



JPB Technology, Operations, Planning, and Safety (TOPS) Committee  
Meeting of April 26, 2023

Supplemental File

<u>Item #</u>	<u>Subject</u>
5	Draft Agreement for South Linden Avenue and Scott Street Grade Separation Project
6	Agreement CMGC MVTC Grade Separation and Access Project
9	Draft Service Agreement with Menlo Park

AGREEMENT BETWEEN  
PENINSULA CORRIDOR JOINT POWERS BOARD (AGENCY)  
AND  
RSE CORPORATION (CONSULTANT)

**AGREEMENT SUMMARY\***

**Board of Directors' Date of Award:** May 4, 2023

**Resolution Number:** 2023-xx

**Effective Date of Agreement:** June 1, 2023

**Services to be Performed (Section 1):** Preliminary Engineering Design of the South Linden Avenue and Scott Street Grade Separation Project

**Term of Agreement (Section 3):** Two (2) year base term commencing upon June 1, 2023, and ending on May 30, 2025, and up to four (4) one (1)-year option term(s).

**CONSULTANT's Key Representative (Section 4):**

**Name:** Phil Leong

**Title:** PE | President

**Company:** RSE Corporation

**Address:** 1075 Old County Road, Suite D, Belmont, CA 94002

**Phone:** Office (650) 637-9500 Cell (650) 826-1858

**Email:** [pleong@rsecorp.com](mailto:pleong@rsecorp.com)

**Compensation (Section 5):** The not-to-exceed as amounts as follows: required services for Task 01 \$361,904; Task 02 \$449,961; Task 03 \$2,960,058; Task 04 \$250,018; Task 05 \$229,063; Task 06 \$36,040 for a total of \$4,287,044.

\*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 for Preliminary Engineering and Environmental Clearance Phase Services for the South Linden Avenue and Scott Street Grade Separation Project (Agreement) is entered into by and between the Peninsula Corridor Joint Power Board (AGENCY) located at 1250 San Carlos Avenue, San Carlos, CA 94070 and RSE Corporation (CONSULTANT), a California Corporation located at 1075 Old County Road, Suite D, Belmont, CA 94002 (“the Parties”).

## 1. SCOPE OF SERVICES

This is an Agreement to provide services for the Preliminary Engineering and Environmental Clearance Phase of the Project. The CONSULTANT shall be familiar with and will be responsible for providing and performing all activities necessary to successfully deliver the scope of services with a goal to achieve 35% Design and support the AGENCY to obtain Environmental Clearance for the Project. The CONSULTANT shall identify and explain the necessity for any additional tasks not within the scope of services detailed below, including any modified assumptions, required to successfully deliver the project. The key components of the scope of services consist of required and optional tasks as follows:

1. Project Management (Required)
2. Preliminary Studies (Required)
3. Preliminary Engineering (Required)
4. Environmental Clearance and Right of Way Support (Required)
5. Utility Coordination (Required)
6. Project Working File Transfer (Required)
7. Final Design (35% Design to 65%, 95%, 100%) (Optional)
8. Submittal of IFB Plans and Specifications (Optional)
9. Project Renderings (Optional)
10. Design Support during Right of Way and Utilities Relocation Phase (Optional)
11. Design Support during Construction Bid (Optional)
12. Design Support during Construction (Optional)
13. Construction Manager/General Contractor (CM/GC) Design Support (Optional)

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 design and other 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 December 6, 2022, the Scope of Services which is attached hereto and incorporated herein as Exhibit A, as supplemented by CONSULTANT's written proposal dated, attached hereto and incorporated herein as Exhibit B.

## 2. **AGREEMENT DOCUMENTS**

This Agreement consists of the following documents:

- (1) This Agreement;
- (2) Exhibit A, Scope of Services;
- (3) Exhibit B, CONSULTANT's Proposal, including cost/labor rates;
- (4) Exhibit C, Insurance Requirements
- (5) Exhibit D, SBE REQUIREMENTS
- (6) Exhibit E, Labor Code Requirements
- (7) Exhibit F, References

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 base term of this Agreement will be for a two (2) year base term commencing upon June 1, 2023 and ending on May 30, 2025. The CONSULTANT will furnish the AGENCY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Solicitation Documents.

The AGENCY reserves the right, in its sole discretion, to exercise up to four (4) one (1)- year option term(s) to extend the Agreement, pursuant to the terms of this Agreement. If the AGENCY determines to exercise the option term(s), the AGENCY will give the CONSULTANT at least 30 days' written notice of its determination.

It is understood that the term of the Agreement, and any option term(s) granted thereto as specified herein are subject to the AGENCY's right to terminate the Agreement in accordance with Section 23 of this Agreement.

## 4. **CONSULTANT'S REPRESENTATIVE**

At all times during the term of this Agreement Phil Leong, PE | 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 all the Required Services (1-6) included in Section 1. Compensation for satisfactory performance of the Required Services included in Section 1 will be on a cost-plus-a-fixed fee with a ceiling basis. The AGENCY will reimburse the CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by the CONSULTANT in performance of the services. The CONSULTANT will not be reimbursed for actual costs that exceed the labor rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in Exhibit B, unless additional reimbursement is provided for, by a fully executed amendment to this Agreement. In no event, will the CONSULTANT be reimbursed for overhead costs at a rate that exceeds the AGENCY-approved overhead rate set forth in Exhibit B. In addition to the allowable incurred costs, the AGENCY will pay the CONSULTANT a fixed fee of \$4,287,044. (Four Million, Two Hundred Eighty-Seven Thousand and Forty-Four Dollars) for the required services. The fixed fee is nonadjustable for the term of the Agreement, except in the event of a significant change in the Scope of Services and such adjustment is made by a fully executed amendment to this Agreement. The AGENCY will pay the CONSULTANT in accordance with Section 6.

AGENCY, in its sole discretion, may elect to exercise option(s) for Tasks 7 through 13 on a cost-plus-a-fixed fee basis. The AGENCY will reimburse the CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by the CONSULTANT in performance of the services. The CONSULTANT will not be reimbursed for actual costs that exceed the labor rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in Exhibit B, unless additional reimbursement is provided for, by a fully executed amendment to this Agreement. In no event, will the CONSULTANT be reimbursed for overhead costs at a rate that exceeds the AGENCY-approved overhead rate set forth in Exhibit B. The fixed fees are nonadjustable for the term of the Agreement, except in the event of a significant change in the Scope of Services and such adjustment is made by a fully executed amendment to this Agreement. The AGENCY will pay the CONSULTANT in accordance with Section 6.

### 5.1. GENERAL

Compensation performed under the Agreement will be **Cost-Plus-Fixed-Fee with a**

ceiling (CPFF).

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.

On an annual basis, no later than 60 days before the start of a succeeding Agreement year, CONSULTANT may, upon written request, adjust prospectively the labor rates. Increases in future negotiated Direct Labor Rates shall be limited, if requested, to the most recent Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco/Oakland/Hayward, CA area available to the AGENCY, or up to a maximum of 3.5 percent escalation, whichever is lower. The effective date of the CPI-U adjustment, if any, will commence either the (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 approval by the AGENCY, the negotiated changes shall remain in effect for the subsequent 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 CPI-U increase for that year.

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's 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.

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## 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 Exhibit B 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.

Increases in hourly rates may not exceed the percentage change of the Consumer Price Index (CPI-U) for the San Francisco/Oakland/Hayward, CA Area (Core Based Statistical Area (CBSA) area, or **3.5%**, whichever is lower.

#### **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.

##### **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 subconsultants, 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', cost of owner-required insurance.

##### **5.4.3. Employee Benefits**

"Employee Benefits" for CONSULTANT's, and subconsultant's, employees are 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 Directors 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 subconsultant's 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. 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 the Project.

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

**Engineering CONSULTANT Design Services – Ten Percent (10%)**  
for CONSULTANT's home office and field office.

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 more than \$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**

Regarding 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 fixed fee amount as set forth in this Section 5.

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 fixed fee 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 fixed fee 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 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 23-J-P-005, Purchase order # and the AGENCY Project Manager'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. **Furthermore, the AGENCY reserves the right to withhold payment for any invoice that does not match the PO lines until CONSULTANT resubmits a corrected invoice.** The AGENCY will provide written notice to the CONSULTANT within 10 calendar days of the AGENCY's decision not to pay and the reasons for non-payment. Final payment will be withheld until CONSULTANT performs all required Agreement expiration or termination obligations.

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

Submit one copy of each invoice as a PDF via email to [AccountsPayable@samtrans.com](mailto: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 Project Manager.

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 Procurement Administrator designee, and the CONSULTANT's Project Manager via electronic mail to: [pleong@rsecorp.com](mailto:pleong@rsecorp.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 Power Board 1250 San Carlos Avenue San Carlos, CA 94070
With a copy to:	Director, Contracts and Procurement Peninsula Corridor Joint Power Board 1250 San Carlos Avenue San Carlos, CA 94070
If to the CONSULTANT:	RSE Corporation Attn: Phil Leong 1075 Old County Road, Suite D Belmont, CA 94002

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

## 8. OWNERSHIP OF WORK

All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared for the services to be performed by CONSULTANT will be and are the property of the AGENCY. The AGENCY will be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the CONSULTANT or in the hands of any subconsultant upon completion or

termination of the work will be immediately delivered to the AGENCY. If any materials are lost, damaged, or destroyed before final delivery to the AGENCY, the CONSULTANT will replace them at its own expense and the CONSULTANT assumes all risks of loss, damage, or destruction of or to such materials. The CONSULTANT may retain a copy of all material produced under this Agreement for its use in its general business activities.

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

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

## **9. CONFIDENTIALITY**

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

The CONSULTANT, its employees, subconsultants and agents, will not release any reports, information, or other materials prepared in connection with this Agreement, whether deemed confidential or not, without the approval of the AGENCY's General Manager/CEO or 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 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 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 Services 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 Services 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 nonpayment 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 willful misconduct of the CONSULTANT or its employees, subconsultants or agents; or
- B. Any allegation that materials or services provided by the CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual- property or proprietary right of any third party.

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

13. **INSURANCE**

Refer to Exhibit D, Insurance Requirements 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. **AGENCY WARRANTIES**

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

18. **AGENCY REPRESENTATIVE**

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

19. **WARRANTY OF SERVICES**

**A.** CONSULTANT warrants that its services will be performed in accordance with the professional standards of practices of comparable engineering firms at the time the services are rendered.

**B.** In the event that any services provided by the CONSULTANT hereunder are deficient because of CONSULTANT's or subconsultants failure to perform said services in accordance with the warranty standards set forth above, the AGENCY will report such deficiencies in writing to the CONSULTANT within a reasonable time. The AGENCY thereafter will have:

- i. The right to have the CONSULTANT re-perform such services at the CONSULTANT's expense; or
- ii. The right to have such services done by others and the costs thereof charged to and collected from the CONSULTANT if within 30 days after written notice to the CONSULTANT requiring such re-performance, CONSULTANT fails to give satisfactory evidence to the AGENCY that it has undertaken said re-performance.
- iii. The right to terminate the Agreement for default.

**C.** CONSULTANT will be responsible for all errors and omissions and is expected to pay for all engineering services work as a result of errors and omissions.

20. **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.

## 21. **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.

## 22. **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.

## 23. **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 subconsultants 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.

24. **LIQUIDATED DAMAGES**

Not Applicable.

25. **PREVAILING WAGE**

See Appendix E.

26. **MAINTENANCE, AUDIT AND INSPECTION OF RECORDS**

All CONSULTANT and subconsultant costs incurred in the performance of this Agreement will be subject to audit. The CONSULTANT and its 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.

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

The CONSULTANT will not discriminate on the basis of race, color, creed, national origin, sex, or age in the performance of this Agreement. The CONSULTANT will carry out applicable requirements of 49 CFR 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 will obtain the same assurances from its joint venture partners, 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.

28. **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 nondiscrimination clause. The CONSULTANT further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

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

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

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

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

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

The CONSULTANT will include the provisions of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of

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

29. **SMALL BUSINESS ENTERPRISE (SBE) POLICY**

See Appendix D.

30. **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 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 financial interests.

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

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

No person previously in the position of Director, Officer, employee or agent of the AGENCY during his or her tenure or for one (1) year after that tenure will have any interest, direct or indirect, in this Agreement or the proceeds under this Agreement, nor may any such person act as an agent or attorney for, or otherwise represent the CONSULTANT by making any formal or informal appearance, or any oral or written communication, before the AGENCY, or any Officer or employee of the AGENCY, for a period of one (1) year after leaving

office or employment with the AGENCY if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant, or Contract.

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

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

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

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

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

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

this Agreement. Such lists may be published as part of future AGENCY



solicitations.

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

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

31. **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 subconsultants 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 1<sup>st</sup> and to submit the Management Information Systems (“MIS”) reports before March 1<sup>st</sup> (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.

If the CONSULTANT is included in the AGENCY's Random Testing Program, CONSULTANT 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. CONSULTANT agrees to timely notify the AGENCY with names of their safety-sensitive employees, including any additions or deletions during the Contract term.

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.

### 32. **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.

### 33. **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.

34. **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.

35. **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.

36. **NO THIRD PARTY BENEFICIARIES**

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

37. **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.

38. **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.

39. **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.

40. **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:**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print: Michelle Bouchard, Caltrain

Print: Phil Leong

Title: Executive Director

Title: President

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.



## PRE-CONSTRUCTION PHASE AGREEMENT

BETWEEN

THE PENINSULA CORRIDOR JOINT POWERS BOARD (AGENCY)

AND

STACY & WITBECK INC AND MYERS & SONS CONSTRUCTION, LLC,  
A JOINT VENTURE (CONTRACTOR)

### AGREEMENT SUMMARY\*

**Board of Directors' Date of Award:** May 4, 2023

**Resolution Number:** 2023-XXX

**Effective Date of Agreement:** May 15, 2023

**Services to be Performed (Section 1):**

- Task 1 – Project Management and Coordination (Required)
- Task 2 – Pre-construction Phase Designer Collaboration (Required)
- Task 3 – Prepare for and Complete Early Utility Work (Optional)
- Task 4 – Deliver the Construction Phase Work (Optional)

**Term of Agreement (Section 3):**

The term of this Agreement will be for a one (1) year base term commencing upon July \_\_\_\_, 2023 and ending on June \_\_\_\_\_, 2024.

The Agency reserves the right, in its sole discretion, to exercise one (1) approximately three-(3) year option term to extend the Agreement for the Construction Phase, or to issue a separate Construction Phase Agreement pursuant to the terms of this Agreement.

**Contractor's Key Representative (Section 4):**

**Name:** Dan Elshire

**Title:** Project Sponsor

**Company:** Stacy & Witbeck Inc and Myers & Sons Construction, LLC, a Joint Venture

**Address:** 2800 Harbor Bay Parkway, Alameda, CA 94502

**Cell Phone:** 510-708-8824

**Email:** delshire@stacywitbeck.com

**Compensation (Section 5):** The Firm Fixed Fee Lump Sum Prices as follows:

Required Services for Tasks 1 and 2: One Million Four Hundred Eighty-Eight Thousand Eight Hundred Sixty-Nine Dollars (\$1,488,869).

Optional Services for Task 3: One Hundred Eighty-Nine Thousand Six Hundred and Ninety-Five Dollars (\$189,695).

Optional Services for Task 4: Five Million Eight Hundred Seventeen Thousand Three Hundred Thirty Dollars (\$5,817,330).

\*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 for Construction Manager General Contractor (CMGC) Pre-construction Phase Services for the Mountain View Transit Center Grade Separation and Access Project (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 Stacy & Witbeck Inc and Myers & Sons Construction, LLC, a Joint Venture (Contractor), a California Corporation located at 2800 Harbor Bay Parkway, Alameda, CA 94502 (“the Parties”).

## 1. **SCOPE OF SERVICES**

This is an Agreement to provide final design Pre-construction Phase services. The Contractor shall be familiar with and will be responsible for providing and performing all activities necessary to successfully deliver the Project through the final design Pre-construction Phase with an ultimate goal to collaborate with the Project Designer to finalized design documents for the construction Work and agree with the Agency on the Total Contract Price (TCP) amount. Upon Agreement on the TCP, the Agency may issue an Amendment to the Pre-construction Phase Contract for the Construction Phase Work. The Contractor shall identify and explain the necessity for any additional tasks not within the Scope of Services detailed below, including any modified assumptions, required in order to successfully deliver the Project. The key components of the Scope of Services are as follows:

- Task 1 – Project Management and Coordination (Required)
- Task 2 – Pre-construction Phase Designer Collaboration (Required)
- Task 3 – Prepare for and Complete Early Utility Work (Optional)
- Task 4 – Deliver the Construction Phase Work (Optional)

The Contractor 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 Contractor represents that it (1) has and will exercise the degree of professional care, skill, efficiency, and judgment of Contractors with special expertise in providing heavy civil construction and other related 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 Contractor’s Services will consist of the Services set forth in the Request for Proposals dated October 25, 2022, the Scope of Services of which is attached hereto and incorporated herein as **Exhibit A**, as supplemented by Contractor’s written Proposal dated December 22, 2022, et seq. attached hereto and incorporated herein as **Exhibit B**.

In addition, Contractor may be asked to provide optional or additional services to support to the Project beyond those specifically identified in **Exhibit A, Scope of Services** and **Exhibit B, Contractor’s Proposal, including Cost Proposal**. The Agency will issue Amendments against the Agreement at any time, on an as-needed basis during the Agreement’s period of performance. Each Amendment will contain a period of performance, negotiated cost-plus-a Firm Fixed Fee Lump Sum Price basis and compensation terms specific to the Amendment.

The Contractor will provide litigation support related to the Project, including serving as an expert witness if required by the Agency. In the event that litigation relating to the Project arises, the Contractor will ensure that at least one individual working on the Project 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 Contractor 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.

## **2. AGREEMENT DOCUMENTS**

This Agreement consists of the following documents:

- (1) Amendments to this Agreement;
- (2) This Agreement;
- (3) Exhibit A, Scope of Services;
- (4) Exhibit B, Contractor's Proposal, including Cost Proposal;
- (5) Exhibit C, Insurance Requirements;
- (6) Exhibit D, SBE Requirements;
- (7) Exhibit E, Labor Code 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 one (1) year base term commencing upon **June 1, 2023 and ending on June 1, 2024**. The Contractor will furnish the Agency with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Solicitation Documents.

The Agency reserves the right, in its sole discretion, to exercise one (1) approximately three-(3) year option term to extend the Agreement, or to issue a separate Construction Phase Agreement pursuant to the terms of this Agreement. If the Agency determines to exercise the option term, the Agency will give the Contractor at least thirty (30) Calendar Days' written notice of its determination.

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

## **4. CONTRACTOR'S REPRESENTATIVE**

At all times during the term of this Agreement, **Dan Elshire, Project Sponsor**, will serve as the primary staff person of Contractor to undertake, render, and oversee all of the services under this Agreement. Upon written notice by the Contractor and approval by the Agency, which will not be unreasonably withheld, the Contractor may substitute this person with another person, who will possess similar qualifications and experience for this position.

## **5. COMPENSATION**

The Contractor agrees to perform all of the services Under Tasks 1 and 2 included in Section 1 for a Firm Fixed Fee Lump Price amount of One Million Four Hundred Eighty-Eight Thousand Eight Hundred Sixty-Nine Dollars (\$1,488,869) plus a ten percent (10%)

contingency amount or up to \$150,000, which may be used at the Agency's sole discretion, if necessary, for unforeseen work only, in accordance with Exhibit A, Scope of Services and Exhibit B, Contractor's Proposal, including Cost Proposal. The total amount will include all labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs and all other costs and expenses incurred by the Contractor. The hourly rate by personnel category will be as set forth in Exhibit B or Attachment. The Agency will pay the Contractor in accordance with Section 6.

Agency, in its sole discretion, may elect to exercise option(s) for Task 3 – Prepare for and Complete Early Utility Work (Optional) and Task 4 – Deliver the Construction Phase Work (Optional), on a cost-plus Firm Fixed Fee Lump Sum Price basis. The cost will be determined based on the Total Contract Price (TCP) negotiations with the Contractor as the Pre-construction Phase design work is completed. This Construction Phase Work, if exercised, will be Authorized by an Amendment to this Agreement. If the Agency determines to exercise optional Task(s) 3 and/or 4, the Agency will give the Contractor at least thirty (30) Calendar Days' written notice of its determination. The Agency will reimburse the Contractor for actual costs (including construction materials procurement, delivery, temporary storage, and installation; labor costs; employee benefits; travel; equipment purchases and rental costs; overhead; and other direct costs) incurred by the Contractor in performance of the services. The Contractor will not be reimbursed for actual costs that exceed the labor rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in Exhibit B, unless additional reimbursement is provided for, by a fully executed Amendment to this Agreement. In no event, will the Contractor be reimbursed for overhead costs at a rate that exceeds the Agency-approved overhead rate set forth in Exhibit B. In addition to the allowable incurred costs, the Agency will pay the Contractor:

A Firm Fixed Fee Lump Sum Price of One Hundred Eighty-Nine Thousand Six Hundred and Ninety-Five Dollars (\$189,695) for Optional Services Task 3 – Prepare for and Complete Early Utility Work (Optional).

A Firm Fixed Fee Lump Sum Price of Five Million Eight Hundred Seventeen Thousand Three Hundred Thirty Dollars (\$5,817,330) for Optional Services Task 4 – Deliver the Construction Phase Work (Optional).

The Firm Fixed Fee Lump Sum Prices are nonadjustable for the term of the Agreement, except in the event of a significant change in the scope of services and such adjustment is made by a fully executed amendment to this Agreement. The Agency will pay the Contractor in accordance with Section 6.

## **6. MANNER OF PAYMENT**

The Contractor 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 23-J-C-011, Purchase Order No. (if applicable), and the Agency Project Manager's name.

Each invoice submitted by the Contractor shall indicate the percentage of the Firm Fixed Fee Lump Sum Price for the required services and any exercised option Task(s) that the work described in the invoice represents. The percentage of the fixed-fee included in each invoice shall be determined by multiplying the total fixed-fee amount for the given task by the percent

of the total progress on that task reported to the Agency for that invoice period, less the total amount of the fixed-fee previously invoiced and paid.

The Agency will endeavor to pay approved invoices/billing statements within thirty (30) Calendar Days of their receipt. The Agency reserves the right to withhold payment to the Contractor if the Agency determines that the quantity or quality of the work performed is unacceptable. Furthermore, the Agency reserves the right to withhold payment for any invoice that does not match the PO lines until Contractor resubmits a corrected invoice. The Agency will provide written notice to the Contractor within ten (10) Calendar Days of the Agency's decision not to pay and the reasons for non-payment. Final payment will be withheld until Contractor performs all required Agreement expiration or termination obligations. If Contractor 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 thirty (30) Calendar Days of the Agency's notice. If Contractor does not provide written notice in accordance with this Section, it waives all rights to challenge the Agency's decision.

Submit one (1) copy of each invoice as a PDF via email to:  
[AccountsPayable@samtrans.com](mailto:AccountsPayable@samtrans.com)

## 7. UNIT PRICES AND LABOR RATE ADJUSTMENTS

The Contractor shall not be entitled to any additional fees for unit priced task order work. The unit prices set forth in **Exhibit 6: Cost Proposal Form** shall be the total cost to the Agency inclusive of all Contractor costs and markups

Unit prices as set forth in Exhibit 6: Cost Proposal Form shall be firm for the duration of this contract regardless of actual changes in labor rates.

## 8. 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 **Contractor's Project Sponsor**.

Notices informing Contractor 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 Procurement Administrator or designee**, and the **Contractor's Project Sponsor** via electronic mail to: [delshire@stacywitbeck.com](mailto:delshire@stacywitbeck.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 Contractor: SWM, a Joint Venture  
Attn: Dan Elshire  
2800 Harbor Bay Parkway  
Alameda, CA 94502

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.

## **9. OWNERSHIP OF WORK**

All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared for the services to be performed by Contractor 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 Contractor or in the hands of any Subcontractor 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 Contractor will replace them at its own expense and the Contractor assumes all risks of loss, damage, or destruction of or to such materials. The Contractor 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 Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

The Contractor 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.

## **10. CONFIDENTIALITY**

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

The Contractor, its employees, Subcontractors, 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.

#### **11. USE OF SUBCONTRACTORS**

The Contractor 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 must be engaged under written contract with the Contractor with provisions allowing the Contractor to comply with all requirements of this Agreement, including without limitation the "Ownership of Work" provisions in Section 9. The Contractor will be solely responsible for reimbursing any Subcontractors and the Agency will have no obligation to them.

#### **12. CHANGES**

The Agency may at any time, by written order, make changes within the scope of services 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 Contractor 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 Contractor regards as a change to the contract terms and conditions, Contractor 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 Contractor 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.

#### **13. RESPONSIBILITY: INDEMNIFICATION**

The Contractor 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 (VTA), TransitAmerica Services, Inc. (TASI) or successor Operator of Record, the Union Pacific Railroad Company, and the City of Mountain View and their directors, officers, agents, and employees against any and all suits, claims, or actions arising out of any of the following:

A. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the Contractor caused by a negligent act or omission or willful misconduct of the Contractor or its employees, Subcontractors, or agents; or

B. Any allegation that materials or services provided by the Contractor 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 Contractor further agrees to defend any and all such actions, suits, or claims and pay all charges of attorneys and all other costs and expenses of defense as they are incurred. If any judgment is rendered against the Agency or any of the other individuals enumerated above in any such action, the Contractor will, at its expense, satisfy and discharge the same. This indemnification will survive termination or expiration of the Agreement.

#### **14. INSURANCE**

Refer to Exhibit C: Insurance Requirements appended hereto, for the Insurance Requirements.

#### **15. CONTRACTOR'S STATUS**

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

#### **16. ASSIGNMENT**

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

#### **17. 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 Contractor, incorporating the terms and conditions of this Agreement with the Agency. Contractor 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. Contractor 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 Contractor in connection with such contracts or purchases by other public agencies.

#### **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.** Contractor warrants that its services will be performed in accordance with the professional standards of practices of comparable firms at the time the services are rendered.

**B.** In the event that any services provided by the Contractor hereunder are deficient because of Contractor's or Subcontractors' failure to perform said services in accordance with the warranty standards set forth above, the Agency will report such deficiencies in writing to the Contractor within a reasonable time. The Agency thereafter will have:

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

ii. The right to have such services done by others and the costs thereof charged to and collected from the Contractor if, within thirty (30) Calendar Days after written notice to the Contractor requiring such re-performance, Contractor 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.** Contractor will be responsible for all errors and omissions and is expected to pay for all services work as a result of errors and omissions.

## **21. CLAIMS OR DISPUTES**

The Contractor 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 Contractor claims before the Contractor has performed any disputed work. Therefore, Contractor's failure to provide timely notice will constitute a waiver of Contractor's claims for additional compensation and/or time.

The Contractor 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 Contractor 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 Contractor has started performance of the work giving rise to the potential claim for additional compensation. In all other cases, notice will 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 Contractor 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 Contractor will maintain cost records of all work that is the basis of any dispute.

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

## **22. REMEDIES**

In the event the Contractor 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 Contractor to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of the Contractor. The Contractor 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 Contractor is provided with written direction from Agency to resume the work.

If the suspension is due to the Contractor'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 Contractor, all costs will be at Contractor's expense and no schedule extensions will be provided by Agency.

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

If the suspension is not the responsibility of the Contractor, suspension of all or any portion of the work under this Section may entitle the Contractor 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 (60) Calendar Days written notice to the Contractor. Upon receipt of such notice, the Contractor 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 Contractor, 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. Contractor 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. Contractor and its Subcontractors must cooperate in good faith in any transition to other contractors, 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 Contractor fails to perform any of the provisions of this Agreement, the Agency may find the Contractor to be in default. After delivery of a written notice of default Agency may terminate the Agreement for default if the Contractor 1) does not cure such breach within seven (7) Calendar Days; or 2) if the nature of the breach is such that it will reasonably require more than seven (7) Calendar 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 seven (7) Calendar Days. If the Contractor 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 Contractor or for appointment of a receiver for Contractor's property, Agency may terminate this Agreement immediately without the thirty (30) Calendar Day cure period.

Upon receipt of a notice of termination for default, the Contractor may not commit itself to any further expenditure of time or resources. The Agency agrees to remit final payment to the Contractor 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 Contractor's actual or projected lost profits had the Contractor 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**

See Exhibit E: Labor Code Requirements

**27. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS**

All Contractor and Subcontractor costs incurred in the performance of this Agreement will be subject to audit. The Contractor and its Subcontractors will permit the Agency, the State Comptroller, and their authorized representatives, to inspect, examine, take excerpts from, transcribe, and copy the Contractor'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 Contractor pursuant to this Agreement. The Contractor will also provide such assistance as may be required in the course of such audit. The Contractor 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 Contractor agrees to reimburse the Agency for those costs within sixty (60) Calendar Days of written notification by the Agency.

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

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor 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 Contractor 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, "Non-discrimination 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 Contractor shall obtain the same assurances from its joint venture partners and Subcontractors by including this assurance in all subcontracts entered into under this Agreement. Failure by the Contractor 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 Contractor 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 Contractor 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 Contractor 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 nondiscrimination clause. The Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, 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 Contractor 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 Contractor's legal duty to furnish information.

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

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

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

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

### **30. SBE REQUIREMENTS**

See Exhibit D: SBE Requirements

### **31. CONFLICT OF INTEREST**

**A. General.** Depending on the nature of the work performed, a Contractor 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, Contractor and its employees may be required to disclose financial interests.

The Contractor 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 Contractor 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, Contractor may be required to publicly disclose financial interests under the Agency's Conflict of Interest Code. Upon receipt, the Contractor 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 Contractor by making any formal or informal appearance, or any oral or written communication, before the Agency, or any Officer or employee of the Agency, for a period of one (1) year after leaving office or employment with the Agency if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant, or contract.

**B. Organizational Conflicts of Interest.** Contractor 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.

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

In the event a conflict is presented, whether disclosed by Contractor or discovered by Agency, the Agency will consider the conflict presented and any alternatives proposed and meet with the Contractor 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, Contractor must maintain lists of its employees, and the Subcontractors and independent contractors or consultants used and their employees. Contractor must provide this information to the Agency upon request. However, submittal of such lists does not relieve the Contractor of its obligation to assure that no organizational conflicts of interest exist. Contractor 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.

Contractor will maintain written policies prohibiting organizational conflicts of interest and will ensure that its employees are fully familiar with these policies. Contractor will monitor and enforce these policies and will 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 Contractor to damages incurred by the Agency in addressing organizational conflicts that arise out of work performed by Contractor, or to termination of this Agreement for breach.

**32. SUBSTANCE ABUSE PROGRAM**

Not Applicable

**33. CALIFORNIA PUBLIC RECORD ACT REQUESTS (CPRA)**

Contractor 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 Contractor 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.

Contractor 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 Contractor 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. 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.

**35. 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.

**36. 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.

**37. NO THIRD PARTY BENEFICIARIES**

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

**38. APPLICABLE LAW**

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

**39. 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.

**40. 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.

**41. 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 Contractor 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**

**CONTRACTOR:(See footnote below)  
STACY & WITBECK INC AND MYERS & SONS CONSTRUCTION, LLC, A JOINT VENTURE**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print: Michelle Bouchard

Print: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Dora Seamans  
Agency Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_

Julie Sherman  
Attorney for the Agency

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\* Note: If Contractor 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 Contractor 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 C: 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 Subcontractors, 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 two million dollars (\$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 ten million dollars (\$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 two million dollars (\$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 two million dollars (**\$2 million**) per occurrence or claim and a general aggregate limit of at least two million dollars (**\$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 and for construction or demolition work within fifty (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 (for Agency, San Mateo County Transit District, Santa Clara Valley Transportation Authority, and City of Mountain View).
- 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 two million dollars (**\$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 (for Agency, San Mateo County Transit District, Santa Clara Valley Transportation Authority, and City of Mountain View).
- 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.**

Not applicable

**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 of Mountain View, 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](mailto: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 (3) 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 thirty (30) Calendar Days' written notice to Contractor of cancellation or non-renewal. Contractor must then provide at least thirty (30) Calendar 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](mailto:smt.certificates@instracking.com)

OR

Fax: (562) 435-2999

**2. Acceptable Insurers.**

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

**3. Self-insurance.**

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

**4. Failure to Maintain Insurance.**

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

**5. Claims Made Coverage.**

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

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

**6. Deductibles and Retentions.**

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

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

## **EXHIBIT D: SBE REQUIREMENTS**

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

The annual overall DBE goal during federal fiscal years 2023-2025 is: PCJPB: 13.58%. This annual DBE goal is the overall Agency goal. There is no Contract-specific DBE goal.

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

### **1. SBE POINT PREFERENCE**

The Agency has established a contract specific SBE preference of five (5) points. The point preference will be granted to Proposers that are either (1) an SBE self-performing at least thirty (30) percent of the contract; or (2) committed to subcontracting with one or more certified SBEs. The actual preference is calculated with the Proposer that has the highest SBE utilization rate receiving the full five points and other Proposers receiving points relative to the highest proposed SBE utilization.

SBE preference scoring will be evaluated based on the proposed utilization of SBEs for Appendix A: Scope of Services, Task 1 – Project Management and Coordination (Required) and Task 2 – Pre-construction Phase Designer Collaboration (Required). The future award of Task 3 – Prepare for and Complete Early Utility Work (Optional) and Task 4 – Deliver the Construction Phase Work (Optional) may be based on SBE utilization, but this will be determined at a later date.

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 Exhibit 7 SBE Preference Form with their Proposal to receive a point preference. If a Proposal fails to submit this form, no SBE preference points will be added to the evaluation of the Proposal.

### **2. SBE EVALUATION**

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

### **3. ASSURANCE**

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

“The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted Contracts. Failure by the Contractor or sub-contractor 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 Contractor from future bidding as non-responsible.”

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

#### **4. AVAILABLE SBE RESOURCES**

The Agency recognizes SBE certifications performed by the following:

- A. Disadvantaged Business Enterprise (DBE) pursuant to U.S. Department of Transportation regulations, 49 CFR Part 26. This includes DBE certifications performed by the California Unified Certification Program, or any other state Unified Certification Program. Proposers may also visit the California Department of Transportation (Caltrans) website at <https://caltrans.dbesystem.com> to obtain a statewide directory of small businesses, including DBEs.
- B. SBA 8(a) by the Small Business Administration provided that a firm's average annual gross receipts do not exceed the cap of \$28.48 million.
- C. Small Business (SB) certification performed by the California Department of General Services (DGS) for the following industries only: (a) Construction (NAICS 230000); (b) Manufacturing (NAICS 310000-330000); (c) Wholesaling (NAICS 420000); and (d) Trucking (NAICS 484000).
- D. All Microbusiness (MB) certifications by the California Department of General Services for ALL industries.
- E. SBE certification by the Santa Clara Valley Transportation Authority.
- F. SBE certification by the Los Angeles County Metropolitan Transportation Authority.

#### **5. SBE ELIGIBILITY**

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

- A. A firm (including affiliates) must be an existing small business as defined by SBA regulations, 13 CFR Part 121, for the appropriate type(s) of work that your firm performs.
- B. Even if your firm meets the above requirement, your firm's (including affiliates') average

annual gross receipts over the previous three years cannot exceed a maximum cap of \$28.48 million.

Note: SBA size standards vary by industry and certain industries, such as general construction contracting, exceed the cap of \$28.48 million. A general construction contractor meeting the SBA size standard but exceeding the cap of \$28.48 million, for example, is ineligible to participate as a small business on Agency' contracts. Please verify a firm's industry size standard by visiting SBA at: <http://www.sba.gov/content/determining-size-standards>.

## **6. COUNTING SBE PARTICIPATION**

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

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

### **A. SBE Contractor**

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

### **B. SBE Subcontractor**

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

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

### **C. SBE Joint Venture Partner**

Count the portion of the work that is performed solely by the SBE's forces or, if the work is not clearly delineated between the SBE and the joint venture partner, count the



portion of the work equal to the SBE's percentage of ownership interest in the joint venture.

D. SBE Manufacturer

Count one hundred percent (100%) of the costs of materials and supplies obtained from an SBE manufacturer that operates or maintains a factory that produces the materials and supplies on the premises. This applies whether the SBE is a Contractor or Subcontractor.

E. SBE Regular Dealer

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

F. Other SBEs

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

G. SBE Trucking Company

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

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

## **7. CONTRACT COMPLIANCE**

A. Substitution of Subcontractors

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

The Contractor shall utilize the specific SBEs listed to perform the work and supply the materials for which each is listed unless the Contractor obtains prior written consent. Unless prior consent is given, the Contractor 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 Subcontractor is either decertified as an SBE or a Subcontractor is certified as an SBE during the life of the Contract, such Subcontractor shall notify the Contractor in writing with the date of decertification or certification. The Contractor shall notify the Agency of such an event and shall furnish the written documentation to the Agency.

**C. Prompt Payment to Subcontractors**

The Contractor shall pay any Subcontractors approved by the Agency for work that has been satisfactorily performed no later than seven (7) Calendar Days from the date of Contractor's receipt of progress payments by the Agency.

The Agency shall withhold retainage from the Contractor, make prompt and regular incremental inspections and approvals of portions of the work and, promptly release retainage to the Contractor 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 (7) Calendar Days after the Agency has made a retainage payment to the Contractor, the Contractor shall release to any Subcontractor, who has satisfactorily completed work covered by the Agency's inspection and approval, the retainage owed to the Subcontractor for such work. For purposes of this section, a Subcontractor's work is satisfactorily completed when the Contractor 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 Contractor to a Subcontractor may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the Contractor 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 Contractor or Subcontractors in the event of a dispute involving late payment or nonpayment by the Contractor; deficient Subcontractor performance; and/or noncompliance by a Subcontractor. This clause applies to all Subcontractors. In the event Contractor does not make progress payments or release retentions to the Subcontractor in accordance with the time periods specified herein, the Contractor will be subject to a charge of 2% per month on the untimely or improperly withheld payment.

The Contractor 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 Contractor shall maintain records of all subcontractor participation in the performance of the contract. This includes subcontracts entered into with both certified

SBEs and non-SBEs and all materials purchased from both certified SBEs and non-SBEs.

The Contractor is required to report payments to all subcontractors, sub-consultants, suppliers, manufacturers, and truckers (Subcontractors) 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 Contractor and prompt payments made by the Contractor to its Subcontractors. The Contractor and every Subcontractor will receive payment notifications via email. The Contractor must report a payment made to a Subcontractor within five (5) Calendar Days of an email notification. The Subcontractor must confirm receipt of payment from the Contractor within five (5) Calendar Days of an email notification.

It is the Contractor's responsibility to ensure that Subcontractors confirm payments in the System in accordance with the requirements set forth above.

- E. If the Contractor 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 Contractor agrees to pay a sum of fifty dollars (\$50) each Calendar 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 Contractor. SBE Outreach Efforts for Work Directive Proposals

## **8. ADMINISTRATIVE REMEDIES**

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

**END OF SBE REQUIREMENTS**

## EXHIBIT E: LABOR CODE REQUIREMENTS

This Agreement includes public works as defined by Labor Code Section 1720. Accordingly, the Contractor and Subcontractor(s) are subject to California prevailing wage laws when work under the Agreement includes the construction, alteration, demolition, repair, installation, maintenance, inspection, or land surveying of a plant, building, structure, ground facility, utility system or any real property including machinery and other equipment permanently attached to a building or realty as fixtures (hereinafter referred to as "Prevailing Wage Covered Work"). California prevailing wage laws include all applicable Sections of the Labor Code (Chapter 1, commencing with Section 1720, of Part 7 of Division 2). At its own cost, Contractor shall comply with all laws, rules and regulations that pertain to Contractor's work force.

### A. Labor Non-Discrimination

Section 1735 of the Labor Code states that the Contractor shall not discriminate against any employee who is employed upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, except as provided in Section 12940 of the Government Code.

### B. Coordination with Federal and California Prevailing Wage Laws

Not Applicable.

### C. California Prevailing Wage Rates

The Contractor and Subcontractors at any tier shall comply with Labor Code Sections 1774 and 1775. The California Department of Industrial Relations (DIR) General Prevailing Wage Determinations 2022-2 shall constitute the Prevailing Wage for the duration of the contract. Copies of the determinations can be reviewed at the Agency's Central Office (1250 San Carlos Avenue, San Carlos, California 94070) or found at:

<https://www.dir.ca.gov/OPRL/2022-2/PWD/index.htm>

The Contractor shall post a printed copy of the applicable prevailing wage determinations in a prominent place at the work site, including field offices.

The Contractor and Subcontractor(s) shall pay no less than the applicable prevailing wage to any worker performing Prevailing Wage Covered Work under this Agreement for all work hours specified within the applicable prevailing wage determinations pursuant to Labor Code Section 1774.

When, after investigation by the Agency or the DIR, it is established that a worker has been paid less than the applicable prevailing wage, the Contractor or Subcontractor shall pay the worker restitution equal to the difference between actual wages paid and the applicable prevailing wage. In addition, the Contractor or Subcontractor shall forfeit to the Agency a penalty of not more than \$200 for each underpaid worker for each Calendar Day, or portion thereof, during which underpayment has occurred pursuant to Labor Code

Section 1775. The Agency may withhold progress or final payments from the Contractor equal to the amount of unpaid wages and applicable penalties when it is established by the Agency or DIR that an underpayment has occurred. Withheld payments shall be released in accordance with Labor Code Sections 1742 through 1743 and 1771.6.

D. Future Wage Increases

Predetermined increases to the prevailing wage can be found within the applicable prevailing wage determinations. Prevailing wage determinations with predetermined increases are denoted by a double-asterisk (\*\*) following the published expiration date. The Agency will not recognize any claim for additional compensation based on the payment by the Contractor of any predetermined increase to the prevailing wage, or the federal minimum wage rate, during the term of the Agreement. The possibility of wage increases during the course of the Agreement is one of the elements to be considered by the Contractor in determining the bid, and such wage increases will not, under any circumstances, be considered as the basis of a claim against the Agency with regard to the Agreement.

E. Hours of Labor

The Contractor and Subcontractor(s) at any tier shall comply with Labor Code Sections 1810 through 1815. The Contractor and Subcontractor(s) shall recognize that eight hours labor constitutes one day's work. The Contractor and Subcontractor(s) shall only permit a worker to work in excess of eight (8) hours in one (1) Day and work in excess of forty (forty) hours in one (1) week when that work is paid at no less than one and one-half (1-1/2) times the prevailing wage basic hourly rate of pay.

The Contractor and Subcontractor(s) shall maintain accurate records showing the name of and actual hours worked each Calendar Day and each week by each worker employed in connection with Prevailing Wage Covered Work performed under the Agreement. The Contractor and Subcontractor(s) shall make these records available for inspection by the Agency and by the DIR's Division of Labor Standards Enforcement.

When, after investigation by the Agency or DIR, it is established work has been performed in excess of eight hours in one (1) Day or forty hours in one (1) week without appropriate compensation, the Contractor or Subcontractor shall forfeit to the Agency a penalty of \$25 per Calendar Day for each affected worker. The Agency may withhold progress or final payments from the Contractor equal to the amount of underpayment and applicable penalties when it is established by the Agency or DIR that overtime work has not been appropriately compensated. Withheld payments shall be released in accordance with Labor Code Sections 1742 through 1743 and 1771.6.

F. Certified Payroll Records (CPRs)

The Contractor and Subcontractor(s) shall comply with Labor Code Section 1776 and Title 8 of the California Code of Regulations Section 16400.

The Agency may withhold progress or final payments due or estimated to be due to the Contractor or Subcontractor whose CPRs are delinquent or inadequate (terms defined in subsequent language of the Contract), plus any additional amount that the Agency has reasonable cause to believe may be needed to cover unpaid wages and penalties assessed against the Contractor or Subcontractor whose CPRs are delinquent or inadequate; the Contractor shall be required in turn to cease all payments to a Subcontractor whose payroll records are delinquent or inadequate until the Agency provides notice that the Subcontractor has cured the delinquency or deficiency.

The Contractor and Subcontractor(s) shall maintain CPRs for a period of three (3) years following the completion of the Agreement.

a. Content of CPRs

The Contractor and Subcontractor(s) shall keep accurate CPRs detailing the following information: name, address, social security number, work classification, wage rates, straight time and overtime hours worked each day and each week, check number, deductions, contributions, payments, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee(s) employed by the Contractor or Subcontractor in connection with the Agreement.

Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- i. The information contained in the payroll record is true and correct.
- ii. The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

A CPR is inadequate if the CPR does not contain all of the above-mentioned parts.

b. Timely Submission of CPRs

The Contractor and Subcontractor(s) shall submit one CPR each week from the start of Prevailing Wage Covered Work through the completion of the work. Each CPR shall be submitted within seven (7) Calendar Days from the last day of the Contractor's or Subcontractor's work week. A CPR shall be considered delinquent if the CPR has not been submitted within thirty (30) Calendar Days from the end of the work week.

c. Additional Requests for CPRs and Other Payroll Records

The Contractor's and Subcontractor's CPRs and all payroll records, as defined by Chapter 8 of the California Code of Regulations Section 16000, shall be available for inspection at all reasonable hours at the Contractor's or Subcontractor's office, and copies thereof shall be provided by the Contractor or Subcontractor on the following basis:

- i. Upon request of an employee or the employee's authorized representative.
- ii. Within ten Calendar Days of a written request from the Agency, or from DIR's Division of Labor Standards Enforcement or Division of Apprenticeship Standards. When copies of payroll records are not provided within ten Calendar Days, the Contractor or Subcontractor shall forfeit to the Agency a penalty of one hundred dollars (\$100) per worker for each Calendar Day or portion thereof that copies are not provided. The Agency may withhold progress or final payments from the Contractor equal to the amount of any accrued penalties. Withheld payments shall be released in accordance with Labor Code Sections 1742 through 1743 and 1771.6.

d. Submittal of Payroll Records via LCPtracker

The Contractor and Subcontractor(s) shall also submit all CPRs via the LCPtracker online submittal system ([www.lcptracker.com](http://www.lcptracker.com)), unless otherwise required by the Agency. LCPtracker access is provided by the Agency free of charge to the Contractor and Subcontractor(s). Any optional interface with LCPtracker shall be at the sole expense of the Contractor. The Contractor is responsible for ensuring that all Subcontractors performing prevailing wage covered work under this agreement are registered in LCPtracker and submit CPRs.

e. Submittal of Payroll Records to the DIR

All contractors, subcontractors, or vendors performing Prevailing Wage Covered Work under this Agreement shall submit certified payroll records as specified in California Labor Code Section 1776 directly to the Labor Commissioner. Information on reporting to the Labor Commissioner is available online at: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>

G. Apprenticeship Requirements

Labor Code Section 1777.5(n) emphasizes that a prime contractor is responsible for compliance with apprenticeship requirements. Therefore, the Contractor shall be responsible for compliance by the Contractor and any Subcontractor(s) with Labor Code Sections 1777.5 through 1777.6 related to the employment of apprentices. The Contractor shall be responsible for any penalties assessed by the Labor Commissioner in accordance with Labor Code Section 1777.7.

The Contractor and Subcontractor(s) shall meet the following obligations whenever Prevailing Wage Covered Work is performed under this Agreement in a craft or classification deemed to be apprenticeable within applicable prevailing wage determinations:

- a. Before the start of work under this Agreement, the Contractor and Subcontractor(s) shall notify all apprenticeship programs approved by DIR's Division of Apprenticeship Standards (DAS) to train apprentices within the county of the Work.

Completion and submission of Form DAS-140 may constitute sufficient notification.

Form DAS-140 can be found at:

<http://www.dir.ca.gov/DAS/DASForm140.pdf>

Information on apprenticeship programs can be found at:

<http://www.dir.ca.gov/databases/das/pwaddrstart.asp>

- b. During work performed under the Agreement, the Contractor and Subcontractor(s) shall employ apprentices in a ratio of not less than one (1) apprentice hour of work for every five (5) hours of journeyman work. The Contractor and Subcontractor(s) shall obtain written exemptions from DAS or a DAS-approved apprenticeship program for exceptions to the one-to-five (1 to 6) ratio.
  - c. For every hour of journeyman and apprentice labor, the Contractor and Subcontractor(s) shall make apprenticeship training fund contributions to either the California Apprenticeship Council or an apprenticeship training program approved by the DAS. Apprenticeship training contributions shall be paid at no less than the amount specified within the applicable prevailing wage determination.
  - d. The Contractor and Subcontractor(s) shall pay a worker at the appropriate journeyman prevailing wage rate if any of the following apprenticeship standards are not met:
    - i. The worker is registered as an apprentice with the DAS and the Contractor has obtained written proof of his or her registration.
    - ii. The worker is registered with U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services and the Contractor has obtained written proof of his or her registration.
    - iii. The worker is employed in accordance with the apprenticeship standards of the apprentice agreement under which he or she is training.
- H. Wage Kickbacks and Worker Registration Fees Prohibited  
The Contractor and Subcontractor(s) at any tier shall comply with Labor Code Sections 1778 through 1779. The Contractor and Subcontractor(s) shall not take, receive, or conspire with another to take or receive, for his own use or the use of any other person any portion of the wages of any worker or Subcontractor in connection with the Agreement.



The Contractor and Subcontractor(s) shall not charge, collect, or attempt to charge or collect, directly or indirectly, a fee or valuable consideration for registering any person work in connection with the Agreement, or for giving information as to where such employment may be procured, or for placing, assisting in placing, or attempting to place, any person in connection with the Agreement.

I. Agency Labor Compliance Program (LCP)

The Agency operates a DIR-approved LCP for monitoring and enforcing California prevailing wage law, including the abovementioned provisions.

All Prevailing Wage Covered Work under the Agreement will be subject to the requirements of the LCP.

The Contractor shall post the Agency's LCP contact information in a prominent place at the work site.

Pursuant to Labor Code Section 1726, the Agency shall take cognizance of Labor Code violations committed in the course of the execution of the Agreement. The Agency shall withhold contract payments pursuant to Section 1771.6 if violations are found.

J. Contractor Registration for California Public Works

Pursuant to Labor Code Section 1771.1, a Contractor or Subcontractor shall not be qualified to bid on, be listed in a bid proposal, or engage in the performance of any contract for public work unless they are currently registered with the DIR and qualified pursuant to Labor Code Section 1725.5. For federally funded projects, the Contractor and all Subcontractors must be registered at the time of contract award.

Submission of a Proposal by an unregistered Contractor, or listing an unregistered Subcontractor, may result in the Proposal being rejected as non-responsive. Contractor registration can be completed online at the following website: <https://www.dir.ca.gov/public-works/contractor-registration.html>.

An unregistered Contractor or Subcontractor who is found to have performed prevailing wage covered work under this Agreement is subject to penalties of up to eight thousand dollars (\$8,000) in addition to any penalty registration fees that may be assessed. Additionally, a higher-tiered Contractor who is found to have entered into a subcontract with an unregistered lower-tier Subcontractor is subject to penalties of up to ten thousand dollars (\$10,000). Contractor registration may be verified online at the following website: <https://cadir.secure.force.com/ContractorSearch>.

To ensure compliance with Labor Code 1773.3: the Agency shall withhold final payment due to the Contractor until:

- a. The Contractor has provided the Agency with a Contractor Registration Closeout Form that includes the name and PWCR of every lower-tier Subcontractor who performed Prevailing Wage Covered Work under the Agreement;
  - b. The Agency's Labor Compliance Officer (LCO) has reviewed that the Contractor Registration Closeout Form contains all required information, has verified that all Contractors were properly registered, and has notified the Contractor that the Contractor Registration Closeout Form is acceptable, and;
  - c. Thirty (30) Calendar Days have passed since the LCO notified the Contractor that the Contractor Registration Closeout Form is acceptable. At the LCO's discretion, the thirty (30) Day waiting period may be waived if all Subcontractors were previously identified.
- K. Compliance Monitoring by the California DIR  
This Agreement is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4. The Contractor must post site notices, as prescribed by Title 8 California Code of Regulations Section 16451(d).
- L. Compliance With Concrete Delivery Legislation  
The Contractor and all Subcontractors shall comply with the concrete hauling and delivery requirements in Labor Code Section 1720.9 as added by AB 219. More information on these requirements may be found at:  
[https://www.dir.ca.gov/ConcreteDeliveryPrevailingWage/AB\\_219\\_Fact\\_Sheet.html](https://www.dir.ca.gov/ConcreteDeliveryPrevailingWage/AB_219_Fact_Sheet.html)
- M. Payment of Workers Compensation  
Pursuant to the requirements of Section 1860 of the California Labor Code, the Contractor will be required to secure the payment of workers' compensation to its employees in accordance with the provisions of Section 3700 of the Labor Code.
- By signing this Agreement, Contractor is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provision of that code, and if awarded an Agreement, will comply with such provisions before commencing the performance of the Work of this Agreement.
- N. Safety and Health Standards.  
Contractor must comply with applicable Occupational Safety and Health standards, regulations and guidelines in performing the Work under this Agreement, including without limitation Section 6500 of the Labor Code.
- O. Trench Safety.  
Excavation for any trench five (5) feet or more in depth will not begin until the Contractor has received approval from the Agency, of the Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of such trench. Such plan must be submitted at least five (5) Days before the Contractor intends to begin excavation for the trench and must show the details of the design of shoring, bracing, sloping or other provisions to be made for worker protection during such excavation. No such plan will allow the use of shoring, sloping or a protective system less effective than that required by the Construction Safety Orders of the Division of Industrial Safety; and if

such plan varies from the shoring system standards established by the Construction Safety Orders, the plan must be prepared and signed by an engineer who is registered as a Civil or Structural Engineer in the State of California. Attention is directed to the provisions of Section 6705 of the Labor Code concerning trench excavation safety plans.

P. Prohibition Against Contracting with Debarred Subcontractors

Contractor is prohibited from performing work on a public works project with a Subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code

**SERVICE AGREEMENT**  
**BETWEEN**  
**PENINSULA CORRIDOR JOINT POWERS BOARD**  
**AND THE CITY OF MENLO PARK**  
**FOR**  
**THE MIDDLE AVENUE UNDERCROSSING PROJECT**

THIS SERVICE AGREEMENT (“Agreement”) is made and entered into by and between the Peninsula Corridor Joint Powers Board, hereinafter referred to as “PCJPB” or “Caltrain,” and the City of Menlo Park, hereinafter referred to as “City,” as of the last date of signature set forth in the signature blocks.

**I. RECITALS**

**1. Project Description**

The City of Menlo Park is the project sponsor for a proposed new bicycle and pedestrian undercrossing of the Caltrain right-of-way (“ROW”) near Middle Avenue in Menlo Park. The project would be located near Caltrain mile post 29.15, north of the intersection of El Camino Real and Ravenswood Avenue. The City of Menlo Park is entering into this Agreement with Caltrain.

The City proposes the installation of a pedestrian and bicycle undercrossing near Burgess Drive and Alma Street to facilitate access between the eastern and western sides of the Caltrain ROW, as well as to and from Alma Street and El Camino Real, both of which run parallel to Caltrain tracks in the project area.

**2. Project Background**

On August 27, 2019, the Menlo Park City Council unanimously passed a motion to select Concept 3 as the preferred alternative for the Middle Avenue pedestrian and bicycle rail crossing. Upon selection of Concept 3 as the preferred alternative by the City Council, City staff proceeded, in coordination with Caltrain, with finalizing the environmental studies and the design plans. The environmental study prepared is in the form of an Addendum to the Menlo Park El Camino Real and Downtown Specific Plan Environmental Impact Report. The City Council recertified the environmental document on January 28, 2020. Between approximately March 2020 and November 2021, the City worked to negotiate and purchase a portion of the property at 700-800 El Camino needed for this project, but there was little design advancement due in part to the pandemic.

**3. Caltrain Processes Background**

In February 2020, Caltrain notified the City that the project would not be subject to the then new Rail Corridor Use Policy (RCUP), since Caltrain and the City had already been engaged in significant project development and advancement activities. In a letter sent to the City in May 2020, Caltrain staff documented concerns regarding project delivery and schedule details described in a City staff report, dated January 28, 2020. In this document published by City staff to certify project environmental documents, approve the 30% project plans and authorize the city manager to enter into all necessary

agreements with the PCJPB, staff provided details on the project that had not been agreed to by Caltrain staff, including design-build as the preferred delivery method for the project. Caltrain provided comments on the initial 30% design and identified several resolution items, including relocation of the east side access ramp out of Caltrain ROW.

In June/July 2022, Caltrain again reviewed the City's 30% design and provided additional comments to the City. Issues requiring resolution upon review of the 30% design include relocation of the under-crossing east side access ramp outside of Caltrain ROW, increase of culvert depth, consideration of less-disruptive construction methods than cut and cover to avoid disruption of Caltrain service from removal of electrification cables.

In September 2022, Caltrain and City staff held a meeting to discuss the RCUP and process to request use of Caltrain ROW. At this time, Caltrain shared with the City the interpretation that the February 2020 letter exempting the project from the RCUP process was applicable to the tunnel portion of the project only, and the access ramps would need to be considered under the RCUP process if they were to be located partially within Caltrain ROW.

In November 2022, Caltrain shared educational material on the recommended non-disruptive construction methods (Jack and Bore, Mining, or other methods) and participated in a design workshop with City staff and conceptual design consultant to resolve the remaining design issues mentioned above.

#### **4. Third Party Service Agreement During Post Conceptual Design**

The initial Service Agreement between the City and Caltrain was executed on March 09, 2022 and included coordination with Caltrain staff pertaining to the project's preliminary engineering phase (30% design).

As the third-party project sponsor, the City is required to coordinate with Caltrain staff as the City advances the project from preliminary engineering to final design. The initial Agreement outlined necessary Caltrain participation and technical review of one preferred design (Concept 3).

Discussions between Caltrain and the City regarding contract(s) ownership during the Final Design and Construction phase occurred during the timeframe of the initial Agreement execution. Caltrain explained that serving as lead implementing agency for all grade separation projects between San Francisco and San Jose will leverage Caltrain's existing expertise in these kinds of railroad projects.

Therefore, it is understood, by this Service Agreement, that the City elects to advance the project beyond the Preliminary Engineering/Environmental Clearance phase to develop the design for construction, and that Caltrain will assume the project delivery lead when the Preliminary Engineering/Environmental Clearance phase and its deliverables are completed by the City, and a Memorandum Of Understanding (MOU) will be established that addresses funding, roles and responsibilities, budgets, and schedule for the subsequent phases.

The purpose of this Agreement is for Caltrain to:

- Perform an analysis for Alternative Contract Delivery,
- Provide for the development and execution an MOU, and

- Prepare (a) Request(s) for Proposals (RFPs) for advancing the project beyond the Preliminary Engineering (PE)/Environmental Clearance phase into final design and construction in accordance with the consensus alternative delivery method recommendation.

This Agreement assumes that Caltrain and the City will work to ascertain the most efficient means of completing the project's NEPA Environmental Clearance and CEQA Determination and that the decision will be further defined as part of the scope described in the MOU.

## **II. TERMS OF AGREEMENT**

### **1. Scope of Work**

To support the review and coordination of the City's post conceptual design and to develop and execute the Alternative Contract Delivery Analysis, MOU, and the RFPs, the tasks described in this Scope of Work will be completed by Caltrain under this Agreement. It is assumed that regular coordination and document review meetings will be held between participating parties on an as-needed basis, with up to eight (8) meetings among staff for the City, PCJPB, and SMCTA.

Caltrain will provide a Project Manager who is knowledgeable about the project and Caltrain processes, and will lead the coordination efforts among Caltrain, City and SMCTA staff. The City will provide a Project Manager who is knowledgeable about the project and the City's processes, and will be the main point of contact for PCJPB and the SMCTA.

All tasks include supporting coordination activities for their development, including the preparation of board documents (board resolutions, staff reports, presentations and other administrative tasks required to adopt the recommendation on the optimal delivery method and to finalize the MOU and RFP. This scope of work does not include performing the CEQA/NEPA environmental review processes, procuring environmental permits, or performing 30% to 100% engineering design. These tasks will be performed under the MOU developed through this Agreement.

#### **1.1. Alternative Contract Delivery Analysis**

This analysis will recommend the optimal contract delivery method based on the selected local preferred alternative's unique characteristics and complexities.

- Caltrain, the City, and SMCTA to work collaboratively to evaluate alternative contract delivery methods (Design - Bid - Build, Construction Manager/General Contractor, Progressive Design Build, other) to reach a consensus recommendation on the optimal method based on the selected local preferred alternative's unique characteristics and complexities.
- This Agreement assumes that Caltrain will prepare for and conduct one (1) one-day Project Delivery Assessment Workshop with two (2) analysis focuses: a qualitative analysis and a quantitative analysis.
  - Caltrain will prepare background materials with support of the City, and create the workshop agenda and handout materials necessary to conduct the qualitative and quantitative parts of the workshop. Caltrain, SMCTA and the City to

provide input to various qualitative and quantitative factors involved in the Project Delivery Method analysis.

- Caltrain staff will facilitate the workshop.
- This Agreement assumes that Caltrain will use the Transportation Research Board's TCRP Report 131 "Project Delivery Method Selection Tool for Transit Projects" and Caltrans Modified Quantitative Project Delivery Method Selection, as base template for its evaluation. If the parties agree on proposed delivery method, Caltrain to document the consensus recommendation in an Alternative Project Delivery Decision Report.

### 1.2. Development of a Memorandum of Understanding (MOU)

- Caltrain staff will coordinate with the City and SMCTA for development of standard MOU outline.
- The MOU will define all parties' roles and responsibilities and overall scope of work to be contained in the MOU among the City, SMCTA, and Caltrain.
- Caltrain staff will develop MOU Exhibit A-Work Plan and budget.
- Caltrain will provide on-going coordination activities for MOU Development (ongoing coordination among City, SMCTA, and Caltrain staff; support of staff reports, presentations, budgets, etc.) and supporting materials to facilitate the execution of the MOU.
- Caltrain will facilitate up to three (3) meetings among the City, funding partners, and Caltrain staff to agree on MOU final terms.

### 1.3 Development of Request(s) For Proposals (RFPs)

- Caltrain will develop one or more RFPs for advancing the project beyond the PE/Environmental Clearance phase into final design and construction in accordance with the consensus alternative delivery method recommendation. The scope of work for the draft RFP will vary as necessary based on the selected contract delivery model. Environmental review-related tasks such as CEQA/NEPA environmental review processes, and procuring environmental permits, will be advanced through a separate contract by Caltrain's Environmental On-Call consultants.
- Caltrain will provide draft RFP(s) to the City for its review and will incorporate up to two (2) rounds of the City's comments.
- Caltrain will conduct any additional research required to ensure that advanced design criteria comply with Caltrain's standards.
- Caltrain staff will develop f board documents such as board resolutions, staff reports, Power Point presentations, and other supporting materials to seek authorization of the issuance of the RFP(s) by the PCJPB.
- The RFP(s) will be subject to legal review by Caltrain and City legal counsel.

**2. Project Delivery Process & Schedules**

**2.1 Capital Projects Delivery**

Caltrain has an internal capital projects delivery process that defines distinct phases and periodic check-ins after each project phase. (See Appendix D). This methodology is used as quality control oversight by Caltrain leadership to ensure that projects proceed in alignment with scope, budget, and schedule as approved in the capital budget. The span of this Agreement is included as part of Phase Gate 3.

**2.2 Estimated Milestones**

This information is offered for reference. As project-specific schedules are developed, these check-in points will be identified as milestones in accordance with this process. For this project, initial estimated milestone dates are:

Gate 1 - Project Initiation	Jan 27, 2022
Gate 2 - 15% Development Complete	NA
Gate 3 - 35% Development Complete	June, 2023
Gate 4 - 65% Development Complete	TBD
Gate 5 - 100% Development Complete	TBD
Gate 6 - Substantial Completion	TBD
Gate 7 - Start-Up / Turnover Complete	TBD
Gate 8 - Project Closeout Complete	TBD

As relates to Agreement tasks, the estimated timelines and milestones are included below. These timelines assume concurrence from both Caltrain and City staff for the project’s design revisions, any related supplemental environmental clearance and adoption of the design revisions by Menlo Park City Council. These timelines may be adjusted as circumstances require upon the written agreement of the parties, which shall not be unreasonably withheld.

Expected durations of tasks:

Service Agreement Estimated Timeline	2023										2024					
	Caltrain FY23			FY24												
	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	
<b>Task 1 - Alternative Contract Delivery Analysis</b>																
<b>Task 2 - Development of a Memorandum of Understanding (MOU)</b>																
<b>Task 3 - Development of the RFPs</b>																



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

The estimated timeline above includes Caltrain and City review periods.

It is anticipated that the City will require up to three (3) weeks to review documents produced by Caltrain. Caltrain will require up to three (3) weeks to incorporate the City's comments into the deliverables.

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

As consideration for the services provided by Caltrain under this Agreement, the City will pay the costs for Caltrain's services, as estimated herein. Costs associated with activities described within this Agreement have been estimated based on Caltrain's current understanding of the project to date and information provided by the City. This estimate is not intended to represent final project costs or bid cost. Every effort will be made by all parties to keep the overall project's cost as low as possible while delivering the intended scope and objectives within schedule.

#### **4.1 Progress Reports**

Caltrain will provide the City with quarterly progress reports on expenditures and the City will provide Caltrain with quarterly progress reports on related activities and funding updates.

#### **4.2 Estimated Budget**

The overall estimated budget for this Agreement is **\$571,940.60**, of which \$89,278.60 is included as contingency funds. (See Appendix B).

The estimated budget for Alternative Contract Delivery Analysis is estimated at \$200,172.00. This conservative estimate assumes this task will be completed by an outside consultant from Caltrain's on-call consultant bench, with oversight by Caltrain staff. Prior to initiating this task, should Caltrain determine there is available in-house staff with the appropriate expertise and availability to complete this task, a revised estimate for this task will be provided to the City.

The estimated budget for MOU development is \$32,944.00.

The estimated budget for RFP(s) development assumes that the project will be delivered through the Construction Manager/General Contractor (CMGC) method. The estimated budget for RFP(s) development includes development of an RFP for CMGC (\$156,000) as well as development of an RFP for final design (\$93,546.00). Should CMGC be selected for the contract delivery method, both RFPs would be required. If another delivery method is selected through the Alternative Contract Delivery Analysis, then the estimated budget for RFP(s) development would suffice and a revised estimate for this task would be provided to the City, upon written request.

### 4.3 Caltrain Fully Burdened Unit Cost Rates and Contingency Funds

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

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

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

Contingency provides funds for additional hours. Contingency funds will not be utilized without prior written (via email) authorization from the City. However, the City's authorization for the release of contingency funds will not be unreasonably withheld. See Appendix B for budget details.

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

### 4.4 Invoices

The PCJPB will invoice the City for work performed under this Agreement quarterly in arrears. Payment by the City is due 30 days following the date of each invoice.

The City may elect to apply any remaining, un-used budget from previous agreements related to Middle Avenue Undercrossing Project, to the balance due for this SA budget.

## **5. Term of Agreement**

It is understood by all parties that this Agreement will terminate on **June 30, 2024**, unless it is mutually agreed upon by both Caltrain (e.g. Capital Delivery PM) and the City (e.g. Public Works Director) to extend the duration of this Agreement.

## **6. Governing Law**

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

## **7. Amendments**

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

**8. Entire Agreement**

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

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

PENINSULA CORRIDOR  
JOINT POWERS BOARD

CITY OF MENLO PARK

By:

By:

\_\_\_\_\_  
Michelle Bouchard  
Executive Director

\_\_\_\_\_  
Justin I. C. Murphy  
City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
James C. Harrison  
General Counsel

\_\_\_\_\_  
Nira F. Doherty  
City Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Appendix A - Middle Avenue Undercrossing – Project Drawings**

## Appendix B – Middle Avenue Undercrossing Service Agreement Tasks Budget

Caltrain Fully Burdened Unit Cost Rates (FY23)	Position	Staff Name	Task 1 Alternative Contract Delivery Analysis		Task 2 MOU Development		Task 3 RFPs Development		Totals	
			Hours	Fee	Hours	Fee	Hours	Fee	Hours	Fee
\$ 211.00	Deputy Chief, Design and Construction	Robert Barnard	0	\$ -	0	\$ -	4	\$ 844	4	\$ 844
Project Delivery										
\$ 297.00	Director, Capital Program Delivery	Andy Robbins	12	\$ 3,564	16	\$ 4,752	40	\$ 11,880	68	\$ 20,196
\$ 139.00	Senior Project Manager	Arul Edwin	16	\$ 2,224	44	\$ 6,116	248	\$ 34,472	308	\$ 42,812
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\$ 158.00	Senior Structural Engineer	TBD	0	\$ -	6	\$ 948	8	\$ 1,264	14	\$ 2,212
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\$ 127.00	Senior Track Engineer	TBD	0	\$ -	0	\$ -	0	\$ -	0	\$ -
\$ 185.00	Resident Engineer	N/A	0	\$ -	0	\$ -	0	\$ -	0	\$ -
Procurement and Contracts										
\$ 200.00	District Temp/Annuitant	Patrick May	0	\$ -	0	\$ -	70	\$ 14,000	70	\$ 14,000
\$ 169.00	Procurement Manager	Alice Cho	0	\$ -	0	\$ -	16	\$ 2,704	16	\$ 2,704
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<b>Subtotal</b>			<b>66</b>	<b>\$ 12,972</b>	<b>180</b>	<b>\$ 32,944.00</b>	<b>536</b>	<b>\$ 93,546.00</b>	<b>782</b>	<b>\$ 139,462.00</b>
Contingency/Additional Costs										
30%	Contingency			\$ 3,891.60		\$ 9,883.20		\$ 28,063.80		\$ 41,838.60
	RFP Contingency			\$ -		\$ -		\$ 47,440.00		\$ 47,440.00
	Consultant Costs*			\$ 187,200		\$ -		\$ 156,000.00		\$ 343,200.00
<b>Subtotal adjusted</b>				<b>\$ 204,063.60</b>		<b>\$ 42,827.20</b>		<b>\$ 325,049.80</b>	<b>768</b>	<b>\$ 432,478.60</b>
<b>Total Including Contingencies</b>										<b>\$ 571,940.60</b>

\*Estimated consultant costs include 4% Caltrain mark-up

1. These FB Unit Cost Rates are offered as placeholders. They may or may not be updated prior to this Agreement getting executed.

## Appendix C – Caltrain Fully Burdened Unit Cost Rates, 2023

### **Caltrain Fully Burdened Unit Cost Rates – 2023**

Effective July 1, 2022 these rates should be applied to District labor, Consultants and Non-Labor for purposes of external agreements with the District. Rates will be updated annually, and the District reserves the right to update rates a maximum of one time during the year, if warranted. The District will communicate all such changes in writing.

		<b>Onsite Consultant</b>	<b>Non-Labor Items</b>	<b>Employee</b>
Unit Cost		\$1.00	\$1.00	\$1.00
Applied fringe rate	63.55%	0.00	0.00	0.64
Total Direct Cost		\$1.00	\$1.00	\$1.64
Applied ICAP Rate	3.22%	0.03	0.03	0.05
<b>Fully Burden Rate</b>		<b>\$1.03</b>	<b>\$1.03</b>	<b>\$1.69</b>

The San Mateo County Transit District (District) provides motorbus, paratransit and shuttle service in San Mateo County. The District also administers and manages the day-to-day operations of the Peninsula Corridor Joint Powers Board (PCJPB)/Caltrain; San Mateo County Transportation Authority (TA); and San Mateo County Express Lane Joint Powers Authority (JPA). The District uses cost allocation and rate setting methodologies to assign and recover costs incurred by providing services shared by all agencies.

#### **Fully Burdened Rate for Onsite Consultants and Non-Labor Items: Unit Cost + ICAP**

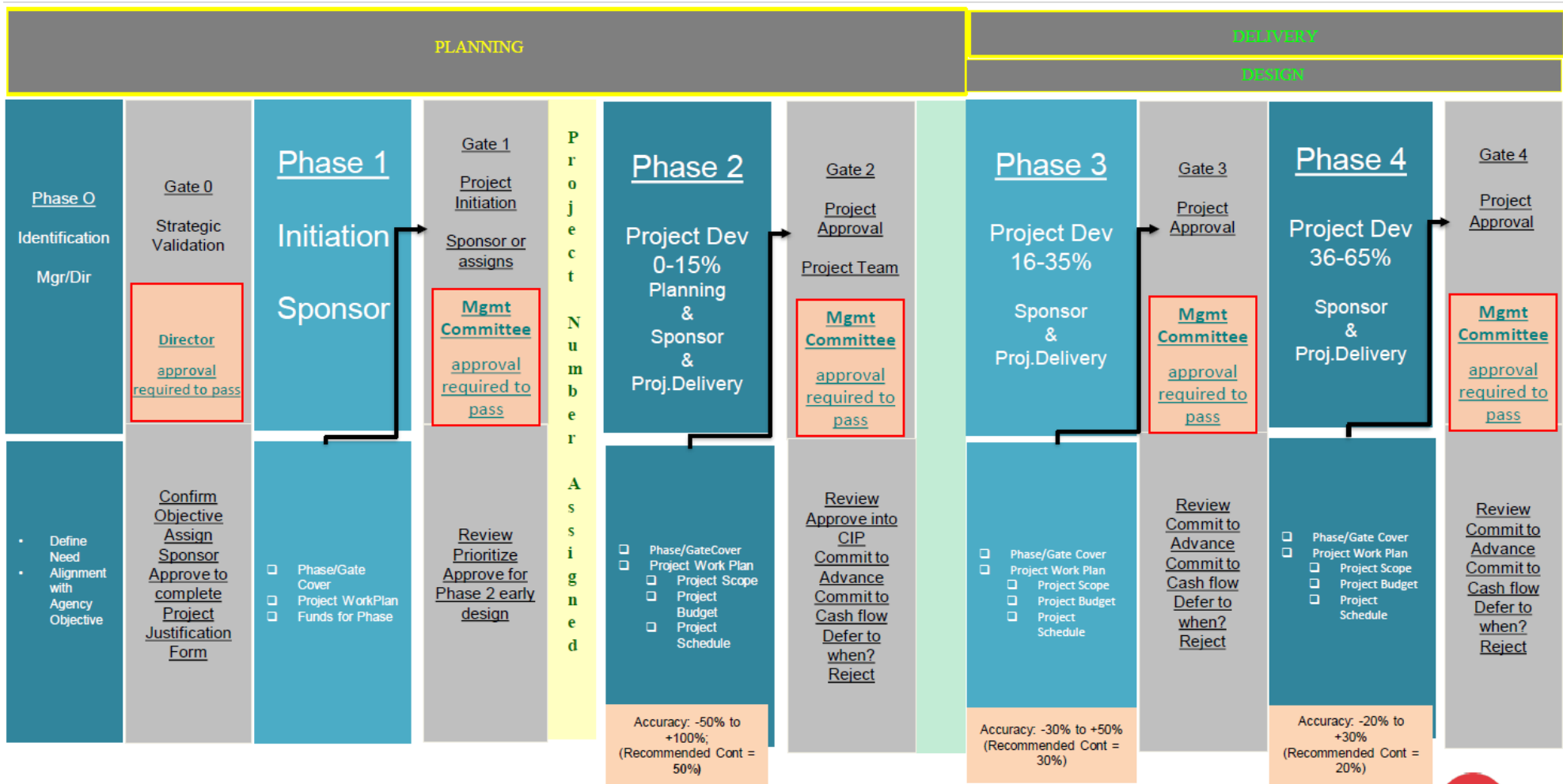
**Agency Indirect Costs (AIA):** Onsite consultants and non-labor items are “grossed up” to add in Agency Indirect Costs (AIA) and Capital Overhead. Taken together, these components are referred to as the Internal Cost Allocation Plan Rate, which is supported by an audited Internal Cost Allocation Plan (ICAP) using statistics appropriate to the costs allocated. AIA costs benefit all agencies and include staff in support departments such as Human Resources, Information Technology and Telecommunications, Treasury, Accounting and Budgets, Security, Facilities Maintenance and Contracts & Procurement. All staff time devoted to shared service activities are recorded to the AIA project category within the accounting system. Annually, AIA costs are allocated to the appropriate benefiting agencies through the ICAP.

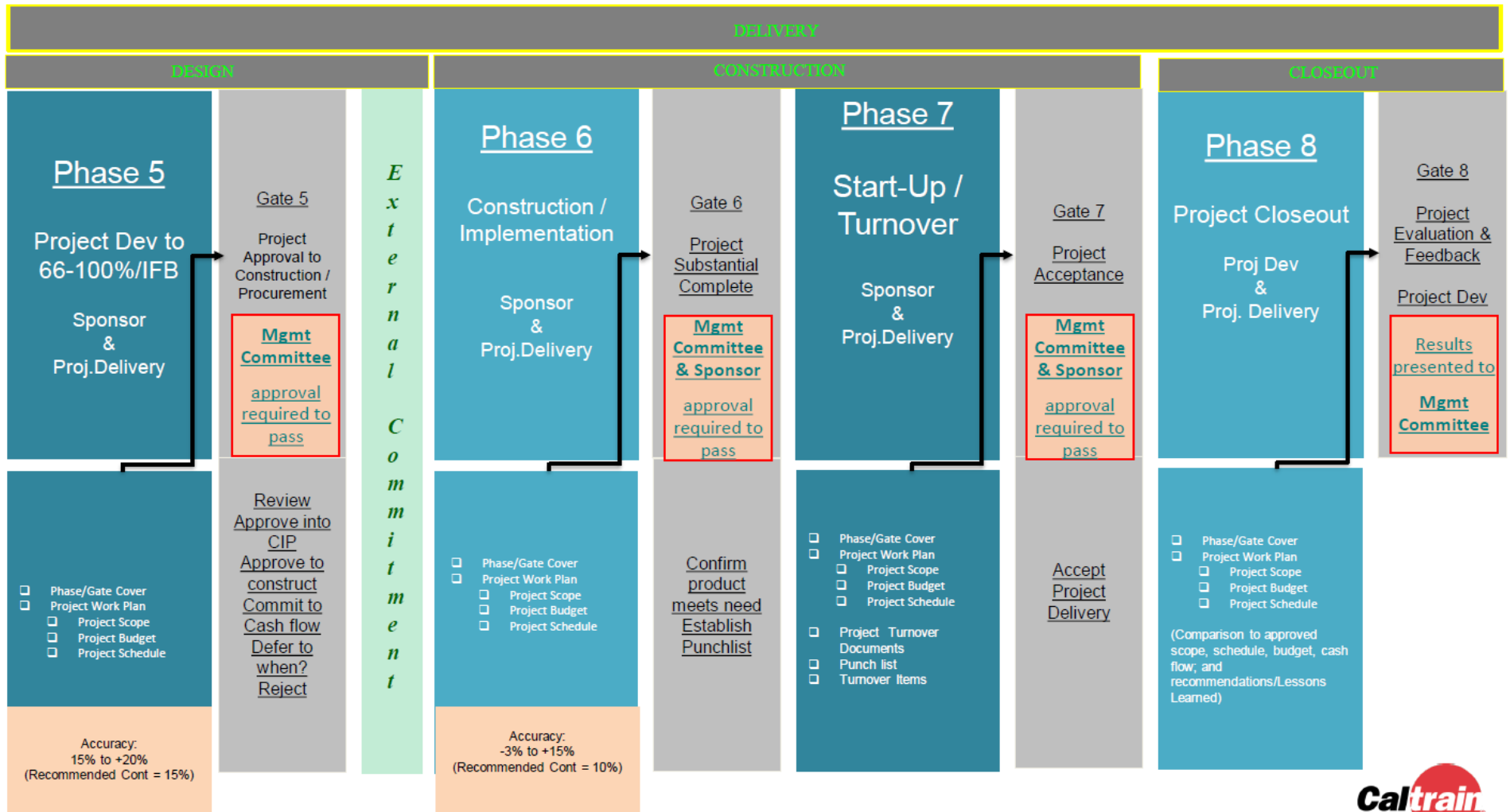
**Capital Overhead:** Capital costs associated with pooled support costs that cannot be directly attributed to a specific capital project, including labor and non-labor costs specific to each agency’s capital projects, are recorded to the Capital Overhead project within the accounting system. A rate is used to charge for the three categories of costs. The rates are calculated and updated on an annual basis.

#### **Fully Burdened Rate for Employees: Unit Cost + ICAP + Fringe Benefits**

The fully burdened rate for employee includes the ICAP rate shown above, and also includes Employee Fringe Benefits. Fringe benefits cover costs associated with payroll taxes, pension plan contributions, group insurance premiums (medical, dental, vision coverages), life insurance, long-term disability, unemployment insurance, and paid time off (PTO). These costs are initially paid by the District and charged to benefiting agencies through the application of a fringe benefit rate.

# Appendix D - Caltrain Phase/Gate Process







**SERVICE AGREEMENT**  
**BETWEEN**  
**PENINSULA CORRIDOR JOINT POWERS BOARD**  
**AND THE CITY OF MENLO PARK**  
**FOR**  
**THE MIDDLE AVENUE UNDERCROSSING PROJECT**

THIS SERVICE AGREEMENT (“Agreement”) is made and entered into by and between the Peninsula Corridor Joint Powers Board, hereinafter referred to as “PCJPB” or “Caltrain,” and the City of Menlo Park, hereinafter referred to as “City,” as of the last date of signature set forth in the signature blocks.

**I. RECITALS**

**1. Project Description**

The City of Menlo Park is the project sponsor for a proposed new bicycle and pedestrian undercrossing of the Caltrain right-of-way (“ROW”) near Middle Avenue in Menlo Park. The project would be located near Caltrain mile post 29.15, north of the intersection of El Camino Real and Ravenswood Avenue. The City of Menlo Park is entering into this Agreement with Caltrain.

The City proposes the installation of a pedestrian and bicycle undercrossing near Burgess Drive and Alma Street to facilitate access between the eastern and western sides of the Caltrain ROW, as well as to and from Alma Street and El Camino Real, both of which run parallel to Caltrain tracks in the project area.

**2. Project Background**

On August 27, 2019, the Menlo Park City Council unanimously passed a motion to select Concept 3 as the preferred alternative for the Middle Avenue pedestrian and bicycle rail crossing. Upon selection of Concept 3 as the preferred alternative by the City Council, City staff proceeded, in coordination with Caltrain, with finalizing the environmental studies and the design plans. The environmental study prepared is in the form of an Addendum to the Menlo Park El Camino Real and Downtown Specific Plan Environmental Impact Report. The City Council recertified the environmental document on January 28, 2020. Between approximately March 2020 and November 2021, the City worked to negotiate and purchase a portion of the property at 700-800 El Camino needed for this project, but there was little design advancement due in part to the pandemic.

**3. Caltrain Processes Background**

In February 2020, Caltrain notified the City that the project would not be subject to the then new Rail Corridor Use Policy (RCUP), since Caltrain and the City had already been engaged in significant project development and advancement activities. In a letter sent to the City in May 2020, Caltrain staff documented concerns regarding project delivery and schedule details described in a City staff report, dated January 28, 2020. In this document published by City staff to certify project environmental documents, approve the 30% project plans and authorize the city manager to enter into all necessary

agreements with the PCJPB, staff provided details on the project that had not been agreed to by Caltrain staff, including design-build as the preferred delivery method for the project. Caltrain provided comments on the initial 30% design and identified several resolution items, including relocation of the east side access ramp out of Caltrain ROW.

In June/July 2022, Caltrain again reviewed the City's 30% design and provided additional comments to the City. Issues requiring resolution upon review of the 30% design include relocation of the under-crossing east side access ramp outside of Caltrain ROW, increase of culvert depth, consideration of less-disruptive construction methods than cut and cover to avoid disruption of Caltrain service from removal of electrification cables.

In September 2022, Caltrain and City staff held a meeting to discuss the RCUP and process to request use of Caltrain ROW. At this time, Caltrain shared with the City the interpretation that the February 2020 letter exempting the project from the RCUP process was applicable to the tunnel portion of the project only, and the access ramps would need to be considered under the RCUP process if they were to be located partially within Caltrain ROW.

In November 2022, Caltrain shared educational material on the recommended non-disruptive construction methods (Jack and Bore, Mining, or other methods) and participated in a design workshop with City staff and conceptual design consultant to resolve the remaining design issues mentioned above.

#### **4. Third Party Service Agreement During Post Conceptual Design**

The initial Service Agreement between the City and Caltrain was executed on March 09, 2022 and included coordination with Caltrain staff pertaining to the project's preliminary engineering phase (30% design).

As the third-party project sponsor, the City is required to coordinate with Caltrain staff as the City advances the project from preliminary engineering to final design. The initial Agreement outlined necessary Caltrain participation and technical review of one preferred design (Concept 3).

Discussions between Caltrain and the City regarding contract(s) ownership during the Final Design and Construction phase occurred during the timeframe of the initial Agreement execution. Caltrain explained that serving as lead implementing agency for all grade separation projects between San Francisco and San Jose will leverage Caltrain's existing expertise in these kinds of railroad projects.

Therefore, it is understood, by this Service Agreement, that the City elects to advance the project beyond the Preliminary Engineering/Environmental Clearance phase to develop the design for construction, and that Caltrain will assume the project delivery lead when the Preliminary Engineering/Environmental Clearance phase and its deliverables are completed by the City, and a Memorandum Of Understanding (MOU) will be established that addresses funding, roles and responsibilities, budgets, and schedule for the subsequent phases.

The purpose of this Agreement is for Caltrain to:

- Perform an analysis for Alternative Contract Delivery,
- Provide for the development and execution an MOU, and

- Prepare (a) Request(s) for Proposals (RFPs) for advancing the project beyond the Preliminary Engineering (PE)/Environmental Clearance phase into final design and construction in accordance with the consensus alternative delivery method recommendation.

This Agreement assumes that Caltrain and the City will work to ascertain the most efficient means of completing the project's NEPA Environmental Clearance and CEQA Determination and that the decision will be further defined as part of the scope described in the MOU.

## **II. TERMS OF AGREEMENT**

### **1. Scope of Work**

To support the review and coordination of the City's post conceptual design and to develop and execute the Alternative Contract Delivery Analysis, MOU, and the RFPs, the tasks described in this Scope of Work will be completed by Caltrain under this Agreement. It is assumed that regular coordination and document review meetings will be held between participating parties on an as-needed basis, with up to eight (8) meetings among staff for the City, PCJPB, and SMCTA.

Caltrain will provide a Project Manager who is knowledgeable about the project and Caltrain processes, and will lead the coordination efforts among Caltrain, City and SMCTA staff. The City will provide a Project Manager who is knowledgeable about the project and the City's processes, and will be the main point of contact for PCJPB and the SMCTA.

All tasks include supporting coordination activities for their development, including the preparation of board documents (board resolutions, staff reports, presentations and other administrative tasks required to adopt the recommendation on the optimal delivery method and to finalize the MOU and RFP. This scope of work does not include performing the CEQA/NEPA environmental review processes, procuring environmental permits, or performing 30% to 100% engineering design. These tasks will be performed under the MOU developed through this Agreement.

#### **1.1. Alternative Contract Delivery Analysis**

This analysis will recommend the optimal contract delivery method based on the selected local preferred alternative's unique characteristics and complexities.

- Caltrain, the City, and SMCTA to work collaboratively to evaluate alternative contract delivery methods (Design - Bid - Build, Construction Manager/General Contractor, Progressive Design Build, other) to reach a consensus recommendation on the optimal method based on the selected local preferred alternative's unique characteristics and complexities.
- This Agreement assumes that Caltrain will prepare for and conduct one (1) one-day Project Delivery Assessment Workshop with two (2) analysis focuses: a qualitative analysis and a quantitative analysis.
  - Caltrain will prepare background materials with support of the City, and create the workshop agenda and handout materials necessary to conduct the qualitative and quantitative parts of the workshop. Caltrain, SMCTA and the City to

provide input to various qualitative and quantitative factors involved in the Project Delivery Method analysis.

- Caltrain staff will facilitate the workshop.
- This Agreement assumes that Caltrain will use the Transportation Research Board's TCRP Report 131 "Project Delivery Method Selection Tool for Transit Projects" and Caltrans Modified Quantitative Project Delivery Method Selection, as base template for its evaluation. If the parties agree on proposed delivery method, Caltrain to document the consensus recommendation in an Alternative Project Delivery Decision Report.

### 1.2. Development of a Memorandum of Understanding (MOU)

- Caltrain staff will coordinate with the City and SMCTA for development of standard MOU outline.
- The MOU will define all parties' roles and responsibilities and overall scope of work to be contained in the MOU among the City, SMCTA, and Caltrain.
- Caltrain staff will develop MOU Exhibit A-Work Plan and budget.
- Caltrain will provide on-going coordination activities for MOU Development (ongoing coordination among City, SMCTA, and Caltrain staff; support of staff reports, presentations, budgets, etc.) and supporting materials to facilitate the execution of the MOU.
- Caltrain will facilitate up to three (3) meetings among the City, funding partners, and Caltrain staff to agree on MOU final terms.

### 1.3 Development of Request(s) For Proposals (RFPs)

- Caltrain will develop one or more RFPs for advancing the project beyond the PE/Environmental Clearance phase into final design and construction in accordance with the consensus alternative delivery method recommendation. The scope of work for the draft RFP will vary as necessary based on the selected contract delivery model. Environmental review-related tasks such as CEQA/NEPA environmental review processes, and procuring environmental permits, will be advanced through a separate contract by Caltrain's Environmental On-Call consultants.
- Caltrain will provide draft RFP(s) to the City for its review and will incorporate up to two (2) rounds of the City's comments.
- Caltrain will conduct any additional research required to ensure that advanced design criteria comply with Caltrain's standards.
- Caltrain staff will develop f board documents such as board resolutions, staff reports, Power Point presentations, and other supporting materials to seek authorization of the issuance of the RFP(s) by the PCJPB.
- The RFP(s) will be subject to legal review by Caltrain and City legal counsel.

**2. Project Delivery Process & Schedules**

**2.1 Capital Projects Delivery**

Caltrain has an internal capital projects delivery process that defines distinct phases and periodic check-ins after each project phase. (See Appendix D). This methodology is used as quality control oversight by Caltrain leadership to ensure that projects proceed in alignment with scope, budget, and schedule as approved in the capital budget. The span of this Agreement is included as part of Phase Gate 3.

**2.2 Estimated Milestones**

This information is offered for reference. As project-specific schedules are developed, these check-in points will be identified as milestones in accordance with this process. For this project, initial estimated milestone dates are:

Gate 1 - Project Initiation	Jan 27, 2022
Gate 2 - 15% Development Complete	NA
Gate 3 - 35% Development Complete	June, 2023
Gate 4 - 65% Development Complete	TBD
Gate 5 - 100% Development Complete	TBD
Gate 6 - Substantial Completion	TBD
Gate 7 - Start-Up / Turnover Complete	TBD
Gate 8 - Project Closeout Complete	TBD

As relates to Agreement tasks, the estimated timelines and milestones are included below. These timelines assume concurrence from both Caltrain and City staff for the project’s design revisions, any related supplemental environmental clearance and adoption of the design revisions by Menlo Park City Council. These timelines may be adjusted as circumstances require upon the written agreement of the parties, which shall not be unreasonably withheld.

Expected durations of tasks:

Service Agreement Estimated Timeline	2023										2024					
	Caltrain FY23			FY24												
	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	
<b>Task 1 - Alternative Contract Delivery Analysis</b>																
<b>Task 2 - Development of a Memorandum of Understanding (MOU)</b>																
<b>Task 3 - Development of the RFPs</b>																

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

The estimated timeline above includes Caltrain and City review periods.

It is anticipated that the City will require up to three (3) weeks to review documents produced by Caltrain. Caltrain will require up to three (3) weeks to incorporate the City's comments into the deliverables.

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

As consideration for the services provided by Caltrain under this Agreement, the City will pay the costs for Caltrain's services, as estimated herein. Costs associated with activities described within this Agreement have been estimated based on Caltrain's current understanding of the project to date and information provided by the City. This estimate is not intended to represent final project costs or bid cost. Every effort will be made by all parties to keep the overall project's cost as low as possible while delivering the intended scope and objectives within schedule.

#### **4.1 Progress Reports**

Caltrain will provide the City with quarterly progress reports on expenditures and the City will provide Caltrain with quarterly progress reports on related activities and funding updates.

#### **4.2 Estimated Budget**

The overall estimated budget for this Agreement is **\$571,940.60**, of which \$89,278.60 is included as contingency funds. (See Appendix B).

The estimated budget for Alternative Contract Delivery Analysis is estimated at \$200,172.00. This conservative estimate assumes this task will be completed by an outside consultant from Caltrain's on-call consultant bench, with oversight by Caltrain staff. Prior to initiating this task, should Caltrain determine there is available in-house staff with the appropriate expertise and availability to complete this task, a revised estimate for this task will be provided to the City.

The estimated budget for MOU development is \$32,944.00.

The estimated budget for RFP(s) development assumes that the project will be delivered through the Construction Manager/General Contractor (CMGC) method. The estimated budget for RFP(s) development includes development of an RFP for CMGC (\$156,000) as well as development of an RFP for final design (\$93,546.00). Should CMGC be selected for the contract delivery method, both RFPs would be required. If another delivery method is selected through the Alternative Contract Delivery Analysis, then the estimated budget for RFP(s) development would suffice and a revised estimate for this task would be provided to the City, upon written request.

### 4.3 Caltrain Fully Burdened Unit Cost Rates and Contingency Funds

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

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

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

Contingency provides funds for additional hours. Contingency funds will not be utilized without prior written (via email) authorization from the City. However, the City's authorization for the release of contingency funds will not be unreasonably withheld. See Appendix B for budget details.

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

### 4.4 Invoices

The PCJPB will invoice the City for work performed under this Agreement quarterly in arrears. Payment by the City is due 30 days following the date of each invoice.

The City may elect to apply any remaining, un-used budget from previous agreements related to Middle Avenue Undercrossing Project, to the balance due for this SA budget.

## **5. Term of Agreement**

It is understood by all parties that this Agreement will terminate on **June 30, 2024**, unless it is mutually agreed upon by both Caltrain (e.g. Capital Delivery PM) and the City (e.g. Public Works Director) to extend the duration of this Agreement.

## **6. Governing Law**

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

## **7. Amendments**

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

**8. Entire Agreement**

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

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

PENINSULA CORRIDOR  
JOINT POWERS BOARD

CITY OF MENLO PARK

By:

By:

\_\_\_\_\_  
Michelle Bouchard  
Executive Director

\_\_\_\_\_  
Justin I. C. Murphy  
City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
James C. Harrison  
General Counsel

\_\_\_\_\_  
Nira F. Doherty  
City Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
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Total Direct Cost		\$1.00	\$1.00	\$1.64
Applied ICAP Rate	3.22%	0.03	0.03	0.05
<b>Fully Burden Rate</b>		<b>\$1.03</b>	<b>\$1.03</b>	<b>\$1.69</b>

The San Mateo County Transit District (District) provides motorbus, paratransit and shuttle service in San Mateo County. The District also administers and manages the day-to-day operations of the Peninsula Corridor Joint Powers Board (PCJPB)/Caltrain; San Mateo County Transportation Authority (TA); and San Mateo County Express Lane Joint Powers Authority (JPA). The District uses cost allocation and rate setting methodologies to assign and recover costs incurred by providing services shared by all agencies.

#### **Fully Burdened Rate for Onsite Consultants and Non-Labor Items: Unit Cost + ICAP**

**Agency Indirect Costs (AIA):** Onsite consultants and non-labor items are “grossed up” to add in Agency Indirect Costs (AIA) and Capital Overhead. Taken together, these components are referred to as the Internal Cost Allocation Plan Rate, which is supported by an audited Internal Cost Allocation Plan (ICAP) using statistics appropriate to the costs allocated. AIA costs benefit all agencies and include staff in support departments such as Human Resources, Information Technology and Telecommunications, Treasury, Accounting and Budgets, Security, Facilities Maintenance and Contracts & Procurement. All staff time devoted to shared service activities are recorded to the AIA project category within the accounting system. Annually, AIA costs are allocated to the appropriate benefiting agencies through the ICAP.

**Capital Overhead:** Capital costs associated with pooled support costs that cannot be directly attributed to a specific capital project, including labor and non-labor costs specific to each agency’s capital projects, are recorded to the Capital Overhead project within the accounting system. A rate is used to charge for the three categories of costs. The rates are calculated and updated on an annual basis.

#### **Fully Burdened Rate for Employees: Unit Cost + ICAP + Fringe Benefits**

The fully burdened rate for employee includes the ICAP rate shown above, and also includes Employee Fringe Benefits. Fringe benefits cover costs associated with payroll taxes, pension plan contributions, group insurance premiums (medical, dental, vision coverages), life insurance, long-term disability, unemployment insurance, and paid time off (PTO). These costs are initially paid by the District and charged to benefiting agencies through the application of a fringe benefit rate.

# Appendix D - Caltrain Phase/Gate Process

