



JPB Finance Committee
Meeting of February 23, 2026

Supplemental Reading File

Subject

1. Item 6 – Attachment A – Draft Agreement Between Peninsula Corridor Joint Powers Board (Agency) and DB E.C.O. North America, Inc. (Consultant)
2. Item 6 – Attachment B – Draft Agreement Between Peninsula Corridor Joint Powers Board (Agency) and Hatch Associates Consultants, Inc. (Consultant)
3. Item 6 – Attachment C – Draft Agreement Between Peninsula Corridor Joint Powers Board (Agency) and WSP USA Inc. (Consultant)
4. Item 7 – Draft Agreement Between The Peninsula Corridor Joint Powers Board (JPB) and Wabtec Transportation Systems, LLC (Provider)
5. Item 8 – Draft Agreement Between Peninsula Corridor Joint Powers Board, (Agency) and Burns Engineering, Inc. (Consultant)
6. Item 8 – Draft Agreement Between Peninsula Corridor Joint Powers Board, (Agency) and Hatch Associates Consultants, Inc. (Consultant)
7. Item 8 – Draft Agreement Between Peninsula Corridor Joint Powers Board, (Agency) and RSE Corporation (Consultant)
8. Receive Quarterly Fuel Hedge Report Fiscal Year 2026 Quarter 2

AGREEMENT BETWEEN
PENINSULA CORRIDOR JOINT POWERS BOARD (AGENCY)
AND
DB E.C.O. NORTH AMERICA, INC. (CONSULTANT)

AGREEMENT SUMMARY*

Board of Directors' Date of Award: XXX

Resolution Number: XXX

Effective Date of Agreement: March 2, 2026

Services to be Performed (Section 1): On-Call Railroad Business and Operations Support Services

Term of Agreement (Section 3): Five (5) year base term; March 2, 2026 – March 1, 2031

Consultant's Key Representative (Section 4):

Name: Yoav Hagler

Title: VP, Technical Consulting

Company: DB E.C.O. North America, Inc.

Address: 32451 Golden Lantern, Suite 306, Laguna Niguel, CA 92677

Phone: 916-562-1848

Email: Yoav.Hagler@db-eco.us

Compensation (Section 5): Board-approved aggregate not-to-exceed amount: \$10,000,000 for a five-year base term.

*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

Final Draft

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This AGREEMENT for On-Call Railroad Business and Operations Support Services (Agreement) is entered into by and between the Peninsula Corridor Joint Powers Board (AGENCY) located at 1250 San Carlos Avenue, San Carlos, CA 94070 and DB E.C.O. North America, Inc. (CONSULTANT), a California Corporation located at 32451 Golden Lantern, Suite 306, Laguna Niguel, CA 92677 ("the Parties").

1. SCOPE OF SERVICES

This is an Agreement to provide On-Call Railroad Business and Operations Support 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 on-call professional services for staff augmentation, project management, and technical services for railroad operations; (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 September 15, 2025, the Scope of Services of which is attached hereto and incorporated herein as Appendix B, as supplemented by CONSULTANT's written proposal dated October 10, 2025, attached hereto and incorporated herein as Appendix E.

2. AGREEMENT DOCUMENTS

This Agreement consists of the following documents:

- (1) This Agreement, including Appendix A-1, Insurance Requirements
- (2) Appendix B, Scope of Services
- (3) Appendix C, SBE/DBE Requirements
- (4) Appendix D, Work Directives
- (5) Appendix E, CONSULTANT's Proposal including cost/labor rates.

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-year term commencing upon March 2, 2026 and ending on March 1, 2031. 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.

It is understood that the term of the Agreement is 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 Yoav Hagler 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 Appendix E.

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 \$10,000,000 (Ten Million Dollars) for the five-year term, plus a 10 percent 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.

5.1. GENERAL

Compensation for each project performed under the Agreement will either be **Cost-Plus-Fixed-Fee with a ceiling (CPFF)** or **Specified Rate of Compensation (SRC)**.

Project pricing will be allowable only to the extent that estimated costs and costs incurred are compliant with Federal cost principals contained in Title 48, Code of Federal Regulations, Part 31. Any costs for which payment has been made to CONSULTANT, which are determined by subsequent audit to be unallowable under these Federal cost principals, are subject to repayment by CONSULTANT to the AGENCY.

CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT's Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.

When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the AGENCY Project Manager before exceeding such estimate. Progress payments for each project will be made monthly in arrears based on services provided and actual costs incurred.

CONSULTANT shall not commence performance of work or services until this Agreement has been approved by AGENCY, and notification to proceed has been issued by AGENCY Procurement Administrator. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.

Fixed Fees shall be negotiated prior to the signing of the Agreement and shall apply throughout the life of the Agreement.

5.2. COST OF WORK

The cost of work shall be calculated as the sum of the direct labor times a multiplier for payroll burden, employee benefits, and overhead costs, plus other direct costs as set forth in this Section.

5.3. DIRECT LABOR

5.3.1. GENERAL

Direct Labor Rates shall be as set forth in Appendix E to this Agreement and shall stay in effect for the first year of the Agreement. The hourly rates (direct labor costs) are subject to salary administration as set forth in Title 48 Code of Federal Regulations Part 31.

Charges by CONSULTANT, and subconsultants, for an employee's time shall in no instance exceed the actual amount paid to such employee for time directly spent on services performed under this Agreement by such employee.

For new personnel to be approved after contract award, CONSULTANT, and subconsultants, shall submit a written request to the Procurement Administrator and provide the person's name, job title, current actual rates, and resume, for review and approval.

New personnel must be approved prior to their commencing work under a project. Work performed by personnel not previously approved in writing by the AGENCY shall be at CONSULTANT's own risk.

5.3.2. Straight Time

Straight time payroll is to be the equivalent annual salary/wage divided by 2080 hours per annum for employees approved to perform services under this Agreement.

5.3.3. Overtime

The AGENCY will reimburse CONSULTANT, and subconsultants, the straight time portion and premium time portion (if payable to the employee in accordance with the CONSULTANT'S employment policies) of its employee's actual overtime pay during performance of services under this Agreement, provided that the AGENCY has approved the overtime, in writing, prior to the incurring of said overtime. Overtime charges must reflect overhead rates reduced by non-applicable employee benefits.

5.4. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

5.4.1. General

CONSULTANT, and subconsultants, multipliers may be inclusive of the markups for payroll burden, employee benefits and office overhead for each office location as defined below. The multiplier is fixed for the first year of the Agreement.

The agreed-upon multipliers shall be used for CONSULTANT's and subconsultants' home office and AGENCY-Furnished Field Office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in Appendix E "Cost Proposal," dated October 10, 2025.

5.4.2. Payroll Burden

CONSULTANT and the AGENCY agree that the following will be considered as Payroll Burdens and as such will be paid to CONSULTANT, and subconsultant's, as compensation for said costs, as set forth below. "Payroll Burden" is defined as:

The cost of all a) employment taxes, b) CONSULTANT's, and subconsultant's, portion of social and retirement charges and c) contributions imposed by law, or labor contract contributions (if applicable), or regulations, with respect to or measured by CONSULTANT's, and subconsultant's, payroll, including but not limited to, the CONSULTANT's, and subconsultant's, cost of owner-required insurance.

5.4.3. Employee Benefits

"Employee Benefits" for CONSULTANT's and subconsultant's employees is defined as The cost of all contractual and voluntary employee benefits, including but not limited to, holidays, vacations, sick leave, jury duty leave, group medical, life insurance, salary continuance insurance, bonus schemes (including Director's drawings of dividends), employee stock ownership plan, savings plan, retirement plan, relocation benefits, and all other employee benefit plans.

5.4.4. Indirect Costs (Office Overhead)

CONSULTANT, and subconsultants, shall be compensated through an agreed-upon multiplier for overhead, which includes those administrative, clerical, word processing, accounting, and other support staff utilized in performing services under this Agreement, which are not explicitly included in the Proposal or who have been approved by the AGENCY.

These rates will remain fixed for the initial year of the Agreement. These rates will be reviewed annually on the anniversary of the effective date of the Agreement, for the CONSULTANT and its subconsultants and may be adjusted upon AGENCY approval.

5.4.4.1. CONSULTANT and subconsultants Home Office Overhead rate shall apply to personnel assigned in CONSULTANT's and subconsultant's Home Office in support of the performance of services under this Agreement. Home Office Indirect Cost Rates (overhead) included in the CONSULTANT's proposal, including those of their subconsultants, must be substantiated by the most recent (within 12 months) audited reports available, which clearly show the calculations. All such reports shall comply with FAR reporting requirements. If audited reports are not available for subconsultants, the CONSULTANT will provide alternate information (i.e. other comparable public agency contract rates) to the AGENCY to review for acceptance. The AGENCY will have the final decision as to what is acceptable.

5.4.4.2. AGENCY-Furnished Field Office Overhead rate shall apply to CONSULTANT's, and subconsultant's, personnel assigned to an AGENCY-Furnished Field Office on a full-time basis, for a period of at least 120 calendar days. As these rates cannot be pre-determined by audit, the AGENCY reserves the right to negotiate this rate for each firm.

5.5. Maximum Fixed Fees (Profit)

5.5.1. General

Maximum Fixed Fee percentages shall apply throughout the life of the Agreement. The CONSULTANT's fixed fee amount for each project may be negotiated on an individual project basis. Said fixed fee amount shall not be altered unless there is a significant alteration in the scope, complexity or character of the work to be performed under a Project.

The maximum fees, as a percentage of fully burdened Direct Labor Cost, allowable by the AGENCY shall not exceed:

- **On-Call Business and Operations Support Services**

- Ten Percent (10%)* for Consultant's home office (Home);
- Ten Percent (10%)* for Agency's field office (Field);

**Fees for Consultant Support projects are only paid for actual time worked (Level of Effort)*

5.6. OTHER DIRECT COSTS (ODCs)

5.6.1. General

Other Direct Costs, including subconsultant's projects, shall be proposed at cost with a Zero Percent (0%) markup.

5.6.2. Allowable ODCs

Examples of allowable include, but are not limited to: mileage, parking, tolls, mail costs, film, photo developing, facsimiles, printing/copying, plan reproduction, blueprint services, and subconsultants directly associated with the project. Expenditures for each allowable ODC in excess of \$500.00 per month, and not included above, shall require advance approval by the AGENCY. Supporting documentation is required for reimbursement of all ODCs.

5.6.3. Subconsultants

With regard to subconsultants, the AGENCY will pay the cost of work as defined in Section 5.2 through Section 5.6.4 with Zero Percent (0%) markup. The CONSULTANT may be compensated for initial, or one-time, charges incurred in establishing a project or for pre-approved administration charges.

5.6.4. Limitations on Direct Costs - The Following Are Limitations:

(1) Vehicles - If applicable and approved by the Agencies, rental vehicles and their support costs are limited to a total maximum of \$500 per month, per vehicle. The standard Internal Revenue Service mileage rates shall apply for use of a personal vehicle.

(2) Travel Expenses - All travel and relocation related plans must be approved in writing by the AGENCY prior to the commencement of the travel. If written approval is received for relocations, travel, temporary accommodations and or assistance, FAR 31.205-46(a) Sections 1 and 2 and Federal Travel Regulation (41 CFR 301-304) for San Mateo County, California, will apply. Lodging and per diem rates shall not exceed the U.S. General Services Administration (GSA) rate at the time of travel for the specific project site. Costs incurred for travel, subsistence, and relocation of personnel engaged in the performance of services under this Agreement, if approved in advance by AGENCY will include the following:

- Relocation expenses, travel, temporary accommodations, and/or subsistence related to mobilization travel to the CONSULTANT's dedicated project office or to AGENCY-Furnished Field Office for CONSULTANT and subconsultant personnel permanently assigned to the project. Such expenses shall be reduced by any amount received from others by CONSULTANT or subconsultant for demobilization from the prior project assignment.

- Travel, accommodations, and subsistence (directly related to the Scope of Services) for business trips to the Project Site, to AGENCY's consultants and suppliers, or to other locations approved by the AGENCY. Such travel may originate at CONSULTANT's or subconsultant's home office or branch office, or at the CONSULTANT's dedicated field office, or at AGENCY's central or field offices.

5.6.5. Unallowable ODCs

The following ODCs are not allowable unless they are authorized by prior written approval of the AGENCY's authorized representative:

- Costs associated with registration for training, seminars, and technical association meetings.
- Costs associated with employee incentive compensation including cash bonuses, suggestion awards, safety awards, and other forms of incentive compensation.
- Costs associated with leasing, maintaining, insuring, and operating dedicated project vehicles.
- Computer hardware and software support, software licenses, or cellular phone usage.
- Safety equipment such as steel-toed boots, safety vests, and hard hats.
- Insurance
- Cellular phones
- Cost of any normal equipment, tools, or vehicles (unless approved) hired, leased or purchased for the performance of services, provided that the depreciated value of such items purchased by CONSULTANT shall be credited to the AGENCY at the completion of the work performed under this Agreement.
- Shipping
- Drafting supplies
- Surveying supplies
- Models and renderings

All other ODCs that are not identified in 5.6.2 are considered unallowable ODCs and must be authorized by prior written approval of the AGENCY's authorized representative.

5.7. Maximum Compensation Amount

A maximum not-to-exceed amount as set forth in the project shall apply for each project.

Further, it is expressly understood and agreed that in no event shall CONSULTANT be compensated in an amount greater than the amount specified in any individual project for the services performed under such project without issuance of a written Amendment to such project by the AGENCY's Procurement Administrator.

If at any time, CONSULTANT has reason to believe that the total compensation payable for the performance of services under this Agreement will exceed the maximum not-to-exceed amount as set for in the project, CONSULTANT shall notify the AGENCY immediately in writing to that effect, indicating the estimated additional amount necessary to complete the services in the project. Any cost incurred by CONSULTANT in excess of the not-to-exceed amount as set forth in the project shall be at CONSULTANT's own risk.

5.8. Flow Down

CONSULTANT shall include the requirements regarding audits, compensation and reimbursement for costs and fees in its subconsultant's agreements, provided such subconsultants have been approved by the AGENCY.

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 26-J-P-017, Purchase order # and the AGENCY Project Manager's, Graham Rogers, 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 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

Accounts Payable

**Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070**

7. NOTICES

All communications relating to the day-to-day activities of the provided services will be exchanged between the AGENCY's Project Manager, Graham Rogers or designee, and the CONSULTANT's Yoav Hagler.

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 Manager, Graham Rogers or designee, and the CONSULTANT's Yoav Hagler via electronic mail to: Yoav.Hagler@db-eco.us.

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 Peninsula Corridor Joint Powers Board 1250 San Carlos Avenue San Carlos, CA 94070
With a copy to:	Director, Contracts and Procurement Peninsula Corridor Joint Powers Board 1250 San Carlos Avenue San Carlos, CA 94070
If to the CONSULTANT:	DB E.C.O North America, Inc. Attn: Yoav Hagler, VP, Technical Consulting 32451 Golden Lantern, Suite 306 Laguna Niguel, CA 92677

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

A. General

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, subcontractors, 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 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.

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 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 Appendix A-1, 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

Not Applicable

17. LITIGATION SUPPORT

Not Applicable

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 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 firms at the time the services are rendered. In addition, CONSULTANT will provide such specific warranties as may be set forth in Work Directives as agreed upon by the Parties.

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.

1. SMALL BUSINESS ENTERPRISE (SBE) POLICY

See Appendix C for SBE, Small Business Enterprise, prompt payment and reporting requirements.

31. 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.

32. SUBSTANCE ABUSE PROGRAM.

Not Applicable

33. 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.

34. ENGINE AND FLEET REGULATIONS.

Not Applicable

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.

PENINSULA CORRIDOR JOINT POWERS BOARD: **DB E.C.O. NORTH AMERICA, INC. :**
(See footnote below)*

Signature: _____

Print: _____ Michelle Bouchard

Title: _____ Executive Director

Date: _____

Signature: _____

Print: _____ Ulrich Leister

Title: _____ Chief Executive Officer

Date: _____

Signature: _____

Print: _____ David Hüffmeier

Title: _____ Chief Financial Officer

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.

APPENDIX A-1 INSURANCE REQUIREMENTS

INSURANCE

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 **\$5 million**

per claim or occurrence and **\$5 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.

END OF INSURANCE REQUIREMENTS

APPENDIX B: SCOPE OF SERVICES

1. Introduction

The Agency is seeking on-call professional services for staff augmentation, project management, and technical services for railroad operations which are needed on a wide variety of small- and large-scale efforts and ancillary tasks. Consultants shall provide specialized on-call railroad business and operations support services in the categories listed below, tailored to the unique operational requirements of the Agency's commuter rail system serving the San Francisco Peninsula and Silicon Valley. The Work under the Agreement will be established as needed on an individual Work Directive basis. Specific contract deliverables will be set forth in each Work Directive issued under this Agreement.

Service Categories:

- A. Railroad Operations Support Services
- B. Railroad Business Planning Support Services

The Consultants shall function with overall guidance from the Peninsula Corridor Joint Powers Board (JPB), but will manage and control the day-to-day Work Directive activities and deliverables. Consultants must demonstrate comprehensive understanding of the Agency's unique operating environment, including physical infrastructure, operational characteristics, and regulatory environment.

List of Potential Work Directive Tasks:

Possible tasks that may be required of the Consultant in executing Work Directive assignments include, but are not limited to:

- Evaluate operational impacts of proposed capital improvements
- Support handover process from construction to operations
- Assess integration requirements for new systems and technologies
- Provide operational input to design reviews and value engineering
- Analyze special event service requirements and crowd management
- Support development of service plans for various operational scenarios
- Analyze EMU fleet requirements and deployment strategies
- Develop maintenance scheduling optimization models
- Evaluate lifecycle replacement planning for rolling stock and infrastructure
- Analyze crew scheduling efficiency and optimization
- Develop key performance indicators (KPIs) and benchmarking studies
- Develop operational procedures and best practices documentation
- Support staff development in advanced operational analysis techniques
- Develop methodologies for monitoring Contract Operator performance
- Establish performance metrics and reporting frameworks for KPIs

- Conduct Contract Operator performance audits and assessments
- Support contract negotiations and modifications
- Develop best practices for contract operations management
- Analyze alternate service delivery models and prepare transition plans, as needed
- Assist with mobilization or transition of contracts or contract operators
- Assess regional coordination opportunities and institutional arrangements
- Support development of operating and capital budgets
- Conduct long-range financial planning and scenario analysis
- Analyze fare policy impacts and revenue optimization strategies
- Evaluate funding strategies for service expansion and improvements
- Develop cost allocation methodologies for shared infrastructure
- Support grant applications and funding requests
- Perform market studies for service expansion opportunities
- Develop interagency agreements for shared use of facilities and services
- Support negotiations with freight railroads and other corridor users
- Support Agency in pursuing FRA, FTA, CPUC, or other regulatory waivers
- Other unanticipated projects

2. Scope of Services and Deliverables

As assigned by individual Work Directives, Consultant will conduct:

a) Railroad Operations Support Services

JPB intends to award contracts to one or more firms to provide railroad operations support services. Consultant shall assist Agency's Rail Operations and Maintenance department with a variety of duties including those described below. Consultant shall have the ability to provide on-site representative(s) within 24 hours of notice.

Core Competencies Required:

- Comprehensive knowledge of FRA regulations, operating rules (GCOR/NORAC), and signal systems
- Experience with electrified commuter rail operations, traction electrification system maintenance, and EMU fleet management
- Proficiency in rail operations simulation software
- Understanding of shared-use corridor operations and dispatching protocols

Consultant shall have comprehensive knowledge of and significant experience with railroad operating rules, scheduling, maintenance practices, and electrical systems as well as a thorough understanding of their impacts on train movements, maintenance rules, and practices.

Consultant shall have the ability to determine operational costs and benefits of proposed capital improvement projects and shall provide training in operations simulation/modeling to JPB staff, if requested.

Consultant shall also assist staff with Agency's annual and long range capital, operating, and administrative budgets and plans, including fleet management, asset allocation, and service development.

Consultant shall have the ability to determine the operational and economic impacts of JPB capital and third party projects. Consultant shall support the handover process for assets transitioning from construction

Consultant shall support the Agency on updating and reviewing the agency's Asset Management system as assets are updated (added/removed/refurbished) as well as coordinate with staff and contractors on Configuration Management for planned and unplanned changes.

b) Railroad Business Planning Support Services

JPB intends to award contracts to one or more firms to provide business planning expertise to support the Agency's regional rail system. Consultant shall have comprehensive knowledge of and significant experience in commuter railroad administrative and contracting practices as well as commuter railroad business methodologies, practices, and strategies.

Core Competencies Required:

- Extensive experience in commuter railroad business operations and financial management
- Knowledge of public transit funding mechanisms and revenue optimization
- Understanding of contract operations oversight and performance management
- Experience with interagency coordination and regional transit integration

Consultant shall assist staff with oversight of the JPB's Contractor Operator. Consultant shall have the ability to develop methodologies and best practices for monitoring, reporting, and developing corrective action recommendations for Contract Operator performance in accordance with the Operations and Maintenance Agreement. This oversight support may include analysis of costs, on-time performance, work force allocation, crew efficiencies, key performance indicators, and maintenance of rolling stock, stations, right-of-way, and the traction electrification system.

Consultant shall have the ability to develop and analyze future business strategies, including direct operation of Caltrain by the JPB, continued operation of Caltrain using a Contract Operator, or other institutional arrangements such as integration with California High Speed Rail for a blended corridor. Analyses should compare and contrast the

operational, financial, labor relations, regulatory, governance, and administrative areas of the various options.

Consultant shall participate in the development of interagency agreements which may affect Agency operations requirements, including construction and maintenance agreements with other agencies having projects on or near Agency property.

Consultant shall have the ability to assist staff with the development of RFPs, Independent Cost Estimates (ICE), Work Directives, or other documents related to the aforementioned services.

3. Work Directive Process

Work Directives will be issues in line with Appendix D. Individual Work Directives will specify:

- Detailed scope of work and deliverables
- Project timeline and milestones
- Resource requirements and key personnel
- Budget and cost structure
- Performance metrics and success criteria
- Coordination requirements with JPB staff and other stakeholders

All work shall be performed in accordance with JPB standards, applicable regulations, and industry best practices, with particular attention to the unique operational requirements of the Caltrain system and its role in the regional transportation network.

4. Additional Services as needed

If it should become necessary for JPB to request the Consultant to render any additional services to either supplement the services required in this agreement, then such additional work shall be performed only if set forth in an Amendment to the contract between JPB and the Consultant and issued by the Contracts and Procurement Department. Any such agreed additional work will be performed at the rates set forth in the Cost Proposal and/or Labor Rates as submitted by the Proposer. Any additional services provided by Consultant will relate to the On-Call Railroad Business & Operations Support Services.

END OF SCOPE OF SERVICES

APPENDIX C: SBE REQUIREMENTS

It is the policy of the Agency to ensure nondiscrimination in the award and administration of all contracts and to create a level playing field on which SBEs can compete fairly for contracts and subcontracts relating to the Agency's construction, procurement and professional services activities. To this end, the Agency has developed procedures to remove barriers to SBE participation in the bidding and award process and to assist SBEs to develop and compete successfully outside of the SBE Policy. In connection with the performance of this contract, the Consultant will cooperate with the Agency in meeting these commitments and objectives.

1. SBE Preference

The Agency has a five-point SBE preference to encourage the participation of small businesses on Agency contracts. Award of the contract will be based, in part, on the Proposer's proposed utilization of SBEs. Proposers that are certified SBEs, or who subcontract with certified SBEs will receive the full five points. To claim the SBE preference, a Proposer must complete the SBE Preference Form 7 and include it with its bid submittal.

2. SBE Evaluation

The Office of Civil Rights (OCR) shall review all of the information submitted by Proposers in accordance with the solicitation documents to determine a recommendation regarding compliance with the SBE Preference requirements for award of a contract to the Proposer. The Proposer shall cooperate with the 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 contract with the Agency, the Proposer hereby makes the following assurance and agrees to include this assurance in any contracts it makes with sub-proposers in the performance of this Agreement:

The Proposer or sub-proposer shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Proposer shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Agency Contracts. Failure by the Proposer or sub-proposer to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract 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 Proposer from future bidding as non-responsible.

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

4. SBE Certifications and Resources

The Agency recognizes SBE certifications that do not consider race or gender:

- A. Small Business Administration (SBA) 8(a) provided that a firm's average annual gross receipts do not exceed the cap of \$31.84 million.
https://dsbs.sba.gov/search/dsp_dsbs.cfm
- B. California Department of General Services (DGS) Small Business (SB), SB for Public Works (SB-PW), and Micro Business (MB) certifications:
<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>
- C. SBE certification by the San Francisco Bay Area Rapid Transit Agency
<https://bart.gob2g.com/>
- D. SBE certification by the Santa Clara Valley Transportation Authority
<https://vta.sbdbe.com/>
- E. SBE certification by the Los Angeles County Metropolitan Transportation Authority.
<https://metro.gob2g.com/>
- F. Other SBE certifications may be accepted for this contract only if submitted and approved through the Planet Bids Q&A process.

5. SBE Eligibility

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

- A. A firm (including affiliates) must be an existing small business as defined by Small Business Administration 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 \$31.84 million.

Note: SBA size standards vary by industry and certain industries, such as general construction contracting, exceed the cap of \$31.84 million. A general construction contractor meeting the SBA size standard but exceeding the cap of \$31.84 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 includes that portion of the contract actually performed by a certified SBE with its own forces. SBEs may participate as a Proposer, sub-proposer, joint venture partner, vendor or supplier of materials or services required by the contract.

7. Contract Compliance

A. Substitution of Subconsultants

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

The Proposer shall utilize the specific SBEs listed to perform the work and supply the materials for which each is listed unless the Proposer obtains prior written consent. Unless prior consent is given, the Proposer 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 a SBE subconsultant is either decertified as a SBE or a subconsultant is certified as a SBE during the life of the Contract, the 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 days from the date of Proposer's receipt of progress payments by the Agency. Within thirty days of satisfactory completion of all work required of the subconsultant, the Consultant shall release any retainage payments withheld to the subconsultant. In the event Consultant does not make progress payments or release retentions to the subconsultant in accordance with the time period specific herein, the Consultant will be subject to a charge of 2% per month on the untimely or improperly withheld payment.

D. Progress Payment Reporting Requirements

The Consultant shall maintain records of all subconsultant participation in the performance of the contract, including 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 subconsultants, suppliers, manufacturers, and truckers (subconsultants) in the Diversity Management and Compliance System (B2Gnow) on a monthly basis. The System, a web-based electronic reporting system, is designed to record the 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 days of an email notification. The subconsultants must confirm receipt of payment from the Consultant within five days of an email notification.

It is the Consultant 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.

The Consultant shall submit any and all reports requested by OCR.

Prior to receiving final payment, the Consultant shall submit a final report to the OCR showing all payments to be made to subconsultant(s) and suppliers after receipt of final payment. The Consultant shall not receive final payment prior to the approval of OCR. The Consultant shall submit the final payment report on a form provided by OCR.

8. Administrative Remedies

In the event the Consultant fails to comply with the SBE, prompt payment, and/or reporting requirements of this contract 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, imposition of liquidated damages, and termination of the contract in whole or in part.

END OF SBE REQUIREMENTS

APPENDIX D: 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.

END OF WORK DIRECTIVES

APPENDIX E: CONSULTANT'S PROPOSAL

Final Draft

AGREEMENT BETWEEN
PENINSULA CORRIDOR JOINT POWERS BOARD (AGENCY)
AND
HATCH ASSOCIATES CONSULTANTS, INC. (CONSULTANT)

AGREEMENT SUMMARY*

Board of Directors' Date of Award: XXXX

Resolution Number: XXXX

Effective Date of Agreement: March 2, 2026

Services to be Performed (Section 1): On-Call Railroad Business and Operations Support Services

Term of Agreement (Section 3): Five (5) year base term; March 2, 2026 – March 1, 2031

Consultant's Key Representative (Section 4):

Name: Rachelle Sarmiento, AICP

Title: Project Manager

Company: Hatch Associates Consultants, Inc.

Address: 1999 Harrison Street, Suite 620 Oakland, CA 94612

Phone: (510) 390-8034

Email: Rachelle.Sarmiento@hatch.com

Compensation (Section 5): Board-approved aggregate not-to-exceed amount: \$10,000,000 for a five-year base term.

*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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This AGREEMENT for On-Call Railroad Business and Operations Support Services (Agreement) is entered into by and between the Peninsula Corridor Joint Powers Board (AGENCY) located at 1250 San Carlos Avenue, San Carlos, CA 94070 and Hatch Associates Consultants, Inc. (CONSULTANT), a New York Corporation located at 1999 Harrison Street, Suite 620, Oakland, CA 94612 ("the Parties").

1. SCOPE OF SERVICES

This is an Agreement to provide On-Call Railroad Business and Operations Support 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 similar on-call professional services for staff augmentation, project management, and technical services for railroad operations in the same locality, at the same site, and under the same or similar circumstances in conditions ("Standard of Care"); (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 September 15, 2025, the Scope of Services of which is attached hereto and incorporated herein as Appendix B, as supplemented by CONSULTANT's written proposal dated October 13, 2025, attached hereto and incorporated herein as Appendix E.

2. AGREEMENT DOCUMENTS

This Agreement consists of the following documents:

- (1) This Agreement, including Appendix A-1, Insurance Requirements
- (2) Appendix B, Scope of Services
- (3) Appendix C, SBE Requirements
- (4) Appendix D, Work Directives
- (5) Appendix E, CONSULTANT's Proposal including cost/labor rates.

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-year term commencing upon March 2, 2026 and ending on March 1, 2031. 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.

It is understood that the term of the Agreement and is 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 Rachelle Sarmiento 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 mutually agreed upon 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 Appendix E.

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 \$10,000,000 (Ten Million Dollars) for the five-year term, plus a 10 percent 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.

5.1. GENERAL

Compensation for each project performed under the Agreement will either be **Cost-Plus-Fixed-Fee with a ceiling (CPFF)** or **Specified Rate of Compensation (SRC)**.

Project pricing will be allowable only to the extent that estimated costs and costs incurred are compliant with Federal cost principals contained in Title 48, Code of Federal Regulations, Part 31. Any costs for which payment has been made to CONSULTANT, which are determined by subsequent audit to be unallowable under these Federal cost principals, are subject to repayment by CONSULTANT to the AGENCY.

CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT's Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.

When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the AGENCY Project Manager before exceeding such estimate. Progress payments for each project will be made monthly in arrears based on services provided and actual costs incurred.

CONSULTANT shall not commence performance of work or services until this Agreement has been approved by AGENCY, and notification to proceed has been issued by AGENCY Procurement Administrator. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.

Fixed Fees shall be negotiated prior to the signing of the Agreement and shall apply throughout the life of the Agreement.

5.2. COST OF WORK

The cost of work shall be calculated as the sum of the direct labor times a multiplier for payroll burden, employee benefits, and overhead costs, plus other direct costs as set forth in this Section.

5.3. DIRECT LABOR

5.3.1. GENERAL

Direct Labor Rates shall be as set forth in Appendix E to this Agreement and shall stay in effect for the first year of the Agreement. The hourly rates (direct labor costs) are subject to salary administration as set forth in Title 48 Code of Federal Regulations Part 31.

Charges by CONSULTANT, and subconsultants, for an employee's time shall in no instance exceed the actual amount paid to such employee for time directly spent on services performed under this Agreement by such employee.

For new personnel to be approved after contract award, CONSULTANT, and subconsultants, shall submit a written request to the Procurement Administrator and provide the person's name, job title, current actual rates, and resume, for review and approval.

New personnel must be approved prior to their commencing work under a project. Work performed by personnel not previously approved in writing by the AGENCY shall be at CONSULTANT's own risk.

5.3.2. Straight Time

Straight time payroll is to be the equivalent annual salary/wage divided by 2080 hours per annum for employees approved to perform services under this Agreement.

5.3.3. Overtime

The AGENCY will reimburse CONSULTANT, and subconsultants, the straight time portion and premium time portion (if payable to the employee in accordance with the CONSULTANT'S employment policies) of its employee's actual overtime pay during performance of services under this Agreement, provided that the AGENCY has approved the overtime, in writing, prior to the incurring of said overtime. Overtime charges must reflect overhead rates reduced by non-applicable employee benefits.

5.4. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

5.4.1. General

CONSULTANT, and subconsultants, multipliers may be inclusive of the markups for payroll burden, employee benefits and office overhead for each office location as defined below. The multiplier is fixed for the first year of the Agreement.

The agreed-upon multipliers shall be used for CONSULTANT's and subconsultants' home office and AGENCY-Furnished Field Office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in Appendix E "Cost Proposal," dated October 13, 2025.

5.4.2. Payroll Burden

CONSULTANT and the AGENCY agree that the following will be considered as Payroll Burdens and as such will be paid to CONSULTANT, and subconsultant's, as compensation for said costs, as set forth below. "Payroll Burden" is defined as:

The cost of all a) employment taxes, b) CONSULTANT's, and subconsultant's, portion of social and retirement charges and c) contributions imposed by law, or labor contract contributions (if applicable), or regulations, with respect to or measured by CONSULTANT's, and subconsultant's, payroll, including but not limited to, the CONSULTANT's, and subconsultant's, cost of owner-required insurance.

5.4.3. Employee Benefits

"Employee Benefits" for CONSULTANT's and subconsultant's employees is defined as The cost of all contractual and voluntary employee benefits, including but not limited to, holidays, vacations, sick leave, jury duty leave, group medical, life insurance, salary continuance insurance, bonus schemes (including Director's drawings of dividends), employee stock ownership plan, savings plan, retirement plan, relocation benefits, and all other employee benefit plans.

5.4.4. Indirect Costs (Office Overhead)

CONSULTANT, and subconsultants, shall be compensated through an agreed-upon multiplier for overhead, which includes those administrative, clerical, word processing, accounting, and other support staff utilized in performing services under this Agreement, which are not explicitly included in the Proposal or who have been approved by the AGENCY.

These rates will remain fixed for the initial year of the Agreement. These rates will be reviewed annually on the anniversary of the effective date of the Agreement, for the CONSULTANT and its subconsultants and may be adjusted upon AGENCY approval.

5.4.4.1. CONSULTANT and subconsultants Home Office Overhead rate shall apply to personnel assigned in CONSULTANT's and subconsultant's Home Office in support of the performance of services under this Agreement. Home Office Indirect Cost Rates (overhead) included in the CONSULTANT's proposal, including those of their subconsultants, must be substantiated by the most recent (within 12 months) audited reports available, which clearly show the calculations. All such reports shall comply with FAR reporting requirements. If audited reports are not available for subconsultants, the CONSULTANT will provide alternate information (i.e. other comparable public agency contract rates) to the AGENCY to review for acceptance. The AGENCY will have the final decision as to what is acceptable.

5.4.4.2. AGENCY-Furnished Field Office Overhead rate shall apply to CONSULTANT's, and subconsultant's, personnel assigned to an AGENCY-Furnished Field Office on a full-time basis, for a period of at least 120 calendar days. As these rates cannot be pre-determined by audit, the AGENCY reserves the right to negotiate this rate for each firm.

5.5. Maximum Fixed Fees (Profit)

5.5.1. General

Maximum Fixed Fee percentages shall apply throughout the life of the Agreement. The CONSULTANT's fixed fee amount for each project may be negotiated on an individual project basis. Said fixed fee amount shall not be altered unless there is a significant alteration in the scope, complexity or character of the work to be performed under a Project.

The maximum fees, as a percentage of fully burdened Direct Labor Cost, allowable by the AGENCY shall not exceed:

- **On-Call Railroad Business and Operations Support Services**
 - Ten Percent (10%)* for Consultant's home office (Home);
 - Eight Percent (8%)* for Agency's field office (Field);

**Fees for Consultant Support projects are only paid for actual time worked (Level of Effort)*

5.6. OTHER DIRECT COSTS (ODCs)

5.6.1. General

Other Direct Costs, including subconsultant's projects, shall be proposed at cost with a Zero Percent (0%) markup.

5.6.2. Allowable ODCs

Examples of allowable include, but are not limited to: mileage, parking, tolls, mail costs, film, photo developing, facsimiles, printing/copying, plan reproduction, blueprint services, and subconsultants directly associated with the project. Expenditures for each allowable ODC in excess of \$500.00 per month, and not included above, shall require advance approval by the AGENCY. Supporting documentation is required for reimbursement of all ODCs.

5.6.3. Subconsultants

With regard to subconsultants, the AGENCY will pay the cost of work as defined in Section 5.2 through Section 5.6.4 with Zero Percent (0%) markup. The CONSULTANT may be compensated for initial, or one-time, charges incurred in establishing a project or for pre-approved administration charges.

5.6.4. Limitations on Direct Costs - The Following Are Limitations:

(1) Vehicles - If applicable and approved by the Agencies, rental vehicles and their support costs are limited to a total maximum of \$500 per month, per vehicle. The standard Internal Revenue Service mileage rates shall apply for use of a personal vehicle.

(2) Travel Expenses - All travel and relocation related plans must be approved in writing by the AGENCY prior to the commencement of the travel. If written approval is received for relocations, travel, temporary accommodations and or assistance, FAR 31.205-46(a) Sections 1 and 2 and Federal Travel Regulation (41 CFR 301-304) for San Mateo County, California, will apply. Lodging and per diem rates shall not exceed the U.S. General Services Administration (GSA) rate at the time of travel for the specific project site. Costs incurred for travel, subsistence, and relocation of personnel engaged in the performance of services under this Agreement, if approved in advance by AGENCY will include the following:

- Relocation expenses, travel, temporary accommodations, and/or subsistence related to mobilization travel to the CONSULTANT's dedicated project office or to AGENCY-Furnished Field Office for CONSULTANT and subconsultant personnel permanently assigned to the project. Such expenses shall be reduced by any amount received from others by CONSULTANT or subconsultant for demobilization from the prior project assignment.

- Travel, accommodations, and subsistence (directly related to the Scope of Services) for business trips to the Project Site, to AGENCY's consultants and suppliers, or to other locations approved by the AGENCY. Such travel may originate at CONSULTANT's or subconsultant's home office or branch office, or at the CONSULTANT's dedicated field office, or at AGENCY's central or field offices.

5.6.5. Unallowable ODCs

The following ODCs are not allowable unless they are authorized by prior written approval of the AGENCY's authorized representative:

- Costs associated with registration for training, seminars, and technical association meetings.
- Costs associated with employee incentive compensation including cash bonuses, suggestion awards, safety awards, and other forms of incentive compensation.
- Costs associated with leasing, maintaining, insuring, and operating dedicated project vehicles.
- Computer hardware and software support, software licenses, or cellular phone usage.
- Safety equipment such as steel-toed boots, safety vests, and hard hats.
- Insurance
- Cellular phones
- Cost of any normal equipment, tools, or vehicles (unless approved) hired, leased or purchased for the performance of services, provided that the depreciated value of such items purchased by CONSULTANT shall be credited to the AGENCY at the completion of the work performed under this Agreement.
- Shipping
- Drafting supplies
- Surveying supplies
- Models and renderings

All other ODCs that are not identified in 5.6.2 are considered unallowable ODCs and must be authorized by prior written approval of the AGENCY's authorized representative.

5.7. Maximum Compensation Amount

A maximum not-to-exceed amount as set forth in the project shall apply for each project.

Further, it is expressly understood and agreed that in no event shall CONSULTANT be compensated in an amount greater than the amount specified in any individual project for the services performed under such project without issuance of a written Amendment to such project by the AGENCY's Procurement Administrator.

If at any time, CONSULTANT has reason to believe that the total compensation payable for the performance of services under this Agreement will exceed the maximum not-to-exceed amount as set for in the project, CONSULTANT shall notify the AGENCY immediately in writing to that effect, indicating the estimated additional amount necessary to complete the services in the project. Any cost incurred by CONSULTANT in excess of the not-to-exceed amount as set forth in the project shall be at CONSULTANT's own risk.

5.8. Flow Down

CONSULTANT shall include the requirements regarding audits, compensation and reimbursement for costs and fees in its subconsultant's agreements, provided such subconsultants have been approved by the AGENCY.

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 26-J-P-017, Purchase order # and the AGENCY Project Manager's, Graham Rogers, name. The AGENCY will endeavor to pay approved invoices/billing statements within 30 calendar days of their receipt. The AGENCY reserves the right to reasonably withhold payment to the CONSULTANT if the AGENCY determines that the quantity or quality of the work performed is unacceptable. 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

Accounts Payable

**Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070**

7. **NOTICES**

All communications relating to the day-to-day activities of the provided services will be exchanged between the AGENCY's Project Manager, Graham Rogers or designee, and the CONSULTANT's Project Manager, Rachelle Sarmiento.

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 Manager, Graham Rogers or designee, and the CONSULTANT's Project Manager, Rachelle Sarmiento via electronic mail to: rachelle.sarmiento@hatch.com.

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
 Peninsula Corridor Joint Powers Board
 1250 San Carlos Avenue
 San Carlos, CA 94070

With a copy to: Director, Contracts and Procurement
 Peninsula Corridor Joint Powers Board
 1250 San Carlos Avenue
 San Carlos, CA 94070

If to the CONSULTANT: Hatch Associates Consultants, Inc.
 Attn: Rachelle Sarmiento, AICP 1999 Harrison
 Street, Suite 620, Oakland, CA 94612

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**

A. General

All reports, designs, drawings, plans, specifications, schedules, and other materials first prepared, by CONSULTANT under this Agreement ("Work Products") will be and are the property of the AGENCY for their intended use on this project only. 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 for their intended use on this project only. 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. The AGENCY agrees to waive any and all claims against the CONSULTANT and to defend, indemnify and hold the CONSULTANT harmless from and against any and all claims, losses, liabilities and damages arising out of or resulting from the unauthorized use, reuse or alteration of the CONSULTANT's Work Products. Notwithstanding anything else in this Agreement, unless agreed to under a separate agreement, the AGENCY, or any other third party shall have no rights or licenses to CONSULTANT's proprietary software applications developed by CONSULTANT, or any affiliates of CONSULTANT which may be used by CONSULTANT as "Software-as-a-Service" in any deliverables under this Agreement.

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. Subject to Section 34 of this Agreement, CONSULTANT's confidential information will be held in confidence by the AGENCY, which will exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the AGENCY as necessary under this Agreement.

The CONSULTANT, its employees, subcontractors, 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 Executive Director or designee. This section shall not apply to information in whatever form that comes into the public domain, nor shall it restrict either party from complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for either party to defend itself from any suit or claim.

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.

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 promptly upon notice of such condition or contingency within seven (7) calendar days. 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 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 will not be required to indemnify the AGENCY in cases of the AGENCY's negligence, fraud, or willful misconduct. 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 Appendix A-1, 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

Not Applicable

17. LITIGATION SUPPORT

Not Applicable

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 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 represents that its professional services will be performed in accordance with the Standard of Care. In addition, CONSULTANT will provide such specific warranties representations as may be set forth in Work Directives as agreed upon by the Parties.

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 representations 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 reasonably 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.

1. SMALL BUSINESS ENTERPRISE (SBE) POLICY

See Appendix C for SBE, Small Business Enterprise, prompt payment and reporting requirements.

31. 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.

32. SUBSTANCE ABUSE PROGRAM.

Not Applicable

33. 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.

34. ENGINE AND FLEET REGULATIONS.

Not Applicable

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.

PENINSULA CORRIDOR JOINT POWERS BOARD:

Signature: _____

Print: Michelle Bouchard

Title: Executive Director

Date: _____

HATCH ASSOCIATES CONSULTANTS, INC. : (See footnote below)*

Signature: _____

Print: Christian G. Reitter

Title: PE / Managing Director, Transit USA (East)

Date: _____

Signature: _____

Print: David Moran

Title: Managing Director, Transit USA (West)

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.

APPENDIX A-1 INSURANCE REQUIREMENTS

INSURANCE

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 **\$5 million** per claim or occurrence and **\$5 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 above requiring the Additional Insured endorsement and any Excess or Umbrella policies over those same referenced 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 above requiring the Waiver of Subrogation endorsement and any Excess or Umbrella policies over those same referenced 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 above requiring the Separation of Insureds clause endorsement and any Excess or Umbrella policies over those same referenced 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.

END OF INSURANCE REQUIREMENTS

APPENDIX B: SCOPE OF SERVICES

1. Introduction

The Agency is seeking on-call professional services for staff augmentation, project management, and technical services for railroad operations which are needed on a wide variety of small- and large-scale efforts and ancillary tasks. Consultants shall provide specialized on-call railroad business and operations support services in the categories listed below, tailored to the unique operational requirements of the Agency's commuter rail system serving the San Francisco Peninsula and Silicon Valley. The Work under the Agreement will be established as needed on an individual Work Directive basis. Specific contract deliverables will be set forth in each Work Directive issued under this Agreement.

Service Categories:

- A. Railroad Operations Support Services
- B. Railroad Business Planning Support Services

The Consultants shall function with overall guidance from the Peninsula Corridor Joint Powers Board (JPB), but will manage and control the day-to-day Work Directive activities and deliverables. Consultants must demonstrate comprehensive understanding of the Agency's unique operating environment, including physical infrastructure, operational characteristics, and regulatory environment.

List of Potential Work Directive Tasks:

Possible tasks that may be required of the Consultant in executing Work Directive assignments include, but are not limited to:

- Evaluate operational impacts of proposed capital improvements
- Support handover process from construction to operations
- Assess integration requirements for new systems and technologies
- Provide operational input to design reviews and value engineering
- Analyze special event service requirements and crowd management
- Support development of service plans for various operational scenarios
- Analyze EMU fleet requirements and deployment strategies
- Develop maintenance scheduling optimization models
- Evaluate lifecycle replacement planning for rolling stock and infrastructure
- Analyze crew scheduling efficiency and optimization
- Develop key performance indicators (KPIs) and benchmarking studies
- Develop operational procedures and best practices documentation
- Support staff development in advanced operational analysis techniques
- Develop methodologies for monitoring Contract Operator performance
- Establish performance metrics and reporting frameworks for KPIs
- Conduct Contract Operator performance audits and assessments

- Support contract negotiations and modifications
- Develop best practices for contract operations management
- Analyze alternate service delivery models and prepare transition plans, as needed
- Assist with mobilization or transition of contracts or contract operators
- Assess regional coordination opportunities and institutional arrangements
- Support development of operating and capital budgets
- Conduct long-range financial planning and scenario analysis
- Analyze fare policy impacts and revenue optimization strategies
- Evaluate funding strategies for service expansion and improvements
- Develop cost allocation methodologies for shared infrastructure
- Support grant applications and funding requests
- Perform market studies for service expansion opportunities
- Develop interagency agreements for shared use of facilities and services
- Support negotiations with freight railroads and other corridor users
- Support Agency in pursuing FRA, FTA, CPUC, or other regulatory waivers
- Other unanticipated projects

2. Scope of Services and Deliverables

As assigned by individual Work Directives, Consultant will conduct:

a) Railroad Operations Support Services

JPB intends to award contracts to one or more firms to provide railroad operations support services. Consultant shall assist Agency's Rail Operations and Maintenance department with a variety of duties including those described below. Consultant shall have the ability to provide on-site representative(s) within 24 hours of notice.

Core Competencies Required:

- Comprehensive knowledge of FRA regulations, operating rules (GCOR/NORAC), and signal systems
- Experience with electrified commuter rail operations, traction electrification system maintenance, and EMU fleet management
- Proficiency in rail operations simulation software
- Understanding of shared-use corridor operations and dispatching protocols

Consultant shall have comprehensive knowledge of and significant experience with railroad operating rules, scheduling, maintenance practices, and electrical systems as well as a thorough understanding of their impacts on train movements, maintenance rules, and practices.

Consultant shall have the ability to determine operational costs and benefits of proposed capital improvement projects and shall provide training in operations simulation/modeling to JPB staff, if requested.

Consultant shall also assist staff with Agency's annual and long range capital, operating, and administrative budgets and plans, including fleet management, asset allocation, and service development.

Consultant shall have the ability to determine the operational and economic impacts of JPB capital and third party projects. Consultant shall support the handover process for assets transitioning from construction

Consultant shall support the Agency on updating and reviewing the agency's Asset Management system as assets are updated (added/removed/refurbished) as well as coordinate with staff and contractors on Configuration Management for planned and unplanned changes.

b) Railroad Business Planning Support Services

JPB intends to award contracts to one or more firms to provide business planning expertise to support the Agency's regional rail system. Consultant shall have comprehensive knowledge of and significant experience in commuter railroad administrative and contracting practices as well as commuter railroad business methodologies, practices, and strategies.

Core Competencies Required:

- Extensive experience in commuter railroad business operations and financial management
- Knowledge of public transit funding mechanisms and revenue optimization
- Understanding of contract operations oversight and performance management
- Experience with interagency coordination and regional transit integration

Consultant shall assist staff with oversight of the JPB's Contractor Operator. Consultant shall have the ability to develop methodologies and best practices for monitoring, reporting, and developing corrective action recommendations for Contract Operator performance in accordance with the Operations and Maintenance Agreement. This oversight support may include analysis of costs, on-time performance, work force allocation, crew efficiencies, key performance indicators, and maintenance of rolling stock, stations, right-of-way, and the traction electrification system.

Consultant shall have the ability to develop and analyze future business strategies, including direct operation of Caltrain by the JPB, continued operation of Caltrain using a Contract Operator, or other institutional arrangements such as integration with California High Speed Rail for a blended corridor. Analyses should compare and contrast the

operational, financial, labor relations, regulatory, governance, and administrative areas of the various options.

Consultant shall participate in the development of interagency agreements which may affect Agency operations requirements, including construction and maintenance agreements with other agencies having projects on or near Agency property.

Consultant shall have the ability to assist staff with the development of RFPs, Independent Cost Estimates (ICE), Work Directives, or other documents related to the aforementioned services.

3. Work Directive Process

Work Directives will be issues in line with Appendix D. Individual Work Directives will specify:

- Detailed scope of work and deliverables
- Project timeline and milestones
- Resource requirements and key personnel
- Budget and cost structure
- Performance metrics and success criteria
- Coordination requirements with JPB staff and other stakeholders

All work shall be performed in accordance with JPB standards, applicable regulations, and industry best practices, with particular attention to the unique operational requirements of the Caltrain system and its role in the regional transportation network.

4. Additional Services as needed

If it should become necessary for JPB to request the Consultant to render any additional services to either supplement the services required in this agreement, then such additional work shall be performed only if set forth in an Amendment to the contract between JPB and the Consultant and issued by the Contracts and Procurement Department. Any such agreed additional work will be performed at the rates set forth in the Cost Proposal and/or Labor Rates as submitted by the Proposer. Any additional services provided by Consultant will relate to the On-Call Railroad Business & Operations Support Services.

END OF SCOPE OF SERVICES

APPENDIX C: SBE REQUIREMENTS

It is the policy of the Agency to ensure nondiscrimination in the award and administration of all contracts and to create a level playing field on which SBEs can compete fairly for contracts and subcontracts relating to the Agency's construction, procurement and professional services activities. To this end, the Agency has developed procedures to remove barriers to SBE participation in the bidding and award process and to assist SBEs to develop and compete successfully outside of the SBE Policy. In connection with the performance of this contract, the Consultant will cooperate with the Agency in meeting these commitments and objectives.

1. SBE Preference

The Agency has a five-point SBE preference to encourage the participation of small businesses on Agency contracts. Award of the contract will be based, in part, on the Proposer's proposed utilization of SBEs. Proposers that are certified SBEs, or who subcontract with certified SBEs will receive the full five points. To claim the SBE preference, a Proposer must complete the SBE Preference Form 7 and include it with its bid submittal.

2. SBE Evaluation

The Office of Civil Rights (OCR) shall review all of the information submitted by Proposers in accordance with the solicitation documents to determine a recommendation regarding compliance with the SBE Preference requirements for award of a contract to the Proposer. The Proposer shall cooperate with the 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 contract with the Agency, the Proposer hereby makes the following assurance and agrees to include this assurance in any contracts it makes with sub-proposers in the performance of this Agreement:

The Proposer or sub-proposer shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Proposer shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Agency Contracts. Failure by the Proposer or sub-proposer to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract 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 Proposer from future bidding as non-responsible.

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

4. SBE Certifications and Resources

The Agency recognizes SBE certifications that do not consider race or gender: <https://californiaucp.dbesystem.com/>

- A. Small Business Administration (SBA) 8(a) provided that a firm's average annual gross receipts do not exceed the cap of \$31.84 million.
https://dsbs.sba.gov/search/dsp_dsbs.cfm
- B. California Department of General Services (DGS) Small Business (SB), SB for Public Works (SB-PW), and Micro Business (MB) certifications:
<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>
- C. SBE certification by the San Francisco Bay Area Rapid Transit Agency
<https://bart.gob2g.com/>
- D. SBE certification by the Santa Clara Valley Transportation Authority
<https://vta.sbdbe.com/>
- E. SBE certification by the Los Angeles County Metropolitan Transportation Authority.
<https://metro.gob2g.com/>
- F. Other SBE certifications may be accepted for this contract only if submitted and approved through the Planet Bids Q&A process.

5. SBE Eligibility

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

- A. A firm (including affiliates) must be an existing small business as defined by Small Business Administration 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 \$31.84 million.

Note: SBA size standards vary by industry and certain industries, such as general construction contracting, exceed the cap of \$31.84 million. A general construction contractor meeting the SBA size standard but exceeding the cap of \$31.84 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 includes that portion of the contract actually performed by a certified SBE with its own forces. SBEs may participate as a Proposer, sub-proposer, joint venture partner, vendor or supplier of materials or services required by the contract.

7. Contract Compliance

- A. Substitution of Subconsultants

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

The Proposer shall utilize the specific SBEs listed to perform the work and supply the materials for which each is listed unless the Proposer obtains prior written consent. Unless prior consent is given, the Proposer 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 a SBE subconsultant is either decertified as a SBE or a subconsultant is certified as a SBE during the life of the Contract, the 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 days from the date of Proposer's receipt of progress payments by the Agency. Within thirty days of satisfactory completion of all work required of the subconsultant, the Consultant shall release any retainage payments withheld to the subconsultant. In the event Consultant does not make progress payments or release retentions to the subconsultant in accordance with the time period specific herein, the Consultant will be subject to a charge of 2% per month on the untimely or improperly withheld payment.

D. Progress Payment Reporting Requirements

The Consultant shall maintain records of all subconsultant participation in the performance of the contract, including 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 subconsultants, suppliers, manufacturers, and truckers (subconsultants) in the Diversity Management and Compliance System (B2Gnow) on a monthly basis. The System, a web-based electronic reporting system, is designed to record the 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 days of an email notification. The subconsultants must

confirm receipt of payment from the Consultant within five days of an email notification.

It is the Consultant 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.

The Consultant shall submit any and all reports requested by OCR.

Prior to receiving final payment, the Consultant shall submit a final report to the OCR showing all payments to be made to subconsultant(s) and suppliers after receipt of final payment. The Consultant shall not receive final payment prior to the approval of OCR. The Consultant shall submit the final payment report on a form provided by OCR.

8. Administrative Remedies

In the event the Consultant fails to comply with the SBE, prompt payment, and/or reporting requirements of this contract 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, imposition of liquidated damages, and termination of the contract in whole or in part.

END OF SBE REQUIREMENTS

APPENDIX D: 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.

END OF WORK DIRECTIVES

APPENDIX E: CONSULTANT'S PROPOSAL

AGREEMENT BETWEEN
PENINSULA CORRIDOR JOINT POWERS BOARD (AGENCY)
AND
WSP USA INC. (CONSULTANT)

AGREEMENT SUMMARY*

Board of Directors' Date of Award: XXXX

Resolution Number: XXXX

Effective Date of Agreement: March 2, 2026

Services to be Performed (Section 1): On-Call Railroad Business and Operations Support Services

Term of Agreement (Section 3): Five (5) year base term; March 2, 2026 – March 1, 2031

Consultant's Key Representative (Section 4):

Name: Matthew Baratz

Title: Senior Vice President

Company: WSP USA Inc.

Address: 71 Stevenson St. Suite 1000, San Francisco, CA 94105

Phone: (415) 398-3833

Email: matthew.baratz@wsp.com

Compensation (Section 5): Board-approved aggregate not-to-exceed amount: \$10,000,000 for a five-year base term.

*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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This AGREEMENT for On-Call Railroad Business and Operations Support Services (Agreement) is entered into by and between the Peninsula Corridor Joint Powers Board (AGENCY) located at 1250 San Carlos Avenue, San Carlos, CA 94070 and WSP USA Inc. (CONSULTANT), a California Corporation located at 71 Stevenson St., Suite 1000, San Francisco, CA 94105 ("the Parties").

1. SCOPE OF SERVICES

This is an Agreement to provide On-Call Railroad Business and Operations Support 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 on-call professional services for staff augmentation, project management, and technical services for railroad operations; (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 September 15, 2025, the Scope of Services of which is attached hereto and incorporated herein as Appendix B, as supplemented by CONSULTANT's written proposal dated October 13, 2025, attached hereto and incorporated herein as Appendix E.

2. AGREEMENT DOCUMENTS

This Agreement consists of the following documents:

- (1) This Agreement, including Appendix A-1, Insurance Requirements
- (2) Appendix B, Scope of Services
- (3) Appendix C, SBE/DBE Requirements
- (4) Appendix D, Work Directives
- (5) Appendix E, CONSULTANT's Proposal including cost/labor rates.

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-year term commencing upon March 2, 2026 and ending on March 1, 2031. 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.

It is understood that the term of the Agreement is 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 Matthew Baratz 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 Appendix E.

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 \$10,000,000 (Ten Million Dollars) for the five-year term, plus a 10 percent 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.

5.1. GENERAL

Compensation for each project performed under the Agreement will either be **Cost-Plus-Fixed-Fee with a ceiling (CPFF)** or **Specified Rate of Compensation (SRC)**.

Project pricing will be allowable only to the extent that estimated costs and costs incurred are compliant with Federal cost principals contained in Title 48, Code of Federal Regulations, Part 31. Any costs for which payment has been made to CONSULTANT, which are determined by subsequent audit to be unallowable under these Federal cost principals, are subject to repayment by CONSULTANT to the AGENCY.

CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT's Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.

When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the AGENCY Project Manager before exceeding such estimate. Progress payments for each project will be made monthly in arrears based on services provided and actual costs incurred.

CONSULTANT shall not commence performance of work or services until this Agreement has been approved by AGENCY, and notification to proceed has been issued by AGENCY Procurement Administrator. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.

Fixed Fees shall be negotiated prior to the signing of the Agreement and shall apply throughout the life of the Agreement.

5.2. COST OF WORK

The cost of work shall be calculated as the sum of the direct labor times a multiplier for payroll burden, employee benefits, and overhead costs, plus other direct costs as set forth in this Section.

5.3. DIRECT LABOR

5.3.1. GENERAL

Direct Labor Rates shall be as set forth in Appendix E to this Agreement and shall stay in effect for the first year of the Agreement. The hourly rates (direct labor costs) are subject to salary administration as set forth in Title 48 Code of Federal Regulations Part 31.

Charges by CONSULTANT, and subconsultants, for an employee's time shall in no instance exceed the actual amount paid to such employee for time directly spent on services performed under this Agreement by such employee.

For new personnel to be approved after contract award, CONSULTANT, and subconsultants, shall submit a written request to the Procurement Administrator and provide the person's name, job title, current actual rates, and resume, for review and approval.

New personnel must be approved prior to their commencing work under a project. Work performed by personnel not previously approved in writing by the AGENCY shall be at CONSULTANT's own risk.

5.3.2. Straight Time

Straight time payroll is to be the equivalent annual salary/wage divided by 2080 hours per annum for employees approved to perform services under this Agreement.

5.3.3. Overtime

The AGENCY will reimburse CONSULTANT, and subconsultants, the straight time portion and premium time portion (if payable to the employee in accordance with the CONSULTANT'S employment policies) of its employee's actual overtime pay during performance of services under this Agreement, provided that the AGENCY has approved the overtime, in writing, prior to the incurring of said overtime. Overtime charges must reflect overhead rates reduced by non-applicable employee benefits.

5.4. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

5.4.1. General

CONSULTANT, and subconsultants, multipliers may be inclusive of the markups for payroll burden, employee benefits and office overhead for each office location as defined below. The multiplier is fixed for the first year of the Agreement.

The agreed-upon multipliers shall be used for CONSULTANT's and subconsultants' home office and AGENCY-Furnished Field Office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to

direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in Appendix E "Cost Proposal," dated October 13, 2025.

5.4.2. Payroll Burden

CONSULTANT and the AGENCY agree that the following will be considered as Payroll Burdens and as such will be paid to CONSULTANT, and subconsultant's, as compensation for said costs, as set forth below. "Payroll Burden" is defined as:

The cost of all a) employment taxes, b) CONSULTANT's, and subconsultant's, portion of social and retirement charges and c) contributions imposed by law, or labor contract contributions (if applicable), or regulations, with respect to or measured by CONSULTANT's, and subconsultant's, payroll, including but not limited to, the CONSULTANT's, and subconsultant's, cost of owner-required insurance.

5.4.3. Employee Benefits

"Employee Benefits" for CONSULTANT's and subconsultant's employees is defined as The cost of all contractual and voluntary employee benefits, including but not limited to, holidays, vacations, sick leave, jury duty leave, group medical, life insurance, salary continuance insurance, bonus schemes (including Director's drawings of dividends), employee stock ownership plan, savings plan, retirement plan, relocation benefits, and all other employee benefit plans.

5.4.4. Indirect Costs (Office Overhead)

CONSULTANT, and subconsultants, shall be compensated through an agreed-upon multiplier for overhead, which includes those administrative, clerical, word processing, accounting, and other support staff utilized in performing services under this Agreement, which are not explicitly included in the Proposal or who have been approved by the AGENCY.

These rates will remain fixed for the initial year of the Agreement. These rates will be reviewed annually on the anniversary of the effective date of the Agreement, for the CONSULTANT and its subconsultants and may be adjusted upon AGENCY approval.

5.4.4.1. CONSULTANT and subconsultants Home Office Overhead rate shall apply to personnel assigned in CONSULTANT's and subconsultant's Home Office in support of the performance of services under this Agreement. Home Office Indirect Cost Rates (overhead) included in the CONSULTANT's proposal, including those of their subconsultants, must be substantiated by the most recent (within 12 months) audited reports available, which clearly show the calculations. All such reports shall comply with FAR reporting requirements. If audited reports are not available for subconsultants, the CONSULTANT will provide alternate information (i.e. other comparable public agency contract rates) to the AGENCY to review for acceptance. The AGENCY will have the final decision as to what is acceptable.

5.4.4.2. AGENCY-Furnished Field Office Overhead rate shall apply to CONSULTANT's, and subconsultant's, personnel assigned to an AGENCY-Furnished Field Office on a full-time basis, for a period of at least 120 calendar days. As these rates cannot be pre-determined by audit, the AGENCY reserves the right to negotiate this rate for each firm.

5.5. Maximum Fixed Fees (Profit)

5.5.1. General

Maximum Fixed Fee percentages shall apply throughout the life of the Agreement. The CONSULTANT's fixed fee amount for each project may be negotiated on an individual project basis. Said fixed fee amount shall not be altered unless there is a significant alteration in the scope, complexity or character of the work to be performed under a Project.

The maximum fees, as a percentage of fully burdened Direct Labor Cost, allowable by the AGENCY shall not exceed:

- **On-Call Business and Operations Support Services –**

- Eight Percent (8%)* for Consultant's home office (Home);
- Eight Percent (8%)* for Agency's field office (Field);

**Fees for Consultant Support projects are only paid for actual time worked (Level of Effort)*

5.6. OTHER DIRECT COSTS (ODCs)

5.6.1. General

Other Direct Costs, including subconsultant's projects, shall be proposed at cost with a Zero Percent (0%) markup.

5.6.2. Allowable ODCs

Examples of allowable include, but are not limited to: mileage, parking, tolls, mail costs, film, photo developing, facsimiles, printing/copying, plan reproduction, blueprint services, and subconsultants directly associated with the project. Expenditures for each allowable ODC in excess of \$500.00 per month, and not included above, shall require advance approval by the AGENCY. Supporting documentation is required for reimbursement of all ODCs.

5.6.3. Subconsultants

With regard to subconsultants, the AGENCY will pay the cost of work as defined in Section 5.2 through Section 5.6.4 with Zero Percent (0%) markup. The

CONSULTANT may be compensated for initial, or one-time, charges incurred in establishing a project or for pre-approved administration charges.

5.6.4. Limitations on Direct Costs - The Following Are Limitations:

(1) Vehicles - If applicable and approved by the Agencies, rental vehicles and their support costs are limited to a total maximum of \$500 per month, per vehicle. The standard Internal Revenue Service mileage rates shall apply for use of a personal vehicle.

(2) Travel Expenses - All travel and relocation related plans must be approved in writing by the AGENCY prior to the commencement of the travel. If written approval is received for relocations, travel, temporary accommodations and or assistance, FAR 31.205-46(a) Sections 1 and 2 and Federal Travel Regulation (41 CFR 301-304) for San Mateo County, California, will apply. Lodging and per diem rates shall not exceed the U.S. General Services Administration (GSA) rate at the time of travel for the specific project site. Costs incurred for travel, subsistence, and relocation of personnel engaged in the performance of services under this Agreement, if approved in advance by AGENCY will include the following:

- Relocation expenses, travel, temporary accommodations, and/or subsistence related to mobilization travel to the CONSULTANT's dedicated project office or to AGENCY-Furnished Field Office for CONSULTANT and subconsultant personnel permanently assigned to the project. Such expenses shall be reduced by any amount received from others by CONSULTANT or subconsultant for demobilization from the prior project assignment.

- Travel, accommodations, and subsistence (directly related to the Scope of Services) for business trips to the Project Site, to AGENCY's consultants and suppliers, or to other locations approved by the AGENCY. Such travel may originate at CONSULTANT's or subconsultant's home office or branch office, or at the CONSULTANT's dedicated field office, or at AGENCY's central or field offices.

5.6.5. Unallowable ODCs

The following ODCs are not allowable unless they are authorized by prior written approval of the AGENCY's authorized representative:

- Costs associated with registration for training, seminars, and technical association meetings.
- Costs associated with employee incentive compensation including cash bonuses, suggestion awards, safety awards, and other forms of incentive compensation.
- Costs associated with leasing, maintaining, insuring, and operating dedicated project vehicles.
- Computer hardware and software support, software licenses, or cellular phone usage.

- Safety equipment such as steel-toed boots, safety vests, and hard hats.
- Insurance
- Cellular phones
- Cost of any normal equipment, tools, or vehicles (unless approved) hired, leased or purchased for the performance of services, provided that the depreciated value of such items purchased by CONSULTANT shall be credited to the AGENCY at the completion of the work performed under this Agreement.
- Shipping
- Drafting supplies
- Surveying supplies
- Models and renderings

All other ODCs that are not identified in 5.6.2 are considered unallowable ODCs and must be authorized by prior written approval of the AGENCY's authorized representative.

5.7. Maximum Compensation Amount

A maximum not-to-exceed amount as set forth in the project shall apply for each project.

Further, it is expressly understood and agreed that in no event shall CONSULTANT be compensated in an amount greater than the amount specified in any individual project for the services performed under such project without issuance of a written Amendment to such project by the AGENCY's Procurement Administrator.

If at any time, CONSULTANT has reason to believe that the total compensation payable for the performance of services under this Agreement will exceed the maximum not-to-exceed amount as set for in the project, CONSULTANT shall notify the AGENCY immediately in writing to that effect, indicating the estimated additional amount necessary to complete the services in the project. Any cost incurred by CONSULTANT in excess of the not-to-exceed amount as set forth in the project shall be at CONSULTANT's own risk.

5.8. Flow Down

CONSULTANT shall include the requirements regarding audits, compensation and reimbursement for costs and fees in its subconsultant's agreements, provided such subconsultants have been approved by the AGENCY.

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 26-J-P-017, Purchase order # and the AGENCY Project Manager's, Graham Rogers, 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 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

Accounts Payable

**Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070**

7. NOTICES

All communications relating to the day-to-day activities of the provided services will be exchanged between the AGENCY's Project Manager, Graham Rogers or designee, and the CONSULTANT's Senior Vice President, Matthew Baratz.

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 Manager, Graham Rogers or designee, and the CONSULTANT's Senior Vice President, Matthew Baratz via electronic mail to: matthew.baratz@wsp.com.

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 Peninsula Corridor Joint Powers Board 1250 San Carlos Avenue San Carlos, CA 94070

With a copy to: Director, Contracts and Procurement
Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070

If to the CONSULTANT: WSP USA Inc.
Attn: Matthew Baratz
71 Stevenson St., Suite 1000
San Francisco, CA 94105

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

A. General

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, subcontractors, 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 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.

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 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 Appendix A-1, 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

Not Applicable

17. LITIGATION SUPPORT

Not Applicable

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 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 represents that its professional services will be performed in accordance with the professional standards of practices of comparable firms at the time the services are rendered. In addition, CONSULTANT will provide such specific warranties as may be set forth in Work Directives as agreed upon by the Parties.

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 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 violations of the above standard of care and is expected to pay for all work as a result of violations.

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.

1. SMALL BUSINESS ENTERPRISE (SBE) POLICY

See Appendix C for SBE, Small Business Enterprise, prompt payment and reporting requirements.

31. 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.

32. SUBSTANCE ABUSE PROGRAM

Not Applicable

33. 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.

34. ENGINE AND FLEET REGULATIONS.

Not Applicable

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.

**PENINSULA CORRIDOR JOINT POWERS WSP USA INC.: (See footnote below)*
BOARD:**

Signature: _____

Print: Michelle Bouchard

Title: Executive Director

Date: _____

Signature: _____

Print: Shalonda Baldwin

Title: Senior Vice President

Date: _____

Signature: _____

Print: Matthew A. Baratz

Title: Senior Vice President

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.

APPENDIX A-1 INSURANCE REQUIREMENTS

INSURANCE

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 \$5,000,000 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 **\$5 million** per claim or occurrence and **\$5 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 except for Professional Liability 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 general and auto policies affording additional insured status 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.

END OF INSURANCE REQUIREMENTS

APPENDIX B: SCOPE OF SERVICES

1. Introduction

The Agency is seeking on-call professional services for staff augmentation, project management, and technical services for railroad operations which are needed on a wide variety of small- and large-scale efforts and ancillary tasks. Consultants shall provide specialized on-call railroad business and operations support services in the categories listed below, tailored to the unique operational requirements of the Agency's commuter rail system serving the San Francisco Peninsula and Silicon Valley. The Work under the Agreement will be established as needed on an individual Work Directive basis. Specific contract deliverables will be set forth in each Work Directive issued under this Agreement.

Service Categories:

- A. Railroad Operations Support Services
- B. Railroad Business Planning Support Services

The Consultants shall function with overall guidance from the Peninsula Corridor Joint Powers Board (JPB), but will manage and control the day-to-day Work Directive activities and deliverables. Consultants must demonstrate comprehensive understanding of the Agency's unique operating environment, including physical infrastructure, operational characteristics, and regulatory environment.

List of Potential Work Directive Tasks:

Possible tasks that may be required of the Consultant in executing Work Directive assignments include, but are not limited to:

- Evaluate operational impacts of proposed capital improvements
- Support handover process from construction to operations
- Assess integration requirements for new systems and technologies
- Provide operational input to design reviews and value engineering
- Analyze special event service requirements and crowd management
- Support development of service plans for various operational scenarios
- Analyze EMU fleet requirements and deployment strategies
- Develop maintenance scheduling optimization models
- Evaluate lifecycle replacement planning for rolling stock and infrastructure
- Analyze crew scheduling efficiency and optimization
- Develop key performance indicators (KPIs) and benchmarking studies
- Develop operational procedures and best practices documentation
- Support staff development in advanced operational analysis techniques
- Develop methodologies for monitoring Contract Operator performance
- Establish performance metrics and reporting frameworks for KPIs
- Conduct Contract Operator performance audits and assessments

- Support contract negotiations and modifications
- Develop best practices for contract operations management
- Analyze alternate service delivery models and prepare transition plans, as needed
- Assist with mobilization or transition of contracts or contract operators
- Assess regional coordination opportunities and institutional arrangements
- Support development of operating and capital budgets
- Conduct long-range financial planning and scenario analysis
- Analyze fare policy impacts and revenue optimization strategies
- Evaluate funding strategies for service expansion and improvements
- Develop cost allocation methodologies for shared infrastructure
- Support grant applications and funding requests
- Perform market studies for service expansion opportunities
- Develop interagency agreements for shared use of facilities and services
- Support negotiations with freight railroads and other corridor users
- Support Agency in pursuing FRA, FTA, CPUC, or other regulatory waivers
- Other unanticipated projects

2. Scope of Services and Deliverables

As assigned by individual Work Directives, Consultant will conduct:

a) Railroad Operations Support Services

JPB intends to award contracts to one or more firms to provide railroad operations support services. Consultant shall assist Agency's Rail Operations and Maintenance department with a variety of duties including those described below. Consultant shall have the ability to provide on-site representative(s) within 24 hours of notice.

Core Competencies Required:

- Comprehensive knowledge of FRA regulations, operating rules (GCOR/NORAC), and signal systems
- Experience with electrified commuter rail operations, traction electrification system maintenance, and EMU fleet management
- Proficiency in rail operations simulation software
- Understanding of shared-use corridor operations and dispatching protocols

Consultant shall have comprehensive knowledge of and significant experience with railroad operating rules, scheduling, maintenance practices, and electrical systems as well as a thorough understanding of their impacts on train movements, maintenance rules, and practices.

Consultant shall have the ability to determine operational costs and benefits of proposed capital improvement projects and shall provide training in operations simulation/modeling to JPB staff, if requested.

Consultant shall also assist staff with Agency's annual and long range capital, operating, and administrative budgets and plans, including fleet management, asset allocation, and service development.

Consultant shall have the ability to determine the operational and economic impacts of JPB capital and third party projects. Consultant shall support the handover process for assets transitioning from construction

Consultant shall support the Agency on updating and reviewing the agency's Asset Management system as assets are updated (added/removed/refurbished) as well as coordinate with staff and contractors on Configuration Management for planned and unplanned changes.

b) Railroad Business Planning Support Services

JPB intends to award contracts to one or more firms to provide business planning expertise to support the Agency's regional rail system. Consultant shall have comprehensive knowledge of and significant experience in commuter railroad administrative and contracting practices as well as commuter railroad business methodologies, practices, and strategies.

Core Competencies Required:

- Extensive experience in commuter railroad business operations and financial management
- Knowledge of public transit funding mechanisms and revenue optimization
- Understanding of contract operations oversight and performance management
- Experience with interagency coordination and regional transit integration

Consultant shall assist staff with oversight of the JPB's Contractor Operator. Consultant shall have the ability to develop methodologies and best practices for monitoring, reporting, and developing corrective action recommendations for Contract Operator performance in accordance with the Operations and Maintenance Agreement. This oversight support may include analysis of costs, on-time performance, work force allocation, crew efficiencies, key performance indicators, and maintenance of rolling stock, stations, right-of-way, and the traction electrification system.

Consultant shall have the ability to develop and analyze future business strategies, including direct operation of Caltrain by the JPB, continued operation of Caltrain using a Contract Operator, or other institutional arrangements such as integration with California High Speed Rail for a blended corridor. Analyses should compare and contrast the

operational, financial, labor relations, regulatory, governance, and administrative areas of the various options.

Consultant shall participate in the development of interagency agreements which may affect Agency operations requirements, including construction and maintenance agreements with other agencies having projects on or near Agency property.

Consultant shall have the ability to assist staff with the development of RFPs, Independent Cost Estimates (ICE), Work Directives, or other documents related to the aforementioned services.

3. Work Directive Process

Work Directives will be issues in line with Appendix D. Individual Work Directives will specify:

- Detailed scope of work and deliverables
- Project timeline and milestones
- Resource requirements and key personnel
- Budget and cost structure
- Performance metrics and success criteria
- Coordination requirements with JPB staff and other stakeholders

All work shall be performed in accordance with JPB standards, applicable regulations, and industry best practices, with particular attention to the unique operational requirements of the Caltrain system and its role in the regional transportation network.

4. Additional Services as needed

If it should become necessary for JPB to request the Consultant to render any additional services to either supplement the services required in this agreement, then such additional work shall be performed only if set forth in an Amendment to the contract between JPB and the Consultant and issued by the Contracts and Procurement Department. Any such agreed additional work will be performed at the rates set forth in the Cost Proposal and/or Labor Rates as submitted by the Proposer. Any additional services provided by Consultant will relate to the On-Call Railroad Business & Operations Support Services.

END OF SCOPE OF SERVICES

APPENDIX C: SBE REQUIREMENTS

It is the policy of the Agency to ensure nondiscrimination in the award and administration of all contracts and to create a level playing field on which SBEs can compete fairly for contracts and subcontracts relating to the Agency's construction, procurement and professional services activities. To this end, the Agency has developed procedures to remove barriers to SBE participation in the bidding and award process and to assist SBEs to develop and compete successfully outside of the SBE Policy. In connection with the performance of this contract, the Consultant will cooperate with the Agency in meeting these commitments and objectives.

1. SBE Preference

The Agency has a five-point SBE preference to encourage the participation of small businesses on Agency contracts. Award of the contract will be based, in part, on the Proposer's proposed utilization of SBEs. Proposers that are certified SBEs, or who subcontract with certified SBEs will receive the full five points. To claim the SBE preference, a Proposer must complete the SBE Preference Form 7 and include it with its bid submittal.

2. SBE Evaluation

The Office of Civil Rights (OCR) shall review all of the information submitted by Proposers in accordance with the solicitation documents to determine a recommendation regarding compliance with the SBE Preference requirements for award of a contract to the Proposer. The Proposer shall cooperate with the 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 contract with the Agency, the Proposer hereby makes the following assurance and agrees to include this assurance in any contracts it makes with sub-proposers in the performance of this Agreement:

The Proposer or sub-proposer shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Proposer shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Agency Contracts. Failure by the Proposer or sub-proposer to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract 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 Proposer from future bidding as non-responsible.

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

4. SBE Certifications and Resources

The Agency recognizes SBE certifications that do not consider race or gender:

- A. Small Business Administration (SBA) 8(a) provided that a firm's average annual gross receipts do not exceed the cap of \$31.84 million.
https://dsbs.sba.gov/search/dsp_dsbs.cfm
- B. California Department of General Services (DGS) Small Business (SB), SB for Public Works (SB-PW), and Micro Business (MB) certifications:
<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>
- C. SBE certification by the San Francisco Bay Area Rapid Transit Agency
<https://bart.gob2g.com/>
- D. SBE certification by the Santa Clara Valley Transportation Authority
<https://vta.sbdbe.com/>
- E. SBE certification by the Los Angeles County Metropolitan Transportation Authority.
<https://metro.gob2g.com/>
- F. Other SBE certifications may be accepted for this contract only if submitted and approved through the Planet Bids Q&A process.

5. SBE Eligibility

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

- A. A firm (including affiliates) must be an existing small business as defined by Small Business Administration 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 \$31.84 million.

Note: SBA size standards vary by industry and certain industries, such as general construction contracting, exceed the cap of \$31.84 million. A general construction contractor meeting the SBA size standard but exceeding the cap of \$31.84 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 includes that portion of the contract actually performed by a certified SBE with its own forces. SBEs may participate as a Proposer, sub-proposer, joint venture partner, vendor or supplier of materials or services required by the contract.

7. Contract Compliance

- A. Substitution of Subconsultants

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

The Proposer shall utilize the specific SBEs listed to perform the work and supply the materials for which each is listed unless the Proposer obtains prior written consent. Unless prior consent is given, the Proposer 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 a SBE subconsultant is either decertified as a SBE or a subconsultant is certified as a SBE during the life of the Contract, the 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 days from the date of Proposer's receipt of progress payments by the Agency. Within thirty days of satisfactory completion of all work required of the subconsultant, the Consultant shall release any retainage payments withheld to the subconsultant. In the event Consultant does not make progress payments or release retentions to the subconsultant in accordance with the time period specific herein, the Consultant will be subject to a charge of 2% per month on the untimely or improperly withheld payment.

D. Progress Payment Reporting Requirements

The Consultant shall maintain records of all subconsultant participation in the performance of the contract, including 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 subconsultants, suppliers, manufacturers, and truckers (subconsultants) in the Diversity Management and Compliance System (B2Gnow) on a monthly basis. The System, a web-based electronic reporting system, is designed to record the 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 days of an email notification. The subconsultants must

confirm receipt of payment from the Consultant within five days of an email notification.

It is the Consultant 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.

The Consultant shall submit any and all reports requested by OCR.

Prior to receiving final payment, the Consultant shall submit a final report to the OCR showing all payments to be made to subconsultant(s) and suppliers after receipt of final payment. The Consultant shall not receive final payment prior to the approval of OCR. The Consultant shall submit the final payment report on a form provided by OCR.

8. Administrative Remedies

In the event the Consultant fails to comply with the SBE, prompt payment, and/or reporting requirements of this contract 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, imposition of liquidated damages, and termination of the contract in whole or in part.

END OF SBE REQUIREMENTS

APPENDIX D: 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.

END OF WORK DIRECTIVES

APPENDIX E: CONSULTANT'S PROPOSAL

Final Draft

**AGREEMENT BETWEEN THE
PENINSULA CORRIDOR JOINT POWERS BOARD (JPB) AND
WABTEC TRANSPORTATION SYSTEMS, LLC (PROVIDER)**

AGREEMENT SUMMARY

Board of Directors' Date of Award: March 5, 2026

Resolution Number: 2026-XX

Effective Date of Agreement: April 1, 2026

Services to be Performed (Section 1): PADS and ROCS Improvements

Term of Agreement (Section 5): 16-months Term

Provider's Key Representative Contact Information (Section 4):

Name: Stephanie Starnes

Title: Program Manager

E-mail: stephanie.starnes@wabtec.com

Phone: 410-353-9235

Mailing Address: 984 Waugh Chapel Way, Suite K, Gambrills, MD 21054

Compensation (Section 4): Board approved not-to-exceed amount of **\$856,798**

*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.

This Agreement executed this 1st day of April, 2026 (the "Effective Date") is entered into between Wabtec Transportation Systems, LLC, having a place of business at 30 Isabella Street, Pittsburgh, PA 15212, (hereinafter referred to as "WABTEC" or "Provider") and the Peninsula Corridor Joint Powers Board having a place of business at 1250 San Carlos Avenue, San Carlos, CA 94070 (hereinafter referred to as "JPB" or "Customer").

RECITALS

WHEREAS, the CUSTOMER desires to enter into a agreement with PROVIDER for the PADS and ROCS Improvements

The parties hereby agree as follows:

1. DEFINITIONS

"Affiliate" shall mean any entity which directly or indirectly controls, is controlled by, or under common control with, a Party to the Agreement (as defined below), but only so long as such control exists, control being the direct or indirect ownership of at least fifty percent (50%) of the stock entitled to vote upon election of directors or persons performing similar functions, or direct or indirect ownership of the maximum percentage permitted under local laws or regulations in those countries where 50% percent ownership by a foreign entity is not permitted.

"AIM Software License" shall mean the license agreement executed December 3, 2009.

"Contract" shall mean this Agreement, the applicable Statement of Work and any Contract Documents attached to or otherwise specifically referenced by the Statement of Work along with any applicable Change Orders (as defined below) and/or amendments signed by both parties.

"Contract Documents" shall mean documents and agreements attached to or otherwise specifically referenced by a Statement of Work. Contract Documents may include license agreements, specifications, payment schedules, pricing schedules, and similar types of documents.

"Change" means (a) request(s) by Customer for any changes to the Products, Software, Services or other work under a Contract, (b) a Change in Law as defined below, or (c) extra work that is not part of the work set forth in a Contract is discovered during the performance of the Contract.

"Change in Law" means any change to or adoption of any governmental (whether federal, state, or local) laws, rules, regulations, or requirements applicable to the Products, Services, or Software that would adversely affect Provider with respect to provision of the Products or Software or the performance of the Services (for example, implementation of tariffs, duties, or other similar taxes, more stringent emissions requirements, or cyber security regulations) (each a "Change in Law").

"Customer" shall refer to the Peninsula Corridor Joint Powers Board, a joint powers authority duly formed pursuant to the laws of the State of California having contracted with Provider to provide the services described in the Exhibits.

"Customer Affiliate" shall refer to Transit America Services, Inc. (TASI), the Union Pacific Railroad Company, the San Mateo County Transit District, the City and County of San Francisco, and the Santa Clara Valley Transportation Authority.

"Customer Data" and all references to data owned by Customer shall mean only the raw data generated by the assets (mobile or otherwise) of Customer in its original format and/or as entered into the Services by the personnel of Customer.

"Customer Partner" means any independent contractor directly contracting with Customer, or who provides services to Customer as a subcontractor, who complies with the following criteria: (a) the

contractor or other third party is not a Competitor of Wabtec and (b) Customer has directed such contractor to keep the Provider Data, Software, and all related information confidential on terms no less stringent than this Agreement and the Software License Agreement; and (c) the contractor or other third party has a need to use the Provider Data, Software, and related information, and only uses the Provider Data, Software, and related information on behalf of Customer to provide services to Customer for the use permitted in accordance with this Agreement and the Software License Agreement.

“Competitor” means a third party who offers products, materials, software or services similar to, or with similar functionality to the specific Provider Data or Software under the applicable SOW.

“Confidential Information” shall mean information including, but not limited to, financial statements, product information, manufacturing capabilities, passwords, documents, data, and business records of a Party and its Affiliates, which either Party or its Affiliates discloses to the other or which either observes or comes into contact with during the performance of this Agreement. Without limiting the foregoing, Provider’s Confidential Information also includes (a) data regarding the performance of Software, (b) any information related to the display and internal processing of data by the Software, and (c) any other data that describes directly or indirectly the internal behavior of the Software, and Customer’s Confidential Information includes Customer Data (as hereinafter defined). Confidential Information shall not include information or documentation that (i) is or becomes publicly available (other than through a breach by a Party or its Representatives of this Agreement), (ii) becomes available on a non-confidential basis from a third-party source that the Party receiving such information or documentation has confirmed (after such inquiry as would be reasonable under the circumstances) is not bound by a confidentiality agreement or other legal or contractual obligation of confidentiality, or (iii) is independently developed by a Party or its Representatives without reference to any Confidential Information.

“Exhibits” contained in this document are as follows:

- EXHIBIT A Statement of Work or SOW
- EXHIBIT B Insurance Requirements

“General Terms and Conditions” or **“GTCs”** means sections 1 through 44 of the Agreement.

“Intellectual Property” or **“IP”** means intellectual property rights, including proprietary rights arising under (i) patent law, (ii) copyright law, (iii) trademark law, (iv) design patent or industrial design law, (v) semiconductor chip or mask work law, or (vi) any other statutory provision or common law principle applicable to this Agreement which may provide a right in ideas, formulae, technical requirements, algorithms, concepts, inventions or know-how generally, including trade secret law, or their expression or use as well as all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of such proprietary right, including derivative works.

“Internal Business Purposes” means the internal ordinary course business operations of Customer; provided however “Internal Business Purposes” exclude any 1) expansion in or to operations occurring due to a business merger or acquisition, 2) fleet addition or rail network expansion, 3) management or servicing of a third party’s fleet, equipment or assets, or 4) infrastructure acquisition or development after the Effective Date.

“IP Claim” is a claim brought by a third party that a Product infringes upon the Intellectual Property rights of any third party's trade secret, trademark, service mark, copyright or patent issued as of the date of the Agreement.

“Liabilities” mean claims, liabilities, losses, reasonable and necessary expenses actually incurred (including, but not limited to, reasonable attorneys' fees), fines, penalties, taxes or damages.

“Laws” shall mean all statutes, ordinances, rules, regulations, decisions, judgments, rulings, injunctions, orders, and similar decrees of governmental and judicial authorities that are applicable to the Services or to the rail operations of Customer.

“NTP” means Notice to Proceed

“PADS” means Predictive Arrival Departure System

“**Products**” means the equipment, spare parts, materials, supplies, and other goods Provider has agreed to supply to Customer under this Agreement, but excluding Software.

“**Provider Data**” means any and all: (i) Software Documentation; (ii) software, information, methodologies, know-how technology and materials, including any technical or functional descriptions, requirements, and plans that are provided by or used by Provider in connection with the Services, (iii) all intermediate data used to create the output that is created by any of the Services or Software, and (iv) enhancements to or modifications, and derivatives of any of the foregoing. For clarity, Provider Data does not include any specifications, requirements or functional descriptions owned by Customer or its Affiliates that are provided to Provider, which shall remain the sole and exclusive property of Customer or such Affiliates, as applicable.

“**Provider Indemnitees**” mean Customer, and its directors, officers, employees, agents, Affiliates, successors, and assigns.

“**Provider IP**” means any and all Intellectual Property rights associated with, or contemplated by, this Agreement.

“**Purchase Order**” or “**PO**” means a purchase order issued by the Customer that specifies the Purchase Order Information.

“ROCS” means Rail Operations Control System

“**Services**” shall be as described in Exhibit A SOW.

“**Software Documentation**” means any written material directly associated with and ordinarily provided with the Software to any customer, end user, or licensee of the Software. This includes, for example and without limitation, software manuals of the kind that would ordinarily be provided “in the box” with commercial off-the-shelf software or product manuals of the kind that would ordinarily be provided “in the box” with boxed products that are commercially available.

“**Software License Agreement**” shall mean the AIM Software License Agreement entered into between PROVIDER and the CUSTOMER dated December 3, 2009.

2. ELIGIBILITY FOR SERVICE

Unless otherwise agreed by Provider, the Services shall only be performed on the System(s) identified in the SOW. The availability and/or the performance of the Services is conditioned on payment by the Customer per the terms of this Agreement, and the continued availability, on commercially reasonable terms, of any needed third-party equipment, hardware, or third-party software licenses.

3. TERM OF AGREEMENT

The term of this Agreement will begin upon the Effective Date of this Agreement and continue through July 31, 2027, unless amended herein or earlier terminated in accordance with Section 23 herein.

4. COMPENSATION

Fee: Provider’s fees (“Fees”) for performance of the Services are set forth in Exhibit A SOW..

5. MANNER OF PAYMENT

Provider must submit invoices/billing statements on a quarterly basis in accordance with the payments established in Exhibit A. Each invoice/billing statement must provide a description of the work performed during the invoice period, the invoice period, and the Customer Project Manager's name.

The Customer will pay approved invoices/billing statements within thirty (30) calendar days of their receipt. The Customer reserves the right to withhold payment solely for any defective Services, to the Provider if the Customer determines that the quantity or quality of the work performed is defective, as defined in the WD or Statement of Work. The Customer will provide written notice to the Provider within ten (10) business days of the Customer's decision not to pay and the reasons for non-payment. If Provider disagrees with the Customer's decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes the Customer's decision to the Customer within thirty (30) calendar days of the Customer's notice.

If Provider does not provide written notice in accordance with this section, it waives all rights to challenge the Customer's decision.

Invoices shall be submitted in soft copy format (PDF) via email to AccountsPayable@samtrans.com

All payments are to be remitted via wire transfer or check via: Wire

Transfer to:

Account Number:	1008980116
Legal Title/ Sub-title:	Wabtec Transportation Systems LLC
Account Type:	Checking
Routing (ABA) ACH & Wire:	043000096
SWIFT:	PNCCUS33

6. Change & Changes Orders

In the event of a Change, the Parties shall:

- a. negotiate the cost increases or decreases related to such Change and any applicable increases or decreases in the time to perform obligations; and
- b. enter into a mutually agreed upon written order signed by each Party that sets forth a description of the Change and the increases in compensation and, if applicable, performance time (a "Change Order" or an "Amendment").
- c. If the parties cannot reach agreement on such adjustments to the Fee within a reasonable period of time, such dispute shall be resolved pursuant to the dispute resolution provision contained in Section 21 herein.

Provider shall not be bound to address any Change until the Parties mutually agree upon a Change Order/Amendment in writing, unless Customer Project Manager issues a change request in which case Provider will proceed with the subject change and submit a complete proposal for a Change Order/Amendment within ten (10) business days following receipt of the Change. The parties shall negotiate a Change Order/Amendment based on such proposal in good faith. To the extent that the Parties cannot reach consensus on a Change Order/Amendment, then Provider must still

proceed with the change directive, subject to the dispute resolution process herein. To the extent there is a disagreement between the Parties as to whether materials and/or services constitute a Change to the Contract, then Customer may issue a disputed work directive for Provider to proceed, subject to the dispute resolution process herein. In the case a change directive that is subject to the dispute resolution process, Customer shall pay Provider, in accordance with Article 5, any actual reasonable material costs incurred by Provider to implement such directive.

7. CUSTOMER RESPONSIBILITIES

Throughout the performance of this Agreement, the Customer undertakes, at its own cost to:

- a. Allow access to the System by Provider representative(s) at a time mutually agreeable to the parties, and shall ensure that each Service call can be carried out in accordance with current rules and regulations, including but not limited to safety; and
- b. Ensure the participation and/or availability of escorts and technical staff with knowledge of the customer systems and facilities during Service calls, if requested by Provider; and
- d. Make available to the Provider representative(s) facilities enabling them to carry out the Service work such as, for example, a telephone, a fax line; and

Have in place policies and procedures required to protect and safeguard the Customer's computer data, programs and files, and to take all necessary steps to ensure compliance with all confidentiality and security requirements.; and provide all needed access rights and use rights to third-party software; and

- f. Provide all needed descriptions and specifications to Customer developed applications which require the use of special or proprietary hardware.

8. Ownership and Infringement

8.1. Work Deliverables. Any and all copies (whether physical or electronic) of documents, reports, and other materials prepared, or in the process of being prepared, as part of the Services and identified in a Statement of Work as deliverables to be the property of the Customer (the "Deliverables"), excluding Provider's intellectual property and other Confidential and/or proprietary information (including documentation and materials), will be and are the property of the Customer. Provider will deliver such material to Customer and will permit Customer to retain a copy of all such material. If any materials are lost, damaged, or destroyed before final delivery to the Customer, the Provider will replace them at its own expense and the Provider assumes all risks of loss, damage, or destruction of or to such materials. Any Deliverables remaining in the hands of the Provider or in the hands of any subcontractor upon completion or termination of the Services shall be promptly delivered to Customer.

8.2. Intellectual Property.

8.2.1. Products and Services delivered under the Agreement are based on technology developed solely by Provider or its suppliers, and Provider or its suppliers retain ownership of all intellectual property rights therein, except that Provider may not use Deliverables produced for Customer, including Customer Data, without express written permission from Customer. Provider's work is not a work made for hire, no rights or licenses are granted to Customer unless expressly provided for in the AIM® Software License Agreement, effective the 3rd of December 2009 as amended

8.2.2. Provider and its Affiliates own (or otherwise have the authority to license) any and all Provider IP included in the Services. Provider has, and will retain, title, exclusive ownership rights and all Intellectual Property rights and other rights and interests in and to the Provider Data, the Software, the Software Documentation and the products, in the

content thereof and in the ideas and concepts embodied therein, and in any and all copies, modifications, alterations and enhancements to the Provider Data, Software, the Software Documentation and the products. Customer will not acquire any rights in or to the Provider Data, the Software or products, or any of the Intellectual Property rights in the Services, except for the licenses granted under the Software Licenses or this Agreement. All the Software, products and Software Documentation are copyrighted by Provider or its Affiliates, are deemed trade secrets and are otherwise confidential information and proprietary to Provider or its Affiliates and will remain the sole and exclusive property of Provider or its Affiliates. Notwithstanding anything in this Section, Customer acquires title and ownership to all Products it has purchased under this Agreement and has all rights attendant with such title and ownership, including but not limited to the right to use and dispose of such Products, subject to any IP or other restrictions contained herein.

8.2.3. The Provider 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 rights of any third party.

9. DATA OWNERSHIP AND RIGHT TO USE

- 9.1. All Provider Data is proprietary to and shall remain the sole property of Provider. Customer is granted a limited license for any Provider Data delivered by Provider to Customer. This limited, non-exclusive, non-transferable, personal license allows Customer to use Provider Data for Customer's Internal Business Purposes. All Customer Data shall remain the sole property of Customer.
- 9.2. Customer may not, without prior written consent from Provider, distribute copies of the Provider Data to others, except to Customer Affiliates and Customer Partners and in such event solely as necessary to permit Customer to use the Provider Data as permitted by this Agreement and subject to all restrictions provided in this Agreement. Provider and Customer acknowledge that the Provider Data is provided and protected pursuant to contractual obligations, and may be further protected by copyright, trade secret, and patent laws of the United States of America (and by applicable international treaties). Customer may not, and shall ensure that the Customer Partners and the Customer Affiliates do not, decompile, reverse engineer, disassemble, or reduce any Software to a human-perceivable form. CUSTOMER MAY NOT, AND SHALL ENSURE THAT THE CUSTOMER AFFILIATES AND CUSTOMER PARTNERS DO NOT, MODIFY, ADAPT, TRANSLATE, LEASE, LOAN, RESELL, DISTRIBUTE, OR CREATE DERIVATIVE WORKS BASED UPON THE SOFTWARE, THE PROVIDER DATA OR ANY PART THEREOF, INCLUDING THE LOOK AND FEEL OF ANY SOFTWARE, AND MUST NOT OTHERWISE COMMERCIALY EXPLOIT THE SOFTWARE OR PROVIDER DATA OR MAKE THE SOFTWARE OR PROVIDER DATA AVAILABLE TO ANY THIRD PARTY. However, nothing in this section shall limit the ability of Customer to (i) transfer, distribute, copy, recreate, or make available the Customer Data to any third party, or (ii) to derive work from or commercially exploit the Customer Data, or (iii) modify the databases created from the Software to improve the functioning, interfacing, data presentation or other aspects of Customer utility of such databases.
- 9.3. Except for Customer Partners as necessary to permit Customer to use the Provider Data or Software as permitted by this Agreement and the Software License Agreement and subject to all restrictions provided in this Agreement and the Software License Agreement, Customer shall not, without prior written consent from Provider: (i) allow any third party to access Provider Data or Software, such as, but not limited to, intercepting equipment data streams, particularly during operation of equipment and/or (ii) use Provider Data or

Software, or provide Provider Data or Software to any other person, for the design, manufacture, repair, or maintenance of any products or processes. Customer shall not, and shall instruct Customer Partners and Customer Affiliates not to use Provider Data or Software in the creation, manufacture, development, or derivation of repair and maintenance processes, modifications, spare parts, designs or configuration changes, or to obtain any regulatory approval of any of the foregoing. Nothing herein shall prohibit Customer from forward selling a product acquired hereunder in which applicable Software is installed. Nothing herein shall obligate the Provider to provide any support, upgrade or revision to any Software, except as otherwise agreed in writing between Customer and Provider or otherwise required by applicable law and/or regulation.

- 9.4. Provider does not represent that the products or Software are compatible with any specific third-party hardware or software, other than as expressly specified in a writing signed by Provider. Customer is responsible for providing and maintaining an operating environment that meets the minimum standards specified by Provider.
- 9.5. With respect only to any Customer Data, and for only as long as Services are being provided to Customer, Provider is granted a non-exclusive, irrevocable, worldwide limited license to use any Customer Data for purposes of improving Provider's Software and Services, which includes without limitation maintenance, development, research, upgrade or improvement of products, software and services; provided, however, that in the event Customer Data includes any personally identifiable information, Provider must anonymize and aggregate the Customer Data and must otherwise comply with all laws applicable to the use of personally identifiable information.

10. CONFIDENTIALITY

- 10.1. Provider and Customer (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information in connection with this Contract. Provider and Customer agree that all Software and Data delivered by Provider to Customer, as well as the Fees or other associated fees for products, Software and Services shall be considered Provider's Confidential Information. Except as set forth below, Provider and Customer shall keep confidential, and not disclose or use for any purpose other than performance of the Contract and use of Products and Services, any Confidential Information of the other Party.
- 10.2. Paragraph 10.1 shall not restrict the Receiving Party from disclosing Confidential Information as follows: (a) Provider may disclose Confidential Information to its affiliates and subcontractors in connection with performance of the Contract; (b) a Receiving Party may disclose Confidential Information to its auditors and tax advisors; (c) Customer may disclose Confidential Information to lenders as necessary for Customer to secure or retain financing needed to perform its obligations under the Contract; (d) a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party; (e) the Receiving Party may disclose Confidential Information in response to a subpoena from a court, arbitration panel, or government or administrative body if it both promptly provides the Disclosing Party with written notice of the discovery request such that the Disclosing Party is able to seek a protective order or other appropriate remedy and cooperates with the Disclosing Party to obtain the protective order or other remedy; in the event that the protective order or other remedy is not obtained, the Receiving Party shall use commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information; (f) Customer may disclose Provider Confidential Information to Customer Partners to the extent necessary for Customer to use the Services or Software as permitted by this Agreement and subject in all instances to this Section; and (g) to the extent necessary to enforce the Receiving Party's rights under the Agreement. Provider may also retain one archive copy of Customer's Confidential Information.

- 10.3. Neither Party, its employees, subcontractors, and agents shall release any reports, information or other materials prepared in connection with this Contract, whether deemed confidential or not, to any third party, subject to the exceptions in this Section 10.3 and Section 30 herein, without the approval of the disclosing Party. This provision does not limit the Customer in any way from including Confidential Information as part of any submittals to the FRA or other regulatory and or industry entities to which the Customer must make submittals as part of Caltrain services. Notwithstanding the foregoing, a Party shall be responsible for any subsequent disclosure or misuse of Confidential Information by any recipient to whom such Confidential Information was disclosed by such Party. This provision also does not prohibit either party from releasing any Confidential Information to the extent that it is required by law, including the California Public Records Act, or by court order to do so. In such event, the party releasing the materials shall notify the other party as soon as practicable and, in all events, a reasonable time in advance of releasing any of those reports, information or other materials to any third party and shall only release to the extent required by the applicable law.
- 10.4. The obligations under this Section 10 shall not apply to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (ii) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party; or (iii) is independently developed by Receiving Party, its representatives or affiliates, without reference to the Confidential Information.
- 10.5. Each Disclosing Party warrants that it has the right to disclose the Confidential Information that it discloses. Neither Customer nor Provider shall make any public announcement about the Contract without prior written approval of the other party.
- 10.6. Nothing in this Section 10 grants the Receiving Party any license under any invention, patent, trademark or copyright now or later owned or controlled by the Disclosing Party. As to any individual item of Confidential Information, the restrictions of this Section 10 shall expire the earlier of ten (10) years after the date of disclosure or five (5) years after termination or expiration of the Contract. This Section does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

11. USE OF SUBCONTRACTORS

The Provider shall not subcontract any services to be performed by it under this Agreement without the prior written approval of the Customer, except service firms engaged in drawing, reprographics, typing, and printing. Any subcontractors must be engaged under written contract with the Provider with provisions allowing the Provider to comply with all requirements of this Agreement, including without limitation the "Ownership of Work" provisions in Section 8. The Provider shall be solely responsible for reimbursing any subcontractors and the Customer shall have no obligation to them.

12. RESPONSIBILITY: INDEMNIFICATION

12.1. Indemnity by Provider.

12.1.1. To the fullest extent permitted by law, Provider agrees to indemnify, defend, and save harmless Customer, Customer Affiliates, and their respective directors, officers, agents and employees (each a "Customer Indemnitee") from and against loss, claim, liability, cost, and expense (including attorney's fees and other reasonable expenses of litigation or arbitration) which any Customer Indemnitee may incur, sustain, or be subject to

on account of:

- (a) any claims of third parties brought against any Customer Indemnitee for the bodily injury or death of any person or damage to property, to the extent attributable to (1) negligence or willful misconduct by Provider or its Affiliates and/or its or their employees in the performance of the Services, or (2) negligence or willful misconduct by consultants, agents, contractors, subcontractors, or suppliers of Provider in the performance of the Services, or (3) any defect in the design, manufacture, materials or workmanship of the Services performed or supplied by Provider or its employees, Affiliates, consultants, agents, contractors, subcontractors, or suppliers.
 - (b) any claim of TASI or Union Pacific Corporation against Customer for the bodily injury or death of any person or damage to property, to the extent attributable to (1) negligence or willful misconduct by Provider's or its Affiliates' employees in the performance of the Services, or (2) negligence or willful misconduct by consultants, agents, contractors, subcontractors, or suppliers of Provider in the performance of the Services, or (3) any defect in the design, manufacture, materials or workmanship of the Services performed or supplied by Provider or its employees, consultants, agents, contractors, subcontractors, or suppliers..
 - (c) Notwithstanding Sections 12.1.1(a) and (b) above, Provider will not assume the risk of injury to persons (including death) or damage to property and shall not indemnify and save harmless any Customer Indemnitee from and against any loss, liability, cost, and expense (including costs of litigation or arbitration and attorney's fees) only to the proportional extent such injury (including death), damage, loss, liability, cost, or expense is caused by the negligence or willful misconduct of any Customer Indemnitee.
- 12.1.2 Provider agrees to indemnify, defend, and hold harmless the Customer Indemnites from any claims, losses, damages or expenses (including attorney's fees) alleging the infringement of any third party's Intellectual Property Right ("IP Claim") by any Products, Software or other portion of the Services supplied in connection with this Agreement by Provider or its Affiliates or subcontractors (the "Article" for purposes of this Section 12.1.2 only). However, the foregoing shall not apply to the extent that (i) the Article was provided by any of the Customer Indemnites; (ii) the Article was used by the Customer Indemnites other than as approved by Provider or as contemplated by the Agreement, and such use is the basis of the IP Claim; (iii) the Article was combined by a Customer Indemnitee with other materials or IP not supplied by Provider, and such combination was not approved in a writing signed by an authorized representative of Provider and is the basis of the IP Claim; (iv) the IP Claim arises from any alteration, modification or revision of the Article by or on behalf of any Customer Indemnitee and such alteration, modification or revision was not approved in a writing signed by an authorized representative of Provider; (v) the Customer Indemnitee fails to use or implement any corrections or enhancements to the Article, as instructed by Provider for the purpose of avoiding and/or mitigating the IP Claim in accordance with 12.1.2(a) below..
- (a) If an Article is found, or in Provider's opinion, is likely to be found, to constitute an infringement of another party's Intellectual Property right, Provider must, at its option and expense (i) secure for Customer the right to continue the use of the affected Article, or (ii) replace the infringing Article with substantially equivalent noninfringing Article; or (iii) modify the infringing Article so that it becomes noninfringing; provided that Provider will consult with Customer as to the selection of (i), (ii), or (iii) and none of Provider's actions under (i), (ii), or (iii) may adversely affect the safety, operation,

or maintenance of the Customer's commuter rail operations or require Customer to incur any cost or liability. In the event that Provider, after using all commercially reasonable efforts, is unable to achieve any of the foregoing results, Customer shall return and/or cease use of the affected Article and Provider will reimburse Customer for any amounts paid to Provider for such Article, without prejudice to Customer's rights to recover damages relative to the affected Article, or in the case of an infringement that materially impairs the value or utility of the Article, declare a default under Section 8.2 herein. The provisions of this Section 12.1.2 state Provider's entire maximum liability, and the Customer's sole and exclusive remedies, with respect to any IP Claims.

12.2. Indemnity by Customer.

12.2.1 To the fullest extent permitted by applicable law, Customer agrees to indemnify, defend, and save harmless Provider and its directors, officers, agents, consultants, Affiliates and employees (each, a "Provider Indemnified Party," and cumulatively, the "Provider Indemnitees") from and against loss, claim, liability, cost, and expense (including attorney's fees and other reasonable expenses of litigation or arbitration) which any Provider Indemnitee may incur, sustain, or be subject to on account of:

- (a) any claims of third parties brought against any Provider Indemnitee for the bodily injury or death of any person or damage to property, to the extent attributable to Customer's, or its consultants', agents', contractors' or subcontractors' (excluding Provider) negligence or intentional misconduct; or
- (b) any claims of a Provider Indemnitee for the bodily injury or death of any person or damage to property, to the extent attributable to Customer's, or its consultants', agents', contractors' or subcontractors' (excluding Provider) negligence or intentional misconduct.
- (c) Notwithstanding Sections 12.2.1 (a) and (b) above, Customer shall not assume the risk of injury to persons (including death) or damage to property and shall not indemnify and save harmless any Provider Indemnitee from and against any loss, liability, cost, and expense (including costs of litigation or arbitration and attorney's fees) to the extent such injury (including death), damage, loss, liability, cost, or expense is caused by the negligence or willful misconduct of any Provider Indemnitee.

12.3. For the indemnities set forth in this Section 12, the indemnifying party agrees to defend any and all such actions, suits or claims subject to the indemnification obligation, and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached, against an indemnitee, the indemnifying party shall, at its expense, satisfy and discharge the same. This indemnification will survive termination or expiration of the Agreement.

12.4. **WAIVER OF INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES**

To the fullest extent provided by law, in no event shall either party or their respective directors, officers, shareholders, employees, agents, assigns, or direct successors in interest be held liable for incidental, indirect, consequential, exemplary or special damages of any kind or nature, including, but not limited to loss of any profit or revenue, commercial loss, loss of data, theft, damage to or loss of property, injuries or deaths as the result of or related to this Agreement. This applies even if the party is advised of the possibility of such damages, or of any claim by any third party.

13. LIMITATION OF LIABILITY

Notwithstanding any language to the contrary in this Agreement, to the fullest extent permitted by law, Customer agrees that Provider and its contractors, subcontractor's, suppliers, consultants, officers, directors, agents and employees (collectively under this paragraph "Provider ") total aggregate liability to Customer and all Customer Indemnitees for any and all injuries, claims, losses, expenses, costs (including without limitation reasonable attorneys' fees and court costs), or damages arising out of or in any way related to the project or this Agreement from any cause or causes including but not limited to Provider's negligence, errors, omissions, strict liability, breach of contract, breach of warranty or otherwise (hereafter "Customer's claims") shall not exceed the total value of the Agreement, as set forth in Section 4 hereto. Provided, however, that the liability cap shall not apply to (1) Provider's indemnification obligations as set forth in Section 12.1 hereto or (2) any of Customer's claims to the extent arising from fraud or willful misconduct by Provider.

14. INSURANCE

The insurance requirements are attached hereto and incorporated herein to this Agreement in Exhibit B, Insurance Requirements.

15. PERFORMANCE BOND

Not applicable.

16. PROVIDER'S STATUS

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

17. ASSIGNMENT

This Agreement and any interest herein or claim hereunder may not be assigned by either party either voluntarily or by operation of law without the advance written consent of the other party.

18. CUSTOMER WARRANTIES

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

19. CUSTOMER REPRESENTATIVE

Except when approval or other action is required to be given or taken by the Board of Directors of the Customer, the Customer's Executive Director or Deputy General Manager, or such person or persons as they shall designate in writing from time to time, shall represent and act for the Customer.

20. WARRANTY OF SERVICES

- 20.1. Provider warrants that Products shall be delivered free from defects in material, workmanship and title and Services shall be performed in a competent, diligent manner in accordance with the professional standards of practices normally exercised by comparable firms providing services of a similar nature.
- 20.2. Unless otherwise stated in the Contract: (i) the warranty period with respect to a Product (other than spare parts) and Software embedded in a Product shall be fifteen (15) months from the date of Product receipt, or twelve (12) months from the date the Product has been placed in service after completion of acceptance testing by Customer within a reasonable time, whichever occurs first; (ii) the warranty period for new spare parts purchases shall be twelve (12) months from the date of Customer's receipt of spare parts; (iii) the warranty period for Services shall be three (3) months from performance of the applicable Service; (iv) notwithstanding the foregoing, the warranty period for ongoing Services such as support services or Software-as-a-Service (including, without limitation, any Products, Software and other deliverables provided as part of such Services) shall be concurrent and co-terminus with the term of the Contract for such Services; and (v) notwithstanding the foregoing, unless otherwise expressly agreed by Provider, the warranty period for repair services performed on out-of-warranty Products shall be ninety (90) days from the completion of the repaired services (the "Warranty Period"). The warranty for the repair services performed on out-of-warranty Products shall be limited to the workmanship of the services and any new parts provided as part of the service, but do not extend to the failed Product itself.
- 20.3. The warranties and remedies are conditioned upon: (i) proper storage, installation, use, operation, and maintenance of Products and Software, as applicable; (ii) Customer keeping accurate and complete records of operation and maintenance during the Warranty Period and providing Provider access to those records; (iii) modification of products, Software, or Services only as authorized by Provider in writing; (iv) compliance with the restrictions applicable to Software as set out herein; and (v) Customer providing such information as is necessary for Provider to replicate and validate any non-conformance of Software with the foregoing warranties. Provider's obligations under this Section 19 shall not apply to: (a) any off the shelf consumer goods that may be incorporated into the products by Customer; (b) any product that is normally consumed in operation; (c) any product that has a normal life inherently shorter than the Warranty Period specified in Section 19.2; (d) any product, Software or Service that has been subjected to any other kind of misuse, neglect, accident, damage or detrimental exposure, has been involved in an accident, or has been subject to an event of force majeure including, without limitation, any of the events described in Section 40, or has otherwise been damaged or fails as a result of external causes outside the reasonable control of Provider, (e) any third party Software installed by Customer, or (f) has been damaged due to abrasion, corrosion or deterioration (outside of normal wear and tear). In the event Customer uses non-Provider parts or software or non-Provider approved repairs, then any damage to, failure of, or performance degradation of the products, Software or Services indirectly or directly resulting from the use of such parts, software or repairs, shall not be warranted by Provider. Further, if such parts, software or repairs cause personal injury, death or property damage to third parties, Customer shall indemnify and hold Provider harmless from all claims and liabilities connected therewith.
- 20.4. In the event that any Services are deficient because of Provider's or its subcontractors' failure to perform said Services in accordance with the warranty standards set forth above, Customer shall report such deficiencies in writing to Provider within a reasonable time, and Provider shall re-perform defective Services at Provider's expense. If despite Provider's reasonable efforts, Provider and Customer confer and jointly determine that non-conforming Services cannot be re-performed, Provider shall refund or credit monies paid by Customer for such non-conforming Services. Warranty repair, replacement or re-performance by Provider shall not

extend or renew the applicable Warranty Period.

- 20.5. This Section 19 provides the sole and exclusive remedies for all claims based on failure of or defect in the Products covered by a warranty, except for Provider's indemnification obligations set forth in Section 12 and except for any obligations detailed in the SOW. The warranties provided in this Section 19 and the Software License Agreements are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory. NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES. THE PRODUCTS, SERVICES AND SOFTWARE ARE NOT SAFETY DEVICES AND MUST NOT BE RELIED ON OR USED AS SAFETY DEVICES IN REPLACEMENT OF COMPREHENSIVE AND PROPER TRAINING, OVERSIGHT AND OPERATION. PROVIDER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT: (A) SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR-FREE OR WILL MEET CUSTOMER'S SPECIFIC NEEDS; (B) SOFTWARE WILL DETECT ANY PARTICULAR FAILURE, FAULT, OR CONDITION, OR PROVIDE ANY PARTICULAR DEGREE OF ADVANCE WARNING OF AN IMPENDING FAILURE, FAULT OR CONDITION OF THE MONITORED EQUIPMENT; OR (C) SOFTWARE WILL PROVIDE COMPLETE OR COMPREHENSIVE PROTECTION AGAINST ALL POSSIBLE SECURITY VULNERABILITIES, UNAUTHORIZED INTRUSIONS, OR ANY OTHER FORM OF SECURITY THREAT, COMPROMISE OR VULNERABILITY, WHETHER KNOWN OR UNKNOWN, FORESEEABLE OR UNFORESEEABLE. ANY PRODUCTS, SERVICES OR SOFTWARE NOT EXPRESSLY INCLUDED IN PROVIDER'S SCOPE OF RESPONSIBILITIES IN THE CONTRACT ARE EXCLUDED.

21. CLAIMS OR DISPUTES

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

The Provider shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the Customer, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given the Customer due written notice of a potential claim. The potential claim shall set forth the reasons for which the Provider 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 Customer, such notice shall be given to the Customer prior to the time that the Provider has started performance of the work giving rise to the potential claim for additional compensation. In all other cases, notice shall be given within ten (10) calendar days after the happening of the event or occurrence giving rise to the potential claim.

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

If an agreement can be reached which resolves the Provider 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 Provider claim, they may choose to pursue a dispute resolution process or termination of the Agreement.

22. DISPUTE RESOLUTION.

22.1. In the event of a dispute relating to this Agreement, the parties will first attempt to resolve the dispute by discussion at the operational and project manager level, such personnel being determined by each respective party. If such discussions do not resolve the dispute, the parties will act in good faith to escalate the discussion as necessary to include Provider's General Manager and the Authority's Chief Operations Officer, or their equivalents. If such discussions still do not resolve the dispute, the parties agree to escalate the dispute with each side submitting their written position regarding the dispute. The written statements will be exchanged between the Chief Executive Officer or equivalent, or their designee, of each party. The Chief Executive Officers or equivalent, or their designees, shall agree to meet and try in good faith to resolve any dispute.

22.2. The parties may, upon mutual agreement, submit disputes to alternative dispute resolution procedures including mediation or arbitration, under terms agreed to by both parties. Each party will bear the costs and expenses incurred by it in connection with such dispute resolution. The cost of any independent decision maker will be shared equally between the parties.

22.2.1. Mediation. Either Party may refer the Dispute to JAMS mediation by providing to JAMS and the other Party a written request for mediation, setting forth the subject of the Dispute and the relief requested. The Parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The Parties must participate in the mediation in good faith and share equally in its costs. Either Party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or at any time following forty-five (45) days from the date of filing the written request for mediation, whichever occurs first ("Earliest Initiation Date"). The mediation may continue after the commencement of arbitration if the parties so desire.

22.2.2. Arbitration. Any Dispute referred to arbitration pursuant to this Section 21.2.2 shall be subject to binding arbitration administered by JAMS pursuant to the then then-current version of the JAMS Comprehensive Arbitration Rules and Procedures and, where requested by either Party within five (5) days after the Dispute being referred to arbitration, pursuant to the JAMS Expedited Arbitration Procedures. The number of arbitrators shall be three, unless the amount of potential damages is less than one million dollars, in which case there shall be one arbitrator. The place of arbitration shall be San Mateo County, California, and it shall be held as promptly as possible at such time as the arbitrators may determine. If there is any inconsistency between the JAMS rules and this arbitration provision, the terms of this arbitration provision will control. The decision of the arbitrators will be final and binding upon the Parties (except in the case of fraud), and the fees and expenses owed to JAMS and the arbitrators will be shared equally between the Parties. Judgment upon the arbitration award may be entered in any court of competent jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.

22.3. If the parties are unable to resolve a dispute through the process set forth in this Section 21, either party may bring an action as appropriate in state or federal court, in San Mateo County or the Northern District of California.

23. TEMPORARY SUSPENSION OF WORK

Customer, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as Customer may deem necessary. Provider shall comply with the written order of Customer to suspend the work wholly or in part. The suspended work shall be resumed when the Provider is provided with written directions from Customer to resume the work, subject to Provider and Customer agreeing on the date on which the work will resume and making any other necessary revisions to this Agreement (i.e. as a result of a change in requested scope or timelines).

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

24. TERMINATION

24.1. Termination for Convenience. The Customer may terminate this Agreement in its entirety, or any portion of the Services, for convenience at any time by giving thirty (30) days written notice to the Provider. Upon receipt of such notice, the Provider may not commit itself to any further expenditure of time or resources, except for costs reasonably necessary to effect the termination. If the Customer terminates the Agreement, or any portion of the Services in the Agreement, for convenience, the Customer agrees to pay the Provider, in accordance with the provisions of Sections 5 and 6, all sums actually due and owing from the Customer upon the effective date of such termination, plus any costs reasonably necessary to effect the termination. Provider 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 Customer upon the effective date of the termination for convenience. Provider and its subcontractors must cooperate, in good faith and at Customer's expense, in any transition to other vendors or consultants as the Customer deems necessary. At Customer's request, Provider shall also use commercially reasonable efforts to have any subcontracts related to the Services assigned to Customer, rather than terminated. Provider's costs for all such transition work shall be paid by Customer, at Provider's standard rates, within thirty (30) days of receipt of Provider's invoice for the same. For the avoidance of doubt, Provider shall not be required, as part of the transition services or otherwise, to provide Customer with a license to any of Provider's or any third party's intellectual property rights free of charge.

24.2. Termination for Default. If the Provider fails to perform any of the provisions of this Agreement, Customer may terminate the Agreement for default if the Provider 1) does not cure such breach within seven (7) Business Days; or 2) if the nature of the breach is such that it will reasonably require more than seven (7) Business Days to commence to cure, provide a plan to cure such breach which is acceptable to the Customer within seven (7) Business Days. In the event of the filing a petition for bankruptcy by or against the Provider or for appointment of a receiver for Provider's property, Customer may terminate this Agreement immediately without the thirty-day cure period.

Upon receipt of a notice of termination for default, the Provider may not commit itself to any further expenditure of time or resources. The Customer agrees to remit final payment to the Provider in an amount to cover only those sums actually due and owing from the Customer for work performed in accordance with the terms of the Agreement as of the effective date of termination. The Customer is not in any manner liable for the Provider's actual or projected lost profits had the Provider 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 Customer upon the effective date of the termination for default.

Within thirty (30) days of receipt of written notice from Provider to pay any undisputed Fees, Customer must (a) pay such undisputed fees or (b) provide Provider with a written statement describing why such payment cannot be made within 30 days. If Customer provides such written statement, the parties shall confer to develop a mutually agreed upon plan for payment. If Customer fails to pay the undisputed fees or issue such written statement within 30 days of Provider's written notice, Provider may terminate the Agreement. Provider may terminate this Agreement for (a) a breach by Customer of its confidentiality obligations or (b) a breach of a Software License Agreement, only after the parties have first gone through the dispute resolution process detailed in Section 21. .

25. LIQUIDATED DAMAGES

Not applicable.

26. PREVAILING WAGES

Not applicable.

27. MAINTENANCE, AUDIT, AND INSPECTION OF RECORDS

All Provider and subcontractor costs incurred in the performance of this Agreement will be subject to audit. The Provider and its subcontractors/subconsultants shall permit the Customer, or its authorized representatives to inspect, examine, take excerpts from, transcribe, and copy the Provider'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 Provider pursuant to this Agreement. The Provider shall also provide such assistance as may be required in the course of such audit. The Provider shall retain these records and make them available for inspection hereunder for a period of five years after expiration or termination of the Agreement.

If, as a result of the audit, it is determined by the Customer'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 Provider agrees to reimburse the Customer for those costs within 60 days of written notification by the Customer.

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

The Provider shall not discriminate on the basis of race, color, creed, national origin, sex, or age in the performance of this Agreement. The Provider shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, the PROVIDER 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.

In accordance with Executive Order ("EO") 14173, and only to the extent that the referenced EO is applicable to Wabtec as a Provider under this Agreement, Provider agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's

payment decisions for purposes of section 31 U.S.C. §3729(b)(4) and certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) that violate any applicable Federal anti-discrimination laws.

The Provider 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 Provider 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 Customer deems appropriate.

29. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

In connection with the performance of this Agreement, the Provider 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 Provider 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 Provider further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

30. CONFLICT OF INTEREST

a. General

Depending on the nature of the work performed, a Provider of the Customer may be subject to the same conflict of interest prohibitions established by [the Federal Transit Administration (FTA), Federal Highway Administration (FHWA) and (for Federally-funded Agreements)] California law that govern CUSTOMER'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, PROVIDER and its employees may be required to disclose financial interests.

The Provider 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 Provider 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, Provider may be required to publicly disclose financial interests under the Customer's Conflict of Interest Code. Upon receipt, the Provider agrees to promptly submit a Statement of Economic Interest on the form provided by Customer.

No person previously in the position of Director, Officer, employee or agent of the Customer shall

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 Provider by making any formal or informal appearance, or any oral or written communication, before the Customer, or any Officer or employee of the Customer, for a period of twelve (12) months after leaving office or employment with the Customer 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

Provider shall 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 Customer; 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.

Provider shall not engage the services of any Subcontractor or independent contractor on any work related to this Agreement if the Subcontractor or independent contractor, or any employee of the Subcontractor or independent contractor, 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 Provider becomes aware of an organizational conflict of interest in connection with the work performed hereunder, Provider immediately shall provide the Customer with written notice of the facts and circumstances giving rise to this organizational conflict of interest. Provider'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, Customer becomes aware of an organizational conflict of interest in connection with Provider's performance of the work hereunder, Customer shall similarly notify Provider.

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

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

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

Failure to comply with this section may subject the Provider to damages incurred by the Customer

in addressing organizational conflicts that arise out of work performed by Provider, or to termination of this Agreement for breach.

31. CALIFORNIA PUBLIC RECORD ACT REQUESTS (CPRA)

Provider 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 to the extent required by the CPRA and waives all claims against the Customer, its directors, officers, employees, and agents, for the disclosure of such information. If the Provider did not include a confidentiality index in its proposal, the Customer will have no obligation to withhold any information from disclosure and may release the information sought without liability to the Customer.

Upon receipt of a request pursuant to the CPRA seeking this Agreement, proposal material relating to this RFP, the Customer 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 Customer determines that information in the confidentiality index is not exempt from disclosure, the Customer will give reasonable notice to the Proposer prior to releasing any material listed in the confidentiality index.

Provider agrees to indemnify, defend, and hold harmless the Customer, 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 Provider fails to accept a tender of a defense, the Customer reserves the right to resolve all claims at its sole discretion, without limiting any rights stated herein.

32. 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, in the event and to the extent ordered by the court of competent jurisdiction or factfinder, or as otherwise negotiated by the Parties at the time of the dispute.

33. SEVERABILITY

If any provision of this Agreement shall be deemed invalid or unenforceable, that provision shall 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 shall remain in full force and effect.

34. NO THIRD PARTY BENEFICIARIES

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

35. APPLICABLE LAW

This Agreement, its interpretation and all work performed under it shall be governed by the laws of the State of California. The Provider 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 Customer.

36. CLAUSE HEADINGS

The headings and subheadings of clauses contained herein are used for convenience and ease of reference and do not limit the scope or intent of the clause.

37. WAIVER

Any waiver of any breach or covenant of this Agreement must be in 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 shall not be construed to be a waiver of any succeeding breach or any other covenant unless specifically and explicitly stated in such waiver.

38. RIGHTS AND REMEDIES OF THE JPB

Unless expressly stated otherwise in the Agreement, the rights and remedies of the Parties provided herein are not exclusive and in addition to any other rights and remedies provided by law or under the Agreement.

39. BINDING ON SUCCESSORS

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

40. NOTICES

Any notice required under this Agreement shall be deemed given either when served personally or when sent by first-class mail addressed to the parties at the addresses set forth in this Agreement.

Every written notice required or contemplated by this Agreement shall be sent to the following addresses:

If to PROVIDER:

Jeyaramesh Balasubramaniam
Director, Program Management, Surface Transportation
5011 Gate Parkway, Bldg. 100, Suite 400,
Jacksonville, FL 32256
(667) 423-8383
Email: jeyaramesh.balasubramaniam@wabtec.com

With a copy to:

Wabtec
Attn: Legal Department
30 Isabella St

Pittsburgh, PA 15212

If to CUSTOMER:

Board Secretary
Peninsula Corridor Joint Powers Board,
San Mateo County
1250 San Carlos Ave. San Carlos, CA 94070

41. PROHIBITED INTEREST

No member, officer, or employee of the Customer during his or her tenure or for one year after that tenure shall have any interest, direct or indirect, in this Agreement or the proceeds under this Agreement.

42. FORCE MAJEURE AND EXCUSABLE DELAY

- a. Provider shall not be liable or considered in breach of its obligations under this Contract to the extent that Provider's performance is delayed or prevented, directly or indirectly, by any cause beyond its reasonable control including, but not limited to, acts of God, fire, terrorism or terroristic threats, cyber-attacks, war (declared or undeclared), epidemics, pandemics, nationally or locally required or suggested shutdowns or sanctions, material shortages, insurrection, , any act or omission by any government agency or other governmental authority (including but not limited to confiscation, nationalization, requisition, expropriation, prohibition, embargo or restraint), strikes, labor disputes, transportation shortages, provided Contractor notifies the Director, Contracts & Procurement in writing of the causes of nonperformance or delay within five (5) Business days from the beginning of any such nonperformance or delay. If an excusable event occurs, the schedule for Provider's performance shall be extended by the amount of time lost by reason of the event plus such additional time as may be needed to overcome the event and resume performance.
- b. If acts or omissions of the Customer or its affiliates (or their agents or other contractors or Providers) cause the delay, Provider shall not be held responsible and may also be entitled to an equitable price adjustment.

43. OBSOLESCENCE.

Notwithstanding anything herein to the contrary, from time to time versions of Software or products may become obsolete and no longer available for purchase or license from Provider, In such event, Provider shall be obligated to maintain support for such obsolete Software or products, including any Warranty Period, for a period to be agreed upon by the Parties, though in no event for less than one (1) year from the time Customer has been put on written notice by Provider of such Software or product's obsolescence (the "Obsolescence Period"). Prior to completion of the Obsolescence Period, Provider will offer Customer, though Customer shall not be obligated to purchase from Provider, the next generation software or product or new version of the software or product, if any is available, on terms no less reasonable overall than such terms as Provider offers to third parties. If Customer does not procure the next generation software or product or the new version of the software or product if any is available, or if none is available, then following the Obsolescence Period, Provider shall have no further obligation with respect to pending orders for such obsolete Software and Products, and shall (after expiry of the applicable Warranty Period for such obsolete Software previously licensed to Customer or obsolete Products previously purchased by Customer) no longer be obligated to perform any Services

being purchased hereunder to the extent related to the obsolete Software or Products.

Notwithstanding anything herein to the contrary, from time to time third party software, components, features, and/or applications (collectively, "Third Party End of Life products") within Software or products may cease to be provided by the third party. In such event, and provided the preceding paragraph herein does not apply, Provider shall not be obligated to continue offering said Third Party End of Life products after the end of life date provided by the third party, except that in the event (i) any third party offers a next generation or new version, or suitable replacement of the Third Party End of Life products (including a different third party than that currently providing such product), and (ii) inclusion of the next generation new version, or replacement is, in Provider's discretion, technically compatible to incorporate into the applicable Software or products, the Provider will incorporate the next generation, new version into the applicable Software or products and will offer same to Customer on terms no less reasonable overall than such terms as Provider offers to third parties. If Customer does not procure the Software or product with the next generation, new feature or application or suitable replacement, then Provider shall have no further obligation with respect to pending orders for the affected Software or products, and shall no longer be obligated to perform any Services being purchased hereunder to the extent related to the Third Party End of Life products.

44. 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 Provider and the Customer. 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, by and through their authorized representatives, do approve and accept this Agreement as of the date of the last signatory.

**PENINSULA CORRIDOR JOINT POWERS
BOARD**

**WABTEC TRANSPORTATION SYSTEMS,
LLC**

Signature

Signature

Michelle Bouchard / Executive Director
Print Name / Title

Nima Tehrani / Group Vice President
Print Name / Title

Date

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
STATEMENT OF WORK

EXHIBIT B

INSURANCE REQUIREMENTS

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 leased employees 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 other persons, firms or corporations (hereinafter collectively referred to as "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 be \$2 million per occurrence and in the annual aggregate. 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 JPB 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. TYPES AND SCOPE OF INSURANCE

1. Workers' Compensation and Employer's Liability Insurance.

- a. Workers' Compensation with Statutory Limits.
- b. If the California Labor Code requiring Workers' Compensation applies, the CONTRACTOR shall also maintain Employer's Liability coverage with limits of \$2 million per employee, per accident, per disease.
- 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 **\$5 million** per occurrence and a general aggregate limit of **\$5 million**. Such insurance shall cover 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 **\$5 million** per accident.

- 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. Professional Liability Insurance.

A Professional Liability insurance policy covering errors and omissions having limits of liability of **\$5 million** per claim or occurrence and **\$5 million** annual aggregate. The policy shall include coverage for all services and work performed under this Agreement.

B. ENDORSEMENTS

1. Additional Insured.

The General Liability, Business Auto Liability and excess General Liability and Business Auto Liability 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, and volunteers 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 Workers' Compensation, General Liability, Business Auto Liability and related excess 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, and employees 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 General Liability, Business Auto Liability and related excess policies shall indicate that they are primary to any other insurance and the insurance company(ies) without right of contribution from any of the insurance effected or which may be effected by the JPB.

4. Separation of Insureds.

The General Liability policy and excess General Liability policy 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 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.**

Upload Certificates of Insurance to:

<https://vendors.planetbids.com/portal/68007/portal-home>

In addition, the CONTRACTOR shall promptly deliver 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 within thirty days of the expiration date of any required insurance policy.

D. GENERAL PROVISIONS

1. Notice of Cancellation.

The Contractor shall provide at least 7 days' written notice to CONTRACTOR of cancellation or non-renewal. CONTRACTOR must then provide at least 7 days' prior written notice to JPB if any of the above policies are non-renewed or cancelled and not concurrently replaced.

Submit written notice to:

Peninsula Corridor Joint Powers Board
ATTN: Risk Manager
1250 San Carlos Avenue
San Carlos, CA 94070

OR

Email Address: rushm@samtrans.com

2. Acceptable Insurers.

All policies will be issued by insurers acceptable to the JPB (generally with a Best's Rating of A- 8 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.
- c. If insurance is terminated for any reason and the insurance not concurrently replaced with similar insurance 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.

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, and employees even if CONTRACTOR is not a named defendant in the lawsuit.

AGREEMENT BETWEEN

PENINSULA CORRIDOR JOINT POWERS BOARD, (AGENCY)

AND

BURNS ENGINEERING, INC. (CONSULTANT)

AGREEMENT SUMMARY*

Board of Directors' Date of Award: March 5, 2026

Resolution Number: 2026-XX

Effective Date of Agreement: April 1, 2026

Services to be Performed (Section 1): On-Call Rail Systems Engineering Business Operations Support Services

Term of Agreement (Section 3): Five (5) year term

Consultant's Key Representative (Section 4):

Name: Alva Carrasco

Title: Regional Director

Company: Burns Engineering, Inc.

Address: 300 North Continental Blvd., Suite 540, El Segundo, CA 90245

Phone: (310) 220-0978

Email: acarrasco@burns-group.com

Board-approved aggregate amount: Board approved not-to-exceed, aggregate amount of \$22,807,692

*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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DRAFT

This AGREEMENT for On-Call Rail Systems Engineering Business Operations Support Services (Agreement) is entered into by and between the Peninsula Corridor Joint Powers Board (AGENCY) located at 1250 San Carlos Avenue, San Carlos, CA 94070 and Burns Engineering, Inc. (CONSULTANT), a Pennsylvania Corporation located at 300 North Continental Boulevard, Suite 540, El Segundo, CA 90245 ("the Parties").

1. SCOPE OF SERVICES

This is an Agreement to provide On-Call Rail Systems Engineering Business Operations Support 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 engineering support 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 September 30, 2025, the Scope of Services of which is attached hereto and incorporated herein as Exhibit A, as supplemented by CONSULTANT's written proposal dated November 20, 2025, attached hereto and incorporated herein as Attachment C.

2. AGREEMENT DOCUMENTS

This Agreement consists of the following documents:

- (1) This Agreement, including Attachment A-1, Insurance Requirements
- (2) Exhibit A, Scope of Services
- (3) Exhibit B, Consultant's Proposal including negotiated cost/labor rates.
- (4) Exhibit C, Work Directives Process
- (5) Exhibit D, Federal Requirements
- (6) Exhibit E, SBE and Prompt Payment Reporting Requirements

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-year term commencing upon April 1, 2026 and ending on March 31, 2031. 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.

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 Alva Carrasco, Regional Director 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 Attachment C.

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 Twenty-Two Million Eight Hundred Seven Thousand Six Hundred Ninety-two Dollars (22,807,692) plus a 10 percent 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.

5.1. GENERAL

Compensation for each project performed under the Agreement will either be **Cost-Plus-Fixed-Fee with a ceiling (CPFF)** or **Specified Rate of Compensation (SRC)**.

Project pricing will be allowable only to the extent that estimated costs and costs incurred are compliant with Federal cost principals contained in Title 48, Code of Federal Regulations, Part 31. Any costs for which payment has been made to CONSULTANT, which are determined by subsequent audit to be unallowable under these Federal cost principals, are subject to repayment by CONSULTANT to the AGENCY.

CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT's Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.

When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the AGENCY Project Manager before exceeding such estimate. Progress payments for each project will be made monthly in arrears based on services provided and actual costs incurred.

CONSULTANT shall not commence performance of work or services until this Agreement has been approved by AGENCY, and notification to proceed has been issued by AGENCY Procurement Administrator. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.

Fixed Fees shall be negotiated prior to the signing of the Agreement and shall apply throughout the life of the Agreement.

5.2. COST OF WORK

The cost of work shall be calculated as the sum of the direct labor times a multiplier for payroll burden, employee benefits, and overhead costs, plus other direct costs as set forth in this Section.

5.3. DIRECT LABOR

5.3.1. GENERAL

Direct Labor Rates shall be as set forth in Attachment C to this Agreement and shall stay in effect for the first year of the Agreement. The hourly rates (direct labor costs) are subject to salary administration as set forth in Title 48 Code of Federal Regulations Part 31.

Charges by CONSULTANT, and subconsultants, for an employee's time shall in no instance exceed the actual amount paid to such employee for time directly spent on services performed under this Agreement by such employee.

For new personnel to be approved after contract award, CONSULTANT, and subconsultants, shall submit a written request to the Procurement Administrator and provide the person's name, job title, current actual rates, and resume, for review and approval.

New personnel must be approved prior to their commencing work under a project. Work performed by personnel not previously approved in writing by the AGENCY shall be at CONSULTANT's own risk.

5.3.2. Straight Time

Straight time payroll is to be the equivalent annual salary/wage divided by 2080 hours per annum for employees approved to perform services under this Agreement.

5.3.3. Overtime

The AGENCY will reimburse CONSULTANT, and subconsultants, the straight time portion and premium time portion (if payable to the employee in accordance with the CONSULTANT'S employment policies) of its employee's actual overtime pay during performance of services under this Agreement, provided that the AGENCY has approved the overtime, in writing, prior to the incurring of said overtime. Overtime charges must reflect overhead rates reduced by non-applicable employee benefits.

5.4. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

5.4.1. General

CONSULTANT, and subconsultants, multipliers may be inclusive of the markups for payroll burden, employee benefits and office overhead for each office location as defined below. The multiplier is fixed for the first year of the Agreement.

The agreed-upon multipliers shall be used for CONSULTANT's and subconsultants' home office and AGENCY-Furnished Field Office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in Exhibit B "Consultants Proposal and Labor Rates," dated January 2, 2026.

5.4.2. Payroll Burden

CONSULTANT and the AGENCY agree that the following will be considered as Payroll Burdens and as such will be paid to CONSULTANT, and subconsultant's, as compensation for said costs, as set forth below. "Payroll Burden" is defined as:

The cost of all a) employment taxes, b) CONSULTANT's, and subconsultant's, portion of social and retirement charges and c) contributions imposed by law, or labor contract contributions (if applicable), or regulations, with respect to or measured by CONSULTANT's, and subconsultant's, payroll, including but not limited to, the CONSULTANT's, and subconsultant's, cost of owner-required insurance.

5.4.3. Employee Benefits

"Employee Benefits" for CONSULTANT's and subconsultant's employees is defined as The cost of all contractual and voluntary employee benefits, including but not limited to, holidays, vacations, sick leave, jury duty leave, group medical, life insurance, salary continuance insurance, bonus schemes (including Director's drawings of dividends), employee stock ownership plan, savings plan, retirement plan, relocation benefits, and all other employee benefit plans.

5.4.4. Indirect Costs (Office Overhead)

CONSULTANT, and subconsultants, shall be compensated through an agreed-upon multiplier for overhead, which includes those administrative, clerical, word processing, accounting, and other support staff utilized in performing services under this Agreement, which are not explicitly included in the Proposal or who have been approved by the AGENCY.

These rates will remain fixed for the initial year of the Agreement. These rates will be reviewed annually on the anniversary of the effective date of the Agreement, for the CONSULTANT and its subconsultants and may be adjusted upon AGENCY approval.

5.4.4.1. CONSULTANT and subconsultants Home Office Overhead rate shall apply to personnel assigned in CONSULTANT's and subconsultant's Home Office in support of the performance of services under this Agreement. Home Office Indirect Cost Rates (overhead) included in the CONSULTANT's proposal, including those of their subconsultants, must be substantiated by the most recent (within 12 months) audited reports available, which clearly show the calculations. All such reports shall comply with FAR reporting requirements. If audited reports are not available for subconsultants, the CONSULTANT will provide alternate information (i.e. other comparable public agency contract rates) to the AGENCY to review for acceptance. The AGENCY will have the final decision as to what is acceptable.

5.4.4.2. AGENCY-Furnished Field Office Overhead rate shall apply to CONSULTANT's, and subconsultant's, personnel assigned to an AGENCY-Furnished Field Office on a full-time basis, for a period of at least 120 calendar days. As these rates cannot be pre-determined by audit, the AGENCY reserves the right to negotiate this rate for each firm.

5.5. Maximum Fixed Fees (Profit)

5.5.1. General

Maximum Fixed Fee percentages shall apply throughout the life of the Agreement. The CONSULTANT's fixed fee amount for each project may be negotiated on an individual project basis. Said fixed fee amount shall not be altered unless there is a significant alteration in the scope, complexity or character of the work to be performed under a Project.

The maximum fees, as a percentage of fully burdened Direct Labor Cost, allowable by the AGENCY shall not exceed:

Systems Engineering Support Services –

Nine Percent (9%)* for Consultant's home office (Home);

Eight Percent (8%)* for Agency's field office (Field);

Subconsultants markup – Zero Percent (0%)

5.6. OTHER DIRECT COSTS (ODCs)

5.6.1. General

Other Direct Costs, including subconsultant's projects, shall be proposed at cost with a Zero Percent (0%) markup.

5.6.2. Allowable ODCs

Examples of allowable include, but are not limited to: mileage, parking, tolls, mail costs, film, photo developing, facsimiles, printing/copying, plan reproduction, blueprint services, and subconsultants directly associated with the project. Expenditures for each allowable ODC in excess of \$500.00 per month, and not included above, shall require advance approval by the AGENCY. Supporting documentation is required for reimbursement of all ODCs.

5.6.3. Subconsultants

With regard to subconsultants, the AGENCY will pay the cost of work as defined in Section 5.2 through Section 5.6.4 with Zero Percent (0%) markup. The CONSULTANT may be compensated for initial, or one-time, charges incurred in establishing a project or for pre-approved administration charges.

5.6.4. Limitations on Direct Costs - The Following Are Limitations:

(1) Vehicles - If applicable and approved by the Agencies, rental vehicles and their support costs are limited to a total maximum of \$500 per month, per vehicle. The standard Internal Revenue Service mileage rates shall apply for use of a personal vehicle.

(2) Travel Expenses - All travel and relocation related plans must be approved in writing by the AGENCY prior to the commencement of the travel. If written approval is received for relocations, travel, temporary accommodations and or assistance, FAR 31.205-46(a) Sections 1 and 2 and Federal Travel Regulation (41 CFR 301-304) for San Mateo County, California, will apply. Lodging and per diem rates shall not exceed the U.S. General Services Administration (GSA) rate at the time of travel for the specific project site. Costs incurred for travel, subsistence, and relocation of personnel engaged in the performance of services under this Agreement, if approved in advance by AGENCY will include the following:

- Relocation expenses, travel, temporary accommodations, and/or subsistence related to mobilization travel to the CONSULTANT's dedicated project office or to AGENCY-Furnished Field Office for CONSULTANT and subconsultant personnel permanently assigned to the project. Such expenses shall be reduced by any amount received from others by CONSULTANT or subconsultant for demobilization from the prior project assignment.

- Travel, accommodations, and subsistence (directly related to the Scope of Services) for business trips to the Project Site, to AGENCY's consultants and suppliers, or to other locations approved by the AGENCY. Such travel may originate at CONSULTANT's or subconsultant's home office or branch office, or at the CONSULTANT's dedicated field office, or at AGENCY's central or field offices.

5.6.5. Unallowable ODCs

The following ODCs are not allowable unless they are authorized by prior written approval of the AGENCY's authorized representative:

- Costs associated with registration for training, seminars, and technical association meetings.
- Costs associated with employee incentive compensation including cash bonuses, suggestion awards, safety awards, and other forms of incentive compensation.
- Costs associated with leasing, maintaining, insuring, and operating dedicated project vehicles.
- Computer hardware and software support, software licenses, or cellular phone usage.
- Safety equipment such as steel-toed boots, safety vests, and hard hats.
- Insurance
- Cellular phones
- Cost of any normal equipment, tools, or vehicles (unless approved) hired, leased or purchased for the performance of services, provided that the depreciated value of such items purchased by CONSULTANT shall be credited to the AGENCY at the completion of the work performed under this Agreement.
- Shipping
- Drafting supplies
- Surveying supplies
- Models and renderings

All other ODCs that are not identified in 5.6.2 are considered unallowable ODCs and must be authorized by prior written approval of the AGENCY's authorized representative.

5.7. Maximum Compensation Amount

A maximum not-to-exceed amount as set forth in the project shall apply for each project.

Further, it is expressly understood and agreed that in no event shall CONSULTANT be compensated in an amount greater than the amount specified in any individual project for the services performed under such project without issuance of a written Amendment to such project by the AGENCY's Procurement Administrator.

If at any time, CONSULTANT has reason to believe that the total compensation payable for the performance of services under this Agreement will exceed the maximum not-to-exceed amount as set for in the project, CONSULTANT shall notify the AGENCY immediately in writing to that effect, indicating the estimated additional amount necessary to complete the services in the project. Any cost incurred by CONSULTANT in excess of the not-to-exceed amount as set forth in the project shall be at CONSULTANT's own risk.

5.8. Flow Down

CONSULTANT shall include the requirements regarding audits, compensation and reimbursement for costs and fees in its subconsultant's agreements, provided such subconsultants have been approved by the AGENCY.

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-J-P-109, Purchase order # [TBD] and the AGENCY Project Manager's and Contract Administrator'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 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 Manager, or designee, and the CONSULTANT's Program Manager, or designee.

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 Manager or designee, and the CONSULTANT's Program Manager via electronic mail.

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
Peninsula Corridor Joint Powers Board,
1250 San Carlos Avenue
San Carlos, CA 94070

With a copy to: Director, Contracts and Procurement
Peninsula Corridor Joint Powers Board,
1250 San Carlos Avenue
San Carlos, CA 94070

If to the CONSULTANT: _____
Attn: _____

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**

General

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, subcontractors, 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 Executive Director or designee.

10. USE OF 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.

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 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 or to the extent caused by any of the following:

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

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 Attachment A-1, 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 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

CONSULTANT warrants that its professional services will be performed in accordance with the professional standards of practices of comparable _____ firms at the time the services are rendered. In addition, CONSULTANT will provide such specific warranties as may be set forth in Work Directives as agreed upon by the Parties.

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:

The right to have the CONSULTANT re-perform such services at the CONSULTANT's expense; or

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.

The right to terminate the Agreement for default.

CONSULTANT will be responsible for all errors and omissions and is expected to pay for all engineering support services 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

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.

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.

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. PREVAILING WAGE

Not Applicable.

26. 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, FTA, the U.S. DOT Office of Inspector General, and the Comptroller General of the United States, or any of 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.

27. 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.

28. 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.

29. 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.

30. SBE AND PROMPT PAYMENT POLICY

See Attachment E for SBE, and prompt payment reporting requirements.

31. CONFLICT OF INTEREST

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 the Federal Transit Administration (FTA), Federal Highway Administration (FHWA) (for Federally-funded Agreements) and 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.

CONSULTANT's duties and services under this Agreement shall not include preparing or assisting the AGENCY with any portion of the AGENCY's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the AGENCY. The AGENCY entering this agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. CONSULTANT'S participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. CONSULTANT shall cooperate

with the AGENCY to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by CONSULTANT pursuant to this Agreement.

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.

32. SUBSTANCE ABUSE PROGRAM

The AGENCY adheres to US DOT/FTA federal regulations, 49 CFR Parts 40 and 655, governing mandatory drug and alcohol testing and education for “safety-sensitive” employees. Pursuant to these regulations, the AGENCY requires that contractors who “stand in the shoes” of the AGENCY are subject to these regulations, and must have a Substance Abuse Policy, a drug and alcohol testing program and provide training for its safety-sensitive employees. CONSULTANT is required to comply fully with all Department of Transportation (“DOT”) and Federal Transit Administration (“FTA”) regulations prohibiting drug use and alcohol misuse by all operators and maintenance personnel or employees of subcontractors performing safety-sensitive functions. The CONSULTANT’s policy, testing program and training must comply with these regulations: 49 CFR Part 655, (*“Prevention of Prohibited Drug Use in Transit Operations and Prevention of Alcohol Misuse in Transit Operations”*) and 49 CFR Part 40, (*“Procedures for Transportation Workplace Drug and Alcohol Testing Procedures”*).

CONSULTANT will be required to cause its prospective safety-sensitive employees who may be assigned to perform safety-sensitive duties for the AGENCY to undergo pre-employment drug testing and make drug test result inquiries of prior DOT-regulated employers. Safety sensitive employees will also be subject to post-accident testing, reasonable suspicion testing, and random testing, and other tests as required by 49 CFR Part 655.

The CONSULTANT must notify the AGENCY’s Project Manager/Contract Administrator immediately of any violation of the regulations or failure to test.

Any employee of the CONSULTANT found to have violated the drug and alcohol regulations is subject to removal from duties under the contract, depending on the facts and circumstances of the situation.

If the CONSULTANT utilizes their own pre-established program or a third-party administrator’s, CONSULTANT must fully cooperate with the AGENCY in such monitoring efforts, provide any requested documents or information, and comply with any corrective action that the AGENCY requires of CONSULTANT. CONSULTANT further agrees to annually certify its compliance with Part 655 by December 1st and to submit the Management Information Systems (“MIS”) reports before March 1st (for the prior calendar year) to the AGENCY. CONSULTANT agrees that all records produced and maintained in

the performance of the program are subject to review by the AGENCY in a facility not more than 100 miles away. Further, CONSULTANT may be required to submit quarterly MIS reports to the AGENCY.

CONSULTANT agrees to submit within thirty (30) days of award of the contract (1) verification that its safety-sensitive employees are included as part of a random testing pool; (2) a copy of CONSULTANT's substance abuse policy; and (3) the name of its third-party administrator, if applicable. Failure to submit such documents within the prescribed time period, or failure to submit any other documentation relevant to the substance abuse testing requirements as required by the AGENCY, may result in the Agreement being terminated for default.

33. 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.

34. ENGINE AND FLEET REGULATIONS.

The CONSULTANT is considered the fleet owner and operator, and is solely responsible for compliance with all provisions of the California Air Resources Board (CARB) engine and fleet regulations and the payment of any fines or penalties imposed by CARB or the U.S. Environmental Protection Agency (EPA) resulting from the CONSULTANT's non-compliance. The CONSULTANT shall indemnify, hold harmless, and defend (with legal counsel chosen by the AGENCY at the CONSULTANT's expense)

the AGENCY against any violation notices issued, or enforcement actions brought, by CARB or EPA involving the CONTRACTOR's non-compliance.

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.

PENINSULA CORRIDOR JOINT POWERS BOARD: **BURNS ENGINEERING, INC.:** (See footnote below)*

Signature: _____

Signature: _____

Print: Michelle Bouchard

Print: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

Signature: _____

Print: _____

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.

ATTACHMENT A-1: INSURANCE REQUIREMENTS

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 subcontractors, subconsultants, suppliers, temporary workers, independent contractors, 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 JPB. Prior to beginning work under this Agreement, CONSULTANT shall provide the JPB's authorized insurance consultant, Insurance PlanetBids, 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 CONSULTANT 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 CONTSULTANT'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 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 **\$5** million per claim or occurrence and **\$5** 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 CONSULTANT. The purpose of this coverage is to protect CONSULTANT 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, CONSULTANT shall provide to PlanetBids, the JPB'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 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

<https://vendors.planetbids.com/portal/68007/portal-home>

In addition, the CONSULTANT shall promptly deliver to PlanetBids 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 PlanetBids 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 JPB's authorized insurance consultant, PlanetBids, if any of the above policies are non-renewed or cancelled.

Submit Certificates of Insurance to:
Peninsula Corridor Joint Powers Board

C/O

<https://vendors.planetbids.com/portal/68007/portal-home>

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 CONSULTANT's agreement to waive subrogation against the JPB 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 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

- 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 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 CONSULTANT 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, 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, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if CONSULTANT or subcontractor is not a named defendant in the lawsuit.

EXHIBIT A: SCOPE OF SERVICES

The Peninsula Corridor Joint Powers Board (“JPB” or Agency”) is seeking On-Call Professional Support Services in Systems Engineering, with a focus on Train Control and Rail Operations Systems. This scope encompasses a broad spectrum of systems, spanning rail vehicle onboard systems, back-office system applications, wayside systems, and their associated communication and network infrastructures.

Consultant shall provide technology and management services related to the planning, designing, implementation, operations, maintenance and management of various railroad system initiatives. Consultant shall be able to provide technical and functional support in sufficient depth to meet the Agency’s project requirements. Such depth shall be demonstrated in the proposal.

Consultant may be requested to assist staff with the development of RFP’s or other documents in reference to the aforementioned services.

The Work under the Agreement will be established as needed on an Individual Work Directive basis. Specific contract deliverables will be set forth in each individual Work Directive issued under this Agreement. The Consultants shall function with overall guidance from the JPB, but will manage and control the day-to-day Work Directive activities and deliverables.

Consultant shall assist staff with oversight of the JPB’s Commuter Rail Operations Systems. Consultant shall provide services related to the operation of the Caltrain rail systems including but not limited to:

- Computer Aided Dispatch (CAD)
- I-ETMS based Positive Train Control (PTC) System
- SCADA (Supervisory Control And Data Acquisition) systems for traction power director systems
- Back Office Systems deployment, maintenance, and administration
- System Integration and Interface Control Documents (ICD), drafting, maintenance, and adherence
- Wayside Passenger Information Systems (GPS and track-circuit based vehicle location systems, prediction algorithms, and digital signage)
- Public Address Audio Systems
- Radio Dispatch and VoIP Systems
- Closed Circuit TV (CCTV)
- Onboard control systems
- Networks and communications infrastructure
- Wayside and Onboard Radio and cellular systems

- Systems Engineering best practices
- Technical Project Management
- Rolling Stock and Wayside equipment health and monitoring systems
- Inventory and Asset Management Systems
- Change Control practices and software tools
- Configuration Management practices and software tools
- State of good repair for all systems
- Datacenter, virtual environments, and cloud environment system maintenance and operation.
- PTC Interoperable Train Control (ITC) Committees
- Regulatory Compliance (e.g. FRA, CPUC, etc.)

List of Potential Work Directives Tasks

Tasks that may be required of the Consultant in executing Work Directive assignments include, but are not limited to:

- Support systems in revenue service operations
- Subject Matter Expertise (SME) for troubleshooting various systems such as log analysis; defect analysis, trend analysis, and resolution planning
- Defect and enhancement tracking, develop requirements and planning
- Products and market research, facilitate technology demonstrations and vendor roadshows
- Evaluation of technology solutions and analysis of alternatives
- Strategic project planning
- Cost estimate preparation and/or review
- Technology Project Management
- Schedule preparation and/or review
- Deliverable documents reviews, to include design documents, test plans, procedures, reports, manuals, installation cutover plans, site-specific work plans, etc.
- Feasibility studies for technology solutions
- Development of technical specifications and RFPs
- Drafting, reviewing, and maintenance of Design Criteria, Design Standards, and Specifications
- Technical Writing, review, and maintenance of Policies, Procedures, Operational Manuals, and Troubleshooting and Maintenance Manuals
- System optimization studies
- Planning and concept development

- Design review analyses and support project execution
- Analysis of FRA/CPUC rulemaking and support regulatory compliance
- Change Control process development and refinement, and execution
- Configuration Management tools and execution with asset management and Operations & Maintenance partners
- State of Good Repair planning and systems maintenance support
- Database queries and custom report building
- Development and facilitation of systems training programs
- As SME provide consultation and knowledge transfer

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EXHIBIT B: CONSULTANT'S PROPOSAL INCLUDING NEGOTIATED COST/LABOR RATES

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EXHIBIT C: WORK DIRECTIVE PROCESS

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.

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.

~ END OF WORK DIRECTIVES ~

EXHIBIT D: FEDERAL REQUIREMENTS

In its performance of the purchase order, the Contractor will comply with all of the applicable Federal Transit Administration (FTA) clauses identified below, as indicated by a checked box next to the clause title. These terms apply only to the extent allowed under applicable federal law.

DEFINITIONS.

☒ **1. FLY AMERICA REQUIREMENTS.**

☒ **2. ENERGY CONSERVATION.**

☒ **3. RECYCLED PRODUCTS.**

☒ **4. CARGO PREFERENCE REQUIREMENTS.**

☒ **5. ACCESS TO RECORDS AND REPORTS.**

☒ **6. FEDERAL CHANGES.**

☒ **7. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.**

☒ **8. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.**

☒ **9. CIVIL RIGHTS REQUIREMENTS.**

☒ **10. SAFE OPERATION OF MOTOR VEHICLES.**

☒ **11. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.**

☒ **12. TELECOMMUNICATIONS EQUIPMENT OR SERVICES; VIDEO SURVEILLANCE EQUIPMENT OR SERVICES.**

☒ **13. CERTIFICATION FOR FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS.**

☐ **14. NOTIFICATION REGARDING FALSE CLAIMS, FRAUD, WASTE, ABUSE, AND OTHER LEGAL MATTERS.** [Include in contracts valued at \$25,000 or more]

- ☐ **15. VETERANS PREFERENCE.** [Applicable if capital project consisting of construction work]
- ☐ **16. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION.** [Applicable if contract is expected to equal or exceed \$25k or if contract is for federally required audit services]
- ☐ **17. LOBBYING.** [Applicable if contract is expected to exceed \$100k;
- ☐ **18. CLEAN WATER AND AIR REQUIREMENTS.** [Applicable if contract is expected to exceed \$150k]
- ☐ **19. BUY AMERICA REQUIREMENTS.** [Applicable if contract is for over \$150k of iron, steel, manufactured goods, or rolling stock;
- ☐ **20. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS.** [Applicable if rolling stock procurement]
- ☐ **21. BUILD AMERICA, BUY AMERICA ACT.** [Consult with legal counsel - Applicable if contract is an infrastructure project that involves construction materials]
- ☐ **22. ACCESSIBILITY.** [Applicable if contract is related to rolling stock (including services, equipment, or new procurements) or public transportation facilities – consult with legal counsel for customization]
- ☐ **23. BUS TESTING.** [Applicable if contract is to lease or purchase any new bus model or any bus model with a major change in configuration or components to be acquired or leased with FTA funds]
- ☐ **24. DAVIS-BACON ACT REQUIREMENTS.** [Applicable if construction, alteration, or repair (including painting) contract in excess of \$2,000]
- ☐ **25. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** [Applicable if contract is expected to equal or exceed \$100k and involves employment of laborers and mechanics. this provision does not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.]
- ☐ **26. SEISMIC SAFETY.** [Applicable if contract for the construction of new buildings or additions to existing buildings]
- ☐ **27. CHARTER SERVICE OPERATIONS.** [Applicable if contract for operation of public transportation service]

☐ **28. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS.**

[Applicable if contract for transit operations performed by employees of a contractor recognized by the FTA as a transit operator]

☐ **29. SCHOOL BUS OPERATIONS.** [Applicable if contract for operating public transportation services]

☐ **30. SUBSTANCE ABUSE REQUIREMENTS.** [Consult with legal counsel – applicable if work involves the performance of safety-sensitive functions, as defined in 49 cfr § 655.4]

☐ **31. DOMESTIC PREFERENCES FOR PROCUREMENTS.** [Applicable if contract is for the purchase, acquisition, or use of goods, products, or other materials and is under the Buy America threshold; do not use for service contracts or if Buy America is applicable]

DEFINITIONS. The following definitions apply to these federal terms and conditions:

- a. "Bid" means bid, proposal, or offer.
- b. "Bidder" means bidder, proposer, or offeror.
- c. "Contract" means the agreement to which these Federal Terms and Conditions apply.
- d. "Contractor" means the person or entity named in the Purchase Order, Bid, Proposal or Contract to which these Federal Terms and Conditions apply.
- e. "FTA" means the Federal Transit Administration.
- f. "Agency" means San Mateo County Transit District, Peninsula Corridor Joint Powers Board, or San Mateo County Transportation Authority, as applicable.
- g. "U.S. DOT" means United States Department of Transportation.

CLAUSES

1. **FLY AMERICA REQUIREMENTS.** The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their Contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property to the extent such service is available, unless travel by foreign air carrier is a matter of necessity as defined by the Fly America Act. The Contractor must submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and must, in any event, provide a certificate of compliance with the Fly America requirements, if used. The Contractor agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

2. **ENERGY CONSERVATION.** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act, 42 U.S.C. § 6321 *et seq.*
3. **RECYCLED PRODUCTS.** The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.
4. **CARGO PREFERENCE REQUIREMENTS.** The Contractor agrees: (a) to use privately owned United States Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract by ocean vessels to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Agency (through the Contractor in the case of a subcontractor's bill-of-lading); and (c) to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, Material, or commodities by ocean vessel.
5. **ACCESS TO RECORDS AND REPORTS.** Contractor must provide all authorized representatives of the Agency, the FTA Administrator, the State Auditor and the Comptroller General of the United States access to any books, documents, papers and records of the Contractor which are related to performance of this Contract for the purposes of making audits, copies, examinations, excerpts and transcriptions. Contractor also agrees to retain and maintain, and will require its subcontractors to retain and maintain, all books, records, accounts and reports related to this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain the same until the Agency, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
6. **FEDERAL CHANGES.** Contractor must at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those

listed directly or by reference in the applicable Master Agreement between the Agency and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply constitutes a material breach of this Contract.

7. **NO GOVERNMENT OBLIGATION TO THIRD PARTIES.** The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and will not be subject to any obligations or liabilities to the Agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor/subconsultant who will be subject to its provisions.

8. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.**

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5353(l) on the Contractor, to the extent the Federal Government deems appropriate.
- c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses will not be modified, except to identify the subcontractor/subconsultant who will be subject to the provisions.

9. **CIVIL RIGHTS REQUIREMENTS.**

- a. **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying Contract:
 - i. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the performance of the Contract. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - ii. **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - iii. **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

10. **SAFE OPERATION OF MOTOR VEHICLES.** The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees

and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or the Agency. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

11. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.

The preceding provisions include, in part, certain terms and conditions required by U.S. DOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1G, dated January 17, 2025, as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any the Agency requests which would cause the Agency to be in violation of the FTA terms and conditions.

12. TELECOMMUNICATIONS EQUIPMENT OR SERVICES; VIDEO SURVEILLANCE EQUIPMENT OR SERVICES.

The Contractor represents that the Contractor, and its subcontractors and subconsultants, will not provide or use covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system, in accordance with Section 889 of the John S. McCain National Defense Authorization Act, in the performance of this Contract. "Covered telecommunications equipment or services" means any of the following: (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (3) Telecommunications or video surveillance services provided by such entities or using such equipment listed in (1) or (2); or (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of the People's Republic of China. "Substantial or essential component" means any component necessary for the proper function or performance of a piece of equipment, system, or service. "Critical technology" includes those critical technologies listed in 48 C.F.R. 52.204–25, subpart (a).

13. CERTIFICATION FOR FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS.

By submitting a bid or proposal, the Contractor certifies that it (1) does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and (2) has not been convicted of a felony criminal violation under any Federal law within the preceding 24 months. The Contractor must flow this requirement down to subcontractors and vendors at all lower tiers.

14. NOTIFICATION REGARDING FALSE CLAIMS, FRAUD, WASTE, ABUSE, AND OTHER LEGAL MATTERS.

A. The Contractor agrees to promptly notify the FTA Chief Counsel and the FTA Regional Counsel for Region IX if it has knowledge of (i) any current or prospective legal matter that may affect the Federal Government, including but not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason, or (ii) any matters that may affect the Federal Government, including but not limited to, the Federal Government's interests in the Federal Award supporting this Agreement, this Agreement and any amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

The Contractor further agrees to promptly notify the FTA Chief Counsel, the FTA Regional Counsel for FTA Region IX, and the U.S. DOT Office of Inspector General if it has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA, including but not limited to knowledge that a person has or may have (i) submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or (ii) committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance.

The Contractor further agrees to promptly notify Agency of any matter described above that relates to this Agreement or any other federally assisted agreement between the Contractor and Agency.

"Knowledge," as used in this section, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the Contractor's possession.

"Promptly," as used in this section, means to refer information without delay and without change.

B. The Contractor agrees to include the above clause in all subcontracts entered into for the performance of this Agreement. It is further agreed that the above clause shall not be modified, except to identify the subcontractor/subconsultant who will be subject to its provisions.

15. VETERANS PREFERENCE. To the extent practicable, the Contractor agrees that it and its subcontractors:

- a. Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the requisite skills and abilities to perform the construction work required under a third party contract in connection with a capital project supported with funds appropriated or made available for 49 U.S.C. chapter 53, and
- b. Will not be required to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

16. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION. This contract is a covered transaction subject to the requirements of 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)" and 2 CFR Part 1200, U.S. DOT regulations, "Nonprocurement Suspension and Debarment." These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor is required to verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be: (a) Debarred from participation in any federally assisted Award; (b) Suspended from participation in any federally assisted Award; (c) Proposed for debarment from participation in any federally assisted Award; (d) Declared ineligible to participate in any federally assisted Award; (e) Voluntarily excluded from participation in any federally assisted Award; or (f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Agency. If it is later determined by the Agency that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C, as supplemented by 2 C.F.R. Part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

17. **LOBBYING**. Contractor shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Contractor shall certify that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded to the Agency. Contractor shall ensure that all of its subcontractors/subconsultants under this Contract shall certify the same. The Agency is responsible for keeping the certification of the Contractor, who is in turn responsible for keeping the certification forms of subcontractors/subconsultants. The Bidder shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities," which is included with the Bid Documents, including instructions for completion.
18. **CLEAN WATER AND AIR REQUIREMENTS**. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in part or in whole with federal assistance provided by the FTA.
19. **BUY AMERICA REQUIREMENTS**. The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. All bidders or proposers must submit the appropriate Buy America certification to the Agency with their bids or proposals, except those subject to a general waiver. Proposals that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.
20. **PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS**. Contractor agrees to comply with pre-award and post-delivery requirements set forth in 49 U.S.C. § 5323(m) and FTA's implementing regulations at 49 C.F.R. Part 663. Contractor must submit the following certifications with its bid:
- a. **Pre-Award Buy America Certification**: The Contractor must complete and submit a declaration certifying either compliance or noncompliance with Buy America. If

- the Contractor certifies compliance with Buy America, it must submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- b. Pre-Award Solicitation Specifications Certification: The Contractor shall submit evidence that is capable of producing rolling stock that meets the Agency's specifications set forth in the solicitation.
- c. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor must submit evidence of (1) the manufacturer's self-certification sticker information that the vehicle complies with applicable FMVSS in 49 CFR Part 571, as may be amended, or (2) the manufacturer's self-certification statement that the vehicle is not subject to the FMVSS in 49 CFR Part 571, as may be amended.
21. **BUILD AMERICA, BUY AMERICA ACT**. For construction materials used in the Project, the Contractor agrees to comply with the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, U.S. DOT, and FTA, unless a waiver applies.
22. **ACCESSIBILITY**. The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended; 29 USC § 794; 49 USC § 5301(6); 49 CFR Parts 27, 37, 38, and 39 and any implementing requirements and regulations FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.
23. **BUS TESTING**. The Contractor [Manufacturer] agrees to comply with 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:
- a. A manufacturer of a new bus model or a bus produced with a major change in components or configuration must provide a copy of the final test report to the Agency at a point in the procurement process specified by the Agency which will be prior to the Agency's final acceptance of the first vehicle.
- b. A manufacturer who releases a report under paragraph (a) above shall provide notice to the operator of the testing facility that the report is available to the public.
- c. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the

- vehicle in the test report, which must be provided to the Agency prior to the Agency's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- d. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

24. DAVIS-BACON ACT REQUIREMENTS.

a. Minimum wages

- i. All laborers and mechanics employed or working upon the site of any qualifying construction work under the Contract (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section I (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Subsection (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which such work is performed. The wage determination (including any additional

classification and wage rates conformed under paragraph (A)(4) of this section) and the Davis-Bacon poster (WH- 1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- ii. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- iii. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- iv. (a) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to Subsections (A)(4)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

b. Withholding - The Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

c. Payrolls and basic records

i. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section I (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the

Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- ii. (a) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Agency for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Agency if the agency is a party to the contract, but the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).
- (b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(i) That the payroll for the payroll period contains the information to be provided under §5.5(a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under §5.5(a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (C)(2)(b) of this Section.

(d) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

iii. The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this Section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

d. Apprentices and trainees

i. Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and

Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journey hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- ii. Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's

level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- iii. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of 29 CFR Part 30.
- e. Compliance with Copeland Act requirements - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.
- f. Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower subcontractor with all the contract clauses in 29 CFR 5.5.
- g. Contract termination: Debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- h. Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

- i. Disputes Concerning Labor Standards - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- j. Certification of eligibility
 - i. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - ii. No part of this Contract shall be subcontracted to person or firm ineligible for an award of a government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

25. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. In accordance with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the United States Department of Labor regulations at 29 C.F.R. part 5, the following requirements apply to all laborers and mechanics employed by the Contractor or subcontractor in the performance of any part of the work under the Contract, including watchmen, guards, and workers performing services in connection with dredging or rock excavation. (40 U.S.C.A. § 3701)

- a. Overtime Requirements – Neither the Contractor nor its subcontractors may permit any laborer or mechanic in any workweek in which he or she is employed on such work under this Contract to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation, Liability for Unpaid Wages, Liquidated Damages – In the event of any violation of the clause set forth in paragraph A of this Section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this Section in the sum of \$10.00 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without

payment of the overtime wages required by the clause set forth in paragraph A of this Section.

- c. Withholding for Unpaid Wages and Liquidated Damages – Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from any moneys payable on account of work performed by Contractor under any such contract or any other Federal contract with Contractor or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this Section.
- d. Subcontracts – The Contractor shall insert in any subcontract the clauses set forth in this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Section.
- e. Payrolls and Basic Records – Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and shall also maintain records that show the costs anticipated or the actual cost incurred in providing such benefits. Should the Contractor employ apprentices or trainees under approved programs, it shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- f. Occupational Safety and Health Act – The Contractor agrees to comply with Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 333, and applicable DOL regulations, “Safety and Health Regulations for

Construction", 29 CFR Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

The Contractor also agrees to include the requirements of this Subsection F in each subcontract. The term "subcontract" under this Subsection is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this Section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials that will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this Section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

26. **SEISMIC SAFETY**. The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.
27. **CHARTER SERVICE OPERATIONS**. The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.
28. **PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:
- a. **General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with

- terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- b. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- c. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

29. **SCHOOL BUS OPERATIONS**. Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in

competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles or facilities.

- 30. SUBSTANCE ABUSE REQUIREMENTS.** Agency adheres to US DOT/FTA federal regulations, 49 CFR Parts 40 and 655, governing mandatory drug and alcohol testing and education for “safety-sensitive” employees. Pursuant to these regulations, the Agency requires that contractors who “stand in the shoes” of the Agency are subject to these regulations, and must have a Substance Abuse Policy, a drug and alcohol testing program and provide training for its safety-sensitive employees. Contractor is required to comply fully with all DOT and FTA regulations prohibiting drug use and alcohol misuse by all operators and maintenance personnel or employees of subcontractors performing safety-sensitive functions. The Contractor's policy, testing program and training must comply with these regulations: 49 CFR Part 655, (“Prevention of Prohibited Drug Use in Transit Operations and Prevention of Alcohol Misuse in Transit Operations”) and 49 CFR Part 40, (“Procedures for Transportation Workplace Drug and Alcohol Testing Procedures”).

The Contractor will be required to cause its prospective safety-sensitive employees who may be assigned to perform safety-sensitive duties for the Agency to undergo pre-employment drug testing and make drug test result inquiries of prior DOT-regulated employers. Safety sensitive employees shall also be subject to post-accident testing, reasonable suspicion testing, and random testing, and other tests as required by 49 CFR Part 655.

The Contractor must notify the Agency's Risk Administrator immediately of any violation of the regulations or failure to test.

Any employee of the Contractor found to have violated the drug and alcohol regulations is subject to removal from duties under the contract, depending on the facts and circumstances of the situation.

If the Contractor utilizes their own pre-established program or a third party administrator's, Contractor must fully cooperate with the Agency in such monitoring efforts, provide any requested documents or information, and comply with any corrective action that the Agency requires of Contractor. Contractor further agrees to annually certify its compliance with Part 655 by December 1st and to submit the Management Information Systems (“MIS”) reports before March 1st (for the prior calendar year) to the Agency. Contractor agrees that all records produced and maintained in the performance of the program are subject to review by the Agency in a facility not more than 100 miles away. Further, Contractor may be required to submit quarterly MIS reports to the Agency.

If the Contractor is included in the Agency's Random Testing Program, the Contractor is not released from all other DOT regulations such as: adhering to DOT's

hiring requirements, including making inquiries of past DOT-regulated employers and pre-employment testing; conducting reasonable suspicion and post-accident testing when warranted; and training safety-sensitive employees and their supervisors for the requisite time required by law. Contractor agrees to timely notify the Agency with names of their safety-sensitive employees, including any additions or deletions during the contract term.

Contractor agrees to submit within thirty (30) days of award of the contract (1) verification that its safety-sensitive employees are included as part of a random testing pool; (2) a copy of Contractor's substance abuse policy; and (3) the name of its third party administrator, if applicable. Failure to submit such documents within the prescribed time period, or failure to submit any other documentation relevant to the substance abuse testing requirements as required by the Agency, may result in the contract being terminated for default.

31. **DOMESTIC PREFERENCES FOR PROCUREMENTS.** Pursuant to 2 CFR § 200.322, the Contractor should, to the greatest extent practicable under this Agreement and as appropriate and to the extent consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Contractor must include this requirement in agreements with subcontractors, including all contracts and purchase orders for work or products under this Agreement.

EXHIBIT E: SBE AND PROMPT PAYMENT REQUIREMENTS

The Agency, a recipient of federal financial assistance from the U. S. Department of Transportation (DOT), is committed to and has adopted a Disadvantaged Business Enterprise (DBE) Program in accordance with federal regulations 49 CFR Part 26, issued by DOT. The DBE Program includes a Small Business Enterprise (SBE) element.

No contract-specific DBE participation goal has been established for this Agreement. 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 SBE'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; or (2) committed to subcontracting with one or more certified SBEs.

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 **Form 7 SBE Preference Form** with their proposal to receive a point preference. If a Proposer 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. **SBE CERTIFICATIONS**

The Agency recognizes the following SBE certifications:

- A. Small Business Administration (SBA) 8(a) provided that a firm's average annual gross receipts do not exceed the maximum cap referenced in section 5C.
<https://search.certifications.sba.gov/>
- B. California Department of General Services (DGS) Small Business (SB), SB for the purpose of Public Works (SB-PW), and Micro Business (MB) certifications.
<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>
- C. SBE certifications by the San Francisco Bay Area Rapid Transit District.
<https://bart.gob2g.com/FrontEnd/searchcertifieddirectory.asp>
- D. SBE certifications by the Santa Clara Valley Transportation Authority.
<https://b2gnow.mwdbe.com/frontend/searchcertifieddirectory.asp?tn=vta>
- E. SBE certifications by the Los Angeles County Metropolitan Transportation Authority.
<https://smallbusinessquery.metro.net/main>
- F. Other SBE certifications with an online directory may be accepted for this contract only if confirmed through the Q&A process in PlanetBids.

5. **SBE ELIGIBILITY**

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

- A. The firm must be certified per section 4: SBE Certifications.
- B. 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.
- C. 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 **\$31.84 million**.

Note: SBA size standards vary by industry and certain industries, such as general construction contracting, exceed the maximum cap. A general construction contractor meeting the SBA size standard but exceeding the maximum cap, 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 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.

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 Subconsultant 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.

E. SBE/DBE Outreach Efforts for WD Proposals

The Consultant agrees to make its best efforts to encourage SBE and DBE participation on each WD issued pursuant to this Contract. In each WD proposal, the Consultant shall identify any Subconsultants, including SBEs, to perform work on the WD by submitting an updated Designation of Subconsultants Form (Form 5).

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 AND PROMPT PAYMENT REQUIREMENTS

AGREEMENT BETWEEN
PENINSULA CORRIDOR JOINT POWERS BOARD, (AGENCY)
AND
HATCH ASSOCIATES CONSULTANTS, INC. (CONSULTANT)

AGREEMENT SUMMARY*

Board of Directors' Date of Award: March 5, 2026

Resolution Number: 2026-XX

Effective Date of Agreement: April 1, 2026

Services to be Performed (Section 1): On-Call Rail Systems Engineering Business Operations Support Services

Term of Agreement (Section 3): Five (5) year term

Consultant's Key Representative (Section 4):

Name: Christian G. Reitter, PE

Title: Regional Director, Transit, USA

Company: Hatch Associates Consultants, Inc.

Address: 375 North Shore Drive, 5th Floor, Pittsburgh, PA 15212

Phone: (213) 437-1200

Email: Christian.reitter@hatch.com

Board-approved aggregate amount: Board approved not-to-exceed, aggregate amount of \$22,807,692

*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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DRAFT

This AGREEMENT for On-Call Rail Systems Engineering Business Operations Support Services (Agreement) is entered into by and between the Peninsula Corridor Joint Powers Board (AGENCY) located at 1250 San Carlos Avenue, San Carlos, CA 94070 and Hatch Associates Consultants, Inc. (CONSULTANT), a New York Corporation located at 375 North Shore Drive, 5th Floor, Pittsburgh, PA 15212 (“the Parties”).

1. SCOPE OF SERVICES

This is an Agreement to provide On-Call Rail Systems Engineering Business Operations Support 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 ordinarily exercised by professionals performing similar services in the same locality, at the same site, and under the same or similar circumstances and conditions (“Standard of Care”) (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 September 30, 2025, the Scope of Services of which is attached hereto and incorporated herein as Exhibit A, as supplemented by CONSULTANT’s written proposal dated November 21, 2025, attached hereto and incorporated herein as Attachment C.

2. AGREEMENT DOCUMENTS

This Agreement consists of the following documents:

- (1) This Agreement, including Attachment A-1, Insurance Requirements
- (2) Exhibit A, Scope of Services
- (3) Exhibit B, Consultant’s Proposal including negotiated cost/labor rates.
- (4) Exhibit C, Work Directives Process
- (5) Exhibit D, Federal Requirements
- (6) Exhibit E, SBE and Prompt Payment Reporting Requirements

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-year term commencing upon April 1, 2026 and ending on March 31, 2031. 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.

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 Christian Reitter, Regional Director, Transit, USA 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 mutually agreed upon 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 Attachment C.

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 Twenty-Two Million Eight Hundred Seven Thousand Six Hundred Ninety-two Dollars (22,807,692) plus a 10 percent 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.

5.1. GENERAL

Compensation for each project performed under the Agreement will either be **Cost-Plus-Fixed-Fee with a ceiling (CPFF)** or **Specified Rate of Compensation (SRC)**.

Project pricing will be allowable only to the extent that estimated costs and costs incurred are compliant with Federal cost principals contained in Title 48, Code of Federal Regulations, Part 31. Any costs for which payment has been made to CONSULTANT, which are determined by subsequent audit to be unallowable under these Federal cost principals, are subject to repayment by CONSULTANT to the AGENCY.

CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT's Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.

When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the AGENCY Project Manager before exceeding such estimate. Progress payments for each project will be made monthly in arrears based on services provided and actual costs incurred.

CONSULTANT shall not commence performance of work or services until this Agreement has been approved by AGENCY, and notification to proceed has been issued by AGENCY Procurement Administrator. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.

Fixed Fees shall be negotiated prior to the signing of the Agreement and shall apply throughout the life of the Agreement.

5.2. COST OF WORK

The cost of work shall be calculated as the sum of the direct labor times a multiplier for payroll burden, employee benefits, and overhead costs, plus other direct costs as set forth in this Section.

5.3. DIRECT LABOR

5.3.1. GENERAL

Direct Labor Rates shall be as set forth in Attachment C to this Agreement and shall stay in effect for the first year of the Agreement. The hourly rates (direct labor costs) are subject to salary administration as set forth in Title 48 Code of Federal Regulations Part 31.

Charges by CONSULTANT, and subconsultants, for an employee's time shall in no instance exceed the actual amount paid to such employee for time directly spent on services performed under this Agreement by such employee.

For new personnel to be approved after contract award, CONSULTANT, and subconsultants, shall submit a written request to the Procurement Administrator and provide the person's name, job title, current actual rates, and resume, for review and approval.

New personnel must be approved prior to their commencing work under a project. Work performed by personnel not previously approved in writing by the AGENCY shall be at CONSULTANT's own risk.

5.3.2. Straight Time

Straight time payroll is to be the equivalent annual salary/wage divided by 2080 hours per annum for employees approved to perform services under this Agreement.

5.3.3. Overtime

The AGENCY will reimburse CONSULTANT, and subconsultants, the straight time portion and premium time portion (if payable to the employee in accordance with the CONSULTANT'S employment policies) of its employee's actual overtime pay during performance of services under this Agreement, provided that the AGENCY has approved the overtime, in writing, prior to the incurring of said overtime. Overtime charges must reflect overhead rates reduced by non-applicable employee benefits.

5.4. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

5.4.1. General

CONSULTANT, and subconsultants, multipliers may be inclusive of the markups for payroll burden, employee benefits and office overhead for each office location as defined below. The multiplier is fixed for the first year of the Agreement.

The agreed-upon multipliers shall be used for CONSULTANT's and subconsultants' home office and AGENCY-Furnished Field Office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in Exhibit B "Consultants Proposal and Labor Rates," dated January 6, 2026.

5.4.2. Payroll Burden

CONSULTANT and the AGENCY agree that the following will be considered as Payroll Burdens and as such will be paid to CONSULTANT, and subconsultant's, as compensation for said costs, as set forth below. "Payroll Burden" is defined as:

The cost of all a) employment taxes, b) CONSULTANT's, and subconsultant's, portion of social and retirement charges and c) contributions imposed by law, or labor contract contributions (if applicable), or regulations, with respect to or measured by CONSULTANT's, and subconsultant's, payroll, including but not limited to, the CONSULTANT's, and subconsultant's, cost of owner-required insurance.

5.4.3. Employee Benefits

"Employee Benefits" for CONSULTANT's and subconsultant's employees is defined as The cost of all contractual and voluntary employee benefits, including but not limited to, holidays, vacations, sick leave, jury duty leave, group medical, life insurance, salary continuance insurance, bonus schemes (including Director's drawings of dividends), employee stock ownership plan, savings plan, retirement plan, relocation benefits, and all other employee benefit plans.

5.4.4. Indirect Costs (Office Overhead)

CONSULTANT, and subconsultants, shall be compensated through an agreed-upon multiplier for overhead, which includes those administrative, clerical, word processing, accounting, and other support staff utilized in performing services under this Agreement, which are not explicitly included in the Proposal or who have been approved by the AGENCY.

These rates will remain fixed for the initial year of the Agreement. These rates will be reviewed annually on the anniversary of the effective date of the Agreement, for the CONSULTANT and its subconsultants and may be adjusted upon AGENCY approval.

5.4.4.1. CONSULTANT and subconsultants Home Office Overhead rate shall apply to personnel assigned in CONSULTANT's and subconsultant's Home Office in support of the performance of services under this Agreement. Home Office Indirect Cost Rates (overhead) included in the CONSULTANT's proposal, including those of their subconsultants, must be substantiated by the most recent (within 12 months) audited reports available, which clearly show the calculations. All such reports shall comply with FAR reporting requirements. If audited reports are not available for subconsultants, the CONSULTANT will provide alternate information (i.e. other comparable public agency contract rates) to the AGENCY to review for acceptance. The AGENCY will have the final decision as to what is acceptable.

5.4.4.2. AGENCY-Furnished Field Office Overhead rate shall apply to CONSULTANT's, and subconsultant's, personnel assigned to an AGENCY-Furnished Field Office on a full-time basis, for a period of at least 120 calendar days. As these rates cannot be pre-determined by audit, the AGENCY reserves the right to negotiate this rate for each firm.

5.5. Maximum Fixed Fees (Profit)

5.5.1. General

Maximum Fixed Fee percentages shall apply throughout the life of the Agreement. The CONSULTANT's fixed fee amount for each project may be negotiated on an individual project basis. Said fixed fee amount shall not be altered unless there is a significant alteration in the scope, complexity or character of the work to be performed under a Project.

The maximum fees, as a percentage of fully burdened Direct Labor Cost, allowable by the AGENCY shall not exceed:

Systems Engineering Support Services –

Nine Percent (9%)* for Consultant's home office (Home);

Eight Percent (8%)* for Agency's field office (Field);

Subconsultants markup – Zero Percent (0%)

5.6. OTHER DIRECT COSTS (ODCs)

5.6.1. General

Other Direct Costs, including subconsultant's projects, shall be proposed at cost with a Zero Percent (0%) markup.

5.6.2. Allowable ODCs

Examples of allowable include, but are not limited to: mileage, parking, tolls, mail costs, film, photo developing, facsimiles, printing/copying, plan reproduction, blueprint services, and subconsultants directly associated with the project. Expenditures for each allowable ODC in excess of \$500.00 per month, and not included above, shall require advance approval by the AGENCY. Supporting documentation is required for reimbursement of all ODCs.

5.6.3. Subconsultants

With regard to subconsultants, the AGENCY will pay the cost of work as defined in Section 5.2 through Section 5.6.4 with Zero Percent (0%) markup. The CONSULTANT may be compensated for initial, or one-time, charges incurred in establishing a project or for pre-approved administration charges.

5.6.4. Limitations on Direct Costs - The Following Are Limitations:

(1) Vehicles - If applicable and approved by the Agencies, rental vehicles and their support costs are limited to a total maximum of \$500 per month, per vehicle. The standard Internal Revenue Service mileage rates shall apply for use of a personal vehicle.

(2) Travel Expenses - All travel and relocation related plans must be approved in writing by the AGENCY prior to the commencement of the travel. If written approval is received for relocations, travel, temporary accommodations and or assistance, FAR 31.205-46(a) Sections 1 and 2 and Federal Travel Regulation (41 CFR 301-304) for San Mateo County, California, will apply. Lodging and per diem rates shall not exceed the U.S. General Services Administration (GSA) rate at the time of travel for the specific project site. Costs incurred for travel, subsistence, and relocation of personnel engaged in the performance of services under this Agreement, if approved in advance by AGENCY will include the following:

- Relocation expenses, travel, temporary accommodations, and/or subsistence related to mobilization travel to the CONSULTANT's dedicated project office or to AGENCY-Furnished Field Office for CONSULTANT and subconsultant personnel permanently assigned to the project. Such expenses shall be reduced by any amount received from others by CONSULTANT or subconsultant for demobilization from the prior project assignment.

- Travel, accommodations, and subsistence (directly related to the Scope of Services) for business trips to the Project Site, to AGENCY's consultants and suppliers, or to other locations approved by the AGENCY. Such travel may originate at CONSULTANT's or subconsultant's home office or branch office, or at the CONSULTANT's dedicated field office, or at AGENCY's central or field offices.

5.6.5. Unallowable ODCs

The following ODCs are not allowable unless they are authorized by prior written approval of the AGENCY's authorized representative:

- Costs associated with registration for training, seminars, and technical association meetings.
- Costs associated with employee incentive compensation including cash bonuses, suggestion awards, safety awards, and other forms of incentive compensation.
- Costs associated with leasing, maintaining, insuring, and operating dedicated project vehicles.
- Computer hardware and software support, software licenses, or cellular phone usage.
- Safety equipment such as steel-toed boots, safety vests, and hard hats.
- Insurance
- Cellular phones
- Cost of any normal equipment, tools, or vehicles (unless approved) hired, leased or purchased for the performance of services, provided that the depreciated value of such items purchased by CONSULTANT shall be credited to the AGENCY at the completion of the work performed under this Agreement.
- Shipping
- Drafting supplies
- Surveying supplies
- Models and renderings

All other ODCs that are not identified in 5.6.2 are considered unallowable ODCs and must be authorized by prior written approval of the AGENCY's authorized representative.

5.7. Maximum Compensation Amount

A maximum not-to-exceed amount as set forth in the project shall apply for each project.

Further, it is expressly understood and agreed that in no event shall CONSULTANT be compensated in an amount greater than the amount specified in any individual project for the services performed under such project without issuance of a written Amendment to such project by the AGENCY's Procurement Administrator.

If at any time, CONSULTANT has reason to believe that the total compensation payable for the performance of services under this Agreement will exceed the maximum not-to-exceed amount as set for in the project, CONSULTANT shall notify the AGENCY immediately in writing to that effect, indicating the estimated additional amount necessary to complete the services in the project. Any cost incurred by CONSULTANT in excess of the not-to-exceed amount as set forth in the project shall be at CONSULTANT's own risk.

5.8. Flow Down

CONSULTANT shall include the requirements regarding audits, compensation and reimbursement for costs and fees in its subconsultant's agreements, provided such subconsultants have been approved by the AGENCY.

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-J-P-109, Purchase order # [TBD] and the AGENCY Project Manager's and Contract Administrator'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 reasonably withhold payment to the CONSULTANT if the AGENCY determines that the quantity or quality of the work performed is unacceptable. 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 Manager, or designee, and the CONSULTANT's Program Manager, or designee.

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 Manager or designee, and the CONSULTANT's Program Manager via electronic mail.

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
Peninsula Corridor Joint Powers Board,
1250 San Carlos Avenue
San Carlos, CA 94070

With a copy to: Director, Contracts and Procurement
Peninsula Corridor Joint Powers Board,
1250 San Carlos Avenue
San Carlos, CA 94070

If to the CONSULTANT: _____
Attn: _____

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

General

All reports, designs, drawings, plans, specifications, schedules, and other materials first prepared by CONSULTANT under this Agreement ("Work Products") will be and are the property of the AGENCY. The AGENCY for their intended use on this project only 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 for their intended use on this project only. 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. The AGENCY agrees to waive any and all claims against the CONSULTANT and to defend, indemnify and hold the CONSULTANT harmless from and against any and all claims, losses, liabilities and damages arising out of or resulting from the unauthorized use, reuse or alteration of the CONSULTANT's Work Products. Notwithstanding anything else in this Agreement, unless agreed to under a separate agreement, the AGENCY, or any other third party shall have no rights or licenses to CONSULTANT's proprietary software applications developed by CONSULTANT, or any affiliates of CONSULTANT which may be used by CONSULTANT as "Software-as-a-Service" in any deliverables under this Agreement.

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. CONSULTANT's confidential information will be held in confidence by the AGENCY, which will exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the AGENCY as necessary under this Agreement.

The CONSULTANT, its employees, subcontractors, 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 Executive Director or designee. This section shall not apply to information in whatever form that comes into the public domain, nor shall it restrict either party from complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or it is reasonably necessary for either party to defend itself from any suit or claim.

10. USE OF 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.

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 promptly 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 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:

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

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 will not be required to indemnify the AGENCY in cases of the AGENCY's negligence, fraud, or willful misconduct. 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 Attachment A-1, 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

At a mutually agreed upon cost, 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 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

CONSULTANT represents that its professional services will be performed in accordance with the Standard of Care. In addition, CONSULTANT will provide such specific representations as may be set forth in Work Directives as agreed upon by the Parties.

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

The right to have the CONSULTANT re-perform such services at the CONSULTANT's expense; or

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.

The right to terminate the Agreement for default.

CONSULTANT will be responsible for all errors and omissions and is expected to pay for all engineering support services 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 reasonably 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

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.

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.

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. PREVAILING WAGE

Not Applicable.

26. 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, FTA, the U.S. DOT Office of Inspector General, and the Comptroller General of the United States, or any of 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.

27. 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.

28. 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.

29. 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.

30. SBE AND PROMPT PAYMENT POLICY

See Attachment E for SBE, and prompt payment reporting requirements.

31. CONFLICT OF INTEREST

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 the Federal Transit Administration (FTA), Federal Highway Administration (FHWA) (for Federally-funded Agreements) and 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.

CONSULTANT's duties and services under this Agreement shall not include preparing or assisting the AGENCY with any portion of the AGENCY's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the AGENCY. The AGENCY entering this agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. CONSULTANT'S participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. CONSULTANT shall cooperate with the AGENCY to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by CONSULTANT pursuant to this Agreement.

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.

32. **SUBSTANCE ABUSE PROGRAM**

The AGENCY adheres to US DOT/FTA federal regulations, 49 CFR Parts 40 and 655, governing mandatory drug and alcohol testing and education for "safety-sensitive" employees. Pursuant to these regulations, the AGENCY requires that contractors who "stand in the shoes" of the AGENCY are subject to these regulations, and must have a Substance Abuse Policy, a drug and alcohol testing program and provide training for its safety-sensitive employees. CONSULTANT is required to comply fully with all Department of Transportation ("DOT") and Federal Transit Administration ("FTA") regulations prohibiting drug use and alcohol misuse by all operators and maintenance personnel or employees of subcontractors performing safety-sensitive functions. The CONSULTANT's policy, testing program and training must comply with these regulations: 49 CFR Part 655, (*"Prevention of Prohibited Drug Use in Transit Operations and Prevention of Alcohol Misuse in Transit Operations"*) and 49 CFR Part 40, (*"Procedures for Transportation Workplace Drug and Alcohol Testing Procedures"*).

CONSULTANT will be required to cause its prospective safety-sensitive employees who may be assigned to perform safety-sensitive duties for the AGENCY to undergo pre-employment drug testing and make drug test result inquiries of prior DOT-

regulated employers. Safety sensitive employees will also be subject to post-accident testing, reasonable suspicion testing, and random testing, and other tests as required by 49 CFR Part 655.

The CONSULTANT must notify the AGENCY's Project Manager/Contract Administrator immediately of any violation of the regulations or failure to test.

Any employee of the CONSULTANT found to have violated the drug and alcohol regulations is subject to removal from duties under the contract, depending on the facts and circumstances of the situation.

If the CONSULTANT utilizes their own pre-established program or a third-party administrator's, CONSULTANT must fully cooperate with the AGENCY in such monitoring efforts, provide any requested documents or information, and comply with any corrective action that the AGENCY requires of CONSULTANT. CONSULTANT further agrees to annually certify its compliance with Part 655 by December 1st and to submit the Management Information Systems ("MIS") reports before March 1st (for the prior calendar year) to the AGENCY. CONSULTANT agrees that all records produced and maintained in the performance of the program are subject to review by the AGENCY in a facility not more than 100 miles away. Further, CONSULTANT may be required to submit quarterly MIS reports to the AGENCY.

CONSULTANT agrees to submit within thirty (30) days of award of the contract (1) verification that its safety-sensitive employees are included as part of a random testing pool; (2) a copy of CONSULTANT's substance abuse policy; and (3) the name of its third-party administrator, if applicable. Failure to submit such documents within the prescribed time period, or failure to submit any other documentation relevant to the substance abuse testing requirements as required by the AGENCY, may result in the Agreement being terminated for default.

33. 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.

34. ENGINE AND FLEET REGULATIONS.

The CONSULTANT is considered the fleet owner and operator, and is solely responsible for compliance with all provisions of the California Air Resources Board (CARB) engine and fleet regulations and the payment of any fines or penalties imposed by CARB or the U.S. Environmental Protection Agency (EPA) resulting from the CONSULTANT's non-compliance. The CONSULTANT shall indemnify, hold harmless, and defend (with legal counsel chosen by the AGENCY at the CONSULTANT's expense) the AGENCY against any violation notices issued, or enforcement actions brought, by CARB or EPA involving the CONTRACTOR's non-compliance.

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.

PENINSULA CORRIDOR JOINT POWERS BOARD: **HATCH ASSOCIATES CONSULTANTS, INC.:** (See footnote below)*

Signature: _____

Signature: _____

Print: Michelle Bouchard

Print: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

Signature: _____

Print: _____

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.

ATTACHMENT A-1: INSURANCE REQUIREMENTS

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 subcontractors, subconsultants, suppliers, temporary workers, independent contractors, 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 JPB. Prior to beginning work under this Agreement, CONSULTANT shall provide the JPB's authorized insurance consultant, Insurance PlanetBids, 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 CONSULTANT 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 CONTSULTANT'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 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 **\$5** million per claim or occurrence and **\$5** million annual aggregate. The policy shall include coverage for all services and work performed under this Agreement.

B. ENDORSEMENTS

1. Additional Insured.

The policies, excluding Workers' Compensation and Professional Liability 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 policies, excluding Workers' Compensation and Professional Liability 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 policies, excluding Workers' Compensation and Professional Liability 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 applicable policies above requiring the Separation of Insureds clause endorsement 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 CONSULTANT. The purpose of this coverage is to protect CONSULTANT 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, CONSULTANT shall provide to PlanetBids, the JPB'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 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

<https://vendors.planetbids.com/portal/68007/portal-home>

In addition, the CONSULTANT shall promptly deliver to PlanetBids 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 PlanetBids 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 JPB's authorized insurance consultant, PlanetBids, if any of the above policies are non-renewed or cancelled.

Submit Certificates of Insurance to:
Peninsula Corridor Joint Powers Board

C/O

<https://vendors.planetbids.com/portal/68007/portal-home>

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 CONSULTANT's agreement to waive subrogation against the JPB 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 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 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 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 CONSULTANT 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, 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, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if CONSULTANT or subcontractor is not a named defendant in the lawsuit.

EXHIBIT A: SCOPE OF SERVICES

The Peninsula Corridor Joint Powers Board (“JPB” or Agency”) is seeking On-Call Professional Support Services in Systems Engineering, with a focus on Train Control and Rail Operations Systems. This scope encompasses a broad spectrum of systems, spanning rail vehicle onboard systems, back-office system applications, wayside systems, and their associated communication and network infrastructures.

Consultant shall provide technology and management services related to the planning, designing, implementation, operations, maintenance and management of various railroad system initiatives. Consultant shall be able to provide technical and functional support in sufficient depth to meet the Agency’s project requirements. Such depth shall be demonstrated in the proposal.

Consultant may be requested to assist staff with the development of RFP’s or other documents in reference to the aforementioned services.

The Work under the Agreement will be established as needed on an Individual Work Directive basis. Specific contract deliverables will be set forth in each individual Work Directive issued under this Agreement. The Consultants shall function with overall guidance from the JPB, but will manage and control the day-to-day Work Directive activities and deliverables.

Consultant shall assist staff with oversight of the JPB’s Commuter Rail Operations Systems. Consultant shall provide services related to the operation of the Caltrain rail systems including but not limited to:

- Computer Aided Dispatch (CAD)
- I-ETMS based Positive Train Control (PTC) System
- SCADA (Supervisory Control And Data Acquisition) systems for traction power director systems
- Back Office Systems deployment, maintenance, and administration
- System Integration and Interface Control Documents (ICD), drafting, maintenance, and adherence
- Wayside Passenger Information Systems (GPS and track-circuit based vehicle location systems, prediction algorithms, and digital signage)
- Public Address Audio Systems
- Radio Dispatch and VoIP Systems
- Closed Circuit TV (CCTV)
- Onboard control systems
- Networks and communications infrastructure
- Wayside and Onboard Radio and cellular systems

- Systems Engineering best practices
- Technical Project Management
- Rolling Stock and Wayside equipment health and monitoring systems
- Inventory and Asset Management Systems
- Change Control practices and software tools
- Configuration Management practices and software tools
- State of good repair for all systems
- Datacenter, virtual environments, and cloud environment system maintenance and operation.
- PTC Interoperable Train Control (ITC) Committees
- Regulatory Compliance (e.g. FRA, CPUC, etc.)

List of Potential Work Directives Tasks

Tasks that may be required of the Consultant in executing Work Directive assignments include, but are not limited to:

- Support systems in revenue service operations
- Subject Matter Expertise (SME) for troubleshooting various systems such as log analysis; defect analysis, trend analysis, and resolution planning
- Defect and enhancement tracking, develop requirements and planning
- Products and market research, facilitate technology demonstrations and vendor roadshows
- Evaluation of technology solutions and analysis of alternatives
- Strategic project planning
- Cost estimate preparation and/or review
- Technology Project Management
- Schedule preparation and/or review
- Deliverable documents reviews, to include design documents, test plans, procedures, reports, manuals, installation cutover plans, site-specific work plans, etc.
- Feasibility studies for technology solutions
- Development of technical specifications and RFPs
- Drafting, reviewing, and maintenance of Design Criteria, Design Standards, and Specifications
- Technical Writing, review, and maintenance of Policies, Procedures, Operational Manuals, and Troubleshooting and Maintenance Manuals
- System optimization studies
- Planning and concept development

- Design review analyses and support project execution
- Analysis of FRA/CPUC rulemaking and support regulatory compliance
- Change Control process development and refinement, and execution
- Configuration Management tools and execution with asset management and Operations & Maintenance partners
- State of Good Repair planning and systems maintenance support
- Database queries and custom report building
- Development and facilitation of systems training programs
- As SME provide consultation and knowledge transfer

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**EXHIBIT B: CONSULTANT'S PROPOSAL INCLUDING NEGOTIATED COST/LABOR
RATES**

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EXHIBIT C: WORK DIRECTIVE PROCESS

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.

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.

~ END OF WORK DIRECTIVES ~

EXHIBIT D: FEDERAL REQUIREMENTS

In its performance of the purchase order, the Contractor will comply with all of the applicable Federal Transit Administration (FTA) clauses identified below, as indicated by a checked box next to the clause title. These terms apply only to the extent allowed under applicable federal law.

DEFINITIONS.

☒ **1. FLY AMERICA REQUIREMENTS.**

☒ **2. ENERGY CONSERVATION.**

☒ **3. RECYCLED PRODUCTS.**

☒ **4. CARGO PREFERENCE REQUIREMENTS.**

☒ **5. ACCESS TO RECORDS AND REPORTS.**

☒ **6. FEDERAL CHANGES.**

☒ **7. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.**

☒ **8. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.**

☒ **9. CIVIL RIGHTS REQUIREMENTS.**

☒ **10. SAFE OPERATION OF MOTOR VEHICLES.**

☒ **11. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.**

☒ **12. TELECOMMUNICATIONS EQUIPMENT OR SERVICES; VIDEO SURVEILLANCE EQUIPMENT OR SERVICES.**

☒ **13. CERTIFICATION FOR FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS.**

☐ **14. NOTIFICATION REGARDING FALSE CLAIMS, FRAUD, WASTE, ABUSE, AND OTHER LEGAL MATTERS.** [Include in contracts valued at \$25,000 or more]

- ☐ **15. VETERANS PREFERENCE.** [Applicable if capital project consisting of construction work]
- ☐ **16. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION.** [Applicable if contract is expected to equal or exceed \$25k or if contract is for federally required audit services]
- ☐ **17. LOBBYING.** [Applicable if contract is expected to exceed \$100k;
- ☐ **18. CLEAN WATER AND AIR REQUIREMENTS.** [Applicable if contract is expected to exceed \$150k]
- ☐ **19. BUY AMERICA REQUIREMENTS.** [Applicable if contract is for over \$150k of iron, steel, manufactured goods, or rolling stock;
- ☐ **20. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS.** [Applicable if rolling stock procurement]
- ☐ **21. BUILD AMERICA, BUY AMERICA ACT.** [Consult with legal counsel - Applicable if contract is an infrastructure project that involves construction materials]
- ☐ **22. ACCESSIBILITY.** [Applicable if contract is related to rolling stock (including services, equipment, or new procurements) or public transportation facilities – consult with legal counsel for customization]
- ☐ **23. BUS TESTING.** [Applicable if contract is to lease or purchase any new bus model or any bus model with a major change in configuration or components to be acquired or leased with FTA funds]
- ☐ **24. DAVIS-BACON ACT REQUIREMENTS.** [Applicable if construction, alteration, or repair (including painting) contract in excess of \$2,000]
- ☐ **25. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** [Applicable if contract is expected to equal or exceed \$100k and involves employment of laborers and mechanics. this provision does not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.]
- ☐ **26. SEISMIC SAFETY.** [Applicable if contract for the construction of new buildings or additions to existing buildings]
- ☐ **27. CHARTER SERVICE OPERATIONS.** [Applicable if contract for operation of public transportation service]

☐ **28. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS.** [Applicable if contract for transit operations performed by employees of a contractor recognized by the FTA as a transit operator]

☐ **29. SCHOOL BUS OPERATIONS.** [Applicable if contract for operating public transportation services]

☐ **30. SUBSTANCE ABUSE REQUIREMENTS.** [Consult with legal counsel – applicable if work involves the performance of safety-sensitive functions, as defined in 49 cfr § 655.4]

☐ **31. DOMESTIC PREFERENCES FOR PROCUREMENTS.** [Applicable if contract is for the purchase, acquisition, or use of goods, products, or other materials and is under the Buy America threshold; do not use for service contracts or if Buy America is applicable]

DEFINITIONS. The following definitions apply to these federal terms and conditions:

- a. "Bid" means bid, proposal, or offer.
- b. "Bidder" means bidder, proposer, or offeror.
- c. "Contract" means the agreement to which these Federal Terms and Conditions apply.
- d. "Contractor" means the person or entity named in the Purchase Order, Bid, Proposal or Contract to which these Federal Terms and Conditions apply.
- e. "FTA" means the Federal Transit Administration.
- f. "Agency" means San Mateo County Transit District, Peninsula Corridor Joint Powers Board, or San Mateo County Transportation Authority, as applicable.
- g. "U.S. DOT" means United States Department of Transportation.

CLAUSES

1. **FLY AMERICA REQUIREMENTS.** The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their Contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property to the extent such service is available, unless travel by foreign air carrier is a matter of necessity as defined by the Fly America Act. The Contractor must submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and must, in any event, provide a certificate of compliance with the Fly America requirements, if used. The Contractor agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

2. **ENERGY CONSERVATION.** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act, 42 U.S.C. § 6321 *et seq.*
3. **RECYCLED PRODUCTS.** The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.
4. **CARGO PREFERENCE REQUIREMENTS.** The Contractor agrees: (a) to use privately owned United States Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract by ocean vessels to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Agency (through the Contractor in the case of a subcontractor's bill-of-lading); and (c) to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, Material, or commodities by ocean vessel.
5. **ACCESS TO RECORDS AND REPORTS.** Contractor must provide all authorized representatives of the Agency, the FTA Administrator, the State Auditor and the Comptroller General of the United States access to any books, documents, papers and records of the Contractor which are related to performance of this Contract for the purposes of making audits, copies, examinations, excerpts and transcriptions. Contractor also agrees to retain and maintain, and will require its subcontractors to retain and maintain, all books, records, accounts and reports related to this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain the same until the Agency, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
6. **FEDERAL CHANGES.** Contractor must at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those

listed directly or by reference in the applicable Master Agreement between the Agency and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply constitutes a material breach of this Contract.

7. **NO GOVERNMENT OBLIGATION TO THIRD PARTIES.** The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and will not be subject to any obligations or liabilities to the Agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor/subconsultant who will be subject to its provisions.

8. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.**

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5353(l) on the Contractor, to the extent the Federal Government deems appropriate.
- c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses will not be modified, except to identify the subcontractor/subconsultant who will be subject to the provisions.

9. **CIVIL RIGHTS REQUIREMENTS.**

- a. **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying Contract:
 - i. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the performance of the Contract. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - ii. **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - iii. **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

10. **SAFE OPERATION OF MOTOR VEHICLES.** The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees

and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or the Agency. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

11. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.

The preceding provisions include, in part, certain terms and conditions required by U.S. DOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1G, dated January 17, 2025, as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any the Agency requests which would cause the Agency to be in violation of the FTA terms and conditions.

12. TELECOMMUNICATIONS EQUIPMENT OR SERVICES; VIDEO SURVEILLANCE EQUIPMENT OR SERVICES.

The Contractor represents that the Contractor, and its subcontractors and subconsultants, will not provide or use covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system, in accordance with Section 889 of the John S. McCain National Defense Authorization Act, in the performance of this Contract. "Covered telecommunications equipment or services" means any of the following: (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (3) Telecommunications or video surveillance services provided by such entities or using such equipment listed in (1) or (2); or (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of the People's Republic of China. "Substantial or essential component" means any component necessary for the proper function or performance of a piece of equipment, system, or service. "Critical technology" includes those critical technologies listed in 48 C.F.R. 52.204–25, subpart (a).

13. CERTIFICATION FOR FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS.

By submitting a bid or proposal, the Contractor certifies that it (1) does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and (2) has not been convicted of a felony criminal violation under any Federal law within the preceding 24 months. The Contractor must flow this requirement down to subcontractors and vendors at all lower tiers.

14. NOTIFICATION REGARDING FALSE CLAIMS, FRAUD, WASTE, ABUSE, AND OTHER LEGAL MATTERS.

A. The Contractor agrees to promptly notify the FTA Chief Counsel and the FTA Regional Counsel for Region IX if it has knowledge of (i) any current or prospective legal matter that may affect the Federal Government, including but not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason, or (ii) any matters that may affect the Federal Government, including but not limited to, the Federal Government's interests in the Federal Award supporting this Agreement, this Agreement and any amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

The Contractor further agrees to promptly notify the FTA Chief Counsel, the FTA Regional Counsel for FTA Region IX, and the U.S. DOT Office of Inspector General if it has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA, including but not limited to knowledge that a person has or may have (i) submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or (ii) committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance.

The Contractor further agrees to promptly notify Agency of any matter described above that relates to this Agreement or any other federally assisted agreement between the Contractor and Agency.

"Knowledge," as used in this section, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the Contractor's possession.

"Promptly," as used in this section, means to refer information without delay and without change.

B. The Contractor agrees to include the above clause in all subcontracts entered into for the performance of this Agreement. It is further agreed that the above clause shall not be modified, except to identify the subcontractor/subconsultant who will be subject to its provisions.

15. VETERANS PREFERENCE. To the extent practicable, the Contractor agrees that it and its subcontractors:

- a. Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the requisite skills and abilities to perform the construction work required under a third party contract in connection with a capital project supported with funds appropriated or made available for 49 U.S.C. chapter 53, and
- b. Will not be required to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

16. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION. This contract is a covered transaction subject to the requirements of 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)" and 2 CFR Part 1200, U.S. DOT regulations, "Nonprocurement Suspension and Debarment." These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor is required to verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be: (a) Debarred from participation in any federally assisted Award; (b) Suspended from participation in any federally assisted Award; (c) Proposed for debarment from participation in any federally assisted Award; (d) Declared ineligible to participate in any federally assisted Award; (e) Voluntarily excluded from participation in any federally assisted Award; or (f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Agency. If it is later determined by the Agency that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C, as supplemented by 2 C.F.R. Part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

17. **LOBBYING**. Contractor shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Contractor shall certify that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded to the Agency. Contractor shall ensure that all of its subcontractors/subconsultants under this Contract shall certify the same. The Agency is responsible for keeping the certification of the Contractor, who is in turn responsible for keeping the certification forms of subcontractors/subconsultants. The Bidder shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities," which is included with the Bid Documents, including instructions for completion.
18. **CLEAN WATER AND AIR REQUIREMENTS**. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in part or in whole with federal assistance provided by the FTA.
19. **BUY AMERICA REQUIREMENTS**. The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. All bidders or proposers must submit the appropriate Buy America certification to the Agency with their bids or proposals, except those subject to a general waiver. Proposals that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.
20. **PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS**. Contractor agrees to comply with pre-award and post-delivery requirements set forth in 49 U.S.C. § 5323(m) and FTA's implementing regulations at 49 C.F.R. Part 663. Contractor must submit the following certifications with its bid:
- a. **Pre-Award Buy America Certification**: The Contractor must complete and submit a declaration certifying either compliance or noncompliance with Buy America. If

- the Contractor certifies compliance with Buy America, it must submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- b. Pre-Award Solicitation Specifications Certification: The Contractor shall submit evidence that is capable of producing rolling stock that meets the Agency's specifications set forth in the solicitation.
- c. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor must submit evidence of (1) the manufacturer's self-certification sticker information that the vehicle complies with applicable FMVSS in 49 CFR Part 571, as may be amended, or (2) the manufacturer's self-certification statement that the vehicle is not subject to the FMVSS in 49 CFR Part 571, as may be amended.
21. **BUILD AMERICA, BUY AMERICA ACT**. For construction materials used in the Project, the Contractor agrees to comply with the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, U.S. DOT, and FTA, unless a waiver applies.
22. **ACCESSIBILITY**. The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended; 29 USC § 794; 49 USC § 5301(6); 49 CFR Parts 27, 37, 38, and 39 and any implementing requirements and regulations FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.
23. **BUS TESTING**. The Contractor [Manufacturer] agrees to comply with 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:
- a. A manufacturer of a new bus model or a bus produced with a major change in components or configuration must provide a copy of the final test report to the Agency at a point in the procurement process specified by the Agency which will be prior to the Agency's final acceptance of the first vehicle.
- b. A manufacturer who releases a report under paragraph (a) above shall provide notice to the operator of the testing facility that the report is available to the public.
- c. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the

- vehicle in the test report, which must be provided to the Agency prior to the Agency's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- d. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

24. DAVIS-BACON ACT REQUIREMENTS.

a. Minimum wages

- i. All laborers and mechanics employed or working upon the site of any qualifying construction work under the Contract (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section I (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Subsection (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which such work is performed. The wage determination (including any additional

classification and wage rates conformed under paragraph (A)(4) of this section) and the Davis-Bacon poster (WH- 1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- ii. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- iii. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- iv. (a) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to Subsections (A)(4)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

b. Withholding - The Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

c. Payrolls and basic records

i. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section I (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the

Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- ii. (a) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Agency for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Agency if the agency is a party to the contract, but the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(i) That the payroll for the payroll period contains the information to be provided under §5.5(a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under §5.5(a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (C)(2)(b) of this Section.

(d) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

iii. The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this Section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

d. Apprentices and trainees

i. Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and

Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journey hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- ii. Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's

level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- iii. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of 29 CFR Part 30.
- e. Compliance with Copeland Act requirements - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.
- f. Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower subcontractor with all the contract clauses in 29 CFR 5.5.
- g. Contract termination: Debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- h. Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

- i. Disputes Concerning Labor Standards - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- j. Certification of eligibility
 - i. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - ii. No part of this Contract shall be subcontracted to person or firm ineligible for an award of a government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

25. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. In accordance with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the United States Department of Labor regulations at 29 C.F.R. part 5, the following requirements apply to all laborers and mechanics employed by the Contractor or subcontractor in the performance of any part of the work under the Contract, including watchmen, guards, and workers performing services in connection with dredging or rock excavation. (40 U.S.C.A. § 3701)

- a. Overtime Requirements – Neither the Contractor nor its subcontractors may permit any laborer or mechanic in any workweek in which he or she is employed on such work under this Contract to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation, Liability for Unpaid Wages, Liquidated Damages – In the event of any violation of the clause set forth in paragraph A of this Section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this Section in the sum of \$10.00 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without

payment of the overtime wages required by the clause set forth in paragraph A of this Section.

- c. Withholding for Unpaid Wages and Liquidated Damages – Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from any moneys payable on account of work performed by Contractor under any such contract or any other Federal contract with Contractor or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this Section.
- d. Subcontracts – The Contractor shall insert in any subcontract the clauses set forth in this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Section.
- e. Payrolls and Basic Records – Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and shall also maintain records that show the costs anticipated or the actual cost incurred in providing such benefits. Should the Contractor employ apprentices or trainees under approved programs, it shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- f. Occupational Safety and Health Act – The Contractor agrees to comply with Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 333, and applicable DOL regulations, “Safety and Health Regulations for

Construction", 29 CFR Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

The Contractor also agrees to include the requirements of this Subsection F in each subcontract. The term "subcontract" under this Subsection is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this Section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials that will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this Section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

26. **SEISMIC SAFETY**. The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.
27. **CHARTER SERVICE OPERATIONS**. The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.
28. **PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:
 - a. **General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with

- terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- b. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- c. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

29. **SCHOOL BUS OPERATIONS**. Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in

competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles or facilities.

- 30. SUBSTANCE ABUSE REQUIREMENTS.** Agency adheres to US DOT/FTA federal regulations, 49 CFR Parts 40 and 655, governing mandatory drug and alcohol testing and education for “safety-sensitive” employees. Pursuant to these regulations, the Agency requires that contractors who “stand in the shoes” of the Agency are subject to these regulations, and must have a Substance Abuse Policy, a drug and alcohol testing program and provide training for its safety-sensitive employees. Contractor is required to comply fully with all DOT and FTA regulations prohibiting drug use and alcohol misuse by all operators and maintenance personnel or employees of subcontractors performing safety-sensitive functions. The Contractor's policy, testing program and training must comply with these regulations: 49 CFR Part 655, (“Prevention of Prohibited Drug Use in Transit Operations and Prevention of Alcohol Misuse in Transit Operations”) and 49 CFR Part 40, (“Procedures for Transportation Workplace Drug and Alcohol Testing Procedures”).

The Contractor will be required to cause its prospective safety-sensitive employees who may be assigned to perform safety-sensitive duties for the Agency to undergo pre-employment drug testing and make drug test result inquiries of prior DOT-regulated employers. Safety sensitive employees shall also be subject to post-accident testing, reasonable suspicion testing, and random testing, and other tests as required by 49 CFR Part 655.

The Contractor must notify the Agency's Risk Administrator immediately of any violation of the regulations or failure to test.

Any employee of the Contractor found to have violated the drug and alcohol regulations is subject to removal from duties under the contract, depending on the facts and circumstances of the situation.

If the Contractor utilizes their own pre-established program or a third party administrator's, Contractor must fully cooperate with the Agency in such monitoring efforts, provide any requested documents or information, and comply with any corrective action that the Agency requires of Contractor. Contractor further agrees to annually certify its compliance with Part 655 by December 1st and to submit the Management Information Systems (“MIS”) reports before March 1st (for the prior calendar year) to the Agency. Contractor agrees that all records produced and maintained in the performance of the program are subject to review by the Agency in a facility not more than 100 miles away. Further, Contractor may be required to submit quarterly MIS reports to the Agency.

If the Contractor is included in the Agency's Random Testing Program, the Contractor is not released from all other DOT regulations such as: adhering to DOT's

hiring requirements, including making inquiries of past DOT-regulated employers and pre-employment testing; conducting reasonable suspicion and post-accident testing when warranted; and training safety-sensitive employees and their supervisors for the requisite time required by law. Contractor agrees to timely notify the Agency with names of their safety-sensitive employees, including any additions or deletions during the contract term.

Contractor agrees to submit within thirty (30) days of award of the contract (1) verification that its safety-sensitive employees are included as part of a random testing pool; (2) a copy of Contractor's substance abuse policy; and (3) the name of its third party administrator, if applicable. Failure to submit such documents within the prescribed time period, or failure to submit any other documentation relevant to the substance abuse testing requirements as required by the Agency, may result in the contract being terminated for default.

31. **DOMESTIC PREFERENCES FOR PROCUREMENTS.** Pursuant to 2 CFR § 200.322, the Contractor should, to the greatest extent practicable under this Agreement and as appropriate and to the extent consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Contractor must include this requirement in agreements with subcontractors, including all contracts and purchase orders for work or products under this Agreement.

EXHIBIT E: SBE AND PROMPT PAYMENT REQUIREMENTS

The Agency, a recipient of federal financial assistance from the U. S. Department of Transportation (DOT), is committed to and has adopted a Disadvantaged Business Enterprise (DBE) Program in accordance with federal regulations 49 CFR Part 26, issued by DOT. The DBE Program includes a Small Business Enterprise (SBE) element.

No contract-specific DBE participation goal has been established for this Agreement. 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 SBE'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; or (2) committed to subcontracting with one or more certified SBEs.

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 **Form 7 SBE Preference Form** with their proposal to receive a point preference. If a Proposer 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. **SBE CERTIFICATIONS**

The Agency recognizes the following SBE certifications:

- A. Small Business Administration (SBA) 8(a) provided that a firm's average annual gross receipts do not exceed the maximum cap referenced in section 5C.
<https://search.certifications.sba.gov/>
- B. California Department of General Services (DGS) Small Business (SB), SB for the purpose of Public Works (SB-PW), and Micro Business (MB) certifications.
<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>
- C. SBE certifications by the San Francisco Bay Area Rapid Transit District.
<https://bart.gob2g.com/FrontEnd/searchcertifieddirectory.asp>
- D. SBE certifications by the Santa Clara Valley Transportation Authority.
<https://b2gnow.mwdbe.com/frontend/searchcertifieddirectory.asp?tn=vta>
- E. SBE certifications by the Los Angeles County Metropolitan Transportation Authority.
<https://smallbusinessquery.metro.net/main>
- F. Other SBE certifications with an online directory may be accepted for this contract only if confirmed through the Q&A process in PlanetBids.

5. **SBE ELIGIBILITY**

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

- A. The firm must be certified per section 4: SBE Certifications.
- B. 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.
- C. 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 **\$31.84 million**.

Note: SBA size standards vary by industry and certain industries, such as general construction contracting, exceed the maximum cap. A general construction contractor meeting the SBA size standard but exceeding the maximum cap, 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 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.

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 Subconsultant 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.

E. SBE/DBE Outreach Efforts for WD Proposals

The Consultant agrees to make its best efforts to encourage SBE and DBE participation on each WD issued pursuant to this Contract. In each WD proposal, the Consultant shall identify any Subconsultants, including SBEs, to perform work on the WD by submitting an updated Designation of Subconsultants Form (Form 5).

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 AND PROMPT PAYMENT REQUIREMENTS

AGREEMENT BETWEEN

PENINSULA CORRIDOR JOINT POWERS BOARD, (AGENCY)

AND

RSE CORPORATION (CONSULTANT)

AGREEMENT SUMMARY*

Board of Directors' Date of Award: March 5, 2026

Resolution Number: 2026-XX

Effective Date of Agreement: April 1, 2026

Services to be Performed (Section 1): On-Call Rail Systems Engineering Business Operations Support Services

Term of Agreement (Section 3): Five (5) year term

Consultant's Key Representative (Section 4):

Name: Phil Leong, PE

Title: President

Company: RSE Corporation

Address: 1820 Gateway Drive, Suite 200, San Mateo, CA 94404

Phone: (650) 637-9500

Email: pleong@rsecorp.com

Board-approved aggregate amount: Board approved not-to-exceed, aggregate amount of \$22,807,692

*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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This AGREEMENT for On-Call Rail Systems Engineering Business Operations Support Services (Agreement) is entered into by and between the Peninsula Corridor Joint Powers Board (AGENCY) located at 1250 San Carlos Avenue, San Carlos, CA 94070 and RSE Corporation (CONSULTANT), a California Corporation located at 1820 Gateway Drive, Suite 200, San Mateo, CA 94404 ("the Parties").

1. SCOPE OF SERVICES

This is an Agreement to provide On-Call Rail Systems Engineering Business Operations Support 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 engineering support 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 September 30, 2025, the Scope of Services of which is attached hereto and incorporated herein as Exhibit A, as supplemented by CONSULTANT's written proposal dated November 21, 2025, attached hereto and incorporated herein as Attachment C.

2. AGREEMENT DOCUMENTS

This Agreement consists of the following documents:

- (1) This Agreement, including Attachment A-1, Insurance Requirements
- (2) Exhibit A, Scope of Services
- (3) Exhibit B, Consultant's Proposal including negotiated cost/labor rates.
- (4) Exhibit C, Work Directives Process
- (5) Exhibit D, Federal Requirements
- (6) Exhibit E, SBE and Prompt Payment Reporting Requirements

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-year term commencing upon April 1, 2026 and ending on March 31, 2031. 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.

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 Phil Leong, President 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 Attachment C.

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 Twenty-Two Million Eight Hundred Seven Thousand Six Hundred Ninety-two Dollars (22,807,692) plus a 10 percent 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.

5.1. GENERAL

Compensation for each project performed under the Agreement will either be **Cost-Plus-Fixed-Fee with a ceiling (CPFF)** or **Specified Rate of Compensation (SRC)**.

Project pricing will be allowable only to the extent that estimated costs and costs incurred are compliant with Federal cost principals contained in Title 48, Code of Federal Regulations, Part 31. Any costs for which payment has been made to CONSULTANT, which are determined by subsequent audit to be unallowable under these Federal cost principals, are subject to repayment by CONSULTANT to the AGENCY.

CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT's Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.

When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the AGENCY Project Manager before exceeding such estimate. Progress payments for each project will be made monthly in arrears based on services provided and actual costs incurred.

CONSULTANT shall not commence performance of work or services until this Agreement has been approved by AGENCY, and notification to proceed has been issued by AGENCY Procurement Administrator. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.

Fixed Fees shall be negotiated prior to the signing of the Agreement and shall apply throughout the life of the Agreement.

5.2. COST OF WORK

The cost of work shall be calculated as the sum of the direct labor times a multiplier for payroll burden, employee benefits, and overhead costs, plus other direct costs as set forth in this Section.

5.3. DIRECT LABOR

5.3.1. GENERAL

Direct Labor Rates shall be as set forth in Attachment C to this Agreement and shall stay in effect for the first year of the Agreement. The hourly rates (direct labor costs) are subject to salary administration as set forth in Title 48 Code of Federal Regulations Part 31.

Charges by CONSULTANT, and subconsultants, for an employee's time shall in no instance exceed the actual amount paid to such employee for time directly spent on services performed under this Agreement by such employee.

For new personnel to be approved after contract award, CONSULTANT, and subconsultants, shall submit a written request to the Procurement Administrator and provide the person's name, job title, current actual rates, and resume, for review and approval.

New personnel must be approved prior to their commencing work under a project. Work performed by personnel not previously approved in writing by the AGENCY shall be at CONSULTANT's own risk.

5.3.2. Straight Time

Straight time payroll is to be the equivalent annual salary/wage divided by 2080 hours per annum for employees approved to perform services under this Agreement.

5.3.3. Overtime

The AGENCY will reimburse CONSULTANT, and subconsultants, the straight time portion and premium time portion (if payable to the employee in accordance with the CONSULTANT'S employment policies) of its employee's actual overtime pay during performance of services under this Agreement, provided that the AGENCY has approved the overtime, in writing, prior to the incurring of said overtime. Overtime charges must reflect overhead rates reduced by non-applicable employee benefits.

5.4. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

5.4.1. General

CONSULTANT, and subconsultants, multipliers may be inclusive of the markups for payroll burden, employee benefits and office overhead for each office location as defined below. The multiplier is fixed for the first year of the Agreement.

The agreed-upon multipliers shall be used for CONSULTANT's and subconsultants' home office and AGENCY-Furnished Field Office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in Exhibit B "Consultants Proposal and Labor Rates," dated November 21, 2025.

5.4.2. Payroll Burden

CONSULTANT and the AGENCY agree that the following will be considered as Payroll Burdens and as such will be paid to CONSULTANT, and subconsultant's, as compensation for said costs, as set forth below. "Payroll Burden" is defined as:

The cost of all a) employment taxes, b) CONSULTANT's, and subconsultant's, portion of social and retirement charges and c) contributions imposed by law, or labor contract contributions (if applicable), or regulations, with respect to or measured by CONSULTANT's, and subconsultant's, payroll, including but not limited to, the CONSULTANT's, and subconsultant's, cost of owner-required insurance.

5.4.3. Employee Benefits

"Employee Benefits" for CONSULTANT's and subconsultant's employees is defined as The cost of all contractual and voluntary employee benefits, including but not limited to, holidays, vacations, sick leave, jury duty leave, group medical, life insurance, salary continuance insurance, bonus schemes (including Director's drawings of dividends), employee stock ownership plan, savings plan, retirement plan, relocation benefits, and all other employee benefit plans.

5.4.4. Indirect Costs (Office Overhead)

CONSULTANT, and subconsultants, shall be compensated through an agreed-upon multiplier for overhead, which includes those administrative, clerical, word processing, accounting, and other support staff utilized in performing services under this Agreement, which are not explicitly included in the Proposal or who have been approved by the AGENCY.

These rates will remain fixed for the initial year of the Agreement. These rates will be reviewed annually on the anniversary of the effective date of the Agreement, for the CONSULTANT and its subconsultants and may be adjusted upon AGENCY approval.

5.4.4.1. CONSULTANT and subconsultants Home Office Overhead rate shall apply to personnel assigned in CONSULTANT's and subconsultant's Home Office in support of the performance of services under this Agreement. Home Office Indirect Cost Rates (overhead) included in the CONSULTANT's proposal, including those of their subconsultants, must be substantiated by the most recent (within 12 months) audited reports available, which clearly show the calculations. All such reports shall comply with FAR reporting requirements. If audited reports are not available for subconsultants, the CONSULTANT will provide alternate information (i.e. other comparable public agency contract rates) to the AGENCY to review for acceptance. The AGENCY will have the final decision as to what is acceptable.

5.4.4.2. AGENCY-Furnished Field Office Overhead rate shall apply to CONSULTANT's, and subconsultant's, personnel assigned to an AGENCY-Furnished Field Office on a full-time basis, for a period of at least 120 calendar days. As these rates cannot be pre-determined by audit, the AGENCY reserves the right to negotiate this rate for each firm.

5.5. Maximum Fixed Fees (Profit)

5.5.1. General

Maximum Fixed Fee percentages shall apply throughout the life of the Agreement. The CONSULTANT's fixed fee amount for each project may be negotiated on an individual project basis. Said fixed fee amount shall not be altered unless there is a significant alteration in the scope, complexity or character of the work to be performed under a Project.

The maximum fees, as a percentage of fully burdened Direct Labor Cost, allowable by the AGENCY shall not exceed:

Systems Engineering Support Services –

Nine Percent (9%)* for Consultant's home office (Home);

Eight Percent (8%)* for Agency's field office (Field);

Subconsultants markup – Zero Percent (0%)

5.6. OTHER DIRECT COSTS (ODCs)

5.6.1. General

Other Direct Costs, including subconsultant's projects, shall be proposed at cost with a Zero Percent (0%) markup.

5.6.2. Allowable ODCs

Examples of allowable include, but are not limited to: mileage, parking, tolls, mail costs, film, photo developing, facsimiles, printing/copying, plan reproduction, blueprint services, and subconsultants directly associated with the project. Expenditures for each allowable ODC in excess of \$500.00 per month, and not included above, shall require advance approval by the AGENCY. Supporting documentation is required for reimbursement of all ODCs.

5.6.3. Subconsultants

With regard to subconsultants, the AGENCY will pay the cost of work as defined in Section 5.2 through Section 5.6.4 with Zero Percent (0%) markup. The CONSULTANT may be compensated for initial, or one-time, charges incurred in establishing a project or for pre-approved administration charges.

5.6.4. Limitations on Direct Costs - The Following Are Limitations:

(1) Vehicles - If applicable and approved by the Agencies, rental vehicles and their support costs are limited to a total maximum of \$500 per month, per vehicle. The standard Internal Revenue Service mileage rates shall apply for use of a personal vehicle.

(2) Travel Expenses - All travel and relocation related plans must be approved in writing by the AGENCY prior to the commencement of the travel. If written approval is received for relocations, travel, temporary accommodations and or assistance, FAR 31.205-46(a) Sections 1 and 2 and Federal Travel Regulation (41 CFR 301-304) for San Mateo County, California, will apply. Lodging and per diem rates shall not exceed the U.S. General Services Administration (GSA) rate at the time of travel for the specific project site. Costs incurred for travel, subsistence, and relocation of personnel engaged in the performance of services under this Agreement, if approved in advance by AGENCY will include the following:

- Relocation expenses, travel, temporary accommodations, and/or subsistence related to mobilization travel to the CONSULTANT's dedicated project office or to AGENCY-Furnished Field Office for CONSULTANT and subconsultant personnel permanently assigned to the project. Such expenses shall be reduced by any amount received from others by CONSULTANT or subconsultant for demobilization from the prior project assignment.

- Travel, accommodations, and subsistence (directly related to the Scope of Services) for business trips to the Project Site, to AGENCY's consultants and suppliers, or to other locations approved by the AGENCY. Such travel may originate at CONSULTANT's or subconsultant's home office or branch office, or at the CONSULTANT's dedicated field office, or at AGENCY's central or field offices.

5.6.5. Unallowable ODCs

The following ODCs are not allowable unless they are authorized by prior written approval of the AGENCY's authorized representative:

- Costs associated with registration for training, seminars, and technical association meetings.
- Costs associated with employee incentive compensation including cash bonuses, suggestion awards, safety awards, and other forms of incentive compensation.
- Costs associated with leasing, maintaining, insuring, and operating dedicated project vehicles.
- Computer hardware and software support, software licenses, or cellular phone usage.
- Safety equipment such as steel-toed boots, safety vests, and hard hats.
- Insurance
- Cellular phones
- Cost of any normal equipment, tools, or vehicles (unless approved) hired, leased or purchased for the performance of services, provided that the depreciated value of such items purchased by CONSULTANT shall be credited to the AGENCY at the completion of the work performed under this Agreement.
- Shipping
- Drafting supplies
- Surveying supplies
- Models and renderings

All other ODCs that are not identified in 5.6.2 are considered unallowable ODCs and must be authorized by prior written approval of the AGENCY's authorized representative.

5.7. Maximum Compensation Amount

A maximum not-to-exceed amount as set forth in the project shall apply for each project.

Further, it is expressly understood and agreed that in no event shall CONSULTANT be compensated in an amount greater than the amount specified in any individual project for the services performed under such project without issuance of a written Amendment to such project by the AGENCY's Procurement Administrator.

If at any time, CONSULTANT has reason to believe that the total compensation payable for the performance of services under this Agreement will exceed the maximum not-to-exceed amount as set for in the project, CONSULTANT shall notify the AGENCY immediately in writing to that effect, indicating the estimated additional amount necessary to complete the services in the project. Any cost incurred by CONSULTANT in excess of the not-to-exceed amount as set forth in the project shall be at CONSULTANT's own risk.

5.8. Flow Down

CONSULTANT shall include the requirements regarding audits, compensation and reimbursement for costs and fees in its subconsultant's agreements, provided such subconsultants have been approved by the AGENCY.

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-J-P-109, Purchase order # [TBD] and the AGENCY Project Manager's and Contract Administrator'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 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 Manager, or designee, and the CONSULTANT's Program Manager, or designee.

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 Manager or designee, and the CONSULTANT's Program Manager via electronic mail.

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
Peninsula Corridor Joint Powers Board,
1250 San Carlos Avenue
San Carlos, CA 94070

With a copy to: Director, Contracts and Procurement
Peninsula Corridor Joint Powers Board,
1250 San Carlos Avenue
San Carlos, CA 94070

If to the CONSULTANT: _____
Attn: _____

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**

General

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, subcontractors, 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 Executive Director or designee.

10. USE OF 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.

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 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:

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

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 Attachment A-1, 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 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

CONSULTANT warrants that its professional services will be performed in accordance with the professional standards of practices of comparable _____ firms at the time the services are rendered. In addition, CONSULTANT will provide such specific warranties as may be set forth in Work Directives as agreed upon by the Parties.

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:

The right to have the CONSULTANT re-perform such services at the CONSULTANT's expense; or

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.

The right to terminate the Agreement for default.

CONSULTANT will be responsible for all errors and omissions and is expected to pay for all engineering support services 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

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.

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.

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. PREVAILING WAGE

Not Applicable.

26. 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, FTA, the U.S. DOT Office of Inspector General, and the Comptroller General of the United States, or any of 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.

27. 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.

28. 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.

29. 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.

30. SBE AND PROMPT PAYMENT POLICY

See Attachment E for SBE, and prompt payment reporting requirements.

31. CONFLICT OF INTEREST

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 the Federal Transit Administration (FTA), Federal Highway Administration (FHWA) (for Federally-funded Agreements) and 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.

CONSULTANT's duties and services under this Agreement shall not include preparing or assisting the AGENCY with any portion of the AGENCY's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the AGENCY. The AGENCY entering this agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. CONSULTANT'S participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. CONSULTANT shall cooperate

with the AGENCY to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by CONSULTANT pursuant to this Agreement.

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.

32. SUBSTANCE ABUSE PROGRAM

The AGENCY adheres to US DOT/FTA federal regulations, 49 CFR Parts 40 and 655, governing mandatory drug and alcohol testing and education for “safety-sensitive” employees. Pursuant to these regulations, the AGENCY requires that contractors who “stand in the shoes” of the AGENCY are subject to these regulations, and must have a Substance Abuse Policy, a drug and alcohol testing program and provide training for its safety-sensitive employees. CONSULTANT is required to comply fully with all Department of Transportation (“DOT”) and Federal Transit Administration (“FTA”) regulations prohibiting drug use and alcohol misuse by all operators and maintenance personnel or employees of subcontractors performing safety-sensitive functions. The CONSULTANT’s policy, testing program and training must comply with these regulations: 49 CFR Part 655, (*“Prevention of Prohibited Drug Use in Transit Operations and Prevention of Alcohol Misuse in Transit Operations”*) and 49 CFR Part 40, (*“Procedures for Transportation Workplace Drug and Alcohol Testing Procedures”*).

CONSULTANT will be required to cause its prospective safety-sensitive employees who may be assigned to perform safety-sensitive duties for the AGENCY to undergo pre-employment drug testing and make drug test result inquiries of prior DOT-regulated employers. Safety sensitive employees will also be subject to post-accident testing, reasonable suspicion testing, and random testing, and other tests as required by 49 CFR Part 655.

The CONSULTANT must notify the AGENCY’s Project Manager/Contract Administrator immediately of any violation of the regulations or failure to test.

Any employee of the CONSULTANT found to have violated the drug and alcohol regulations is subject to removal from duties under the contract, depending on the facts and circumstances of the situation.

If the CONSULTANT utilizes their own pre-established program or a third-party administrator’s, CONSULTANT must fully cooperate with the AGENCY in such monitoring efforts, provide any requested documents or information, and comply with any corrective action that the AGENCY requires of CONSULTANT. CONSULTANT further agrees to annually certify its compliance with Part 655 by December 1st and to submit the Management Information Systems (“MIS”) reports before March 1st (for the prior calendar year) to the AGENCY. CONSULTANT agrees that all records produced and maintained in

the performance of the program are subject to review by the AGENCY in a facility not more than 100 miles away. Further, CONSULTANT may be required to submit quarterly MIS reports to the AGENCY.

CONSULTANT agrees to submit within thirty (30) days of award of the contract (1) verification that its safety-sensitive employees are included as part of a random testing pool; (2) a copy of CONSULTANT's substance abuse policy; and (3) the name of its third-party administrator, if applicable. Failure to submit such documents within the prescribed time period, or failure to submit any other documentation relevant to the substance abuse testing requirements as required by the AGENCY, may result in the Agreement being terminated for default.

33. 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.

34. ENGINE AND FLEET REGULATIONS.

The CONSULTANT is considered the fleet owner and operator, and is solely responsible for compliance with all provisions of the California Air Resources Board (CARB) engine and fleet regulations and the payment of any fines or penalties imposed by CARB or the U.S. Environmental Protection Agency (EPA) resulting from the CONSULTANT's non-compliance. The CONSULTANT shall indemnify, hold harmless, and defend (with legal counsel chosen by the AGENCY at the CONSULTANT's expense)

the AGENCY against any violation notices issued, or enforcement actions brought, by CARB or EPA involving the CONTRACTOR's non-compliance.

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.

PENINSULA CORRIDOR JOINT POWERS BOARD RSE CORPORATION: (See footnote below)*

Signature: _____

Print: Michelle Bouchard

Title: Executive Director

Date: _____

Signature: _____

Print: _____

Title: _____

Date: _____

Signature: _____

Print: _____

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.

ATTACHMENT A-1: INSURANCE REQUIREMENTS

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 subcontractors, subconsultants, suppliers, temporary workers, independent contractors, 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 JPB. Prior to beginning work under this Agreement, CONSULTANT shall provide the JPB's authorized insurance consultant, Insurance PlanetBids, 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 CONSULTANT 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 CONTSULTANT'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 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 **\$5** million per claim or occurrence and **\$5** 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 CONSULTANT. The purpose of this coverage is to protect CONSULTANT 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, CONSULTANT shall provide to PlanetBids, the JPB'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 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

<https://vendors.planetbids.com/portal/68007/portal-home>

In addition, the CONSULTANT shall promptly deliver to PlanetBids 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 PlanetBids 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 JPB's authorized insurance consultant, PlanetBids, if any of the above policies are non-renewed or cancelled.

Submit Certificates of Insurance to:
Peninsula Corridor Joint Powers Board

C/O

<https://vendors.planetbids.com/portal/68007/portal-home>

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 CONSULTANT's agreement to waive subrogation against the JPB 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 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 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 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 CONSULTANT 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, 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, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if CONSULTANT or subcontractor is not a named defendant in the lawsuit.

EXHIBIT A: SCOPE OF SERVICES

The Peninsula Corridor Joint Powers Board (“JPB” or Agency”) is seeking On-Call Professional Support Services in Systems Engineering, with a focus on Train Control and Rail Operations Systems. This scope encompasses a broad spectrum of systems, spanning rail vehicle onboard systems, back-office system applications, wayside systems, and their associated communication and network infrastructures.

Consultant shall provide technology and management services related to the planning, designing, implementation, operations, maintenance and management of various railroad system initiatives. Consultant shall be able to provide technical and functional support in sufficient depth to meet the Agency’s project requirements. Such depth shall be demonstrated in the proposal.

Consultant may be requested to assist staff with the development of RFP’s or other documents in reference to the aforementioned services.

The Work under the Agreement will be established as needed on an Individual Work Directive basis. Specific contract deliverables will be set forth in each individual Work Directive issued under this Agreement. The Consultants shall function with overall guidance from the JPB, but will manage and control the day-to-day Work Directive activities and deliverables.

Consultant shall assist staff with oversight of the JPB’s Commuter Rail Operations Systems. Consultant shall provide services related to the operation of the Caltrain rail systems including but not limited to:

- Computer Aided Dispatch (CAD)
- I-ETMS based Positive Train Control (PTC) System
- SCADA (Supervisory Control And Data Acquisition) systems for traction power director systems
- Back Office Systems deployment, maintenance, and administration
- System Integration and Interface Control Documents (ICD), drafting, maintenance, and adherence
- Wayside Passenger Information Systems (GPS and track-circuit based vehicle location systems, prediction algorithms, and digital signage)
- Public Address Audio Systems
- Radio Dispatch and VoIP Systems
- Closed Circuit TV (CCTV)
- Onboard control systems
- Networks and communications infrastructure
- Wayside and Onboard Radio and cellular systems

- Systems Engineering best practices
- Technical Project Management
- Rolling Stock and Wayside equipment health and monitoring systems
- Inventory and Asset Management Systems
- Change Control practices and software tools
- Configuration Management practices and software tools
- State of good repair for all systems
- Datacenter, virtual environments, and cloud environment system maintenance and operation.
- PTC Interoperable Train Control (ITC) Committees
- Regulatory Compliance (e.g. FRA, CPUC, etc.)

List of Potential Work Directives Tasks

Tasks that may be required of the Consultant in executing Work Directive assignments include, but are not limited to:

- Support systems in revenue service operations
- Subject Matter Expertise (SME) for troubleshooting various systems such as log analysis; defect analysis, trend analysis, and resolution planning
- Defect and enhancement tracking, develop requirements and planning
- Products and market research, facilitate technology demonstrations and vendor roadshows
- Evaluation of technology solutions and analysis of alternatives
- Strategic project planning
- Cost estimate preparation and/or review
- Technology Project Management
- Schedule preparation and/or review
- Deliverable documents reviews, to include design documents, test plans, procedures, reports, manuals, installation cutover plans, site-specific work plans, etc.
- Feasibility studies for technology solutions
- Development of technical specifications and RFPs
- Drafting, reviewing, and maintenance of Design Criteria, Design Standards, and Specifications
- Technical Writing, review, and maintenance of Policies, Procedures, Operational Manuals, and Troubleshooting and Maintenance Manuals
- System optimization studies
- Planning and concept development

- Design review analyses and support project execution
- Analysis of FRA/CPUC rulemaking and support regulatory compliance
- Change Control process development and refinement, and execution
- Configuration Management tools and execution with asset management and Operations & Maintenance partners
- State of Good Repair planning and systems maintenance support
- Database queries and custom report building
- Development and facilitation of systems training programs
- As SME provide consultation and knowledge transfer

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EXHIBIT B: CONSULTANT'S PROPOSAL INCLUDING NEGOTIATED COST/LABOR RATES

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EXHIBIT C: WORK DIRECTIVE PROCESS

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.

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.

~ END OF WORK DIRECTIVES ~

EXHIBIT D: FEDERAL REQUIREMENTS

In its performance of the purchase order, the Contractor will comply with all of the applicable Federal Transit Administration (FTA) clauses identified below, as indicated by a checked box next to the clause title. These terms apply only to the extent allowed under applicable federal law.

DEFINITIONS.

☒ **1. FLY AMERICA REQUIREMENTS.**

☒ **2. ENERGY CONSERVATION.**

☒ **3. RECYCLED PRODUCTS.**

☒ **4. CARGO PREFERENCE REQUIREMENTS.**

☒ **5. ACCESS TO RECORDS AND REPORTS.**

☒ **6. FEDERAL CHANGES.**

☒ **7. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.**

☒ **8. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.**

☒ **9. CIVIL RIGHTS REQUIREMENTS.**

☒ **10. SAFE OPERATION OF MOTOR VEHICLES.**

☒ **11. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.**

☒ **12. TELECOMMUNICATIONS EQUIPMENT OR SERVICES; VIDEO SURVEILLANCE EQUIPMENT OR SERVICES.**

☒ **13. CERTIFICATION FOR FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS.**

☐ **14. NOTIFICATION REGARDING FALSE CLAIMS, FRAUD, WASTE, ABUSE, AND OTHER LEGAL MATTERS.** [Include in contracts valued at \$25,000 or more]

- ☐ **15. VETERANS PREFERENCE.** [Applicable if capital project consisting of construction work]
- ☐ **16. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION.** [Applicable if contract is expected to equal or exceed \$25k or if contract is for federally required audit services]
- ☐ **17. LOBBYING.** [Applicable if contract is expected to exceed \$100k;
- ☐ **18. CLEAN WATER AND AIR REQUIREMENTS.** [Applicable if contract is expected to exceed \$150k]
- ☐ **19. BUY AMERICA REQUIREMENTS.** [Applicable if contract is for over \$150k of iron, steel, manufactured goods, or rolling stock;
- ☐ **20. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS.** [Applicable if rolling stock procurement]
- ☐ **21. BUILD AMERICA, BUY AMERICA ACT.** [Consult with legal counsel - Applicable if contract is an infrastructure project that involves construction materials]
- ☐ **22. ACCESSIBILITY.** [Applicable if contract is related to rolling stock (including services, equipment, or new procurements) or public transportation facilities – consult with legal counsel for customization]
- ☐ **23. BUS TESTING.** [Applicable if contract is to lease or purchase any new bus model or any bus model with a major change in configuration or components to be acquired or leased with FTA funds]
- ☐ **24. DAVIS-BACON ACT REQUIREMENTS.** [Applicable if construction, alteration, or repair (including painting) contract in excess of \$2,000]
- ☐ **25. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** [Applicable if contract is expected to equal or exceed \$100k and involves employment of laborers and mechanics. this provision does not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.]
- ☐ **26. SEISMIC SAFETY.** [Applicable if contract for the construction of new buildings or additions to existing buildings]
- ☐ **27. CHARTER SERVICE OPERATIONS.** [Applicable if contract for operation of public transportation service]

☐ **28. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS.**

[Applicable if contract for transit operations performed by employees of a contractor recognized by the FTA as a transit operator]

☐ **29. SCHOOL BUS OPERATIONS.** [Applicable if contract for operating public transportation services]

☐ **30. SUBSTANCE ABUSE REQUIREMENTS.** [Consult with legal counsel – applicable if work involves the performance of safety-sensitive functions, as defined in 49 cfr § 655.4]

☐ **31. DOMESTIC PREFERENCES FOR PROCUREMENTS.** [Applicable if contract is for the purchase, acquisition, or use of goods, products, or other materials and is under the Buy America threshold; do not use for service contracts or if Buy America is applicable]

DEFINITIONS. The following definitions apply to these federal terms and conditions:

- a. "Bid" means bid, proposal, or offer.
- b. "Bidder" means bidder, proposer, or offeror.
- c. "Contract" means the agreement to which these Federal Terms and Conditions apply.
- d. "Contractor" means the person or entity named in the Purchase Order, Bid, Proposal or Contract to which these Federal Terms and Conditions apply.
- e. "FTA" means the Federal Transit Administration.
- f. "Agency" means San Mateo County Transit District, Peninsula Corridor Joint Powers Board, or San Mateo County Transportation Authority, as applicable.
- g. "U.S. DOT" means United States Department of Transportation.

CLAUSES

1. **FLY AMERICA REQUIREMENTS.** The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their Contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property to the extent such service is available, unless travel by foreign air carrier is a matter of necessity as defined by the Fly America Act. The Contractor must submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and must, in any event, provide a certificate of compliance with the Fly America requirements, if used. The Contractor agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

2. **ENERGY CONSERVATION.** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act, 42 U.S.C. § 6321 *et seq.*
3. **RECYCLED PRODUCTS.** The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.
4. **CARGO PREFERENCE REQUIREMENTS.** The Contractor agrees: (a) to use privately owned United States Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract by ocean vessels to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Agency (through the Contractor in the case of a subcontractor's bill-of-lading); and (c) to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, Material, or commodities by ocean vessel.
5. **ACCESS TO RECORDS AND REPORTS.** Contractor must provide all authorized representatives of the Agency, the FTA Administrator, the State Auditor and the Comptroller General of the United States access to any books, documents, papers and records of the Contractor which are related to performance of this Contract for the purposes of making audits, copies, examinations, excerpts and transcriptions. Contractor also agrees to retain and maintain, and will require its subcontractors to retain and maintain, all books, records, accounts and reports related to this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain the same until the Agency, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
6. **FEDERAL CHANGES.** Contractor must at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those

listed directly or by reference in the applicable Master Agreement between the Agency and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply constitutes a material breach of this Contract.

7. **NO GOVERNMENT OBLIGATION TO THIRD PARTIES.** The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and will not be subject to any obligations or liabilities to the Agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor/subconsultant who will be subject to its provisions.

8. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.**

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5353(l) on the Contractor, to the extent the Federal Government deems appropriate.
- c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses will not be modified, except to identify the subcontractor/subconsultant who will be subject to the provisions.

9. **CIVIL RIGHTS REQUIREMENTS.**

- a. **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying Contract:
 - i. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the performance of the Contract. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - ii. **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - iii. **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

10. **SAFE OPERATION OF MOTOR VEHICLES.** The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees

and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or the Agency. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

11. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.

The preceding provisions include, in part, certain terms and conditions required by U.S. DOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1G, dated January 17, 2025, as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any the Agency requests which would cause the Agency to be in violation of the FTA terms and conditions.

12. TELECOMMUNICATIONS EQUIPMENT OR SERVICES; VIDEO SURVEILLANCE EQUIPMENT OR SERVICES.

The Contractor represents that the Contractor, and its subcontractors and subconsultants, will not provide or use covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system, in accordance with Section 889 of the John S. McCain National Defense Authorization Act, in the performance of this Contract. "Covered telecommunications equipment or services" means any of the following: (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (3) Telecommunications or video surveillance services provided by such entities or using such equipment listed in (1) or (2); or (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of the People's Republic of China. "Substantial or essential component" means any component necessary for the proper function or performance of a piece of equipment, system, or service. "Critical technology" includes those critical technologies listed in 48 C.F.R. 52.204–25, subpart (a).

13. CERTIFICATION FOR FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS.

By submitting a bid or proposal, the Contractor certifies that it (1) does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and (2) has not been convicted of a felony criminal violation under any Federal law within the preceding 24 months. The Contractor must flow this requirement down to subcontractors and vendors at all lower tiers.

14. NOTIFICATION REGARDING FALSE CLAIMS, FRAUD, WASTE, ABUSE, AND OTHER LEGAL MATTERS.

A. The Contractor agrees to promptly notify the FTA Chief Counsel and the FTA Regional Counsel for Region IX if it has knowledge of (i) any current or prospective legal matter that may affect the Federal Government, including but not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason, or (ii) any matters that may affect the Federal Government, including but not limited to, the Federal Government's interests in the Federal Award supporting this Agreement, this Agreement and any amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

The Contractor further agrees to promptly notify the FTA Chief Counsel, the FTA Regional Counsel for FTA Region IX, and the U.S. DOT Office of Inspector General if it has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA, including but not limited to knowledge that a person has or may have (i) submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or (ii) committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance.

The Contractor further agrees to promptly notify Agency of any matter described above that relates to this Agreement or any other federally assisted agreement between the Contractor and Agency.

"Knowledge," as used in this section, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the Contractor's possession.

"Promptly," as used in this section, means to refer information without delay and without change.

B. The Contractor agrees to include the above clause in all subcontracts entered into for the performance of this Agreement. It is further agreed that the above clause shall not be modified, except to identify the subcontractor/subconsultant who will be subject to its provisions.

15. VETERANS PREFERENCE. To the extent practicable, the Contractor agrees that it and its subcontractors:

- a. Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the requisite skills and abilities to perform the construction work required under a third party contract in connection with a capital project supported with funds appropriated or made available for 49 U.S.C. chapter 53, and
- b. Will not be required to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

16. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION. This contract is a covered transaction subject to the requirements of 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)" and 2 CFR Part 1200, U.S. DOT regulations, "Nonprocurement Suspension and Debarment." These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor is required to verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be: (a) Debarred from participation in any federally assisted Award; (b) Suspended from participation in any federally assisted Award; (c) Proposed for debarment from participation in any federally assisted Award; (d) Declared ineligible to participate in any federally assisted Award; (e) Voluntarily excluded from participation in any federally assisted Award; or (f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Agency. If it is later determined by the Agency that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C, as supplemented by 2 C.F.R. Part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

17. **LOBBYING**. Contractor shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Contractor shall certify that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded to the Agency. Contractor shall ensure that all of its subcontractors/subconsultants under this Contract shall certify the same. The Agency is responsible for keeping the certification of the Contractor, who is in turn responsible for keeping the certification forms of subcontractors/subconsultants. The Bidder shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities," which is included with the Bid Documents, including instructions for completion.
18. **CLEAN WATER AND AIR REQUIREMENTS**. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in part or in whole with federal assistance provided by the FTA.
19. **BUY AMERICA REQUIREMENTS**. The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. All bidders or proposers must submit the appropriate Buy America certification to the Agency with their bids or proposals, except those subject to a general waiver. Proposals that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.
20. **PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS**. Contractor agrees to comply with pre-award and post-delivery requirements set forth in 49 U.S.C. § 5323(m) and FTA's implementing regulations at 49 C.F.R. Part 663. Contractor must submit the following certifications with its bid:
- a. **Pre-Award Buy America Certification**: The Contractor must complete and submit a declaration certifying either compliance or noncompliance with Buy America. If

- the Contractor certifies compliance with Buy America, it must submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- b. Pre-Award Solicitation Specifications Certification: The Contractor shall submit evidence that is capable of producing rolling stock that meets the Agency's specifications set forth in the solicitation.
 - c. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor must submit evidence of (1) the manufacturer's self-certification sticker information that the vehicle complies with applicable FMVSS in 49 CFR Part 571, as may be amended, or (2) the manufacturer's self-certification statement that the vehicle is not subject to the FMVSS in 49 CFR Part 571, as may be amended.
21. **BUILD AMERICA, BUY AMERICA ACT**. For construction materials used in the Project, the Contractor agrees to comply with the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, U.S. DOT, and FTA, unless a waiver applies.
22. **ACCESSIBILITY**. The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended; 29 USC § 794; 49 USC § 5301(6); 49 CFR Parts 27, 37, 38, and 39 and any implementing requirements and regulations FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.
23. **BUS TESTING**. The Contractor [Manufacturer] agrees to comply with 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:
- a. A manufacturer of a new bus model or a bus produced with a major change in components or configuration must provide a copy of the final test report to the Agency at a point in the procurement process specified by the Agency which will be prior to the Agency's final acceptance of the first vehicle.
 - b. A manufacturer who releases a report under paragraph (a) above shall provide notice to the operator of the testing facility that the report is available to the public.
 - c. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the

- vehicle in the test report, which must be provided to the Agency prior to the Agency's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- d. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

24. DAVIS-BACON ACT REQUIREMENTS.

a. Minimum wages

- i. All laborers and mechanics employed or working upon the site of any qualifying construction work under the Contract (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section I (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Subsection (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which such work is performed. The wage determination (including any additional

classification and wage rates conformed under paragraph (A)(4) of this section) and the Davis-Bacon poster (WH- 1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- ii. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- iii. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- iv. (a) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to Subsections (A)(4)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

b. Withholding - The Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

c. Payrolls and basic records

i. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section I (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the

Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- ii. (a) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Agency for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Agency if the agency is a party to the contract, but the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(i) That the payroll for the payroll period contains the information to be provided under §5.5(a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under §5.5(a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (C)(2)(b) of this Section.

(d) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

iii. The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this Section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

d. Apprentices and trainees

i. Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and

Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journey hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- ii. Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's

level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- iii. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of 29 CFR Part 30.
- e. Compliance with Copeland Act requirements - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.
- f. Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower subcontractor with all the contract clauses in 29 CFR 5.5.
- g. Contract termination: Debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- h. Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

- i. Disputes Concerning Labor Standards - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- j. Certification of eligibility
 - i. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - ii. No part of this Contract shall be subcontracted to person or firm ineligible for an award of a government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

25. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. In accordance with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the United States Department of Labor regulations at 29 C.F.R. part 5, the following requirements apply to all laborers and mechanics employed by the Contractor or subcontractor in the performance of any part of the work under the Contract, including watchmen, guards, and workers performing services in connection with dredging or rock excavation. (40 U.S.C.A. § 3701)

- a. Overtime Requirements – Neither the Contractor nor its subcontractors may permit any laborer or mechanic in any workweek in which he or she is employed on such work under this Contract to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation, Liability for Unpaid Wages, Liquidated Damages – In the event of any violation of the clause set forth in paragraph A of this Section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this Section in the sum of \$10.00 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without

payment of the overtime wages required by the clause set forth in paragraph A of this Section.

- c. Withholding for Unpaid Wages and Liquidated Damages – Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from any moneys payable on account of work performed by Contractor under any such contract or any other Federal contract with Contractor or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this Section.
- d. Subcontracts – The Contractor shall insert in any subcontract the clauses set forth in this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Section.
- e. Payrolls and Basic Records – Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and shall also maintain records that show the costs anticipated or the actual cost incurred in providing such benefits. Should the Contractor employ apprentices or trainees under approved programs, it shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- f. Occupational Safety and Health Act – The Contractor agrees to comply with Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 333, and applicable DOL regulations, “Safety and Health Regulations for

Construction", 29 CFR Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

The Contractor also agrees to include the requirements of this Subsection F in each subcontract. The term "subcontract" under this Subsection is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this Section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials that will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this Section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

26. **SEISMIC SAFETY**. The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.
27. **CHARTER SERVICE OPERATIONS**. The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.
28. **PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:
 - a. **General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with

terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

- b. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- c. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

- 29. SCHOOL BUS OPERATIONS.** Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in

competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles or facilities.

- 30. SUBSTANCE ABUSE REQUIREMENTS.** Agency adheres to US DOT/FTA federal regulations, 49 CFR Parts 40 and 655, governing mandatory drug and alcohol testing and education for “safety-sensitive” employees. Pursuant to these regulations, the Agency requires that contractors who “stand in the shoes” of the Agency are subject to these regulations, and must have a Substance Abuse Policy, a drug and alcohol testing program and provide training for its safety-sensitive employees. Contractor is required to comply fully with all DOT and FTA regulations prohibiting drug use and alcohol misuse by all operators and maintenance personnel or employees of subcontractors performing safety-sensitive functions. The Contractor's policy, testing program and training must comply with these regulations: 49 CFR Part 655, (“Prevention of Prohibited Drug Use in Transit Operations and Prevention of Alcohol Misuse in Transit Operations”) and 49 CFR Part 40, (“Procedures for Transportation Workplace Drug and Alcohol Testing Procedures”).

The Contractor will be required to cause its prospective safety-sensitive employees who may be assigned to perform safety-sensitive duties for the Agency to undergo pre-employment drug testing and make drug test result inquiries of prior DOT-regulated employers. Safety sensitive employees shall also be subject to post-accident testing, reasonable suspicion testing, and random testing, and other tests as required by 49 CFR Part 655.

The Contractor must notify the Agency's Risk Administrator immediately of any violation of the regulations or failure to test.

Any employee of the Contractor found to have violated the drug and alcohol regulations is subject to removal from duties under the contract, depending on the facts and circumstances of the situation.

If the Contractor utilizes their own pre-established program or a third party administrator's, Contractor must fully cooperate with the Agency in such monitoring efforts, provide any requested documents or information, and comply with any corrective action that the Agency requires of Contractor. Contractor further agrees to annually certify its compliance with Part 655 by December 1st and to submit the Management Information Systems (“MIS”) reports before March 1st (for the prior calendar year) to the Agency. Contractor agrees that all records produced and maintained in the performance of the program are subject to review by the Agency in a facility not more than 100 miles away. Further, Contractor may be required to submit quarterly MIS reports to the Agency.

If the Contractor is included in the Agency's Random Testing Program, the Contractor is not released from all other DOT regulations such as: adhering to DOT's

hiring requirements, including making inquiries of past DOT-regulated employers and pre-employment testing; conducting reasonable suspicion and post-accident testing when warranted; and training safety-sensitive employees and their supervisors for the requisite time required by law. Contractor agrees to timely notify the Agency with names of their safety-sensitive employees, including any additions or deletions during the contract term.

Contractor agrees to submit within thirty (30) days of award of the contract (1) verification that its safety-sensitive employees are included as part of a random testing pool; (2) a copy of Contractor's substance abuse policy; and (3) the name of its third party administrator, if applicable. Failure to submit such documents within the prescribed time period, or failure to submit any other documentation relevant to the substance abuse testing requirements as required by the Agency, may result in the contract being terminated for default.

31. **DOMESTIC PREFERENCES FOR PROCUREMENTS.** Pursuant to 2 CFR § 200.322, the Contractor should, to the greatest extent practicable under this Agreement and as appropriate and to the extent consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Contractor must include this requirement in agreements with subcontractors, including all contracts and purchase orders for work or products under this Agreement.

EXHIBIT E: SBE AND PROMPT PAYMENT REQUIREMENTS

The Agency, a recipient of federal financial assistance from the U. S. Department of Transportation (DOT), is committed to and has adopted a Disadvantaged Business Enterprise (DBE) Program in accordance with federal regulations 49 CFR Part 26, issued by DOT. The DBE Program includes a Small Business Enterprise (SBE) element.

No contract-specific DBE participation goal has been established for this Agreement. 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 SBE'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; or (2) committed to subcontracting with one or more certified SBEs.

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 **Form 7 SBE Preference Form** with their proposal to receive a point preference. If a Proposer 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. **SBE CERTIFICATIONS**

The Agency recognizes the following SBE certifications:

- A. Small Business Administration (SBA) 8(a) provided that a firm's average annual gross receipts do not exceed the maximum cap referenced in section 5C.
<https://search.certifications.sba.gov/>
- B. California Department of General Services (DGS) Small Business (SB), SB for the purpose of Public Works (SB-PW), and Micro Business (MB) certifications.
<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>
- C. SBE certifications by the San Francisco Bay Area Rapid Transit District.
<https://bart.gob2g.com/FrontEnd/searchcertifieddirectory.asp>
- D. SBE certifications by the Santa Clara Valley Transportation Authority.
<https://b2gnow.mwdbe.com/frontend/searchcertifieddirectory.asp?tn=vta>
- E. SBE certifications by the Los Angeles County Metropolitan Transportation Authority.
<https://smallbusinessquery.metro.net/main>
- F. Other SBE certifications with an online directory may be accepted for this contract only if confirmed through the Q&A process in PlanetBids.

5. **SBE ELIGIBILITY**

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

- A. The firm must be certified per section 4: SBE Certifications.
- B. 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.
- C. 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 **\$31.84 million**.

Note: SBA size standards vary by industry and certain industries, such as general construction contracting, exceed the maximum cap. A general construction contractor meeting the SBA size standard but exceeding the maximum cap, 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 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.

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 Subconsultant 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.

E. SBE/DBE Outreach Efforts for WD Proposals

The Consultant agrees to make its best efforts to encourage SBE and DBE participation on each WD issued pursuant to this Contract. In each WD proposal, the Consultant shall identify any Subconsultants, including SBEs, to perform work on the WD by submitting an updated Designation of Subconsultants Form (Form 5).

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 AND PROMPT PAYMENT REQUIREMENTS

**Peninsula Corridor Joint Powers Board
Staff Report**

To: JPB Finance Committee

Through: Michelle Bouchard, Executive Director

From: Kate Jordan Steiner, Chief Financial Officer

For: March 2026 JPB Board of Directors Meeting

Subject: **Receive Quarterly Fuel Hedge Report Fiscal Year 2026 Quarter 2**



Finance Committee
Recommendation



Technology, Operations, Planning,
and Safety Committee
Recommendation



Advocacy and Major Projects
Committee Recommendation

Purpose and Recommended Action

Staff provides this report as an update on Caltrain's fuel hedging strategy for the Board of Directors' (Board) review.

Discussion

The purpose of this presentation is to provide an update on the performance of the Diesel Fuel Hedging Program (Program) established for Caltrain. The 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.

In September 2024 Caltrain launched fully electric service between San Francisco and San Jose; however, Caltrain still provides diesel service between San Jose and Gilroy.

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.

Following electrification of Caltrain in October 2024, diesel fuel consumption declined significantly, leading to the wind-down of the diesel fuel hedge program. By the end of the Fiscal Year (FY) 2025 Quarter (Q4), the hedge account was fully liquidated, with a final disbursement of \$4,369,988.20 issued to Caltrain. Following the close of FY25 Q4, a recommendation was presented to management to reinstate the fuel hedging program, and management approved the reinstatement. During FY26 Q1, Caltrain did not immediately enter into fuel hedge contracts, as staff observed a continuing downward trend in diesel prices and recommended waiting for further price declines before executing any positions. This approach

was intended to optimize hedge timing and secure more favorable pricing once the market stabilized at lower levels.

In October 2025, following the close of FY26 Q1, as diesel fuel prices declined, Caltrain reinstated its fuel hedge program. From October 2025, shortly after the contracts were executed, fuel prices spiked due to supply chain disruptions and sanctions from the Russia-Ukraine war. Since that spike, prices have generally decreased due to a relatively well-supplied global petroleum market. As of December 31, 2025, Caltrain is hedged for 420,000 gallons of diesel, covering most of the period from January 2026 through August 2027, with a current net unrealized loss of approximately \$12,092 as of the end of December 2025.

Update on Hedging Electricity

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 2026 Performance

- As of FY26 Q2, the fuel hedging program had a realized gain of \$4,716.
- There was no hedging activity in FY26 Q1 and the gains occurred during FY26 Q2.

Prospective

Following the electrification of Caltrain services in October 2024, diesel fuel consumption has significantly decreased from an average of 325,923 gallons to 31,153 gallons per month for the period October 2024 through December 2025.

Subsequent Fuel Hedge Asset Information as of December 31, 2025:

During FY26 Q1, \$250,000 was deposited into the hedging account. As of December 31, 2025, the value of the hedging account is \$242,625 which is the sum of \$250,000 that was deposited by Peninsula Corridor Joint Powers Board (JPB) to the account in FY26 Q1, \$4,716 in realized gains, and \$12,091 in unrealized loss.

Budget Impact

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

Prepared By: Adela Alicic Manager, Treasury Deby and Investments 2/10/2026