



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

Supplemental Reading File

<u>#</u>	<u>Subject</u>
1	Commercial Lease for Bike Parking Station Facilities
2	Bike Parking Station Cost Proposal - BAFO REVISED
3	Bike Parking Station Draft Agreement

Lease Approval and Summary Sheet

1. Grantor/Licensor, etc. Peninsula Corridor Joint Powers Board
2. Grantee/Licensee, etc. BikeHub, Inc.
3. Rental Rate/Payment _____
4. Rent Adjustments _____
(If appropriate)
5. Security Deposit _____
(If appropriate)
6. Term/Termination _____
(Month to Month, Fixed Term, etc.)
7. Permitted Uses Bicycle Parking Station Facility

Comments: _____

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

COMMERCIAL LEASE

THIS COMMERCIAL LEASE (“Lease”) is entered on September 1, 2023 (“Effective Date”), by and between the Peninsula Corridor Joint Powers Board located at 1250 San Carlos Avenue, San Carlos, CA 94070 (“Agency”) and BikeHub, Inc., a California corporation located at 1522 Park Street, Alameda, CA 94501 (“Lessee”).

1. Facility.

Subject to the terms and conditions set forth herein, Agency hereby leases to Lessee, and Lessee leases from Agency, the real property and any improvements thereon located in the City and County of San Francisco, State of California, which consists of an approximately 1500 s.f. building as well as an approximately 7’ wide area running the width of the 4th Street side of the building (the “Display Area”) (collectively “Facility”) as depicted in Exhibit A, which is attached hereto and incorporated herein by this reference.

2. Effective Date.

Agency and Lessee have entered into **Agreement 22-J-S-087** for the operation of the Facility (“Agreement”). This Lease will take effect on the Effective Date and supersedes any prior lease existing between the parties or their predecessors.

3. Term.

The base term for this lease will be five (5) years (“Lease Term”) from the Effective Date, unless sooner terminated as provided herein. It is intended that the Lease Term be coincident with the term of the Agreement. Accordingly, in the event Agency exercises its option(s) to extend the Agreement, this Lease shall also be extended for an identical period.

This Lease is terminable by Agency without cause on 30 days’ advance written notice and shall automatically terminate upon the expiration or termination of the Agreement.

4. Termination for Transit Activities.

Lessee acknowledges that it takes this Lease with the express knowledge that Agency may conduct Transit Activities (defined below) on, around, under or over the Facility. Transit Activities include, but are not limited to, any activities relating to the study, design, development, construction, maintenance, operation, mapping, testing, or surveying of transportation systems (collectively “Transit Activities”). In the event Agency determines that it needs to obtain possession of all or a portion of the Facility, or needs to place restrictions on Lessee’s use of the Facility, Agency will give Lessee thirty (30) days’ notice prior to the date Lessee must vacate the Facility, a portion of the Facility or restrict the Permitted Use (“Surrender Date”). If Agency only uses a portion of the Facility, this Lease will continue in full force except that Rent will be reduced in proportion by such part of the Facility rendered unusable by Lessee for the conduct of its business; provided, however, that the entire Facility will be deemed unusable if the extent and nature of the transit activities substantially impairs Lessee’s use of the balance of the Facility and this Lease will terminate. If Agency requires the entire Facility or its

Transit Activities substantially impairs Lessee's Permitted Use, on or before the Surrender Date, Lessee must peaceably surrender possession of the Facility and this Lease will be deemed terminated except for those terms intended to survive termination. LESSEE HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE BENEFITS UNDER FEDERAL AND STATE UNIFORM RELOCATION ACTS (UNITED STATES CODE TITLE 42, SECTION 4601 *ET SEQ.*; CALIFORNIA GOVERNMENT CODE SECTION 7260 *ET SEQ.*) AS A RESULT OF AGENCY'S USE OR POSSESSION OF ANY PORTION OF THE PREMISES.

Lessee

5. Use.

The Facility may be used by Lessee solely and exclusively for the operations of the Caltrain Bicycle Parking Station Facility, as described in the Agreement for Services for Agreement No. 22-J-S-087 ("Permitted Uses"). Lessee may place temporary banner signage in visible locations on the building to advertise sales and special promotional events, subject to prior approval by Agency. Lessee may display not more than 15 bicycles in the Display Area. Lessee may place garbage and recycling bins on Fourth St. side of building. Lessee may not use the Facility for any other use other than the Permitted Use without Agency's prior written consent, which consent may be withheld by Agency in its sole discretion.

(a) Restrictions on Use.

Lessee may not permit any damage, nuisance or waste on the Facility; nor permit to be placed upon the Facility any gasoline, diesel fuel, oil, other petroleum products, or any hazardous or explosive material, waste or substance, except for the products that are normally used or associated with bicycle repairs and maintenance, subject to the provisions of Section 18 or any applicable health and safety laws and written consent of the Agency.

(b) Regulatory Approvals.

Lessee, at Lessee's sole expense, will arrange for the filing of any map required under any subdivision map act and of any environmental study required, or other requirements imposed by any governmental body having jurisdiction over the Facility or Permitted Use. Agency may terminate this Lease if any governmental body seeks to impose any condition on approval of Lessee's use of the Facility that will affect the Facility after termination of this Lease or that will affect any other property of Agency. Lessee must pay all costs and expenses associated with any conditions imposed on approval by any such governmental body.

(c) Compliance with Laws.

Lessee, at Lessee's expense, will at all times during the Lease Term comply with all applicable laws, regulations, rules and orders with respect to Lessee's use and/or improvement of the Facility, regardless of their effective date, including, without limitation, those relating to construction, grading, signage, health, disability accommodation (including the Americans with Disabilities Act), safety, noise, environmental protection, waste disposal, and water and air

quality. Lessee will furnish satisfactory evidence of such compliance upon request of Agency.

(d) Prior Rights.

This Lease is made subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, and claims of title that may affect Facility in effect as of the Effective Date of the Lease. The word "Lease" may not be construed as a covenant against the existence of any of these.

6. Condition of Facility.

(a) "AS IS" Rental.

Agency leases the Facility to Lessee on an "AS IS" with all faults basis, and Lessee acknowledges that Agency has made no representations of any kind in connection with soils, improvements, or physical conditions on the Facility, or bearing on Lessee's use of the Facility, whether express or implied.

(b) Inspections.

Lessee is solely responsible for conducting any inspections it may deem necessary or appropriate in determining whether to enter this Lease. Prior to the Effective Date, Lessee may examine and inspect all matters with respect to taxes, operating expenses, insurance costs, bonds, permissible uses, historical uses, zoning, covenants, conditions and restrictions and all other matters which in Lessee's judgment might bear upon the value and suitability of the Facility for Lessee's purposes or Lessee's willingness to enter into this Lease. Lessee acknowledges that Agency has made no representations and warranties regarding these matters, whether express or implied, and that Lessee has relied on its own inspections and examinations in entering into this Lease. As of the Effective Date, Lessee will be deemed fully satisfied with the results of all of the inspections and examinations contemplated in this Section 6 and Lessee be deemed to have accept the Facility "AS IS" with all faults.

7. Rent.

Lessee is being provided use of the Facility in exchange for its services under the Agreement. No rent is due under this Lease.

8. Rental Adjustments.

Intentionally Omitted.

9. Security Deposit.

Intentionally Omitted.

10. Taxes.

Lessee shall pay, before they become delinquent, all taxes, charges, and assessments that are levied upon or assessed against any improvement or personal property placed upon the

Facility by Lessee. Lessee shall pay, before they become delinquent, any and all property taxes and/or possessory interest taxes, assessments and/or supplemental taxes which are levied or assessed by any government entity on the Facility or Lessee's possession and/or use thereof. In addition to the taxes and assessments specified above, Lessee shall pay to Agency any privilege, sales, gross income or other tax (but not including federal or state income tax) imposed upon the Rent by any government entity.

11. Notices.

All notices, payments, or other communications by either party to the other under this Lease shall be in writing and shall be deemed to have been given or made on the date of service if served personally or on the second business day after mailing if mailed to the party to which notice is to be given by first class mail, postage prepaid and properly addressed as follows:

To Agency: Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070
Attention: Board Secretary

To Lessee: BikeHub
1522 Park Street
Alameda CA 94501
Attention: Adam Shapiro

Either party may change its address by providing written notice to the other as provided herein.

12. Alterations.

It is anticipated that Agency shall undertake any improvements needed to facilitate the operations of Lessee under the Agreement. Therefore, Lessee shall not make or suffer to be made any alterations, additions or improvements (collectively "Alterations") in, on, or to the Facility without the prior written consent of Agency, which consent shall not be unreasonably withheld or delayed. Any Alterations Lessee is permitted to make shall be made by Lessee at Lessee's sole cost and expense except as the parties may otherwise expressly agree in writing. Prior to commencement of construction of the Alterations, Lessee shall deliver to Agency, and obtain Agency's approval of, a detailed construction plan for the Alterations, which approval shall not be unreasonably withheld or delayed. Prior to commencement of construction, Lessee shall also obtain and deliver to Agency copies of all city, county, and/or other regulatory permits required for construction of the Alterations. Lessee shall keep the Facility free and clear of all liens of any kind. Lessee shall give Agency at least 10 days' prior written notice of commencement of any work on Alterations, so that Agency may post appropriate notices of non-responsibility, and Lessee hereby grants permission to Agency to enter onto the Facility for that purpose. Lessee, at its cost, shall provide to Agency a performance bond equal to 100% of the total estimated cost of any proposed Alterations prior to commencement of work thereon. All work on Alterations shall be performed in a worker-like manner and shall comply with all applicable governmental permits, laws, ordinances and regulations, including, but not limited to,

any procedures promulgated by Agency. All work on Alterations shall be completed by contractors licensed in the State of California who shall have in place prior to commencement of work the policies of insurance satisfactory to Agency, as evidenced by a certificate of insurance delivered to and approved by Agency. Agency shall have the right to enter onto the Facility and to inspect construction of the Alterations during construction. All Alterations and fixtures, whether temporary or permanent in character, made in or upon or added to the Facility by Lessee shall be Agency's property at the end of the Lease Term without compensation to Lessee, subject to the provisions of Section 25 below.

13. Option to Renew.

Subject to the terms and conditions set forth in this Section, Agency hereby is granted the right and option ("Renewal Option") to extend the term of this Lease for five additional one-year term(s) ("Renewal Term(s)"), in conjunction with any extension of the term of the Agreement. Lessee shall exercise the Renewal Option, in the same manner as provided in the Agreement for the exercise of the option(s) under the Agreement.

14. Utilities.

Lessee shall arrange and pay for all utilities, if any, including without limitation, water, electric, gas, garbage, communications and sewer services to be used in connection with this Lease. If Agency is required to contract with a utility to provide access for service to Lessee at the Facility for Lessee's sole use, Lessee shall pay to Agency the sum of \$200.00 upon receipt of a bill therefor from Agency in order to partially defray administrative costs.

15. Maintenance and Repair.

Lessee shall keep the Facility, including any improvements located thereon, in safe condition and in good order, condition and repair at all times during the Lease Term at Lessee's sole cost and expense. Lessee shall, at Lessee's sole expense, repair any area damaged by Lessee, Lessee's agents, employees and visitors. Lessee acknowledges that Agency is under no duty to repair or make improvements to the Facility. If Lessee fails to perform Lessee's obligations under this Section 15, Agency may enter upon the Facility after 10 days prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required) and perform such obligations on Lessee's behalf and expense as provided in Section 24(a) of this Lease. At the end of the Lease Term, Lessee shall surrender the Facility to Agency in the same condition as when received, ordinary wear and tear excepted. Agency shall provide capital maintenance and repairs to the building including roof repairs and repairs of broken windows and removal of graffiti, provided that such repairs were not necessitated by damage caused by the Lessee, Lessee's agents, employees or visitors.

16. Liens.

Lessee shall not permit any mechanics' or materialmen's liens, stop orders or other liens (collectively, "Liens") to be filed against the Facility nor against Lessee's leasehold interest therein by reason of labor or materials furnished to the Facility at Lessee's instance or request. If any such liens are filed against the Facility, Lessee shall cause the same to be discharged of record either by payment of the claim or by posting and recording the bond contemplated by

California Civil Code Section 8000 *et seq.*, within 20 days after demand by Agency. Lessee shall indemnify, hold harmless, and defend Agency from and against any such liens.

17. Indemnification.

Lessee shall indemnify, defend and hold harmless 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 respective directors, officers, employees, agents, contractors, any other person acting on Agency's behalf, and their successors and assignees, as they now or as they may hereafter be constituted, singly, jointly or severally (collectively, "Indemnitees") from and against any and all liabilities, penalties, losses, damages, costs, loss of rent, expenses, demands, causes of action, claims or judgments (collectively, "Liabilities") arising out of or in connection with (a) the use, maintenance, occupation, alteration, or improvement of the Facility by Lessee, (b) any act, omission or neglect of Lessee, Lessee's officers, employees, agents, servants, sublessees, concessionaires, contractors or visitors, and/or (c) any breach or default by Lessee of any of the terms, covenants or conditions of this Lease; provided, however that with respect to any Liability under sub-sections (a) and/or (b) above, Lessee shall not be obligated to indemnify any Indemnitee for any Liability caused by the gross negligence or willful misconduct of that Indemnitee. The duty to defend established herein shall include payment of all legal costs and charges, including reasonable attorney's fees, and shall remain in effect notwithstanding any claim of gross negligence or willful misconduct by Lessee against any Indemnitee. Lessee waives any and all rights to any type of express or implied indemnity against Agency, its directors, officers or employees. The provisions of this Section shall survive the expiration or termination of this Lease.

18. Environmental Impairment.

The term "Hazardous Materials" shall mean any substance or material that is designated defined or described as a "hazardous materials," "hazardous substances," "hazardous wastes," "toxic substances," or "toxic waste" in or under any federal, state or local law, rule or regulation, whether in effect now or enacted in the future (collectively "Hazardous Materials"). The term "Hazardous Materials Release" shall mean the use, disposal, presence or release of Hazardous Materials from, in, on or under the Property, unless such use, disposal, presence or release was conducted in compliance with all applicable laws, rules and regulations and it will not create any liability for Agency now or in the future, or it has been explicitly approved in writing by Agency.

If Lessee knows of any Hazardous Materials Release in, on, under or about the Facility during the Term, Lessee shall immediately give Agency written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action or proceeding given to, or received by Lessee from, any governmental authority or private party concerning said Hazardous Materials Release.

Should any Hazardous Materials Release occur upon or from the Facility during the Term, Lessee, at Lessee's expense, shall investigate, remove, remediate and otherwise clean all property affected thereby to the satisfaction of Agency (insofar as the property owned or controlled by Agency is concerned) and of any governmental body having jurisdiction thereof.

Lessee shall indemnify, hold harmless, and defend each and all of the Indemnitees from and against all liability, claims, damages, loss, costs and expenses (including, without limitation, any fines, penalties, judgments, litigation costs, attorneys' fees, and consulting, engineering and construction costs) (collectively "Claim") suffered or incurred by such Indemnitees or any of them as a result of Lessee's breach of this Section, or as a result of any Hazardous Materials Release occurring at any time during the term of this Lease, regardless of whether such Claim arises during or after the Lease Term.

The provisions of this Section shall survive the expiration or termination of this Lease.

19. Insurance.

During the term of this Lease, Lessee is required to procure and maintain the same insurance coverages required under the Agreement.

20. Noise Levels Near Railroad Tracks.

Lessee hereby recognizes and acknowledges that railroad tracks may be located on or adjacent to the Facility, and that the operation of trains over the tracks does and shall produce noise levels which may be considered objectionable by Lessee or employees, agents, sublessees, or invitees of Lessee. Therefore, Lessee agrees that no legal action or complaint of any kind whatsoever shall be instituted against Agency on Lessee's behalf as a result of such noise levels including any claims of nuisance or trespass. Lessee shall indemnify and save harmless Agency against any loss, damage, liability or expense either might incur as a result of such action being taken by Lessee's employees, agents, sublessees or invitees.

21. Reservations.

Intentionally Omitted.

22. Mineral Rights.

Agency also reserves for itself and those to whom it grants such right the title and exclusive right to all of the minerals and mineral ores of every kind and character now known to exist or hereafter discovered upon, within or underlying the Facility, or that may be produced therefrom, including, without limiting the generality of the foregoing, all petroleum, oil, natural gas and other hydrocarbon substances and products derived therefrom, together with the exclusive and perpetual right thereto, without, however, the right to use or penetrate the surface of, or to enter upon the Facility within 500 feet of the surface thereof to extricate or remove the same.

23. Default.

(a) Defaults.

The occurrence of any of the following shall constitute a material breach and default ("Default") of this Lease by Lessee:

(1) A failure by Lessee to observe or perform any other provision of this Lease to be observed or performed by Lessee when such failure is not corrected within 10 days after written notice thereof from Agency; or if such failure cannot be cured within this 10 day period, as determined by Agency in its reasonable discretion, if such cure is not commenced within 30 days of Agency's written notice and thereafter diligently pursued to completion;

(2) The abandonment or the vacation of the Facility by Lessee for a period of more than 15 consecutive days;

(3) The happening of any of the following events: (a) the filing or institution by Lessee of any proceeding under the Bankruptcy Act and any amendment thereto, or any other federal or state act now or hereafter relating to the subject of bankruptcy, insolvency, arrangement, reorganization, or other form of debtor relief, (b) the institution or filing of any involuntary proceeding against Lessee under any of the aforementioned laws unless such proceeding is dismissed within 30 days thereafter, (c) an adjudication of bankruptcy or a finding or judgment of insolvency of Lessee, (d) an assignment for the benefit of creditors by Lessee, (e) the levy of a writ of execution of the business of Lessee or the assets of Lessee located on the Facility which is not discharged within 10 days after the date of said levy, or (f) the appointment of a receiver to take possession of any property of Lessee.

(4) The occurrence of a default under the Agreement that is not remedied pursuant to the stated terms of the Agreement.

24. Remedies.

In the event of a Default by Lessee, Agency may, at any time thereafter:

(a) Cure said Default by Lessee at Lessee's expense. Lessee shall, upon demand, immediately reimburse Agency for the cost of such cure together with interest at the Interest Rate from the date of the expenditure therefor by Agency until such reimbursement is received by Agency.

(b) Maintain Lessee's right to possession in which case this Lease shall continue in effect whether or not Lessee shall have vacated or abandoned the Facility, in which event Agency shall be entitled to enforce all of Agency's rights and remedies under this Lease. Acts of maintenance or preservation, efforts to re-let the Facility, or the appointment of a receiver upon the initiative of Agency to protect Agency's interest under this Lease shall not constitute a termination of Lessee's right to possession. No act by Agency other than giving written notice to Lessee will terminate this Lease.

(c) Terminate Lessee's right to possession of the Facility by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Facility to Agency. In such event Agency shall be entitled to recover from Lessee the sum of all amounts set forth in California Civil Code Section 1951.2(a), including without limitation, all damages incurred by Agency by reason of Lessee's default including, without limitation, the cost of recovering possession of the Facility, and expenses of re-letting such as renovation of the Facility and real estate commissions and finder's fees actually paid for

such re-letting. The "worth at the time of award" shall be computed in the manner provided in California Civil Code Section 1951.2(b) or its successor statute.

(d) Pursue any other remedy now or hereafter available to Agency under the laws of California.

Termination of this Lease under this section or for any reason whatsoever shall not release either party from any liability or obligation arising from an event which may have occurred before termination or from actions that, under the express terms of this Lease, must be performed.

25. Surrender of the Facility; Holding Over.

(a) Upon expiration or earlier termination of this Lease, Lessee shall leave the Facility in a neat and clean condition satisfactory to Agency and free of all personal property of Lessee. All repairs, Alterations and/or other improvements made by Lessee shall become the property of Agency, provided that Agency may, by written notice given to Lessee on not less than 10 days prior to the expiration or termination of the Lease, require Lessee to remove any such Alterations and improvements from the Facility and to restore the Facility to their original condition prior to termination of this Lease. If Lessee fails to do so, Agency may perform such removal and restoration work in which case Lessee shall pay Agency within 30 days after demand therefor the cost of removal of such improvements. Agency shall use reasonable diligence on the removal of such improvements.

(b) If Lessee, without Agency's written consent, remains in possession of all or part of the Facility after expiration or earlier termination of this Lease, such occupancy shall be construed to be a tenancy from month-to-month, subject to the terms and conditions of this Lease, except that Rent in the amount of \$8,000 per month shall be due for the period following expiration or termination of the Lease until Lessee vacates the Facility.

26. Condemnation.

If all or part of the Facility is acquired by eminent domain or by purchase in lieu thereof, Lessee shall have no claim to any compensation awarded for the taking of the Facility or any portion thereof, including Lessee's leasehold interest therein or any bonus value of this Lease, or to any compensation paid as severance damages, or for loss of or damage to Lessee's Alterations or improvements, except as may be expressly provided in this Lease.

27. Assignment and Subletting.

Lessee shall not assign, encumber or otherwise transfer its interest in this Lease without the prior written consent of Agency. No transfer, even with Agency's written consent thereto, shall release Lessee from its obligations hereunder. Agency's consent to one transfer shall not constitute its consent to any another transfer, or a waiver of Agency's rights hereunder. Lessee's transferee shall agree in writing to be bound by all of the terms and conditions of this Lease that are to be performed by Lessee. Any purported transfer in violation of this section shall be void and constitute a default hereunder, and at the option of Agency, terminate this Lease.

28. Damage.(a) Scope of Damage.

Lessee shall notify Agency in writing immediately upon the occurrence of any damage to the Facility which makes the Facility untenable (a "Casualty"). Such damage shall be deemed partial if it can be repaired and the Facility made tenable within 180 days and does not occur during the last year of the Term ("Partial Damage"). All damage other than Partial Damage shall be deemed to be total destruction ("Total Destruction").

(b) Total Destruction.

In the event of Total Destruction, the Lease shall terminate as of the date of the Casualty ("Casualty Date").

(c) Partial Damage.

In the event of Partial Damage, Agency shall elect in a written notice to Lessee within 60 days of the Casualty Date whether to restore the Facility, at Agency's expense, to their condition prior to the Casualty Date. If Agency elects to restore the Facility, Agency shall diligently pursue such restoration to completion at Agency's sole cost and expense, provided that Lessee shall be responsible for the restoration, at Lessee's expense, of Lessee's fixtures, equipment and other improvements installed by Lessee. Upon such an election, this Lease will remain in effect. If Agency elects not to restore the Facility, Lessee shall elect within 30 days of receipt of Agency's election whether to restore the Facility at Lessee's sole cost and expense. If Lessee elects to restore the Facility, Lessee shall diligently pursue such restoration to completion in compliance with the provisions of Section 12 above. Upon such an election, this Lease will remain in effect. If Lessee elects not to restore the Facility, this Lease shall terminate as of the date of Lessee's election.

(d) Lessee's Costs.

If Agency restores the Facility, Lessee shall reimburse Agency for the deductible or self-insured retention under any of Agency's insurance policies and, if the Casualty was caused or contributed to by Lessee or Lessee's invitees, the excess of the cost to restore the Facility over the amount of the insurance proceeds from the Agency's insurance. Lessee shall have no right to any insurance proceeds other than proceeds that Lessee obtains with respect to Lessee's personal property and fixtures. If this Lease is not terminated, the base Rent shall abate in proportion to the Facility damaged until the Facility are restored.

29. Barricades.

Intentionally Omitted.

30. Attorney' Fees.

If either party brings any action against the other to enforce any provision of this Lease or collect any sum due hereunder, or if Agency brings an action for unlawful detainer of the Facility, the prevailing party shall be entitled to recover its costs, including reasonable attorneys'

fees, in addition to any other remedies to which it may be entitled.

31. Miscellaneous Provisions.

(a) Non-Waiver.

Agency's failure to enforce or exercise its rights with respect to any provision hereof shall not be construed as a waiver of such rights or of such provision. Acceptance of Rent or any other sum shall not be a waiver of any preceding breach by Lessee of any provision hereof, regardless of Agency's knowledge of such preceding breach at the time of acceptance of such Rent; nor shall such acceptance be a waiver in any way of Agency's right to terminate this Lease for any reason.

(b) Time of Essence.

Time is of the essence of each provision of this Lease. Any reference to "days" shall mean calendar days except as otherwise expressly provided in this Lease.

(c) Entire Agreement and Amendment.

This Lease sets forth the entire agreement between the parties with respect to the leasing of the premises and supersedes all prior and/or contemporaneous agreements, communications, and representations, oral or written, express or implied, since the parties intend that this be an integrated agreement. This Lease shall not be modified except by written agreement of the parties.

(d) Successors and Assigns.

Subject to the provisions of this Lease relating to assignment, mortgaging and subletting, this Lease shall bind the heirs, executors, administrators, successors and assigns of any and all of the parties hereto.

(e) Authority.

Each individual executing this Lease on behalf of Lessee represents and warrants that he or she is duly authorized to execute and deliver this lease on behalf of Lessee, and that this Lease is binding upon Lessee in accordance with its terms. Agency, as a condition precedent to this Lease, may require corporate or partnership resolutions as are reasonably necessary to establish the authority of Lessee to execute this Lease.

(f) Governing Law.

This Lease shall be governed by and construed in accordance with the laws of the State of California as applied to contracts that are made and performed entirely in California.

(g) Captions.

All captions and headings in this Lease are for the purposes of reference and convenience and shall not limit or expand the provisions of this Lease.

(h) Brokers.

Agency and Lessee are separately responsible for payment of any broker’s commission or finder’s fee incurred by that party’s engagement or acceptance of the services of a broker or agent by said party. Agency and Lessee agree to indemnify, defend and hold the other party harmless from and against any claims and suits made by any broker, agent or other person claiming a commission or other form of compensation against the other party by virtue of having dealt with Agency or Lessee, as the case may be, with regard to this Lease.

(i) Counterparts.

This Lease may be entered into in counterparts, each of which shall be deemed an original but both of which together shall be deemed a single agreement.

IN WITNESS WHEREOF, the parties hereto have executed, or have caused to be executed, this Lease on the day and year first above written.

<p>Agency: PENINSULA CORRIDOR JOINT POWERS BOARD</p> <p>Signature: _____</p> <p>Print: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>APPROVED AS TO FORM:</p> <p>_____ Attorney for Agency</p>	<p>Lessee: BIKEHUB, INC.</p> <p>Signature: _____</p> <p>Print: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>*Signature: _____</p> <p>Print: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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EXHIBIT A
FACILITY

TO BE INSERTED UPON EXECUTION OF LEASE

EXHIBIT B
AGREEMENT

TO BE ATTACHED FOLLOWING EXECUTION OF AGREEMENT

22-J-S-087 BIKE PARKING STATION COST PROPOSAL FORM

Section A- Staffed Facility *

Annual compensation for the staffed facility located at 4th and King in San Francisco should include the fully burdened labor rates, overhead, utilities, equipment and supplies needed to operate the facility. Rent of the facility will be provided at no charge to the Contractor.

Proposed Annual Cost for Initial Base Five (5) Year Term	
	Proposed Annual Cost **
Base Term - Year One	\$ 158,268
Base Term - Year Two	\$ 151,504
Base Term - Year Three	\$ 149,708
Base Term - Year Four	\$ 149,096
Base Term - Year Five	\$ 147,801
TOTAL FOR FIVE-YEAR TERM	\$ 756,377

** Programwide staff expenses are included in staffed facility section*

*** Caltrain participates in 50% share of gross profit + other business ventures exceeding \$150,000 annual (minus additional staffing expense from projected totals)*

Section B- Unstaffed Facility *

Annual compensation for the proposed unstaffed facilities (up to 8) shall include the fully burdened labor rates, overhead, equipment and supplies to operate the facility. Rent of the facilities will be provided at no charge to the Contractor. Caltrain will pay for utilities at unstaffed facilities.

Proposed Annual Cost for Initial Base Five (5) Year Term	
	Proposed Annual Cost
Base Term- Year One	\$ 11,298
Base Term- Year Two	\$ 11,715
Base Term- Year Three	\$ 12,148
Base Term- Year Four	\$ 12,597
Base Term- Year Five	\$ 13,064
TOTAL FOR FIVE-YEAR TERM	\$ 60,822

** Quoted price for one unstaffed facility. Discounted rates for additional facilities (see OpEx tab for details)*

GRAND TOTAL FOR FIVE-YEAR TERM	\$ 817,200
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Prepared By	Adam Shapiro
Title	COO
Company	BikeHub
Date	May 23, 2023

CAPITAL EXPENSES (CAPEX) TEMPLATE

MODULAR STRUCTURE *

CAPACITY 42: 30 STANDARD, 12 OVERSIZED

Components	Unit Cost	Qty	Subtotal	Tax	Labor	Total
Startup and Project Management	\$38,000	1	\$38,000	\$4,085		\$42,085
Structure	\$62,514	1	\$62,514	\$6,720	\$17,500	\$86,734
Concrete pad (parts+labor)**						
Kiosk	\$24,000	1	\$33,000	\$3,548	\$4,000	\$40,548
Cameras	\$2,000	1	\$2,000	\$215	\$1,700	\$3,915
Reinforced door	\$800	1	\$800	\$86	\$700	\$1,586
Paint / Signage	\$1,400	1	\$1,400	\$151	\$1,100	\$2,651
Upright rack	\$222	30	\$6,659	\$716		\$7,374
Inverted U rack (2-bike)	\$179	6	\$1,076	\$116		\$1,192
Bike Rack installation					\$8,800	\$8,800
Transport / Storage	\$7,125	1	\$7,125	\$766		\$7,891
Amenities (pump, etc)	\$1,100	1	\$1,100	\$118	\$200	\$1,418
TOTAL						\$204,194

* Financial model only, based on California Ave. Actual cost will vary by space constraints, desired capacity, and selected hardware.

**Concrete pad not Included in Total. Depending on location, concrete pad may be required.

EXISTING STRUCTURE *

CAPACITY 38: 24 STANDARD, 14 OVERSIZED

Components	Unit Cost	Qty	Subtotal	Tax	Labor	Total
Startup and Project Management	\$30,400	1	\$30,400	\$3,268		\$33,668
Demo + Deferred maintenance	\$10,000	1	\$10,000	\$1,075	\$7,000	\$18,075
Kiosk	\$24,000	1	\$33,000	\$3,548	\$4,000	\$40,548
Cameras	\$2,000	1	\$2,000	\$215	\$1,700	\$3,915
Reinforced, electrified door	\$1,200	1	\$1,200	\$129	\$1,400	\$2,729
Signage	\$1,400	1	\$1,400	\$151	\$1,100	\$2,651
Paint	\$600	1	\$600	\$65	\$3,800	\$4,465
Double-Decker rack (4-bike)	\$3,395	6	\$20,369	\$2,190		\$22,558
Inverted U rack (2-bike)	\$222	7	\$1,554	\$167		\$1,721
Bike Rack installation			\$0	\$0	\$8,800	\$8,800
Transport / Storage	\$5,700	1	\$5,700	\$613		\$6,313
Amenities (pump, etc)	\$1,100	1	\$1,100	\$118	\$200	\$1,418
TOTAL						\$146,860

* Financial model only, based on Menlo Park North. Actual cost will vary by space constraints, desired capacity, and selected hardware.

UNDER TRACKWAY *

CAPACITY 86: 68 STANDARD, 18 OVERSIZED

Components	Unit Cost	Qty	Subtotal	Tax	Labor	Total
Startup and Project Management	\$38,000	1	\$38,000	\$4,085		\$42,085
Walls/Fencing	\$59,478	1	\$59,478	\$6,394	\$20,000	\$85,872
Reinforced, electrified door	\$7,234	1	\$7,234	\$778	\$0	\$8,011
Concrete pad (parts+labor)**						
Lighting improvements**	\$380	8	\$3,040	\$327	\$5,800	\$9,167
Kiosk	\$24,000	1	\$33,000	\$3,548	\$4,000	\$40,548
Cameras	\$2,000	1	\$2,000	\$215	\$1,700	\$3,915
Signage	\$1,400	1	\$1,400	\$151	\$1,100	\$2,651
Double-Decker rack (4-bike)	\$3,395	9	\$30,553	\$3,284		\$33,838
Upright rack w/tire stop (1-bike)	\$222	32	\$7,102	\$764		\$7,866
Inverted U rack (2-bike)	\$179	9	\$1,615	\$174		\$1,788
Bike Rack installation			\$0	\$0	\$13,200	\$13,200

Transport / Storage	\$5,700	1	\$5,700	\$613		\$6,313
Amenities (pump, etc)	\$1,100	1	\$1,100	\$118	\$200	\$1,418
					TOTAL	\$256,671

* Financial model only, based on Belmont. Actual cost will vary by space constraints, desired capacity, and selected hardware.

**Concrete pad not Included in Total. Depending on location, concrete pad may be required.

Project Management	Modular	Existing	Trackway
Participate in project planning phase	X	X	X
Lead meetings and provide minutes	X	X	X
Project Scheduling	X	X	X
Project Budget	X	X	X
Bike elements: Purchasing and Logistics	X	X	X
Coordinate signage and/or painting	X	X	X
Coordinate installation of bike parking elements	X	X	X
Coordinate installation of kiosk and entry hardware	X	X	X
Coordinate installation of fencing / security upgrades		X	X

OPERATIONS EXPENSES (OPEX)

OpEx Programwide	Unit Cost	Qty per Year	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	TOTAL
Regional Manager	\$59	260	\$15,330	\$15,943	\$16,580	\$17,244	\$17,933	83,030
Total Funding Required			\$15,330	\$15,943	\$16,580	\$17,244	\$17,933	83,030

OpEx 4th / King Staffed Facility	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	TOTAL
Staffing	\$207,414	\$215,711	\$224,339	\$233,313	\$242,645	\$1,123,422
Other Direct Expenses	\$25,765	\$26,796	\$27,868	\$28,983	\$30,142	\$139,554
Total Costs	\$233,180	\$242,507	\$252,207	\$262,295	\$272,787	\$1,262,976

Retail Sales Gross Profits	\$81,841	\$98,209	\$109,994	\$120,994	\$133,093	\$544,131
Other Business Ventures	\$8,400	\$8,736	\$9,085	\$9,449	\$9,827	\$45,497
Anticipated Revenues	\$90,241	\$106,945	\$119,080	\$130,443	\$142,920	\$589,628

Total Funding Required	\$158,268	\$151,504	\$149,708	\$149,096	\$147,801	\$756,377
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Caltrain participates in 50% share of gross profit + other business ventures exceeding \$150,000 annual (minus additional staffing expense from projected totals)

OpEx per 1st Unstaffed Facility	Unit Cost	Qty per Year	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	TOTAL
Auditor (monthly rotation)	\$160	12	\$1,920	\$1,997	\$2,077	\$2,160	\$2,246	\$10,399
Parkit license *	\$2,178	1	\$2,178	\$2,230	\$2,284	\$2,339	\$2,395	\$11,425
Facility maintenance**	\$3,000	1	\$3,000	\$3,120	\$3,245	\$3,375	\$3,510	\$16,249
Janitorial***	\$650	0	\$0	\$0	\$0	\$0	\$0	\$0
Utilities, Surveillance, Support	\$350	12	\$4,200	\$4,368	\$4,543	\$4,724	\$4,913	\$22,749
Total Funding Required			\$11,298	\$11,715	\$12,148	\$12,597	\$13,064	\$60,822

OpEx 2-4 Unstaffed Facilities	Unit Cost	Qty per Year	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	TOTAL
Auditor (monthly rotation)	\$145	12	\$1,740	\$1,810	\$1,882	\$1,957	\$2,036	\$9,424
Parkit license *	\$1,960	1	\$1,960	\$2,039	\$2,120	\$2,205	\$2,293	\$10,617
Facility maintenance**	\$2,700	1	\$2,700	\$2,808	\$2,920	\$3,037	\$3,159	\$14,624
Janitorial***	\$600	0	\$0	\$0	\$0	\$0	\$0	\$0
Utilities, Surveillance, Support	\$350	12	\$4,200	\$4,368	\$4,543	\$4,724	\$4,913	\$22,749
Total Funding Required			\$10,600	\$11,024	\$11,465	\$11,924	\$12,401	\$57,414

OpEx 5+ Unstaffed Facilities	Unit Cost	Qty per Year	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	TOTAL
Auditor (monthly rotation)	\$120	12	\$1,440	\$1,498	\$1,558	\$1,620	\$1,685	\$7,800
Parkit license *	\$1,742	1	\$1,742	\$1,812	\$1,885	\$1,960	\$2,038	\$9,437
Facility maintenance**	\$2,430	1	\$2,430	\$2,527	\$2,628	\$2,733	\$2,843	\$13,162
Janitorial***	\$550	0	\$0	\$0	\$0	\$0	\$0	\$0
Utilities, Surveillance, Support	\$350	12	\$4,200	\$4,368	\$4,543	\$4,724	\$4,913	\$22,749
Total Funding Required			\$9,812	\$10,205	\$10,613	\$11,038	\$11,479	\$53,147

* Standard cost Parkit license \$6,600

** Shared Facilities Maintenance and Janitorial responsibilities, see chart below

Facilities Maintenance	BikeHub	Caltrain
Parkit access kiosk function	X	
Camera System	X	
Parking racks maintenance	X	
Facility security issue - initial action to secure	X	
Facility security issue - repair followup		X
Electronic lock, controller + door assembly		X
All other facility maintenance (doors, windows, walls, roof, electrical, plumbing, etc)		X
Graffiti / Vandalism		X

Janitorial	BikeHub	Caltrain
Monthly light cleaning (dust, sweep, pick up litter)	X	
Quarterly deep clean (power wash, or hand-wash if facility cannot be sprayed)		X
On-Call, as needed - major cleaning (hazards / spills)		X
Interior or exterior graffiti		X

4th AND KING + PROGRAMWIDE FINANCIALS (PAST ACTUALS + PROJECTIONS)

PAST FINANCIALS

	2017	2018	2019	2020	2021	2022
Costs						
Payroll	88,784	100,978	107,613	89,306	116,313	125,974
Fringe Benefits	13,895	9,497	9,154	12,044	11,326	14,312
Other Direct Expenses	20,451	19,815	20,787	21,257	19,089	25,542
Overhead	37,917	35,000	35,000	35,000	35,000	35,000
Profit	-	-	-	-	-	-
Total Costs	161,047	165,291	172,554	157,608	181,728	200,828
Gross Profit	76,556	92,857	118,082	51,481	60,373	72,386
Total Funding Needed	84,491	72,434	54,472	106,126	121,355	128,442
Total Funding per Month	7,041	6,036	4,539	8,844	10,113	10,704

FORECASTED FINANCIALS

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Costs						
Payroll *	172,436	179,333	186,506	193,967	201,725	933,967
Fringe Benefits	20,424	21,241	22,090	22,974	23,893	110,622
Other Direct Expenses	25,765	26,796	27,868	28,983	30,142	139,554
Overhead	29,884	31,080	32,323	33,616	34,961	161,863
Profit	-	-	-	-	-	0
Total Costs	248,509	258,450	268,788	279,539	290,721	1,346,006

* Programwide staff expenses are included in Payroll

PROJECTION
BASE

Gross Profit	90,241	106,945	119,080	130,443	142,920
Total Funding Needed **	158,268	151,504	149,708	149,096	147,801
Total Funding per Month	13,189	12,625	12,476	12,425	12,317

PROJECTION
+30%

Gross Profit	117,313	139,029	154,804	169,575	185,796
Total Funding Needed **	158,268	151,504	147,306	139,309	129,903
Total Funding per Month	13,189	12,625	12,275	11,609	10,825

PROJECTION
+50%

Gross Profit	135,362	160,418	178,620	195,664	214,380
Total Funding Needed **	-104,124	146,295	132,996	116,477	97,713
Total Funding per Month	-8,677	12,191	11,083	9,706	8,143

** Caltrain participates in 50% share of gross profit + other business ventures exceeding \$150,000 annual (minus additional staffing expense from projected totals)

AGREEMENT BETWEEN
THE PENINSULA CORRIDOR JOINT POWERS BOARD (AGENCY)
AND
BIKEHUB, INC. ("CONTRACTOR")

AGREEMENT SUMMARY*

Board of Directors' Date of Award: August 3, 2023

Resolution Number: _____

Effective Date of Agreement: September 1, 2023

Services to be Performed (Section I ,A. ,1): Bike Parking Stations

Term of Agreement (Section I ,A. ,3): September 1, 2023 to August 31 2028, with up to five (5) one (1)-year option terms.

Contractor's Key Representative (Section I ,A. ,4): Adam Shapiro, VP of Operations

Compensation (Section I ,A. ,5): The total contract not to exceed amount is \$2,969,106

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

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This AGREEMENT for Caltrain Bike Station Program (“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 BikeHub, Inc. (“CONTRACTOR”), a California Corporation located at 1522 Park Street, Alameda, CA 94501 (“the Parties”).

1. SCOPE OF SERVICES

This is an Agreement to provide services related to operating Bike Parking Stations at various Caltrain facilities ("Facilities"). 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 consultants with special expertise in providing Bike Parking Stations; (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 services will consist of the services set forth in the Request for Proposals dated December 21, 2022, the Scope of Services of which is attached hereto and incorporated herein as Exhibit A, as supplemented by CONTRACTOR’s written proposal dated February 1, 2023 and revised cost proposal dated May 23, 2023, attached hereto and incorporated herein as Exhibit B.

2. AGREEMENT DOCUMENTS

This Agreement consists of the following documents:

- (1) Work Directives/Task Orders, as applicable
- (2) This Agreement including Attachment A, Insurance Requirements, and Attachment B, Data Security and Privacy Requirements
- (3) Exhibit A, Scope of Services
- (4) Exhibit B, CONTRACTOR'S Proposal including labor rates
- (5) Exhibit C, Commercial Lease
- (6) Exhibit D, Labor Code Requirements
- (7) Exhibit E, SBE 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 base term of this Agreement will be for a five (5) year term commencing upon September 1, 2023 and ending on August 31, 2028. 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 Agreement Documents.

The AGENCY reserves the right, in its sole discretion, to exercise up to five (5) one-year option term(s) to extend the Agreement, pursuant to the terms of this Agreement. If the AGENCY determines to exercise the option term(s), the AGENCY will give the CONTRACTOR at least 30 days' written notice of its determination.

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

4. CONTRACTOR'S REPRESENTATIVE

At all times during the term of this Agreement, Adam Shapiro, Vice President of Operations, 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 base services included in Section 1 for a total not-to-exceed amount of Two Million Nine Hundred and Sixty Nine Thousand One Hundred and Six Dollars (\$2,969,106), in accordance with Exhibits A and B. This amount consists of up to \$1,787,553 for a five-year base term for start-up services and to manage and operate the Bike Parking Station Program and up to Two Hundred and Seventy Thousand Dollars (\$270,000) for potential tenant improvements and repairs to the Facilities. The total amount will include all labor, equipment, taxes, profit, overhead, insurance, subcontractor costs and all other costs and expenses incurred by the CONTRACTOR. The AGENCY will pay the CONTRACTOR in accordance with Section 6. For the tenant improvements and repairs, as further detailed in Section 26 of this Agreement, AGENCY will pay CONTRACTOR on a time and materials basis.

In the event that the AGENCY exercises its right to extend this Agreement, CONTRACTOR agrees to perform all of the optional services for a total not-to-exceed amount of One Million One Hundred and Eighty One Thousand Three Hundred Seventy Seven Dollars (\$1,181,377), in accordance with Exhibits A and B. This amount consists of up to \$1,181,377 for a five-year base term to operate the 4th and King Street Facility and up to eight additional unstaffed Facilities. The total amount will include all labor, equipment, taxes, profit,

overhead, insurance, subcontractor costs and all other costs and expenses incurred by the CONTRACTOR. The AGENCY will pay the CONTRACTOR in accordance with Section 6.

If CONTRACTOR generates more than \$150,000 in gross profit from the 4th and King Street Facility, the Parties agree that any gross profit over \$150,000 (minus additional staffing expenses) will be split 50/50 between AGENCY and CONTRACTOR.

Six months prior to the expiration of the base term, the Parties will negotiate mutually agreeable modifications (resulting in an increase or decrease) to the compensation terms for the option periods. Such modification shall be based upon the AGENCY's review of the CONTRACTOR's financial statements concerning the operations of the retail business, if any, and any increase in compensation requested by CONTRACTOR. This re-determination shall only occur once and shall be applicable for each one-year option terms, if exercised by the AGENCY. While the monthly compensation may decrease in accordance with the AGENCY's review, the monthly compensation may not increase more than 10% from the compensation of the last year of the base term.

6. MANNER OF PAYMENT

The CONTRACTOR must submit monthly invoices/billing statements for 1/12 of the Agreement costs for the Facilities currently in operation, in accordance with Exhibits A and B. Each invoice/billing statement must provide the contract number and the AGENCY Project Manager's name, Dan Provence. 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 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 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 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 copy of each invoice as a PDF via email to AccountsPayable@samtrans.com

7. NOTICES

All communications relating to the day-to-day activities of the provided services will be exchanged between the AGENCY's Contract Administrator or designee, and the Contractor's Project Manager.

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 Contract Administrator or designee, and the Contractor's Project Manager via electronic mail to: adam@bikehub.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 CONTRACTOR : BikeHub
Attn: Adam Shapiro
1522 Park St.
Alameda, CA 94501

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

8. OWNERSHIP OF WORK

a. GENERAL

All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared for the services to be performed by 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.

b. DATA SECURITY AND PRIVACY REQUIREMENTS

Refer to Attachment B, appended hereto, for additional data security and privacy requirements.

9. 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, 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 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 8. The CONTRACTOR will be solely responsible for reimbursing any subcontractors and the AGENCY will have no obligation to them.

11. CHANGES

The AGENCY may at any time, by written order, make changes within the scope of work and services described in this Agreement. If such changes cause an increase or decrease in the budgeted cost of or the time required for performance of the agreed-upon work, an equitable adjustment as mutually agreed will be made in the limit on compensation as set forth in Section 5 or in the time of required performance as set forth in Section 3, or both. In the event that 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.

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

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

13. INSURANCE

Refer to Attachment A, Insurance Requirements, appended hereto, for the Insurance Requirements.

14. 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.

15. 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.

16. OTHER GOVERNMENTAL AGENCIES

Not Applicable.

17. LITIGATION SUPPORT

Not Applicable.

18. AGENCY WARRANTIES

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

19. AGENCY REPRESENTATIVE

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

20. WARRANTY OF SERVICES

- a. CONTRACTOR warrants that its services will be performed in accordance with the standards of practices of comparable firms at the time the services are rendered. In addition, CONTRACTOR will provide such specific warranties as may be set forth in Work Directives as agreed upon by the Parties.
- b. In the event that any services provided by the CONTRACTOR hereunder are deficient because of CONTRACTOR's or subcontractor's 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:
 - 1) The right to have the CONTRACTOR re-perform such services at the CONTRACTOR's expense; or
 - 2) The right to have such services done by others and the costs thereof charged to and collected from the CONTRACTOR if, within 30 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.
 - 3) 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 work re-performed 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 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 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 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 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 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 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 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-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. ADDITIONAL REQUIREMENTS CONCERNING TENANT IMPROVEMENTS AND OTHER REPAIR WORK

The Parties agree that while this is a contract to operate various bike parking station facilities, certain provisions of the California Labor Code and Public Contract Code may be applicable to those portions of the work pertaining to tenant improvements and repairs. The Parties agree as a matter of contract that the following additional provisions of the Labor Code and Public Contract Code will apply to the tenant improvement and repair work in Section 28 of this Agreement.

26.1. Prohibition Against Contracting with Debarred Subcontractors

CONTRACTORS are prohibited from performing work with a Subcontractor who is ineligible to perform work on the project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

26.2. Use of Subcontractors

CONTRACTOR shall not subcontract any work without the prior written approval of the AGENCY. CONTRACTOR shall be solely responsible for reimbursing any Subcontractors and the AGENCY shall have no obligation to them. Attention is directed to the requirements of Section 4100 to 4113, inclusive of the California Public Contract Code which may be applicable to the work covered by this Section of the Agreement.

26.3. Third-Party Claims

In accordance with Public Contracts Code Section 9201, the AGENCY shall have full authority to compromise or otherwise settle any claim relating to the Agreement at any time. The AGENCY shall provide for timely notification to the CONTRACTOR of the receipt of any third-party claim, relating to the contract. Notice shall be in writing and will be provided within thirty (30) calendar days. The AGENCY shall be entitled to recover its reasonable costs incurred in providing the notification required by this subdivision

26.4. Utility Relocation

In accordance with California Government Code Section 4215, if during the course of the work the CONTRACTOR encounters utility installations which are not shown or indicated in the contract plans or in the specifications or which are found in a location substantially different from that shown, and such utilities are not reasonably apparent from visual examination of the work site, then it shall promptly notify the AGENCY in writing. Where necessary for the work of the Agreement, the AGENCY will amend the contract to adjust the scope of work and the compensation to allow the CONTRACTOR to make such adjustment, rearrangement, repair, removal, alteration, or special handling of such utility, including repair of the damaged utility. If the CONTRACTOR fails to give the notice specified above and thereafter acts without instructions from the AGENCY, then it shall be liable for any or all damage to such utilities or other work of the Agreement which arises from its operations subsequent to the discovery, and it shall repair and make good such damage at its own cost.

26.5. Excavation

In accordance with state law (Public Contract Code Section 7104), with respect to any work involving digging trenches or excavations that extend deeper than

four feet, the CONTRACTOR shall notify the AGENCY promptly in writing of any of the following conditions: (a) material that the CONTRACTOR believes may be hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law; (b) subsurface or latent physical conditions at the site differing from those indicated; (c) unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. CONTRACTOR shall notify the AGENCY of such conditions prior to disturbing them, and shall await direction from the AGENCY as to how to proceed. CONTRACTOR will comply with AGENCY's SSWP process and ensure that any excavation areas are checked for signal or other railroad related cables, wires, lines, etc.

26.6. Trench Safety

Excavation for any trench 5 feet or more in depth shall 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 shall be submitted at least five (5) calendar days before the CONTRACTOR intends to begin excavation for the trench and shall 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 shall 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 shall be prepared and signed by an Project Manager 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.

26.7. CONTRACTOR's License Requirements

CONTRACTOR and any approved Subcontractor shall hold such current and valid CONTRACTOR's Licenses as required by California Law.

26.8. Labor Code Requirements

See Exhibit D, Labor Code Requirements.

26.9. Prompt Payment

Pursuant to Public Contract Code Section 20104.50, AGENCY will pay CONTRACTOR within thirty (30) days of its receipt of an undisputed, properly submitted and approved Application for Payment, after deducting all previous

payments, retention, and other sums as described in the Agreement. Within seven (7) days of receipt of CONTRACTOR's Application for Payment, AGENCY will determine whether it complies with the conditions of the Agreement. If necessary, AGENCY will return the application to the CONTRACTOR accompanied by a document prepared by AGENCY setting forth the reasons for the rejection. Thereafter, CONTRACTOR shall correct and resubmit the Application for Payment. Progress payments may be withheld for Work that is not performed in accordance with the Agreement.

The CONTRACTOR shall pay Subcontractors for work that has been satisfactorily performed no later than seven (7) days from the date of CONTRACTOR's receipt of progress payments from the AGENCY. Within thirty (30) days of satisfactory completion of all work required of the Subcontractor, CONTRACTOR shall release any retainage payments withheld to the Subcontractor. CONTRACTOR shall release such retainage payments to the Subcontractor without the benefit of a similar release from the AGENCY. If AGENCY releases retention, in whole or in part, to CONTRACTOR, in no instance shall CONTRACTOR release retention to the Subcontractor later than seven (7) days after CONTRACTOR receives retention from AGENCY. Any delay or postponement of payment may take place only for good cause and with the AGENCY's prior written approval. Any violation of these conditions shall subject the violating prime 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 Subcontractor 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 both SBE and non-SBE subcontractors. In the event CONTRACTOR does not make progress payments or release retentions to the subcontractors in accordance with the time period specific herein, CONTRACTOR will be subject to a charge of two percent (2%) per month on the untimely or improperly withheld payment. See Exhibit 8, SBE Requirements for more information.

26.10. Antitrust Claims

The CONTRACTOR's attention is directed to the following provision of Public Contract Code Section 7103.5(b), which shall be applicable to the CONTRACTOR and its subcontractors:

"In entering into a public works contract or a sub-contract to supply goods, services or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all right, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and

Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the sub-contract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgement by the parties.”

26.11. Agreement Bonds

All Agreement bonds shall be on the AGENCY's forms and shall be executed as surety by a corporation or corporations acceptable to the AGENCY which is admitted and authorized to issue surety bonds in the State of California. The bond must allow for all alterations, extensions of time, extra and additional work, and other changes authorized by the Agreement to be made without securing the consent of the surety or sureties on the Agreement bonds while continuing to provide security for such work. Full compensation for furnishing the Agreement bonds is included in the prices paid for the various Agreement items of work and no separate payment will be made by the AGENCY for the bonds.

26.11.1. Performance Bond

The CONTRACTOR shall provide a Performance Bond in an amount of not less than 100% of the cost of the tenant improvement work. The Performance Bond shall guarantee the CONTRACTOR's faithful performance of the Agreement in compliance with all terms, conditions and requirements specified in the Agreement. It shall also guarantee any excess payments the AGENCY may make in order to complete the Work in the event of CONTRACTOR's default pursuant to Section 24. The Performance Bond shall remain in full force and effect until completion of the warranty period, and satisfactory resolution of all outstanding warranty claims.

26.11.2. Payment Bond

As a matter of contract, and not as a requirement of law, the CONTRACTOR shall also provide a Payment Bond in an amount equal to the cost of the tenant improvement work. The Payment Bond shall provide the AGENCY with security for CONTRACTOR's full payment to all Subcontractors for costs of materials, equipment, supplies, and labor furnished in the course of performing any work that may be required for the above referenced line item.

26.12. California Prevailing Wage Rates

See Exhibit D, Labor Code Requirements.

26.13. Iran Contracting Certification

CONTRACTOR certifies that it is not on the California Department of General Services (DGS) list of persons determined to be engaged in investment activities in Iran or otherwise in violation of the Iran Contracting Act of 2010 (Public Contract Code Sections 2200–2208).

26.14. Notice of Taxable Possessory Interest

In accordance with Revenue and Taxation Code Section 107.6, the Agreement may create a possessory interest subject to personal property taxation for which CONTRACTOR will be responsible.

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 any of their authorized representatives to inspect, examine, take excerpts from, transcribe, and copy the CONTRACTOR 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) days of written notification by the AGENCY.

28. REPORTING REQUIREMENTS

A. Monthly Reports

The CONTRACTOR shall submit monthly reports in a format approved by the AGENCY for evaluation by the 15th of each month for the preceding month. Reports will include, at a minimum:

- i. Bicycle parking usage statistics, including but not limited to: weekday, average weekday, Saturday and Sunday parking use, length of bicycle parking (e.g. daily parking, overnight storage);
- ii. Provide customer satisfaction comments regarding the service and resolution of issues, if any; and

- iii. Changes in services or operating policies, etc.

B. Semi-Annual Reports

The CONTRACTOR shall submit semi-annual status reports in a format approved by the AGENCY as follows:

- i. Due on July 31 for the period January 1 through June 30; and
- ii. Due on January 31 for the period July 1 through December 31.

Each report shall contain:

- i. Year-to-date Balance Sheets and Income Statement containing operating budget and revenues for Facility retail and bicycle parking operations;
- ii. Year-to-date actual revenues compared to budget projections for Facility retail and bicycle parking operations;
- iii. Other information as may be requested by the JPB; and
- iv. A brief assessment of whether the Facility is likely to sustain operations with reduced or no compensation and any actions being taken to improve the likelihood that it will become self-sustaining.

C. Surveys

CONTRACTOR shall complete up to a maximum of five surveys of bicycle parking facility users, including prior travel mode, origin and destination, trip distance, frequency of use and any additional information as may be required by the AGENCY. The survey format and dates covered by each survey will be determined by CONTRACTOR and the AGENCY.

28. TENANT IMPROVEMENTS AND REPAIRS

The CONTRACTOR may from time to time perform tenant improvements and repairs on the Facilities, as directed by the AGENCY in its sole discretion. The CONTRACTOR may perform urgent or security-related repairs without the AGENCY's direction.

Tenant improvements and repairs are subject to the public works requirements in Section 26 of this Agreement.

29. DOWNTOWN EXTENSION

The AGENCY is currently undertaking the Downtown Extension project that may result in the demolition of the existing 4th and King Street Facility. AGENCY will give the CONTRACTOR twelve (12) months written notice if the 4th and

King Street Facility will be demolished. CONTRACTOR may provide input to the AGENCY on any temporary and long term replacement facilities.

If the 4th and King Street Facility is demolished, the Parties agree to renegotiate in good faith the compensation amount for the Facility, as determined by the AGENCY in its sole discretion.

30. AGENCY ACCESS TO UNSTAFFED FACILITIES

For all unstaffed Facilities, CONTRACTOR shall install card readers or keyed locks to allow the AGENCY access, as needed. The AGENCY shall approve the form of the card readers or keyed locks prior to installation.

31. MENLO PARK FACILITY

As described in Exhibit A, the Menlo Park Facility has both a North shed and South shed. If CONTRACTOR rents out the South shed, any revenue generated from this rental will be split 50/50 between AGENCY and CONTRACTOR. If CONTRACTOR rents out the South shed within the first six months of the Effective Date of this Agreement, CONTRACTOR will receive the 100% of the revenue generated from the South shed for the first month, and all subsequent months will be split 50/50 between AGENCY and CONTRACTOR. If CONTRACTOR continues to rent out the South shed for ten out of 12 months in a calendar year, CONTRACTOR will receive 100% of the revenue generated from the South shed in the last month as well; revenue generated in the intervening months will be split 50/50 between AGENCY and CONTRACTOR.

If CONTRACTOR is not operating the South shed within six months of the Effective Date of this Agreement, the AGENCY shall have the ability to retake possession of the South shed upon 30 days' written notice to CONTRACTOR.

32. 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 CFR 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, "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 CONTRACTOR will obtain the same assurances from its joint venture partners, subcontractors, 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.

33. 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.

34. SBE POLICY

See Exhibit E, SBE Requirements.

35. 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 CONTRACTOR on any work related to this Agreement if the subcontractor or independent CONTRACTOR, or any employee of the subcontractor or independent CONTRACTOR, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement 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 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.

36. SUBSTANCE ABUSE PROGRAM

Not Applicable.

37. 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.

38. 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.

39. 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.

40. 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.

41. NO THIRD PARTY BENEFICIARIES

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

42. 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.

43. 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.

44. 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.

45. 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.

THE PENINSULA CORRIDOR JOINT
POWERS BOARD:

BikeHub, Inc.: (See footnote below)

Signature

Signature

Print

Print

Title

Title

Date

Date

Signature

Print

Title

Date

ATTEST:

By: _____
Agency Secretary

APPROVED AS TO FORM:

By: _____
Julie A. Sherman
Attorney for the Agency

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

A. MINIMUM TYPES AND SCOPE OF INSURANCE

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

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

2. **Commercial General Liability Insurance.**

Commercial General Liability insurance for bodily injury and property damage coverage of at least **\$2 million** per occurrence or claim and a general aggregate limit of at least **\$2 million**. Such insurance shall cover all of

CONTRACTOR's operations both at and away from the project site. Such insurance shall not have any exclusion for Cross Liability or Cross-Suits. In addition, for any construction and public works projects, the insurance shall not have any exclusion for Explosion, Collapse and Underground perils (xcu) and for construction or demolition work within 50 feet of railroad tracks, the contractual liability exclusion for liability assumed shall be deleted.

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

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

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

3. Business Automobile Liability Insurance.

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

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

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

4. Property Insurance.

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

- a. This insurance shall include coverage for, but not be limited to:
 - Non-owned personal property, while in the care, custody or control of the Contractor.
 - 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 DISTRICT, if any.
 - Builders risk for property in the course of construction.
- b. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:
 - Waiver of Subrogation.

B. ENDORSEMENTS

1. Additional Insured.

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

2. Waiver of Subrogation.

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

3. Primary Insurance.

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

4. Separation of Insureds.

The referenced policies and any Excess or Umbrella policies shall contain a Separation of Insureds Clause and stipulate that inclusion of the San Mateo County Transit District as an Additional Insured shall not in any way affect DISTRICT's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the CONTRACTOR. The purpose of this coverage is to protect CONTRACTOR and the San Mateo County Transit District in the same

manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

C. EVIDENCE OF INSURANCE

1. All Coverages.

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

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

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

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

D. GENERAL PROVISIONS

1. Notice of Cancellation.

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

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

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

2. Acceptable Insurers.

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

3. Self-insurance.

Upon evidence of financial capacity satisfactory to the DISTRICT and CONTRACTOR's agreement to waive subrogation against the DISTRICT 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 DISTRICT property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

5. Claims Made Coverage.

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

- a. Policy retroactive date coincides with or precedes the 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 DISTRICT. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that the policy of the CONTRACTOR or any subcontractor contains a deductible or self-insured retention, and in the event that the DISTRICT 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.

ATTACHMENT B- DATA SECURITY AND PRIVACY REQUIREMENTS

1. DATA PRIVACY

The CONTRACTOR may have access to Personally Identifiable Information ("PII") in connection with the performance of the Agreement. PII is any information that identifies or describes a person or can be directly linked to a specific individual, including ridership and usage data. Examples of PII include, but are not limited to, name, address, phone or fax number, signature, date of birth, e-mail address, method of payment, payment card information, ridership and travel pattern data. AGENCY Personally Identifiable Information, or AGENCY PII, means any PII relating to the AGENCY's customers.

The CONTRACTOR must ensure and maintain the confidentiality, security, safety, and integrity of all AGENCY PII, including physical, electronic, and procedural safeguards designed to prevent unauthorized access or use and protect against known or anticipated threats to the security or integrity of such data. This includes, but is not limited to, the secure transport, transmission and storage of AGENCY PII used or acquired in the performance of this Agreement. Notwithstanding the generality of the foregoing requirements, CONTRACTOR will adhere to the following requirements concerning AGENCY PII:

A. The CONTRACTOR may not, except as authorized or required by law, reveal or divulge to any person or entity any AGENCY PII that becomes known to it during the term of this Agreement. The CONTRACTOR may not use or attempt to use any such information in any manner that may injure or cause loss, either directly or indirectly, to the AGENCY.

B. The CONTRACTOR must maintain policies and programs that prohibit unauthorized disclosure of AGENCY PII and promote training and awareness of information security policies and practices. The CONTRACTOR must comply, and must cause its employees, representatives, agents, and subcontractors to comply, with such commercially and operationally reasonable directions as the AGENCY may make to promote the safeguarding or confidentiality of AGENCY PII.

C. The CONTRACTOR must conduct background checks for employees or Subcontractors that have access to AGENCY PII or host AGENCY PII.

D. The CONTRACTOR must limit access to computers and networks that host AGENCY PII, including without limitation through user credentials and strong passwords, data encryption both during transmission and at rest, firewall rules, and network-based intrusion detection software.

E. The CONTRACTOR agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 et. seq.) and Civil Code Section 1798.81.5(b) by entering into this Agreement with the AGENCY. In addition, the CONTRACTOR warrants and certifies that

in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, and the State of California relating to the handling and confidentiality of AGENCY PII, including the terms and conditions contained in this Section.

This Section will survive termination or expiration of this Agreement.

2. DATA SECURITY

The CONTRACTOR must provide those administrative, physical, and technical safeguards for protection of the security, confidentiality, integrity, and availability of AGENCY PII pursuant to the minimum standards of care recommended by the California Attorney General in her February 2016 report (See <https://oag.ca.gov/breachreport2016>). In particular:

A. The CONTRACTOR agrees to properly secure and maintain any computer, hardware and software applications, or electronic media that it will use in the performance of this Agreement. This includes ensuring all security patches, upgrades, and anti-virus updates are applied to secure AGENCY PII that may be used, transmitted, or stored on such software in the performance of this Agreement.

B. The CONTRACTOR, its employees, agents, Subcontractors, and consultants may not download or otherwise store any AGENCY PII onto any CONTRACTOR computer, desktop, laptop, thumb drives, disks, or other portable memory device without such data being encrypted.

C. The CONTRACTOR represents that its hosting environment is built upon a secure infrastructure, which undergoes examinations from an independent auditor in accordance with the minimum standards of care recommended by the California Attorney General in her February 2016 report (see above). For added security, the CONTRACTOR will use multi-factor authentication when accessing the infrastructure. In addition to the independent audit, AGENCY will have the right at any time, upon reasonable notice, to audit and inspect: (i) CONTRACTOR's facilities where the AGENCY PII is stored or maintained; (ii) any computerized software used to share, disseminate or otherwise exchange AGENCY PII; and (iii) CONTRACTOR's security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures related to software where the AGENCY PII is shared, disseminated or otherwise exchanged. The audit and inspection rights hereunder will be for the purpose of verifying CONTRACTOR's compliance with this Agreement, and all applicable laws.

D. The CONTRACTOR must process and store all AGENCY PII in a single-tenant environment and at no time will AGENCY PII be commingled with data of independent third-party users of CONTRACTOR's services.

E. The CONTRACTOR must have vulnerability management programs to identify and minimize threats and risks on any software used to store or transmit AGENCY PII.

F. The CONTRACTOR represents that the CONTRACTOR's management access to the hosting infrastructure is limited to authorized support staff. The security architecture has been designed to control appropriate logical access to the infrastructure to meet industry standards that meet or exceed the Trust Services Criteria and Principles for Security, Availability, Integrity, and Confidentiality established by the AICPA.

G. Notwithstanding anything to the contrary in this Agreement, the CONTRACTOR agrees to retain AGENCY PII for no longer than three days after the completion date of this Agreement and the AGENCY's confirmation that the CONTRACTOR may proceed with such deletion. At the conclusion of this retention period, the CONTRACTOR agrees to use U.S. Department of Defense ("DoD") – approved method and removal of AGENCY PII from any files, with said service being included in the total cost of this Agreement. Discarded AGENCY PII will be unavailable and unrecoverable following the purge on any storage media including, but not limited to, magnetic disk, optical disk, and memory chips ("Storage Media"). The CONTRACTOR agrees to destroy hard-copy documents containing AGENCY PII by means of a cross-cut shredding machine. The CONTRACTOR also agrees to use DoD—approved methods, or an alternate AGENCY-approved method, to sanitize any Storage Media prior to discarding or when useful life has ended, whichever comes first. At the conclusion of the performance period of this Agreement, the CONTRACTOR will submit a certification to the AGENCY's Project Manager that all electronic or hard-copy format AGENCY PII has been destroyed in accordance with the Agreement.

H. The CONTRACTOR is responsible for the security of the cardholder data the service providers possess or otherwise store, process or transmit on behalf of the AGENCY's customers, and to the extent that it could impact the security of the customer's cardholder data environment. The CONTRACTOR must at all times remain in compliance with the Payment Card Industry (PCI) Data Security Standard (DSS) requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with PCI DSS, in each case, at the CONTRACTOR's sole cost and expense.

This Section will survive termination or expiration of this Agreement.

3. **NOTICE OF SECURITY BREACH**

The CONTRACTOR must immediately notify the AGENCY when it discovers that there may have been a data security incident that has or may have resulted in compromise to AGENCY PII. For purposes of this Section, immediately is defined as within twenty-four hours of discovery. The CONTRACTOR must immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of any suspected breach or security vulnerability—and must promptly alert the AGENCY of any such circumstances, including information sufficient for the AGENCY to assess the nature and scope of any suspected data breach. In the event of an unauthorized disclosure of AGENCY PII, the CONTRACTOR will be liable for paying for the following costs to remediate any such unauthorized disclosure:

- A. The reasonable cost of providing notice of the breach to individuals affected by such breach;
- B. The reasonable cost of providing required notice of the breach to government agencies, credit bureaus, and/or other required entities;
- C. The cost of providing individuals affected by such breach with credit protection services designed to prevent fraud associated with identity theft crimes for a specific period not to exceed 12 months; and
- D. Any other service required by applicable law.

The CONTRACTOR must provide any information and/or support to the AGENCY in issuing the actual notification and, at the AGENCY's sole discretion, the CONTRACTOR must itself provide actual notification if the AGENCY desires. This Section will survive termination or expiration of this Agreement.

Exhibit A SCOPE OF SERVICES

The Peninsula Corridor Joint Powers Board (JPB) is seeking proposals from qualified and experienced firms to develop bike parking stations (Facilities) operate and manage the Bike Station Program at up to eight Caltrain stations, including:

1. 4th and King San Francisco Facility – Operate a staffed valet facility (currently in operation) and a future unstaffed bicycle station (to be established as part of this effort)
2. Menlo Park – Bike parking facilities currently exist in two station buildings at Menlo Park Station. The vendor would collaborate to upgrade one or both buildings and operate an unstaffed bicycle station in at least one of the two available station buildings. The use of the second building is not required. It also may be used for other uses that increase Caltrain customer amenities or reduce the overall payments from Caltrain.
3. Hayward Park – A ground floor, unstaffed bicycle station with room for up to 50 bicycles is included with plans for a development in the station's parking lot. The vendor would operate the facility when it comes on line.
4. Up to five (5) additional unstaffed bicycle stations – The vendor would collaborate with Caltrain to establish unstaffed bicycle station(s) at up to 5 additional stations with capacity for a minimum of 25 bikes per station (optional facilities at Caltrain's discretion) before July of 2025. Capital funding is currently available to establish these facilities.

Background

Caltrain has historically served most customers with bikes by providing on board space on trains. With growing ridership trending back to pre-pandemic levels and new train cars coming with electrification, Caltrain has capped the number of bike spaces on board trainsets at 72. The JPB is focused on accommodating future growth in bike access to stations with wayside bike improvements that encourage people to leave a bike at the station rather than take it on a train. Since there are size limitations for taking a bike on board the trains, all facilities should include space for larger than normal bikes (cargo bikes, long tailed bikes, etc.) to be parked.

Caltrain's Business Plan calls for increasing service in the coming years. There are no plans to build car parking structures or otherwise increase car parking. Some locations will see Transit Oriented Development in existing surface parking lots. In addition to providing bicycle parking, proposers will be evaluated on their proposals that improve first and last mile connections beyond just bicycles. It is anticipated that the Contractor will build relationships and programs over the course of this contract that will increase options for people accessing Caltrain in modes other than single occupant automobiles. In order to encourage strong programs that Caltrain customers can rely upon, this contract term is five years, with five additional one-year option years.

The Bike Station Program includes facilities with very different statuses. The 4th and King Station facility has been in operation for many years with regular staffing. This facility has staff available to park and retrieve bicycles during business hours. It has repair and bike retail services. The successful proposer will include as part of their proposal a Business Plan to maintain similar services and offer potential other services that would serve customers and generate revenue to help offset staffing costs. The staffed facility plan should include creative partnership ideas with shared micromobility companies to make use of staff resources so that shared devices are more reliably available to Caltrain customers. Other ideas that would lower the financial costs to Caltrain are also encouraged.

The Menlo Park Station facility is an example of an unstaffed bicycle station. An unstaffed bicycle station is a shared access storage area where registered cyclists lock their own bicycles. It was previously used as an unstaffed bike parking facility and may need to be updated prior to operation. Access is gained to the facility by electronic key card or similar device. As part of the proposal the Proposer must submit a Business Plan that includes a Parking Operations Plan to ensure regular parking turnover so that bicycles are not stored continuously for long periods of time. Hours of access for cyclists are generally longer than those at a staffed facility.

Other unstaffed locations are still being built and will be put into operation over the duration of the project. Proposer must include in their proposal the Transition Plan for these locations.

The last type of facility are those that need to be established. Caltrain has identified several potential locations for additional facilities. The Proposer must as part of their proposal include a Tenant Improvement Plan that identifies the facility, equipment, materials, supplies and amenities needed for such improvements. The purchase and installation of improvements and amenities, if approved, will be coordinated by Caltrain staff or its representatives.

The primary interest of the JPB is to provide bike parking amenities that encourage people to ride bikes to the station but leave bikes at the station. For this reason, keeping customer costs low is an important factor in the operation of these facilities. The JPB, in its sole and complete discretion, may require the Contractor to implement or change any fee charged for bicycle parking. Any fees collected from bicycle parking shall be used to offset the Facility's operating costs.

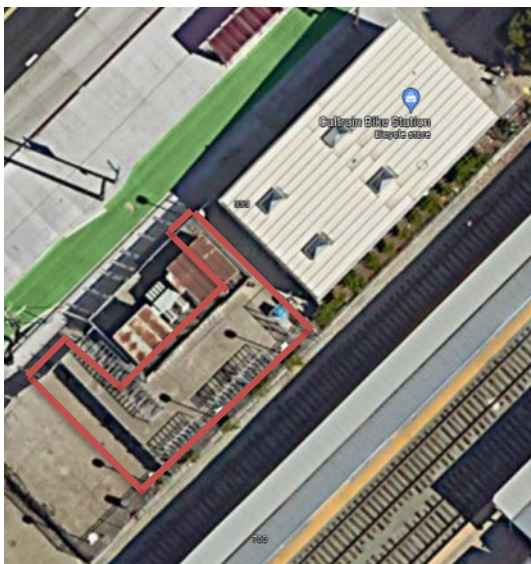
4th and King Street - San Francisco Facility

The 4th and King Street Facility is located at 311 Townsend Street, adjacent to the San Francisco Caltrain Station. There are four distinct areas that are included with this agreement:

1. **Main Building:** There is an approximately 1500 square foot building configured with double decker racks and an area for retail and repairs. The building can accommodate approximately 180 parked bikes. Space in between the bike racks can accommodate scooters without reducing the number of bike parking spaces.



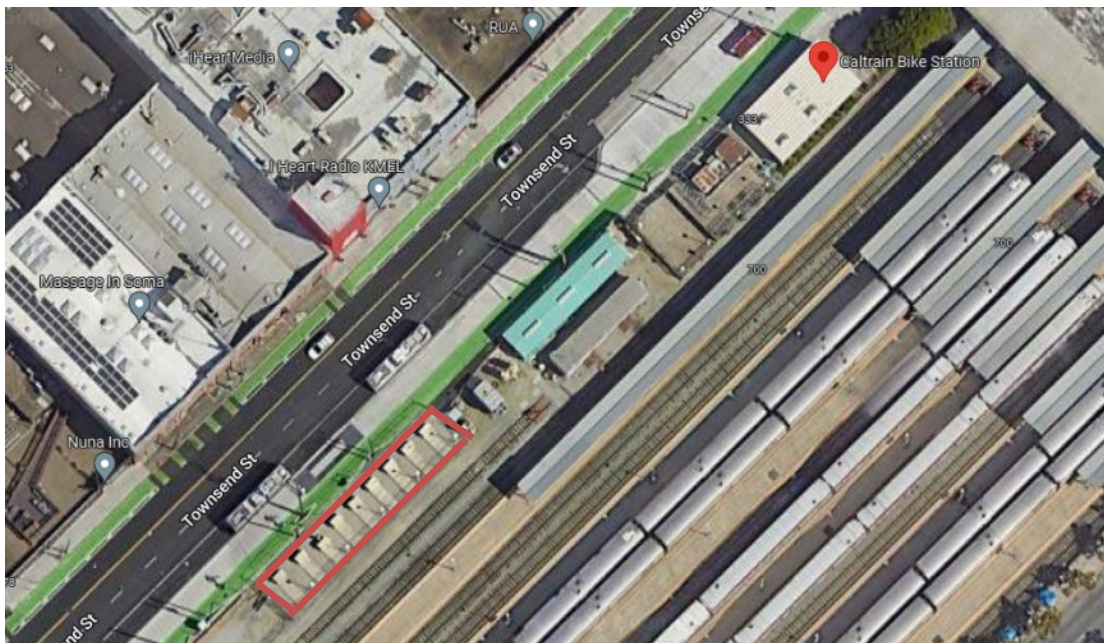
2. **Fenced Exterior Area #1:** Directly adjacent to the structure and accessible through the rear door and from the street, is a horseshoe shaped open (see orange outlined area below) air area that is approximately 1200 square feet. There is room to park approximately 50 bikes here.



3. **Sidewalk Space:** A 715 square foot area of sidewalk space on the north side of the structure is included as part of the area to be leased and is currently being sub-leased to Spin scooters as part of a pilot.



4. **Fenced Exterior Area #2:** About 280 feet from the front door of the bike parking building is an approximately 3,000 square foot open air area (see orange outlined area below) that had been previously used for bike lockers. This area is available to provide customer amenities or other ideas that will help offset the ongoing costs to Caltrain.

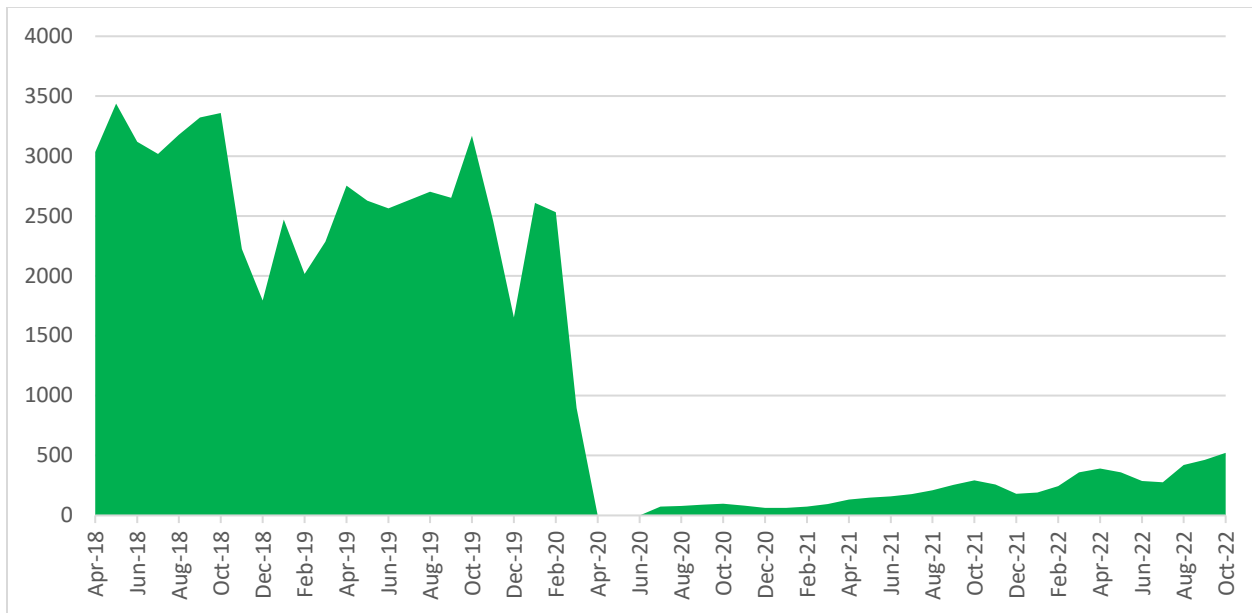


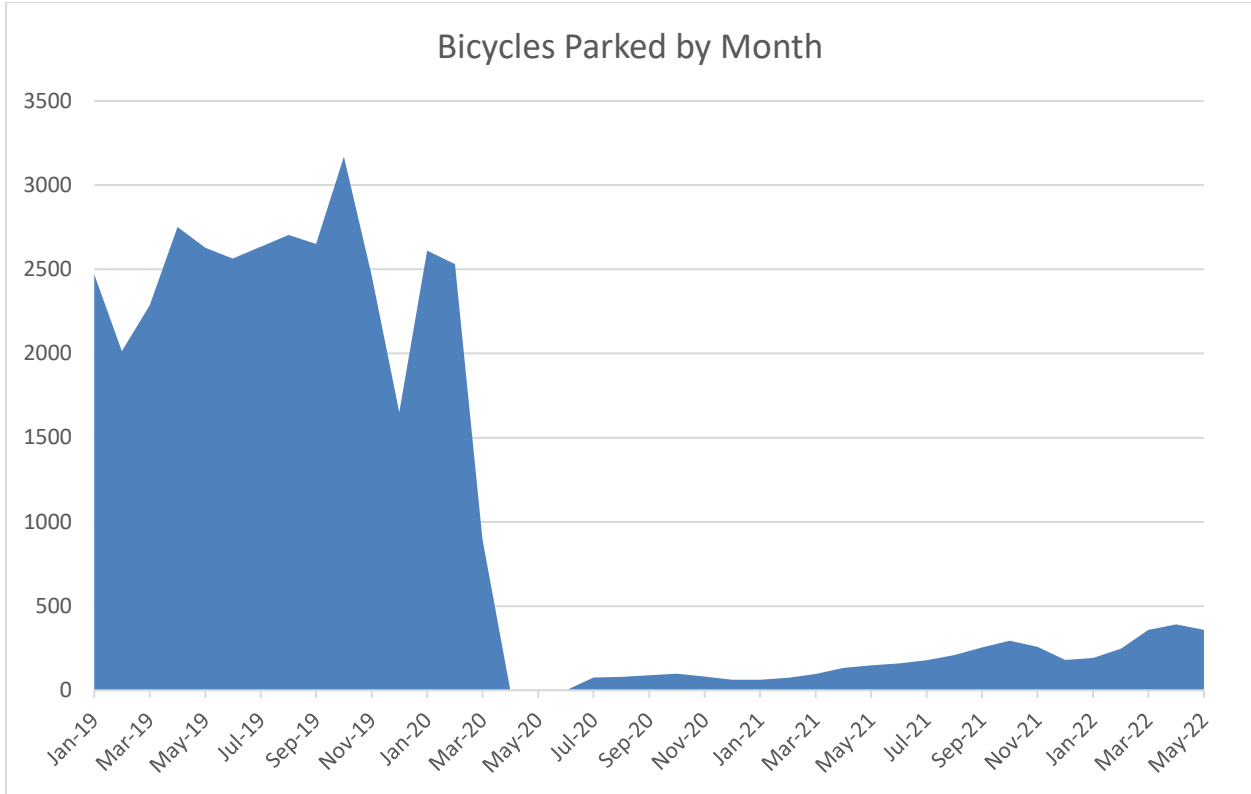
The 4th and King Station is the busiest station for bike ridership. More than 1200 cyclists boarded trains on the average weekday morning during the two most recent annual counts (2018 and 2019). Counts were conducted in February, which is one of the slowest months of the year for bike access to Caltrain. Current counts for bicycle boardings at 4th

and King Station have not been taken since 2019 but Caltrain ridership is approximately 35% of what it was pre-pandemic.

	Feb-18	Feb-19
Daily AM Bike Boardings 4th & King Station	1442	1225

COVID-19 has reduced the number of people using the facility. The chart below shows the number of bikes parked by month beginning in January of 2019. The busiest month saw over 3000 bikes parked (October 2019). When COVID-19 struck, the facility was closed for several months. The highest monthly parking numbers since the pandemic are 524 bikes parked in the month of October 2022.





During this contract, the Downtown Extension (“The Portal”) and associated tunneling effort along Townsend Street will possibly lead to the demolition of the existing facility. While funding and approvals for this undertaking are still needed, the facility could be removed as soon as 2025. At the JPB’s sole discretion, a similarly sized facility may be provided during the construction phase for the Portal. A new bike parking facility may be constructed and available at the completion of the Portal construction. Moving expenses may be covered by the Portal project and other logistical issues will be coordinated with the operator, the JPB and the Transbay Joint Powers Authority. The JPB retains discretion to determine if relocation is feasible.

Menlo Park Facility

The Menlo Park Facility is located at 1120 Merrill Street in Menlo Park, CA. There are two station buildings available as part of the Bike Station Program. These rooms had been available to Caltrain customers prior to 2020, when keyed lockers were available at most Caltrain stations, but the application for use of these rooms was removed in 2020. Instructions to gain access to the sheds have recently been added to the Caltrain website but use is generally low.

1. **South Shed:** This building has four walls and a roof and is approximately 580 square feet. It currently has inverted U bike racks and hanging bike racks installed in the interior. The current configuration accommodates approximately 33 bikes.



2. **North Shed:** This structure has a roof and wrought iron fencing on three of the four sides. The bike parking area is approximately 696 square feet with approximately 40 vertical bike racks.

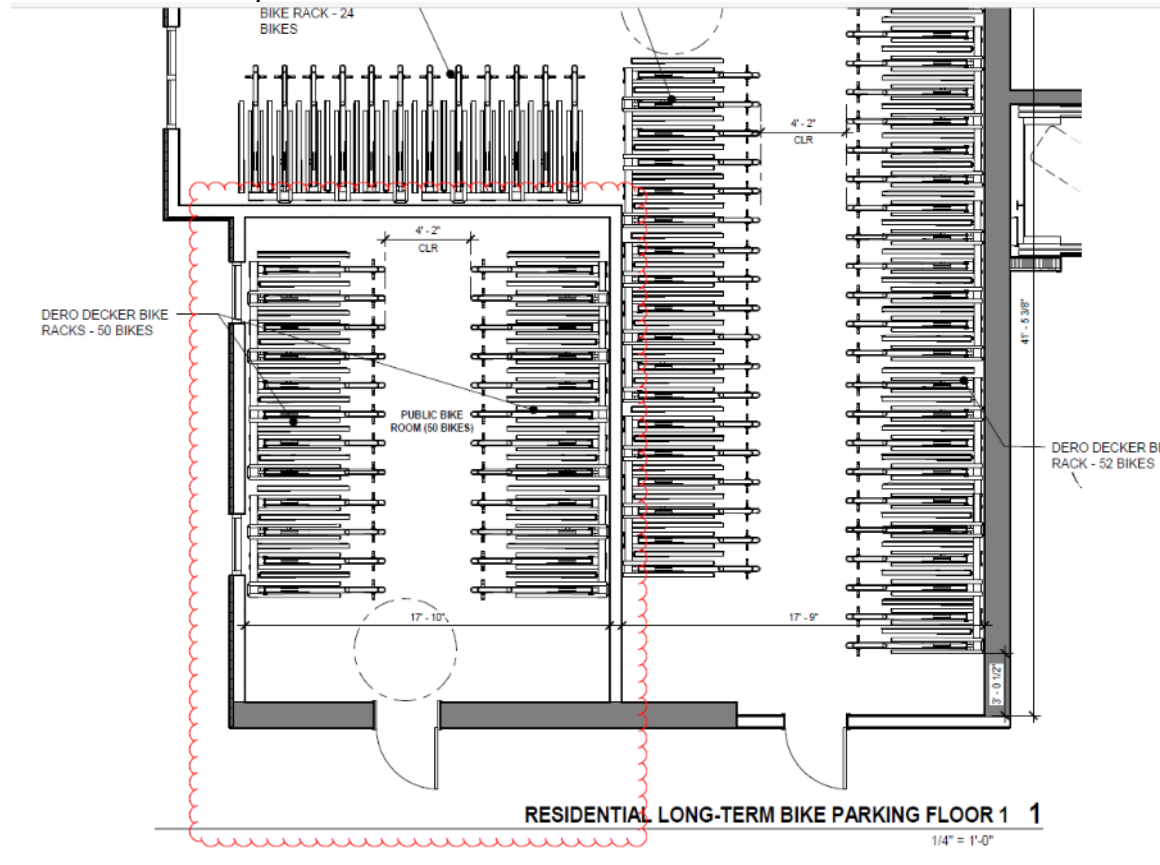


Menlo Park Station is the 10th busiest station for bike ridership. About 200 cyclists boarded trains in the AM peak during the two most recent annual counts that are conducted in the lower bike ridership month of February.

	2018	2019
Average February Weekday Morning Bike Boardings:	203	191

Hayward Park Facility

Much of the parking lot at Hayward Park Station is planned to be developed. As part of the development, an approximately 415 square foot public bike room near the northbound platform is being planned to serve Caltrain customers. With lift assist double decker racks, the facility would have a maximum capacity of about 50 bikes. There may be interest in lowering that figure in order to provide parking for larger bikes, like cargo bikes and long tailed bikes. While it is subject to change, it is anticipated that this unstaffed facility would be available for operation in 2026.

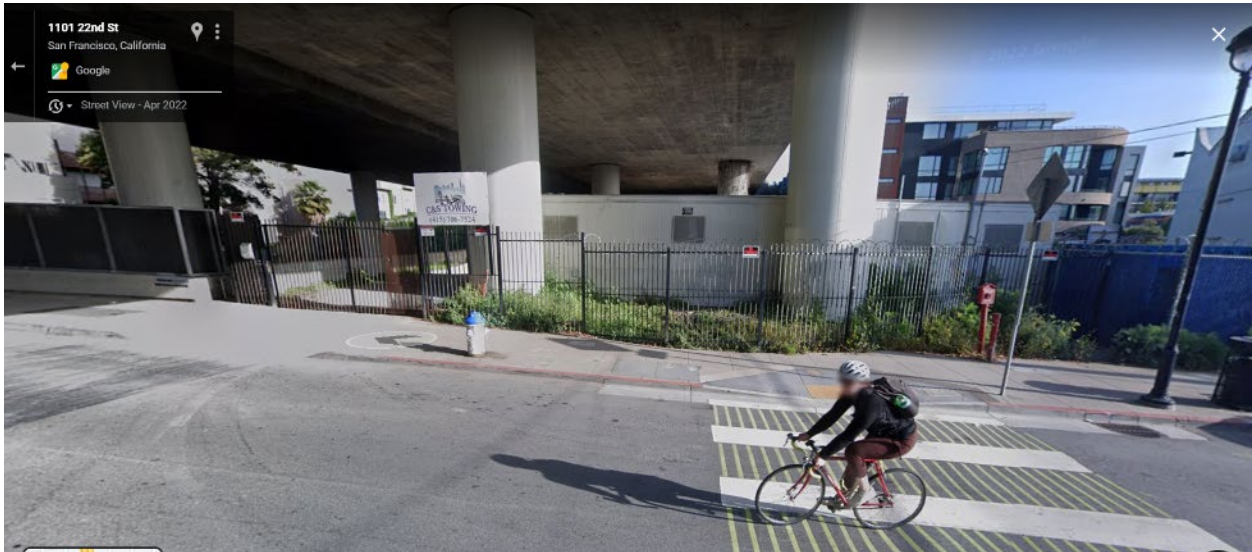


The most recent passenger counts (February 2019) found over 500 people boarding trains at Hayward Park Station in the AM Peak. Approximately 10% (53 people) boarded trains with bikes.

Other Potential Bike Station Locations

22nd Street Station:

There is an area under the freeway that may be suitable for a bike station. Initial discussions found some interest in a partnership from Caltrans but many questions are still left to be determined. 31 different customers used the e-lockers at this station in the summer of 2022.



San Mateo Station:

Area in the surface parking lot may be available for a modular bike room. 51 different customers used the e-lockers at this station in the summer of 2022.



Hillsdale Station:

Dedicated bike parking space has been set aside in both the north and south parking lots. There is also potential for a bike room under the tracks at the main station entrance near Derby Avenue. 25 different customers used the e-lockers at this station in the summer of 2022.



Belmont Station:

An area under the tracks at the main station entrance may work well for an easy to build bike room. 25 different customers used the e-lockers at this station in the summer of 2022.



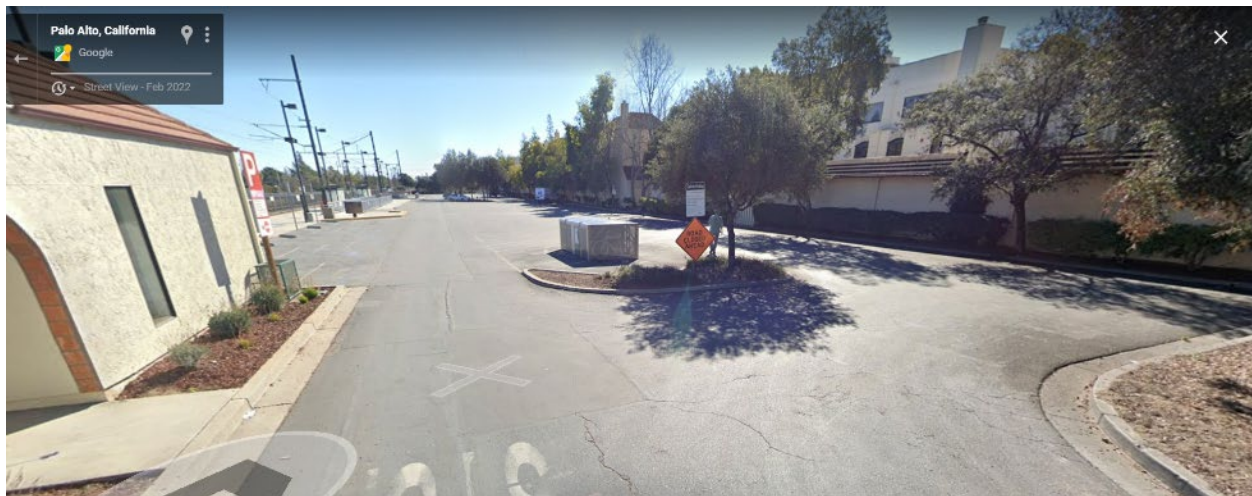
San Carlos Station:

An area under the tracks at the main station entrance may work well for an easy to build bike room. 13 different customers used the e-lockers at this station in the summer of 2022.



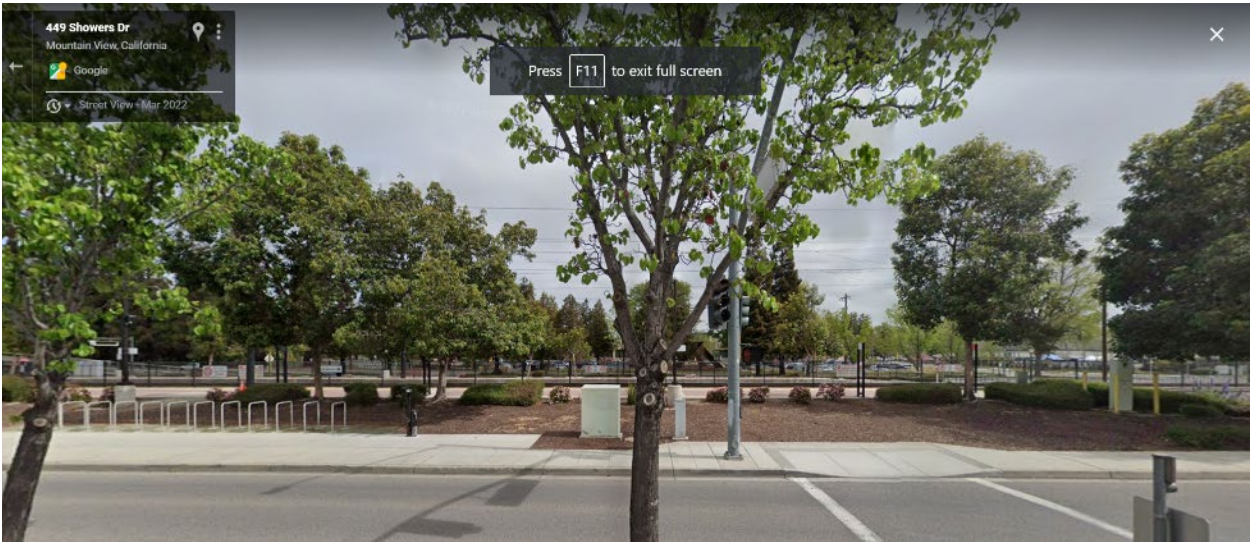
California Avenue Station:

Area in the surface parking lot may be available for a modular bike room. 57 different customers used the e-lockers at this station in the summer of 2022.



San Antonio Station:

A few locations are possible for a modular bike room on a concrete pad. 34 different customers used the e-lockers at this station in the summer of 2022.



Sunnyvale:

A few locations are a possible for a modular bike room or a facility inside the adjacent parking garage. 65 different customers used the e-lockers at this station in the summer of 2022.



San Jose Diridon Station:

Area in the surface parking lot may be available for a modular bike room. 68 different customers used the e-lockers at this station in the summer of 2022.



OPERATING DAYS AND HOURS

The staffed facility will be operational from 7:00am to 7:00pm at a minimum during non-holiday weekdays. The facility is closed on the following days: New Year's Day, Martin Luther King Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving, Day After Thanksgiving, and Christmas Day. The facility is also closed the week between Christmas and New Year's Day.

The unstaffed facilities are open from one half hour before the operation of Caltrain service begins to one half hour after Caltrain service concludes for the day.

The proposal must include operational procedures related to temporary closures to accommodate regularly scheduled breaks without inconveniencing customers. Procedures should include provisions for assisting with after-hours incidents or customer complaints in a timely manner.

SECURITY

The Contractor is responsible for the security for all bicycles parked at the Facilities. Each location must include security features to protect bicycles from theft, damage and vandalism. Contractor shall be responsible for handling any claims related to theft, damage, or vandalism. Caltrain will not compensate the vendor for any costs related to theft, damage or vandalism. The contractor shall have a user agreement in place at the facilities and on their website. A bike registry that includes the user agreement is preferred.

Proposer must also provide as part of the Security Plan clear policies for abandoned bikes and a process for their removal and disposal. These practices are subject to approval by Caltrain.

USER REGISTRATION

Use of a confidential registration program is preferred. The information should be available to Caltrain staff. It must not be available for sale and customer information should not be available to third parties for any purposes. The information should be used to assist with resolving any issues related to theft, damage or other incidents that may occur. A database must be kept to contact all customers about any service related issues.

Items to include in the registry include:

- Name
- Contact information: email, phone, mailing address
- Main station to be used
- Color/make of bike(s) to be parked at bike station
- Unique registration ID number assigned as part of registry

The registry shall be in a secure electronic database that allow for easy searching and sorting.

MARKETING

Contractor shall implement a marketing plan, including green/sustainable business practices, with sufficient detail to ensure successful marketing of the services. At a minimum it should include:

1. **Website:** A Caltrain specific website that shows all bike related facilities available at Caltrain stations, including those not operated by the contractor. These also include shared micromobility services. Caltrain's website will provide relevant links to the site.
2. **Signage:** Each facility should include clear signage that provide information about the facility and the amenities.
3. **Limited English Proficiency:** Website and other available information should provide basic information about how to use other languages. The project manager will work with the Contractor to provide translation services as part of the agreement.

All marketing materials are subject to review by and approval Caltrain staff.

MONITORING AND REPORTING

Contractor shall provide a monthly report to Caltrain's project manager. The reports shall maintain a minimum of the following:

- Bicycle storage numbers (current month, same month previous year, year to date) by station and total
- Number of active customers and new customers by month
- Cost per bike parked for staffed and unstaffed locations
- Marketing initiatives (completed, ongoing, planned)
- Summary of income and expenses
- Circumstance/issues of note

An annual survey of all registered customers should include:

- Use frequency
- Use of Caltrain frequency
- Satisfaction with service
- Demographics (home zip, work zip, age, gender)
- Suggestions for improved service

CONTRACTOR POINT OF CONTACT

The point of contact shall manage the Caltrain Bike Station Program. This person shall be based in the Bay Area and be the main contact with Caltrain. Responsibilities for the Point of Contact shall include a minimum of the following:

- Managing operations at all facilities
- Recruiting, hiring, and training staff as needed to provide services
- Marketing
- Reporting
- Invoicing
- Incident response
- Record keeping including coordination with customer registry
- Attend quarterly meetings with Caltrain Project Manager

CUSTOMER SERVICE

Contractor shall respond within one hour during normal business hours of notification to customer complaints or emergencies caused by a facility or staff problem (i.e. malfunctioning equipment, tardiness, etc.). A procedure to serve customers who are unable to retrieve their bike for reasons that are not the fault of the contractor must also be established.

For non-emergencies, Contractor shall respond to inquiries within 24 hours. A phone number for customer service during operating hours shall be posted. In advance of the quarterly meeting with the Caltrain Project Manager, Contractor shall submit a list of emergencies and complaints and the responses to those that may be discussed at the quarterly meeting.

The contractor shall coordinate any issues requiring police attention with the San Mateo County Sheriff's Office and the Caltrain Project Manager.

RETAIL AND SERVICES

The 4th and King staffed facility shall provide sales of bicycle parts and accessories. Trained staff must be available to perform bicycle repairs. Other items may be sold as long as they are not in competition with other businesses at the station. The Caltrain Project Manager will confirm whether or not it is permissible to sell certain products.

If permitted by the JPB, the retail operations must not compromise bicycle parking operations, serve to reduce the capacity of the Facilities to less than:

- 150 bicycles at the San Francisco staffed facility
- 30 bicycles at the San Francisco unstaffed facility
- 40 bicycles at the Menlo Park facility
- 25 bicycles at the 8 other optional facilities

All retail operations cannot compete with existing retailers at the station, which currently include a flower and snack stand, a coffee house and a sandwich shop.

JANITORIAL SERVICES

Contractor shall provide janitorial services for each facility. All bike stations are to be maintained as secure, clean, visible and welcoming environments for the customers and employees. Each Bike Station shall be cleaned to include sweeping, picking up litter, sanitizing shared surfaces daily or in response to complaints.

EXHIBIT B- CONTRACTORS PROPOSAL AND COST PROPOSAL

EXHIBIT C- COMMERCIAL LEASE

Exhibit D 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

When both federal and California prevailing wage laws apply to the Agreement, the Contractor and any Subcontractor shall pay their workers the higher of the two prevailing wage rates. To the extent that contract provisions required by federal and state law are inconsistent, the Contractor is responsible for complying with the more comprehensive or stricter requirements. The Contractor and all Subcontractors shall insert this clause in any lower tier contract.

Federal prevailing wage rates are not applicable.

C. California Prevailing Wage Rates

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 Ave., San Carlos, California 94070) or found at: <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>

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

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 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) 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 hours in one day and work in excess of forty hours in one week when that work is paid at no less than one and one-half 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 calendar 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 day or forty hours in one week without appropriate compensation, the Contractor or Subcontractor(s) shall forfeit to the

Agency a penalty of \$25 per 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 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 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 one week 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 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 \$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 submit all CPRs via the LCPtracker online submittal system (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: <https://www.dir.ca.gov/Public-Works/Contractors.html>

G. Apprenticeship Requirements

This provision does not apply to prime contracts with an award amount of less than \$30,000 per Labor Code Section 1777.5(o). 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 apprentice hour of work for every five 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 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) 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 during 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 \$8,000 in addition to any penalty registration fees that may be assessed. Additionally, a higher-tiered Contractor who is found to have entered a subcontract

with an unregistered lower-tier Subcontractor is subject to penalties of up to \$10,000.

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 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-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

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 submitting a bid and signing this Agreement, Contractor certified it 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 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 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.

END OF LABOR CODE REQUIREMENTS

Exhibit E SBE/DBE PROGRAM REQUIREMENTS

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

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

1. **SBE POINT PREFERENCE**

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

Points received through the SBE preference will be added to each Proposer's total evaluation score. Preference points will be aggregated with proposal evaluation scoring to determine the highest ranked Proposer. Each Proposer must provide the **Form 5 SBE Preference** with their proposal to receive a point preference. If a Proposal fails to submit this form, no SBE preference points will be added to the evaluation of the proposal.

2. **SBE EVALUATION**

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

3. **ASSURANCE**

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

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

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

4. AVAILABLE SBE/DBE RESOURCES

The Agency recognizes SBE certifications performed by the following:

- A. 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. A statewide directory of DBEs is available at <https://caltrans.dbesystem.com>.
- 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 Small Business Administration (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 consultant, subconsultant, joint venture partner, vendor or supplier of materials or services required by the Agreement. An SBE's participation can only be counted if it performs a commercially useful function on the Agreement. An SBE performs a commercially useful function when it actually performs, manages and supervises a portion of the work involved. There is a rebuttable presumption that if the SBE is not responsible for at least 30% of the work with its own forces, or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function. An SBE trucking company performs a commercially useful function if it is responsible for the overall management and supervision of the transportation services involved and uses at least one truck that it owns, insures, and operates with its own employees on the Agreement.

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

1. SBE Consultant

Count the entire dollar amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not

count any work subcontracted to another firm as SBE participation by the SBE Consultant.

2. SBE Subconsultant

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

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

3. 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.

4. SBE Manufacturer

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

5. SBE Regular Dealer

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

6. 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.

7. SBE Trucking Company

Count the entire amount of the transportation services provided by an SBE trucking company that performs the work using trucks it owns, insures and

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

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

7. CONTRACT COMPLIANCE

A. Substitution of Subconsultants

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

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

B. Change to a Firm's SBE Status

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

C. Prompt Payment to Subconsultants

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

The Agency shall withhold retainage from the Consultant, make prompt and regular incremental inspections and approvals of portions of the work and,

promptly release retainage to the Consultant based on these inspections and approvals. The Agency's incremental approvals and release of a portion of the retainage under this section does not constitute Acceptance of the work.

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

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

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

D. Monthly Electronic Reporting Requirements

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

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

Subconsultant(s) must confirm receipt of payment from the Consultant within five calendar days of an email notification.

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

- E. If the Consultant fails to comply with the monthly electronic reporting requirements within the time period required in this section and has not received written approval for an extension, the Consultant agrees to pay a sum of \$50 each day the monthly report is late as liquidated damages. The amount of liquidated damages is not a penalty and covers reasonable damages that the Agency will sustain and which are impractical to determine in advance. The Agency may deduct the amount of liquidated damages from monies due to the Consultant. SBE Outreach Efforts for Work Directive Proposals

8. ADMINISTRATIVE REMEDIES

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

END OF SBE REQUIREMENTS