT A

SCOPE OF SERVICES

1. INTRODUCTION

The Agencies' administrative headquarters are both located at 1250 San Carlos Avenue, San Carlos, CA. There are two additional Agencies locations, North Base at 301 North Access Road, South San Francisco, CA, and South Base at 501 Pico Blvd., San Carlos, CA. Temporary work assignment may be at any of these locations. The Agencies reserve the right to add additional work assignment locations in and adjacent to San Mateo County, as it deems necessary. The Agencies currently employ approximately 960 employees, of whom 385 are in administrative positions and 575 are in bus operations.

The Agencies currently contract with six temporary staffing agencies firms to provide a variety of qualified temporary personnel to meet its business needs. Annual expenditures for temporary personnel for the past five years have been approximately \$5,600,000. The Agencies do not use temporary staffing firms for direct hire placements. The Agencies anticipate awarding Agreements to one or more firms. However, there is no guarantee of a minimum level of service or compensation to be allocated to any firm(s) under the Agreement(s), if awarded.

2. SCOPE OF SERVICES

A. Placement Process

The Agencies shall provide detailed job description information to the Contractor with each temporary placement request to better assist the firm in determining the placement requirements. The Contractor is expected to provide high-quality personnel, qualified by experience, training and/or education to perform work as required for the Agencies. Contractor shall provide the Agencies with qualified personnel who meet the skills and experience of the placement requirements and provide their hourly pay rates and all other billing charges on an as-needed basis in a timely manner, usually within one business day of the Agencies' request. Following review of potential personnel, the Agencies shall inform the Contractor of its selection and confirm the acceptable hourly bill and/or pay rate.

Temporary personnel provided by the Contractor are not employees of the Agencies. The Contractor shall recruit, hire, pay, and provide benefits (if any are provided); approve and provide any leaves of absence or time-off, and address performance problems, including discipline and termination, as necessary, of temporary personnel. The Contractor shall comply with all applicable federal, state, and local regulations concerning equal opportunity requirements and take affirmative action to ensure employment opportunities. The Agencies reserve the right to review and approve the qualifications and experience of temporary personnel providing services

under this Agreement, including new and/or replacement temporary personnel proposed by the Contractor. The Agencies will select the proposers that can demonstrate the highest level of support by performing the requested functions in an accurate and timely manner. The selected firms should provide high-quality services along with dependable and reliable customer service.

B. Placement Position Descriptions

The Agencies have an array of positions that may require the services of temporary personnel, including, but not limited to:

Category	Approximate Percent of Requests
Administrative, finance/accounting	70%
Customer service representatives	5%
Skilled professionals e.g. entry-level	5%
Information technology	5%
Maintenance/utility workers	10%
Miscellaneous positions	5%

Position descriptions, including the minimum skills and experience required to perform the job, are briefly described in section below and may be useful to in providing a range of hourly rates for each position. Temporary personnel will not be assigned managerial or supervisory duties. The Agencies reserve the right to add and/or modify the titles of positions that may require the services of temporary personnel during the term of the contract.

Please note that economic conditions play a significant role in the number of requests the Agencies may have for any given year and will always fluctuate with the Agencies' business needs. The Agencies do not have a need for more temporary personnel at a specific time of year than any other.

C. Assignment Hours

Most temporary assignments require personnel to work a 40-hour week, Monday through Friday. Some assignments, such as customer service and in the maintenance department, may require temporary personnel to work evenings, and/or holidays. A list of the Agencies' holidays is provided for reference in section below. The Agencies do not anticipate requesting temporary personnel to work more than eight hours per day or to travel as part of their job duties. In the event that personnel are required to work in excess of eight hours a day or 40 hours per week, Contractor shall be responsible for fully compensating such individuals as required by applicable law.

The Agencies do not guarantee any minimum quantity of days or hours to be worked by temporary personnel. The Agencies will advise the Contractor of the expected term of the placement; generally, a placement is six months in length. No assignment may exceed 960 hours (or 6 months) in duration without prior written approval of the Director, Human Resources or designee. The Agencies will not pay Contractor for staffing services provided beyond the written end date of the Work Directive. It is the Contractor's responsibility to ensure that the temporary assignment concludes on the designated date. If placed temporary personnel cannot complete the assignment, it is the responsibility of the Contractor to give the appropriate Agencies two weeks' notice and to provide a timely and acceptable replacement.

In the event the Agencies determine that any temporary personnel performing services under this Agreement is not adequately qualified, properly trained or providing safe, courteous, reliable and responsible services, the Agencies reserve the right to direct Contractor to remove an individual from providing services. Contractor shall immediately comply with this direction. In the event of illness or unforeseen emergencies regarding any temporary personnel, Contractor is solely responsible for their replacement.

The Agencies reserve the right to cancel a temporary assignment at any time. It is the Contractor's responsibility to provide notice to temporary personnel of the cancellation or conclusion of the temporary assignment. If the Agencies determine within the first three days of an assignment that replacement is appropriate, replacement of temporary personnel shall be effectuated at no cost to the Agencies.

D. Background Checks and Screening Requirements

The Contractor will be required to conduct criminal background checks in accordance with state and federal law prior to the placement of temporary personnel. As permitted under applicable law, all misdemeanor and felony convictions from the age of 18 years incurred in any County and State must be disclosed.

The Contractor shall screen, interview, and test all personnel who are referred to the Agencies for temporary assignments to assure their skills meet the requirements and requested standards and skills criteria of the available temporary position at no additional cost to the Agencies.

The Contractor shall provide resumes for the individuals to be assigned to any particular position, as requested by the Agencies. Unsolicited resumes will not be considered. The Agencies may request an interview with prospective temporary personnel.

E. Invoices and Reports

The Contractor shall submit two copies of weekly invoices, including electronic or hard copies of temporary personnel's time cards, and provide access to firm's website for online account management, if available. Proposers should describe their online account management, if any.

The Contractor shall submit monthly status reports in a format approved by the Agencies. These reports must include the date of request for personnel, date of placement of personnel (first day on the job), length of placement, cost of placement, job title, department where placed, and hourly billing rate. Proposers must provide sample monthly reports with their proposals.

F. Transition to New Temporary Staffing Firms

The Agencies intend to retain temporary personnel currently in place under existing temporary staffing firm contracts, until their assignments are completed. If any existing temporary staffing firm is not awarded a new contract, such personnel will not transfer to any new employment agencies.

Upon expiration of the five-year Agreement term resulting from this solicitation, temporary personnel will complete their existing assignments as mutually agreed upon between the Agencies and the employment firms providing services. The Agency or Agencies will issue a unilateral amendment extending the Agreement(s) to allow for the completion of said staffing assignments.

G. Agencies Holidays

The Agencies recognize the following seven holidays:

- New Year's Day (January 1)
- Martin Luther King Jr. Day (3rd Monday in January)
- Memorial Day (last Monday in May)
- Independence Day (July 4)
- Labor Day (1st Monday in September)
- Thanksgiving Day (4th Thursday in November)
- Christmas Day (December 25)

3. POSITION DESCRIPTIONS

Below are brief position descriptions for potential temporary staff most likely to be requested by the Agencies during the contract term. More detailed descriptions will be provided to the selected firms.

A. Accounting Assistant

This position may include duties such as data entry, coding invoices and receipts, preparing daily summary sheets, maintaining files and records, maintaining petty cash, and preparing check runs.

Minimum Qualifications:

Two years full-time experience preparing and processing accounting or financial records. Proficient in the use of Microsoft (MS) Excel and Word processing applications. Knowledge of PeopleSoft accounting products desirable. Accounts payable experience. 10-key skills.

B. Accounting Technician

This is an accounting position performs functions such as accounts receivable, billing, general ledger journal entries, reconciliations, and reporting.

Minimum Qualifications:

AS/AA degree in Accounting, Business or related field plus two years full-time accounting experience working with computerized accounting systems. Proficient in the use of spreadsheet, word processing and database applications. 10-key by touch.

C. Customer Service Representative

This position responds to the public (telephone and walk-in) for general information about the District, provides specific information on routes and schedules for SamTrans and Caltrain and takes consumer and ticket vending machine reports.

Minimum Qualifications:

Must have one year of customer service experience providing information to the public over the telephone or in a direct customer service environment.

D. Distribution Clerk

This position is responsible for distribution of District materials and maintaining mail functions.

Minimum Qualifications:

Six months experience in mail room/distribution center environment. Familiarity with computerized mail system. Must know how to operate mail machine and UPS system. Must possess a valid California driver license with a safe driving record. Must be able to lift 50 to 75 pounds on a regular basis.

E. Administrative Support Specialist

The receptionist is responsible for answering calls to the administrative office, greeting visitors, selling transit tickets, passes, maintaining a cash drawer, reconciling all money transactions and completing financial records and reports.

Minimum Qualifications:

High School graduate. Demonstrated reception experience, which may include experience performing duties similar to those described above. Course work in bookkeeping and/or customer service a plus. Must have basic computer and math skills as well as good communication and strong organizational skills. Able to handle multiple tasks in a busy environment.

F. Administrative Analyst

This position is the mid-level in the administrative support series. Under limited supervision the Secretary provides the full range of secretarial/administrative support services at the department-level to one or more departments and department heads.

Minimum Qualifications:

Three years full-time experience in a secretarial/clerical support position performing duties. Must be proficient in word-processing (Microsoft Word), and spreadsheet applications (Excel). Must have excellent oral and written communication skills. Must be able to handle multiple work assignments in a fast paced office environment. Must have basic knowledge of PowerPoint and Microsoft Outlook.

G. Human Resources Specialist

This position provides confidential, technical and administrative support services in the Human Resources Department. Under limited supervision, HR Specialists handle confidential employee and applicant information in a variety of functional areas including employee/labor relations, civil rights, DBE/labor compliance, employee programs and development, benefits, recruitment and selection, personnel records, hiring and separations, compensation, attendance control, grievance processing, etc. HR Specialists are assigned to a member of the management team and rotate to other managers/officers in the Human Resources Department at

designated intervals. Personnel Specialists utilize positive human relations skills to assist callers and walk-in customers with Personnel and other district-related matters.

Minimum Qualifications:

Associate's degree in Human Resources, Business Administration, or related field Three years full-time experience in any of the functional areas of Human Resources (compensation/benefits administration, employee/labor relations, leaves of absence (LOA), recruitment/selection, employee programs/activities, employee training/development, and general personnel records administration)

H. Utility Worker

Under general supervision a Maintenance Worker safely cleans, maintains and services all District vehicles and maintenance facilities. Work is primarily conducted outdoors in a variety of weather conditions.

Minimum Qualifications:

Must possess a valid Class C California driver license with a safe driving record. (Must be able to obtain and maintain a Class B commercial license with air brake and passenger transport endorsements.) Must be able to report to work on-time and on a regular/dependable basis. Must be able to follow oral and written instructions and work rules, follow proper safety practices and perform heavy manual labor on a continuous basis in all weather and road conditions; must be able to maintain written records, writing clearly and neatly. Mechanical training, knowledge, background or experience will be considered a plus.

I. Data Analyst

This position provides general administrative support to the Scheduling Department. This position also assists in the reviewing District bus service and schedules and performs analysis, data gathering, creates spreadsheets and provides other forms of data analysis, manipulation and reporting.

Minimum Qualifications:

An Associate degree in public or business administration, data analysis, engineering, planning or closely related field may be substituted on a year for year basis to a maximum of two years of experience. Three years of full-time experience performing duties similar to those listed above. Must have excellent customer service, proofreading, word processing and data analysis skills. Must be able to handle multiple work assignments, determine work priorities, and handle sensitive documents with discretion. Desired skills and knowledge include Geographic Information Systems (GIS) programs, computerized scheduling and database applications.

J. Accountant

This is a professional position in the Finance Department performing major accounting work involving all financial transactions and reporting in accordance with Generally Accepted Accounting Principles (GAAP) and the Government Accounting Standards Board.

Minimum Qualifications:

Bachelor's Degree in accounting, finance or related field and two years of full-time accounting or related experience. Ability to analyze and solve accounting problems with timeliness and accuracy. Must be experienced in computerized accounting systems (PeopleSoft experience a plus), proficient in the use of a variety of software packages, including excel. Must be able to prioritize work to affect an orderly flow of accurate information within the Finance Division and to other parts of the District. Good oral and written communication skills.

K. Contract Administrator

This position in the Contracts and Procurement Department is responsible for the preparation and processing of Invitations for Bids (IFBs) for the procurement of goods, services and public works, Requests for Proposals (RFPs) for professional and other services, and contract administration for a wide variety of contracts.

Minimum Qualifications:

Bachelor's degree in Business Administration, Economics, or related field and three (3) years relevant full-time professional-level experience with procurement and administration of equipment, material, maintenance, public works, and professional or other services-type contracts.

L. Engineer

Engineer is the entry level position in the professional engineering series. Electrical, Civil, Mechanical, Architectural and other fields of expertise in the engineering field may be required in different engineering discipline groups (track, signals and communications, bridges, stations and facilities) and perform design reviews, maintenance planning, and support of project planning and design studies for a full range of transportation projects.

Minimum Qualifications:

Bachelor's degree in engineering, architecture or related field and five years of progressively increasing responsibility in an engineering firm and/or railroad.

M. Database Administrator

The Database Administrator develops and maintains database applications; provides in-house technical and analytical support on database issues; provides software systems support for the implementation of new business applications, ensures integrity control of applications; trains staff and users on the use and application of databases and applicable systems; and performs related duties as assigned.

Minimum Qualifications:

Bachelor's degree in Computer Science, Information Systems or related field and five years full-time experience as Database Administrator or a combination of education and experience demonstrating the ability to successfully perform the essential functions of this position.

N. IT Helpdesk

The Information Technology (IT) Computer Support Representative reports to the Manager, IT Operations and Telecommunications and provides IT systems and software support for the San Mateo County Transit (SamTrans), Peninsula Joint Powers Board (Caltrain), and the San Mateo County Transportation Authority (TA).

Minimum Qualifications:

Bachelor's degree in Computer Science or Information Systems, certification as a Microsoft Certified Desktop Support Technician (MCDST) or a combination of education and two years of Help Desk support experience including supporting remote workstations (desktops/laptops) and mobile devices.

O. IT Analyst

This position provides support to the Information Technology Department (IT) and District personal computer users, Server hardware and software installation, configuration, administration, monitoring, and other routine system administration procedures. Maintaining network functionality plays a role in this job, as do matters related to workstation setup, connectivity, and client/server interoperability.

Minimum qualifications:

Bachelor's degree in Computer Science or Information Systems and certification as a Microsoft Certified Systems Engineer + Internet (MCSE+Internet).

P. Facilities Technician

The Facilities Technician reports to the Supervisor, Maintenance Facilities and is responsible for providing repair activities are recorded, organized, and completed. Report on functional operation of buildings, grounds and related facility systems to supervisor.

Minimum Qualifications:

Three years full-time building/facility maintenance experience.

Q. Senior Accountant

The Senior Accountant reports to a Finance Manager, and is responsible for performing and reviewing financial reporting activities in accordance with Generally Accepted Accounting Principles (GAAP). These activities will be performed for the San Mateo County Transit District (SamTrans), the Peninsula Corridor Joint Powers Board (Caltrain), and the San Mateo County Transportation Authority (TA).

Minimum Qualifications:

Bachelor's Degree in accounting, finance, or related field and three years of full-time accounting along with one year of supervisory or lead experience. Ability to analyze and solve accounting problems with timeliness and accuracy. Must be experienced in computerized accounting systems (PeopleSoft experience a plus), proficient in the use of a variety of software packages, including excel. Must be able to prioritize work to affect an orderly flow of accurate information within the Finance Division and to other parts of the District. Good oral and written communication skills.

EXHIBIT B
CONSULTANT'S PROPOSAL, AS ACCEPTED BY THE AGENCY

[CONSULTANT'S PROPOSAL WILL BE INSERTED HERE]

EXHIBIT C

SMALL BUSINESS ENTERPRISE (SBE) REQUIREMENTS

It is the policy of the Agency to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which SBEs and DBEs can compete fairly for contracts and subcontracts relating to construction, procurement, and services activities. To this end, the Agency has developed procedures to remove barriers to participation in the bidding and award process and to assist small and disadvantaged businesses to develop and compete successfully outside of the DBE Program. In connection with the performance of this Agreement, the Proposer will cooperate with the Agency in meeting these SBE commitments and objectives.

The Agency implements its DBE program in accordance with U.S. DOT regulations, and no contract-specific DBE participation goal has been established for this Agreement. However, CONSULTANT must cooperate with the Agency in meeting its commitments and objectives with regard to ensuring nondiscrimination in the award and administration of contracts and must use its best efforts to ensure that barriers to DBE's participation do not exist.

1. SBE POINT PREFERENCE

The Agency has established a contract specific SBE point preference of five points. The point preference will be granted to Proposers that are either (1) an SBE self-performing at least 30% of the contract; or (2) committed to subcontracting with one or more certified SBEs. The actual preference is calculated with the Proposer that has the highest SBE utilization rate receiving the full five points and other Proposers receiving points relative to the highest proposed SBE utilization.

Points received through the SBE preference will be added to each Proposer's total evaluation score. Preference points will be aggregated with proposal evaluation scoring to determine the highest ranked Proposer. Each Proposer must provide the **SBE Preference Form** with their proposal to receive a point preference. If a Proposal fails to submit this form, no SBE preference points will be added to the evaluation of the proposal.

2. SBE EVALUATION

The Office of Civil Rights (OCR) shall review all the information submitted by Proposers in accordance with the solicitation documents to determine a recommendation regarding compliance with the SBE point preference requirements for award of a contract to the Proposer. The Proposers shall cooperate with OCR if a request for additional information is made during this evaluation process.

3. ASSURANCE

Pursuant to 49 CFR §26.13, and as a material term of any Agreement with the Agency, the CONSULTANT hereby makes the following assurance and agrees to include this assurance in any contracts it makes with Subconsultants in the performance of this Agreement:

“The Consultant or Subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted Contracts. Failure by the CONSULTANT or sub-consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Agency deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the CONSULTANT from future bidding as non-responsible.”

By entering into the Agreement, the CONSULTANT is deemed to have made the foregoing assurance and to be bound by its terms.

4. AVAILABLE SBE/DBE RESOURCES

The Agency recognizes SBE certifications performed by the following:

- A. DBE pursuant to U.S. DOT regulations, 49 CFR Part 26. This includes DBE certifications performed by the California Unified Certification Program, or any other state Unified Certification Program. A statewide directory of DBEs is available at <https://caltrans.dbesystem.com>.
- B. Small Business Administration (SBA) 8(a) provided that a firm’s average annual gross receipts do not exceed the cap of \$30.4 million.
- C. Small Business certification performed by the California Department of General Services (DGS) for the following industries only: (a) Construction (NAICS 230000); (b) Manufacturing (NAICS 310000-330000); (c) Wholesaling (NAICS 420000); and (d) Trucking (NAICS 484000).
- D. All Microbusiness (MB) certifications by the DGS for ALL industries.
- E. SBE certification by the Santa Clara Valley Transportation Authority.
- F. SBE certification by the Los Angeles County Metropolitan Transportation Authority.

5. SBE ELIGIBILITY

To participate as an eligible small business, a firm must meet both of the following requirements:

- A. A firm (including affiliates) must be an existing small business as defined by SBA regulations, 13 CFR Part 121, for the appropriate type(s) of work that your firm performs.
- B. Even if your firm meets the above requirement, your firm’s (including affiliates’) average annual gross receipts over the previous three years cannot exceed a maximum cap of \$30.4 million.

Note: SBA size standards vary by industry and certain industries, such as general construction contracting, exceed the cap of \$30.4 million. A general construction contractor meeting the SBA size standard but exceeding the cap of \$30.4 million, for example, is ineligible to participate as a small business on Agency' contracts. Please verify a firm's industry size standard by visiting SBA at: <http://www.sba.gov/content/determining-size-standards>.

6. COUNTING SBE PARTICIPATION

SBE participation shall be counted and enforced in accordance with Title 49 CFR Part 26 and the Agency's DBE Program. SBE participation includes that portion of the Agreement actually performed by a certified SBE with its own forces. SBEs may participate as a consultant, subconsultant, joint venture partner, vendor or supplier of materials or services required by the Agreement. An SBE's participation can only be counted if it performs a commercially useful function on the Agreement. An SBE performs a commercially useful function when it actually performs, manages and supervises a portion of the work involved. There is a rebuttable presumption that if the SBE is not responsible for at least 30% of the work with its own forces, or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function. An SBE trucking company performs a commercially useful function if it is responsible for the overall management and supervision of the transportation services involved and uses at least one truck that it owns, insures, and operates with its own employees on the Agreement.

The CONSULTANT shall determine the amount of SBE participation for each SBE performing work on the Agreement in terms of the percentage of the total Agreement amount. The CONSULTANT shall also determine the total amount of SBE participation for the entire Agreement. The CONSULTANT shall count SBE participation according to the following guidelines:

A. SBE CONSULTANT

Count the entire dollar amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as SBE participation by the SBE CONSULTANT.

B. SBE Subconsultant

Count the entire amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work, except for materials and supplies purchased or leased from the CONSULTANT, and reasonable fees and commissions charged for the services.

Do not count any work subcontracted by an SBE to another firm as SBE participation by said SBE. If the work has been subcontracted to another SBE, it will be counted as SBE participation for that other SBE.

C. SBE Joint Venture Partner

Count the portion of the work that is performed solely by the SBE's forces or, if the work is not clearly delineated between the SBE and the joint venture partner, count the portion of the work equal to the SBE's percentage of ownership interest in the joint venture.

D. SBE Manufacturer

Count 100% of the costs of materials and supplies obtained from an SBE manufacturer that operates or maintains a factory that produces the materials and supplies on the premises. This applies whether the SBE is a CONSULTANT or Subconsultant.

E. SBE Regular Dealer

Count 60% of the costs of materials and supplies obtained from an SBE regular dealer that owns, operates, or maintains a store or warehouse in which the materials and supplies are regularly brought, kept in stock and sold or leased to the public in the usual course of business, except regular dealers of bulk items such as petroleum, cement, and gravel who own and operate distribution equipment in lieu of maintaining a place of business. This applies whether an SBE is a prime CONSULTANT or Subconsultant.

F. Other SBEs

Count the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from an SBE that is not a manufacturer or regular dealer. Do not count the cost of the materials and supplies.

G. SBE Trucking Company

Count the entire amount of the transportation services provided by an SBE trucking company that performs the work using trucks it owns, insures and operates with its own employees on the Agreement. Count the entire amount of the transportation services provided by an SBE trucking company that performs the work using trucks it leases from another SBE, including an owner-operator, provided that it is responsible for the overall management and supervision of the service and that it uses at least one truck that it owns, insures and operates with its own employees on the Agreement.

Count the entire amount of fees and commissions charged for providing the management and supervision of transportation services using trucks it leases from a non-SBE trucking company, including owner-operator, provided that it is responsible for the overall management and supervision of the service and that it uses at least one truck that it owns, insures and operates with its own employees on the Agreement.

7. CONTRACT COMPLIANCE

A. Substitution of Subconsultants

The CONSULTANT shall not terminate an SBE Subconsultant at any tier without prior written consent from the Agency. The CONSULTANT shall notify OCR in writing of its intention to substitute an SBE Subconsultant before any substitution of an SBE Subconsultant takes place. The CONSULTANT must provide appropriate documentation to substantiate the request for substitution as defined by applicable federal and/or state law.

The CONSULTANT shall utilize the specific SBEs listed to perform the work and supply the materials for which each is listed unless the CONSULTANT obtains prior written consent. Unless prior consent is given, the CONSULTANT shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed SBE.

B. Change to a Firm's SBE Status

If an SBE Subconsultant is either decertified as an SBE or a Subconsultant is certified as an SBE during the life of the Contract, such Subconsultant shall notify the CONSULTANT in writing with the date of decertification or certification. The CONSULTANT shall notify the Agency of such an event and shall furnish the written documentation to the Agency.

C. Prompt Payment to Subconsultants

The CONSULTANT shall pay any Subconsultants approved by the Agency for work that has been satisfactorily performed no later than seven calendar days from the date of CONSULTANT's receipt of progress payments by the Agency.

The Agency shall withhold retainage from the CONSULTANT, make prompt and regular incremental inspections and approvals of portions of the work and, promptly release retainage to the CONSULTANT based on these inspections and approvals. The Agency's incremental approvals and release of a portion of the retainage under this section does not constitute Acceptance of the work.

Within seven calendar days after the Agency has made a retainage payment to the CONSULTANT, the CONSULTANT shall release to any Subconsultant, who has satisfactorily completed work covered by the Agency's inspection and approval, the retainage owed to the Subconsultant for such work. For purposes of this section, a Subconsultant's work is satisfactorily completed when the CONSULTANT certifies to the Agency that all the tasks called for in the subcontract related to the work covered by the Agency's incremental inspection and approval have been satisfactorily completed.

Any delay or postponement of payment by the CONSULTANT to a Subconsultant may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the CONSULTANT to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or Subconsultants in the event of a dispute involving late payment or nonpayment by the CONSULTANT; deficient Subconsultant performance; and/or noncompliance by a Subconsultant. This clause applies to all Subconsultants. In the event CONSULTANT does not make progress payments or release retentions to the Subconsultant in accordance with the time periods specified herein, the CONSULTANT will be subject to a charge of 2% per month on the untimely or improperly withheld payment.

The CONSULTANT shall cooperate with the Project Manager or the Resident Engineer and OCR to identify, report and effectuate the prompt and regular approvals of the work.

D. Monthly Electronic Reporting Requirements

The CONSULTANT shall maintain records of all subcontractor participation in the performance of the contract. This includes subcontracts entered into with both certified SBEs and non-SBEs and all materials purchased from both certified SBEs and non-SBEs.

The CONSULTANT is required to report payments to all subcontractors, sub-consultants, suppliers, manufacturers, and truckers (Subconsultants) in the Diversity Management and Compliance System (System) on a monthly basis. The System, a web-based electronic reporting system, is designed to record Agency payments made to the CONSULTANT and prompt payments made by the CONSULTANT to its Subconsultants. The CONSULTANT and every Subconsultant will receive payment notifications via email. The CONSULTANT must report a payment made to Subconsultant(s) within five calendar days of an email notification. The Subconsultant(s) must confirm receipt of payment from the CONSULTANT within five calendar days of an email notification.

It is the CONSULTANT's responsibility to ensure that Subconsultant(s) confirm payments in the System in accordance with the requirements set forth above.

If the CONSULTANT fails to comply with the monthly electronic reporting requirements within the time period required in this section and has not received written approval for an extension, the CONSULTANT agrees to pay a sum of \$50 each day the monthly report is late as liquidated damages. The amount of liquidated damages is not a penalty and covers reasonable damages that the Agency will sustain and which are impractical to

determine in advance. The Agency may deduct the amount of liquidated damages from monies due to the CONSULTANT.

8. ADMINISTRATIVE REMEDIES

In the event the CONSULTANT fails to comply with the SBE requirements of this Agreement in any way, the Agency reserves the right to implement administrative remedies which may include, but are not limited to, withholding of progress payments and Agreement retentions, imposition of liquidated damages, and termination of the Agreement in whole or in part.

END OF SBE REQUIREMENTS

EXHIBIT D
INSURANCE REQUIREMENTS

Exhibit D-1 – Insurance requirements for San Mateo County Transit District

Exhibit D-2 – Insurance requirements for Peninsula Corridor Joint Powers Board

Exhibit D-3 – Insurance requirements for San Mateo County Transportation Authority

EXHIBIT D-1
INSURANCE REQUIREMENTS (DISTRICT)

The insurance requirements specified in this Section shall cover CONSULTANT's own liability and any liability arising out of work or services performed under this Agreement by any subconsultants, subconsultants, suppliers, temporary workers, independent CONSULTANTS, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") that CONSULTANT authorizes to work under this Agreement. CONSULTANT is required to procure and maintain at its sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement. CONSULTANT is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks; the limit for the Commercial General Liability insurance in each subcontract shall not be less than \$2 million. To the extent that any Agent does not procure and maintain such insurance coverage, CONSULTANT shall assume any and all costs and expenses that may be incurred in fulfilling CONSULTANT's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event CONSULTANT or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the CONSULTANT's insurance be primary without any right of contribution from the DISTRICT. Prior to beginning work under this Agreement, CONSULTANT shall provide the DISTRICT's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS) with satisfactory evidence of compliance with the insurance requirements of this Section by submitting such evidence of compliance to the address indicated in C.1. below.

A. MINIMUM TYPES AND SCOPE OF INSURANCE

1. Workers' Compensation and Employer's Liability Insurance
 - a. Workers' Compensation with Statutory Limits, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto, governing the liability of employers to their employees.
 - b. Employer's Liability coverage with minimum limits of **\$2 million**.
 - c. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:
 - Waiver of Subrogation.
2. Commercial General Liability Insurance

Commercial General Liability insurance for bodily injury and property

damage coverage of at least **\$2 million** per occurrence or claim and a general aggregate limit of at least **\$2 million**. Such insurance shall cover all of CONSULTANT's operations both at and away from the project site. Such insurance shall not have any exclusion for Cross Liability or Cross-Suits. In addition, for any construction and public works projects, the insurance shall not have any exclusion for Explosion, Collapse and Underground perils (xcu) and for construction or demolition work within 50 feet of railroad tracks, the contractual liability exclusion for liability assumed shall be deleted.

- a. This insurance shall include coverage for, but not be limited to:
 - Premises and operations.
 - Products and completed operations.
 - Personal injury.
 - Advertising injury.

- b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
 - Additional Insured.
 - Separation of Insureds Clause.
 - Primary and Non-Contributory wording.
 - Waiver of Subrogation.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

3. Business Automobile Liability Insurance

Business Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least **\$2 million** per accident or loss.

- a. This insurance shall include coverage for, but not be limited to:
 - All owned vehicles.
 - Non-owned vehicles.
 - Hired or rental vehicles.

- b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
 - Additional Insured.
 - Primary and Non-Contributory wording.
 - Waiver of Subrogation.

4. Property Insurance

Property insurance with Special Form coverage including theft, but excluding earthquake, with limits at least equal to the replacement cost of the property described below.

a. This insurance shall include coverage for, but not be limited to:

- CONSULTANT's own business personal property and equipment to be used in performance of this Agreement.
- Materials or property to be purchased and/or installed on behalf of the DISTRICT, if any.
- Builders risk for property in the course of construction.

b. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

- Waiver of Subrogation.

5. Professional Liability Insurance

A Professional Liability insurance policy covering errors and omissions and the resulting damages including, but not limited to, economic loss to the DISTRICT and having minimum limits of liability of **\$2 million** per claim or occurrence and **\$2 million** annual aggregate. The policy shall include coverage for all services and work performed under this Agreement.

B. ENDORSEMENTS

1. Additional Insured

The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds the San Mateo County Transit District and its directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

2. Waiver of Subrogation

The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of the San Mateo County Transit District and its officers, directors, employees, volunteers and agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

3. Primary Insurance

The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the San Mateo County Transit District.

4. Separation of Insureds

The referenced policies and any Excess or Umbrella policies shall contain a Separation of Insureds Clause and stipulate that inclusion of the San Mateo County Transit District as an Additional Insured shall not in any way affect DISTRICT's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the CONSULTANT. The purpose of this coverage is to protect CONSULTANT and the San Mateo County Transit District in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

C. EVIDENCE OF INSURANCE

1. All Coverages

Prior to commencing work or entering onto the Property, CONSULTANT shall provide to Insurance Tracking Services, Inc. (ITS), the DISTRICT's authorized insurance consultant, a certificate of insurance with respect to each required policy to be provided by the CONSULTANT under the Agreement. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate. **The DISTRICT Contract number and Project name shall be clearly stated on the face of each Certificate of Insurance.**

Submit Certificates of Insurance to:
San Mateo County Transit District
C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 198
Long Beach, CA 90801

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

In addition, the CONSULTANT shall promptly deliver to ITS a Certificate of Insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than three business days after the expiration date of any policy.

D. GENERAL PROVISIONS

1. Notice of Cancellation

Each insurance policy supplied by the CONSULTANT shall provide at least 30 days' written notice to CONSULTANT of cancellation or non-renewal. CONSULTANT must then provide at least 30 days' prior written notice to the DISTRICT's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS), if any of the above policies are non-renewed or cancelled.

Submit written notice to:
San Mateo County Transit District
C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 198
Long Beach, CA 90801

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

2. Acceptable Insurers

All policies will be issued by insurers acceptable to the DISTRICT (generally with a Best's Rating of A- 10 or better).

3. Self-insurance

Upon evidence of financial capacity satisfactory to the DISTRICT and CONSULTANT's agreement to waive subrogation against the DISTRICT respecting any and all claims that may arise, CONSULTANT's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

4. Failure to Maintain Insurance

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of CONSULTANT's personnel and equipment have been removed from the DISTRICT property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

5. Claims Made Coverage

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the CONSULTANT's start of work (including subsequent policies purchased as renewals or replacements).
- b. CONSULTANT shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds.
- c. If insurance is terminated for any reason, CONSULTANT agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this Agreement.
- d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

6. Deductibles and Retentions

CONSULTANT shall be responsible for payment of any deductible or retention on CONSULTANT's policies without right of contribution from the DISTRICT. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that the policy of the CONSULTANT or any subconsultant contains a deductible or self-insured retention, and in the event that the DISTRICT seeks coverage under such policy as an additional insured, CONSULTANT shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of CONSULTANT, subconsultant, or any of their officers, directors, employees, agents, or suppliers, even if CONSULTANT or subconsultant is not a named defendant in the lawsuit.

EXHIBIT D-2
INSURANCE REQUIREMENTS (JPB)

The insurance requirements specified in this Section shall cover CONTRACTOR's own liability and any liability arising out of work or services performed under this Agreement by any subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") that CONTRACTOR authorizes to work under this Agreement. CONTRACTOR is required to procure and maintain at its sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement. CONTRACTOR is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks; the limit for the Commercial General Liability insurance in each subcontract shall not be less than \$2 million. To the extent that any Agent does not procure and maintain such insurance coverage, CONTRACTOR shall assume any and all costs and expenses that may be incurred in fulfilling CONTRACTOR's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event CONTRACTOR or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the CONTRACTOR's insurance be primary without any right of contribution from the JPB. Prior to beginning work under this Agreement, CONTRACTOR shall provide the JPB's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS), with satisfactory evidence of compliance with the insurance requirements of this Section, by submitting such evidence of compliance to the address indicated in C.1. below.

A. MINIMUM TYPES AND SCOPE OF INSURANCE

1. Workers' Compensation and Employer's Liability Insurance
 - a. Workers' Compensation with Statutory Limits and/or Federal Employer's Liability ("FELA") coverage (whichever is applicable) to its employees, as required by the Federal Employer's Liability Act of 1908, applying to Interstate railroad employees, or, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto, governing the liability of employers to their employees.
 - b. If FELA applies, it shall be in accordance with federal statutes and have minimum limits of \$10,000,000 per occurrence.
 - c. If the California Labor Code requiring Workers' Compensation applies, the CONTRACTOR shall also maintain Employer's Liability coverage with minimum limits of \$2 million.

d. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

- Waiver of Subrogation.

2. Commercial General Liability Insurance

Commercial General Liability insurance for bodily injury and property damage coverage of at least **\$2 million** per occurrence or claim and a general aggregate limit of at least **\$2 million**. Such insurance shall cover all of CONTRACTOR's operations both at and away from the project site. Such insurance shall not have any exclusion for Cross Liability or Cross-Suits. In addition, for any construction and public works projects, the insurance shall not have any exclusion for Explosion, Collapse and Underground perils (xcu) and for construction or demolition work within 50 feet of railroad tracks, the contractual liability exclusion for liability assumed shall be deleted.

a. This insurance shall include coverage for, but not be limited to:

- Premises and operations.
- Products and completed operations.
- Personal injury.
- Advertising injury.

b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

- Additional Insured.
- Separation of Insureds Clause.
- Primary and Non-Contributory wording.
- Waiver of Subrogation.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

3. Business Automobile Liability Insurance

Business Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least **\$2 million** per accident or loss.

a. This insurance shall include coverage for, but not be limited to:

- All owned vehicles.
- Non-owned vehicles.
- Hired or rental vehicles.

b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

- Additional Insured.
- Primary and Non-Contributory wording.
- Waiver of Subrogation.

4. Property Insurance

Property insurance with Special Form coverage including theft, but excluding earthquake, with limits at least equal to the replacement cost of the property described below.

a. This insurance shall include coverage for, but not be limited to:

- CONTRACTOR's own business personal property and equipment to be used in performance of this Agreement.
- Materials or property to be purchased and/or installed on behalf of the JPB, if any.
- Builders risk for property in the course of construction.

b. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

- Waiver of Subrogation.

5. Professional Liability Insurance

A Professional Liability insurance policy covering errors and omissions and the resulting damages including, but not limited to, economic loss to the JPB and having minimum limits of liability of **\$2** million per claim or occurrence and **\$2** million annual aggregate. The policy shall include coverage for all services and work performed under this Agreement.

B. ENDORSEMENTS

1. Additional Insured

The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, TransitAmerica Services, Inc. or any successor Operator of the Service, and the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors

or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

2. Waiver of Subrogation

The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, TransitAmerica Services, Inc. or any successor Operator of the Service, and the Union Pacific Railroad Company and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

3. Primary Insurance

The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the JPB.

4. Separation of Insureds

The referenced policies and any Excess or Umbrella policies shall contain a Separation of Insureds Clause and stipulate that inclusion of the Peninsula Corridor Joint Powers Board, the San Mateo County Transit District, the Santa Clara Valley Transportation Authority, the City and County of San Francisco, TransitAmerica Services, Inc. or any successor Operator of the Service, and the Union Pacific Railroad Company as Additional Insureds shall not in any way affect the JPB's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the CONTRACTOR. The purpose of this coverage is to protect CONTRACTOR and the JPB in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

C. EVIDENCE OF INSURANCE

1. All Coverages

Prior to commencing work or entering onto the Property, CONTRACTOR shall provide to Insurance Tracking Services, Inc. (ITS), the JPB's

authorized insurance consultant, a Certificate of Insurance with respect to each required policy to be provided by the CONTRACTOR under the Agreement. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate. **The JPB Contract number and Project name shall be clearly stated on the face of each Certificate of Insurance.**

Submit Certificates of Insurance to:

Peninsula Corridor Joint Powers Board
C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 198
Long Beach, CA 90801

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

In addition, the CONTRACTOR shall promptly deliver to ITS a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than three business days after the expiration date of any policy.

D. GENERAL PROVISIONS

1. Notice of Cancellation

Each insurance policy supplied by the CONTRACTOR shall provide at least 30 days' written notice to CONTRACTOR of cancellation or non-renewal. CONTRACTOR must then provide at least 30 days' prior written notice to the JPB's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS), if any of the above policies are non-renewed or cancelled.

Submit written notice to:

Peninsula Corridor Joint Powers Board
C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 198
Long Beach, CA 90801

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

2. Acceptable Insurers

All policies will be issued by insurers acceptable to the JPB (generally with a Best's Rating of A- 10 or better).

3. Self-insurance

Upon evidence of financial capacity satisfactory to the JPB and CONTRACTOR's agreement to waive subrogation against the JPB respecting any and all claims that may arise, CONTRACTOR's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

4. Failure to Maintain Insurance

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of CONTRACTOR's personnel and equipment have been removed from the JPB property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

5. Claims Made Coverage

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the CONTRACTOR's start of work (including subsequent policies purchased as renewals or replacements).
- b. CONTRACTOR shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds.
- c. If insurance is terminated for any reason, CONTRACTOR agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this Agreement.

- d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

6. Deductibles and Retentions

CONTRACTOR shall be responsible for payment of any deductible or retention on CONTRACTOR's policies without right of contribution from the JPB. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that the policy of the CONTRACTOR or any subcontractor contains a deductible or self-insured retention, and in the event that the JPB seeks coverage under such policy as an additional insured, CONTRACTOR shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of CONTRACTOR, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if CONTRACTOR or subcontractor is not a named defendant in the lawsuit.

EXHIBIT D-3
INSURANCE REQUIREMENTS (TA)

The insurance requirements specified in this Section shall cover CONTRACTOR's own liability and any liability arising out of work or services performed under this Agreement by any subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") that CONTRACTOR authorizes to work under this Agreement. CONTRACTOR is required to procure and maintain at its sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement. CONTRACTOR is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks; the limit for the Commercial General Liability insurance in each subcontract shall not be less than \$2 million. To the extent that any Agent does not procure and maintain such insurance coverage, CONTRACTOR shall assume any and all costs and expenses that may be incurred in fulfilling CONTRACTOR's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event CONTRACTOR or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the CONTRACTOR's insurance be primary without any right of contribution from the San Mateo County Transportation Authority (Transportation Authority). Prior to beginning work under this Agreement, CONTRACTOR shall provide the TRANSPORTATION AUTHORITY's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS) with satisfactory evidence of compliance with the insurance requirements of this Section by submitting such evidence of compliance to the address indicated in C.1. below.

A. MINIMUM TYPES AND SCOPE OF INSURANCE

1. Workers' Compensation and Employer's Liability Insurance
 - a. Workers' Compensation with Statutory Limits, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto, governing the liability of employers to their employees.
 - b. Employer's Liability coverage with minimum limits of **\$2 million**.
 - c. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:
 - Waiver of Subrogation.

2. Commercial General Liability Insurance

Commercial General Liability insurance for bodily injury and property damage coverage of at least **\$2 million** per occurrence or claim and a general aggregate limit of at least **\$2 million**. Such insurance shall cover all of CONTRACTOR's operations both at and away from the project site. Such insurance shall not have any exclusion for Cross Liability or Cross-Suits. In addition, for any construction and public works projects, the insurance shall not have any exclusion for Explosion, Collapse and Underground perils (xcu) and for construction or demolition work within 50 feet of railroad tracks, the contractual liability exclusion for liability assumed shall be deleted.

- a. This insurance shall include coverage for, but not be limited to:
 - Premises and operations.
 - Products and completed operations.
 - Personal injury.
 - Advertising injury.

- b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
 - Additional Insured.
 - Separation of Insureds Clause.
 - Primary and Non-Contributory wording.
 - Waiver of Subrogation.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

3. Business Automobile Liability Insurance

Business Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least **\$2 million** per accident or loss.

- a. This insurance shall include coverage for, but not be limited to:
 - All owned vehicles.
 - Non-owned vehicles.
 - Hired or rental vehicles.

- b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
 - Additional Insured.

- Primary and Non-Contributory wording.
- Waiver of Subrogation.

4. Property Insurance

Property insurance with Special Form coverage including theft, but excluding earthquake, with limits at least equal to the replacement cost of the property described below.

a. This insurance shall include coverage for, but not be limited to:

- CONTRACTOR's own business personal property and equipment to be used in performance of this Agreement.
- Materials or property to be purchased and/or installed on behalf of the TRANSPORTATION AUTHORITY, if any.
- Builders risk for property in the course of construction.

b. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

- Waiver of Subrogation.

5. Professional Liability Insurance

A Professional Liability insurance policy covering errors and omissions and the resulting damages including, but not limited to, economic loss to the TRANSPORTATION AUTHORITY and having minimum limits of liability of **\$2 million** per claim or occurrence and **\$2 million** annual aggregate. The policy shall include coverage for all services and work performed under this Agreement.

B. ENDORSEMENTS

1. Additional Insured

The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds The San Mateo County Transportation Authority, the San Mateo County Transit District, and its directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

2. Waiver of Subrogation

The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of San Mateo County Transportation

Authority, the San Mateo County Transit District, and its officers, directors, employees, volunteers and agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

3. Primary Insurance

The referenced policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the San Mateo County Transportation Authority.

4. Separation of Insureds

The referenced policies and any Excess or Umbrella policies shall contain a Separation of Insureds Clause and stipulate that inclusion of the San Mateo County Transportation Authority, the San Mateo County Transit District, as an Additional Insured shall not in any way affect TRANSPORTATION AUTHORITY's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the CONTRACTOR. The purpose of this coverage is to protect CONTRACTOR and the San Mateo County Transportation Authority in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

C. EVIDENCE OF INSURANCE

1. All Coverages

Prior to commencing work or entering onto the Property, CONTRACTOR shall provide to Insurance Tracking Services, Inc. (ITS), the TRANSPORTATION AUTHORITY's authorized insurance consultant, a certificate of insurance with respect to each required policy to be provided by the CONTRACTOR under the Agreement. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate. **The TRANSPORTATION AUTHORITY'S Contract number and Project name shall be clearly stated on the face of each Certificate of Insurance.**

Submit Certificates of Insurance to:
San Mateo County Transportation Authority
C/O Insurance Tracking Services, Inc. (ITS)

P.O. Box 198
Long Beach, CA 90801

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

In addition, the CONTRACTOR shall promptly deliver to ITS a Certificate of Insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than three business days after the expiration date of any policy.

D. GENERAL PROVISIONS

1. Notice of Cancellation

Each insurance policy supplied by the CONTRACTOR shall provide at least 30 days' written notice to CONTRACTOR of cancellation or non-renewal. CONTRACTOR must then provide at least 30 days' prior written notice to the TRANSPORTATION AUTHORITY's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS), if any of the above policies are non-renewed or cancelled.

Submit written notice to:
San Mateo County Transportation Authority, C/O Insurance Tracking Services, Inc. (ITS)
P.O. Box 198
Long Beach, CA 90801

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

2. Acceptable Insurers

All policies will be issued by insurers acceptable to the TRANSPORTATION AUTHORITY (generally with a Best's Rating of A- 10 or better).

3. Self-insurance

Upon evidence of financial capacity satisfactory to the TRANSPORTATION AUTHORITY and CONTRACTOR's agreement to waive subrogation against the TRANSPORTATION AUTHORITY respecting any and all claims that may arise, CONTRACTOR's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

4. Failure to Maintain Insurance

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of CONTRACTOR's personnel and equipment have been removed from the TRANSPORTATION AUTHORITY property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

5. Claims Made Coverage

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the CONTRACTOR's start of work (including subsequent policies purchased as renewals or replacements).
- b. CONTRACTOR shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds.
- c. If insurance is terminated for any reason, CONTRACTOR agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this Agreement.
- d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

6. Deductibles and Retentions

CONTRACTOR shall be responsible for payment of any deductible or retention on CONTRACTOR's policies without right of contribution from the TRANSPORTATION AUTHORITY. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to

the Named Insured is unacceptable.

In the event that the policy of the CONTRACTOR or any subcontractor contains a deductible or self-insured retention, and in the event that the TRANSPORTATION AUTHORITY seeks coverage under such policy as an additional insured, CONTRACTOR shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of CONTRACTOR, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if CONTRACTOR or subcontractor is not a named defendant in the lawsuit.

EXHIBIT E

WORK DIRECTIVES

Work Directives (WDs) will be issued to the Consultant at any time during the contract period of performance. Award of WDs will be based on the technical superiority of a Consultant's proposal in response to a Work Directive Proposal Request (WDPR). Services are to be provided on an as needed basis throughout the term of the contract and services must be completed within the period specified in the WD. Performance of under issued WDs must be completed within the term of the Agreement.

The Services to be furnished by the Consultant may vary according to the Agency's needs. The actual services to be provided shall be described in specific WDs. Each WD will contain a period of performance specific to the WD. The Agency expressly reserves the right to contract for performance of services with other consultant(s). There is no guaranteed minimum level of effort to be expended or compensation to be paid under this RFP.

Organizational conflicts of interest, if any, will be assessed at the WD level. Consultant shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under WDs. It is the Consultant's responsibility to assure that no organizational conflicts of interest exist. If the Consultant has a conflict of interest, real or apparent; it will not be allowed to provide services for those projects.

A. ISSUANCE

As needs arise, the Agency will issue a WDPR. Consultant is responsible for preparing and submitting a WD Technical and Cost Proposal within **ten (10) calendar days** of Consultant's receipt of Agency's request or by the due date as indicated in the specific WDPR. Upon review, negotiation (if any), and approval by the Agency Project Manager (or designee) of Consultant's WD Technical and Cost Proposal, the Agency will issue a WD.

If a DBE goal has been assigned to a WDPR, Consultant shall meet the DBE goal in its proposal or shall document that it has made sufficient good faith efforts to meet the goal. The Agency will evaluate the Consultant's good faith efforts to meet the DBE goal before a work directive is authorized. Good faith efforts may include the following:

- Advertising or other outreach to seek DBEs.
- The solicitation of proposals from DBEs.
- The selection of types and units of work for DBEs to participate in.
- Reasons and other evidence why DBEs were rejected for the WD.
- Efforts to help DBEs participate in the WD, such as loan assistance,

reduction in insurance requirements, etc.

- Contacting minority or women trade or other organizations to seek DBEs.
- Other data to support a demonstration of good faith efforts.

If a Consultant fails to meet a DBE goal on a WDPR and also fails to demonstrate that good faith efforts were made to meet the goal, the Consultant may be denied the award of the WD and the Consultant shall be afforded a reconsideration hearing.

B. AMENDMENTS AND COMPENSATION

WDs are governed by the terms and conditions of the contract, and by any other specific terms and conditions identified in the WD. Such additional terms and conditions, if any, will be identified in the WDPR. Work will be authorized by the Agency through the issuance of a WD.

Work performed by the Consultant prior to issuance of a WD is understood to be at-risk, and Consultant may not be reimbursed for said work.

WD Amendments:

Any addition to, reduction of, and/or other revision of the scope of work for a WD that is approved by the Agency requires a WD Amendment. A WDPR for the Amendment will be issued to WD Consultant by the Agency. Consultant is responsible for preparing and submitting a WD Technical and Cost Proposal within **ten (10) calendar days** of Consultant's receipt of Agency request or by the due date as indicated in that specific WDPR. The Agency reserves the right to determine in its sole discretion if completion of the WD amendment is needed. **Performance of work related to additional scope by the Consultant prior to authorization to perform such work by the Agency is understood to be at-risk, and Consultant may not be reimbursed for said work.**

WD Compensation and Rates:

WD cost will be based on rates established in the underlying contract, and the time and deliverable requirements in the WD. WDs will be issued on either a Not to Exceed (NTE), Firm-Fixed Price (FFP), Cost Plus Fixed Fee with a ceiling (CPFF) expenses, and/or Specified Rates of Compensation (SROC), depending on the WD scope of services. WD estimated total cost amounts will be negotiated based on estimated labor hours and previously approved Position Title and/or Labor Categories and other rates set forth in Consultant's Cost Proposal to this RFP and as set forth in each WD Technical and Cost Proposal. WDs may vary significantly in size. For example, one Work Directive may be for NEPA/CEQA clearance efforts while another Work Directive may be for providing a single support staff person (i.e., transportation planner) to a project for a limited duration of time.

Compensation is further described in **Section 8, Appendices, Appendix B, Section 5** “Compensation”, of this RFP.

C. WD REPORTING AND INVOICING

If required by a WD’s scope of work, the Consultant shall submit to the Agency an Earned Value Report within **seven (7) business days** after the end of the billing period. These reports shall contain the task/sub-task as set forth in the WD and will include, at a minimum, a description of all work performed within the reporting period; and the planned, forecasted, earned and actual costs for the reporting period and cumulative to date. The reporting period shall be identical to the billing period established for the work.

The report shall include a narrative status report containing work accomplished to date and a forecast for work to be completed within the billing period. The narrative report shall note significant milestones achieved. This report shall be supplied to the Project Manager (PM) and shall also be attached to the appropriate corresponding invoice. Consultant is required to submit invoices for services performed no later than **thirty (30) days** after the close of the calendar month in which such costs were incurred. Failure to submit invoices in a timely manner may result in the Agency rejecting such invoices.

The report will cover activities performed on all open WDs during the billing period and shall address the following topics:

- Summary of key issues, trends and risks which shall include identification of potential cost/schedule overruns including the reasons for such impact and the mitigation measures proposed. The summary shall also describe any outstanding responses that the Consultant has requested from the Agency or a 3rd Party Agency that may potentially impact the cost or schedule of the work;
- Summary of deliverables that includes a table showing original, revised forecast and actual dates for each deliverable. Any actual or revised forecast dates that deviate from the original plan shall be accompanied by an explanation of the causes for such deviations;
- Identify any WD Proposals or Amendments in process;
- Identify any out of scope work; and
- Compare the percent billing to percent work complete.

D. MEETINGS

The Agency and Consultant shall meet quarterly or at a time period as mutually agreed upon to review Consultant's performance under specific WDs and/or the contract.

E. AGENCY'S RIGHTS

Although it is the Agency's intention to satisfy its Services needs by contracting with Consultant, the Agency's expressly reserves the right to contract for future Services with other firms for projects that may arise. Such Services will be obtained through a separate competitive solicitation, and the Agency's shall solely determine how such specific projects will be awarded.

F. CONSULTANT'S KEY PERSONNEL

Consultant shall be responsible for the management of technical and administrative personnel used for each WD. Each WD will identify Agency staff representative as WD Manager and/or Project Manager. Consultant shall be responsible for any errors and omissions and is financially responsible to cover the cost of any and all deficient work resulting from the Consultant's errors and omissions, including re-performance of the work.

**Peninsula Corridor Joint Powers Board
Staff Report**

To: JPB Finance Committee
Through: Michelle Bouchard, Executive Director
From: Kate Jordan Steiner, Chief Financial Officer
For: June 2025 JPB Board of Directors Meeting
Subject: **Receive Quarterly Fuel Hedge Report Quarter 3 Fiscal Year 2025**

Finance Committee
Recommendation

Technology, Operations, Planning,
and Safety Committee
Recommendation

Advocacy and Major Projects
Committee Recommendation

Purpose and Recommended Action

Staff propose that the Board review and receive into the record the presentation providing an update on the implementation of a fuel hedging strategy for Caltrain.

Discussion

The purpose of this presentation is to provide an update on the performance of the Diesel fuel Hedging Program (Program) established for Caltrain. Caltrain launched fully electric service between San Francisco and San Jose in September 2024, however, Caltrain still provides diesel service between San Jose and Gilroy.

Caltrain's diesel fuel hedging program, implemented in partnership with Linwood Capital, LLC was designed to reduce expense volatility caused by fluctuations in diesel fuel prices, thereby supporting financial stability in operations.

Following the electrification of Caltrain services in October 2024, diesel fuel consumption declined sharply. However, fuel hedging remains in place as Caltrain continues to consume an average of 31,267 gallons of fuel per month (based on fuel delivery data from October 2024 to April 2025) to provide service between Tamien and Gilroy, and support activities in the yard.

Overview of Diesel Fuel Hedge and Update on Hedging Electricity

Caltrain's diesel fuel hedging program, managed in partnership with Linwood Capital, LLC, was initiated in May 2020. The primary objective of this program has been to mitigate budget volatility stemming from fluctuations in diesel fuel prices, thereby enhancing financial stability and predictability for Caltrain's operations.

At present, there is no viable mechanism for Caltrain to hedge electricity costs as a retail customer. Effective hedging would require access to the wholesale energy market through

long-term power purchase agreements (PPAs), which is not currently available to Caltrain. However, since retail electricity rates are already partially insulated from market volatility through utility-level PPAs and other instruments, they inherently function as a hedged cost. Staff will continue to explore long-term strategies and opportunities to hedge electricity costs, with a note that access to the wholesale market is essential for any meaningful hedging program.

Fiscal Year 2025 (FY25) Performance

- There was no hedging activity in Quarter 2 (Q2) and Quarter 3 (Q3) of FY25. Fuel consumption volumes were low enough that staff did not consider hedging was warranted [estimated 6,300 gallons monthly volume at the time]
- Although there was no activity through Q2 and Q3, as of March 31, 2025, the fuel hedging program realized a net loss of -\$59,748 for the time period July 2024 through March 2025 (first three quarters of FY25). Losses were incurred during Q1.

FY25 Prospective

Following the electrification of Caltrain services in October 2024, diesel fuel consumption has declined sharply. Staff will continue monitoring the Program's cost-effectiveness and operational need. In the next quarterly fuel hedge report (August 2025), we will provide an analysis on hedge performance and present a formal recommendation on whether to continue or terminate the hedge program.

Fuel Hedge Asset Information as of 3/31/2025:

Currently, \$4,242,807 of the value of the account is in the form of Treasury securities with maturities of 90 days or less with the remaining account value of \$96,364 in cash.

Budget Impact

This is an informational item. There is no budget impact.

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