JPB Finance Committee
Meeting of November 27, 2023

Supplemental Reading File

#	Subject
1	DRAFT Contract_24-J-P-016 On-Call Alternate Project Delivery Negotiation Support Services
2	Signed, HDR - JPB contract 19-J-P-072A, On-Call Env
3	Signed, ICF - JPB contract 19-J-P-072B, On-Call Env
4	Signed, LBG - JPB contract 19-J-P-072C, On-Call Env
5	DRAFT_JPB_ON-CALL EV_1ST AMEND_HDR
6	DRAFT_JPB_ON-CALL EV_1ST AMEND_ICF
7	WSP-19-J-P-072C-Amend_1
8	DRAFT_JPB_ON-CALL ENV_2ND AMEND_WSP
9	Acceptance of Quarterly Fuel Hedge Update

ATTACHMENT A: AGREEMENT

AGREEMENT BETWEEN

THE PENINSULA CORRIDOR JOINT POWERS BOARD (AGENCY)

AND

KELLY MCNUTT CONSULTING, LLC (CONSULTANT)

AGREEMENT SUMMARY*

Board of Directors' Date of Award: January 17, 2024

Resolution Number: TBD

Effective Date of Agreement: January 4, 2023

Services to be Performed (Section 1): On-Call Alternative Project Delivery Negotiation Support Services

Term of Agreement (Section 3): five (5) year base term with up to two (2), one (1)-year option terms.

Consultant's Key Representative (Section 4):

Name: Kelly McNutt
Title: President/Owner
Company: Kelly McNutt Consulting, LLC
Address: 1811 SE 173rd Ave, Vancouver, WA 98683
Phone: 360-772-0954
Email: kelly@kmccostandrisk.com

Compensation (Section 5): The not-to-exceed amount of **$2,450,000** for a five-year base term, plus up to two, one-year option terms for a not-to-exceed aggerate amount of $3,500,000 if exercised.

*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

Table of Contents

This AGREEMENT for On-call Alternative Project Delivery Negotiation Support Services (Agreement) is entered into by and between the Peninsula Corridor Joint Powers Board (AGENCY) located at 1250 San Carlos Avenue, San Carlos, CA 94070 and Kelly McNutt consulting, LLC (CONSULTANT), a Washington Corporation located at 1811 SE 173rd Ave, Vancouver, WA 98683 ("the Parties").

1. SCOPE OF SERVICES

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

The scope of the CONSULTANT's services will consist of the services set forth in the Request for Proposals dated August 30, 2023, the Scope of Services of which is attached hereto and incorporated herein as Exhibit A, as supplemented by CONSULTANT's written proposal dated September 26, 2023, attached hereto and incorporated herein as Exhibit B.

2. AGREEMENT DOCUMENTS

This Agreement consists of the following documents:

(1) This Agreement including Attachment A and Attachment B Insurance Requirements
(2) Exhibit A, Scope of Services
(3) Exhibit B, Consultant's Proposal and Negotiated Cost Proposal
(4) Exhibit C, SBE Requirements
(5) Exhibit D, Work Directive Process
(6) Exhibit E, Federal Clauses

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

3. TERM OF AGREEMENT

The term of this Agreement will be for a FIVE (5) year term commencing upon January 1, 2024 and ending on December 31, 2029 The CONSULTANT will furnish the AGENCY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Solicitation Documents.

The AGENCY reserves the right, in its sole discretion, to exercise up to __ one- year option term(s) to extend the Agreement, pursuant to the terms of this Agreement. If the AGENCY

determines to exercise the option term(s), the AGENCY will give the CONSULTANT at least 30 days' written notice of its determination.

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

4. CONSULTANT'S REPRESENTATIVE

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

5. COMPENSATION

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

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

There is no guaranteed compensation to the CONSULTANT under this Agreement. However, the maximum compensation that the AGENCY has authorized to be expended for this Contract will not exceed $3,500,000 **(**$2,450,000 for the five-year base term plus $980,000 in aggregate, for the two, one-year option terms, if exercised) plus a 10 percent contingency, which may be used at the Agency's discretion if necessary for unforeseen work only. The AGENCY will pay the CONSULTANT in accordance with Section 6.

GENERAL

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

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

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

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

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

On an annual basis, no later than 60 days before the start of a succeeding Agreement year, CONSULTANT may, upon written request, adjust prospectively its labor rates. Increases in future labor rates shall be limited, if requested, to the most recent Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco/Oakland/Hayward, CA area available to the AGENCY, or up to a maximum of 3.5 percent escalation, whichever is lower. The effective date of the CPI-U adjustment, if any, will commence either (1) the first day of the second and/or subsequent year(s) of the Agreement, or (2) the date of the CONSULTANT's request, whichever event is later. Upon written approval by the AGENCY, the negotiated changes shall remain in effect for the subsequent Agreement year. If the CONSULTANT does not submit a request at least 60 days before the start of the succeeding Agreement year, the CONSULTANT waives any CPI-U increase for that year

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

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

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

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

5.1. COST OF WORK

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

5.2. DIRECT LABOR

5.2.1. GENERAL

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

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

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

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

Increases in hourly rates may not exceed the previous published twelve (12) months Consumer Price Index for All Urban (CPI-U) for the San Francisco/Oakland/Hayward, CA area, or 3.5%, whichever is lower.

5.2.2. Straight Time

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

5.2.3. Overtime

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

5.3. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

5.3.1. General

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

The agreed-upon multipliers shall be used for CONSULTANT's and subconsultants' home office and AGENCY-Furnished Field Office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in Exhibit B "Cost Proposal," dated September 26, 2023.

5.3.2. Payroll Burden

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

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

5.3.3. Employee Benefits

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

5.3.4. Indirect Costs (Office Overhead)

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

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

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

5.4. Maximum Fixed Fees (Profit)

5.4.1. General

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

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

- **On-Call Alternative Project Delivery Negotiation Support Services**

  Eight Percent (8%)* for Consultant's home office (Home);

- **Subconsultants**

  Eight Percent (8%)* for Consultant's home office (Home);

  Subconsultants markup – Zero Percent (0%)

5.5. OTHER DIRECT COSTS (ODCs)

5.5.1. General

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

5.5.2. Allowable ODCs

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

5.5.3. Subconsultants

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

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

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

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

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

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

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

5.5.5. Unallowable ODCs

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

- Costs associated with registration for training, seminars, and technical association meetings.
- Costs associated with employee incentive compensation including cash bonuses, suggestion awards, safety awards, and other forms of incentive compensation.
- Costs associated with leasing, maintaining, insuring, and operating dedicated project vehicles.
- Computer hardware and software support, software licenses, or cellular phone usage.
- Safety equipment such as steel-toed boots, safety vests, and hard hats.
- Insurance

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

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

5.6. Maximum Compensation Amount

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

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

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

5.7. Flow Down

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

6. MANNER OF PAYMENT

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, the contract number 24-J-P-016, purchase order and the AGENCY Project Manager's and Contract Administrator's name. The AGENCY will endeavor to pay approved invoices/billing statements within 30 calendar days of their receipt. The AGENCY reserves the right to withhold payment to the CONSULTANT if the AGENCY determines that the quantity or quality of the work performed is unacceptable. **Furthermore, the AGENCY reserves the right to withhold payment for any invoice that does not match the PO lines until CONSULTANT resubmits a corrected invoice.** The AGENCY will provide written

notice to the CONSULTANT within 10 calendar days of the AGENCY's decision not to pay and the reasons for non-payment. Final payment will be withheld until CONSULTANT performs all required Agreement expiration or termination obligations. If CONSULTANT disagrees with the AGENCY's decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes the AGENCY's decision to the AGENCY within 30 calendar days of the AGENCY's notice. If CONSULTANT does not provide written notice in accordance with this section, it waives all rights to challenge the AGENCY's decision.

Submit one copy of each invoice as a PDF via email to **AccountsPayable@samtrans.com;** with a "cc" to the Project Manager, and Contractor Administrator or Procurement Administrator as applicable.

7. NOTICES

All communications relating to the day-to-day activities of the provided services will be exchanged between the AGENCY's Project Manager, Alvin Piano or designee, and the CONSULTANT's Kelly McNutt, or designee.

Notices informing CONSULTANT of the AGENCY's decision to exercise Agreement options (that were exercisable in the AGENCY's sole discretion) will be exchanged between the AGENCY's Project Manager, Alvin Piano or designee, and the CONSULTANT's Kelly McNutt or designee, via electronic mail to: PianoA@caltrain.com.

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

If to the AGENCY:
Board Secretary
Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070

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

If to the CONSULTANT:
Kelly McNutt Consulting, LLC____
Attn: Kelly McNutt_____
_____
_____

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

8. OWNERSHIP OF WORK

A. General

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

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

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

9. CONFIDENTIALITY

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

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

10. USE OF SUBCONTRACTORS/SUBCONSULTANTS

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

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

11. CHANGES

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

12. RESPONSIBILITY: INDEMNIFICATION

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

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

B. Any allegation that materials or services provided by the CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

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

13. INSURANCE

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

14. CONSULTANT'S STATUS

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

15. ASSIGNMENT

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

16. OTHER GOVERNMENTAL AGENCIES

Not Applicable

17. LITIGATION SUPPORT

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

18. AGENCY WARRANTIES

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

19. AGENCY REPRESENTATIVE

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

20. WARRANTY OF SERVICES

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

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

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

ii. The right to have such services done by others and the costs thereof charged to and collected from the CONSULTANT if, within 30 days after written notice to the CONSULTANT requiring such re-performance, CONSULTANT fails to give satisfactory evidence to the AGENCY that it has undertaken said re-performance.

iii. The right to terminate the Agreement for default.

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

21. CLAIMS OR DISPUTES

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

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

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

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

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

22. REMEDIES

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

23. TEMPORARY SUSPENSION OF WORK

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

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

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

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

24. TERMINATION

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

B. Termination for Default. If the CONSULTANT fails to perform any of the provisions of this Agreement, the AGENCY may find the CONSULTANT to be in default. After delivery of a written notice of default AGENCY may terminate the Agreement for default if the CONSULTANT 1) does not cure such breach within seven calendar days; or 2) if the nature of the breach is such that it will reasonably require more than 7 days to commence curing, as determined in the AGENCY'S discretion, provide a plan to cure such breach which is acceptable to the AGENCY within 7 calendar days. If the CONSULTANT cures the default within the cure period but subsequently defaults again, the AGENCY may immediately terminate the Agreement without

further notice or right to cure. In the event of the filing a petition for bankruptcy by or against the CONSULTANT or for appointment of a receiver for CONSULTANT'S property, AGENCY may terminate this Agreement immediately without the thirty-day cure period.

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

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

25. LIQUIDATED DAMAGES

Not Applicable

26. PREVAILING WAGE

Not Applicable

27. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

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

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

28. UKRAINE/RUSSIA RELATED SANCTIONS

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

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

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

30. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

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

The CONSULTANT will, in all solicitations or advancements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration

for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

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

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

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

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

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

31. SMALL BUSINESS ENTERPRISES (SBE) AND PROMPT PAYMENT

See Exhibit C for SBE and prompt payment requirements.

32. CONFLICT OF INTEREST

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

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

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

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

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

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

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

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

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

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

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

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

33. SUBSTANCE ABUSE PROGRAM [IF APPLICABLE

Not Applicable

34. CALIFORNIA PUBLIC RECORD ACT REQUESTS (CPRA)

CONSULTANT consents to the release of this Agreement, the redacted version of its proposal, and the release of any portion of its proposal not included in its confidentiality index, and waives all claims against the AGENCY, its directors, officers, employees, and agents, for the

disclosure of such information. If the CONSULTANT did not include a confidentiality index in its proposal, the AGENCY will have no obligation to withhold any information from disclosure and may release the information sought without liability to the AGENCY.

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

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

35. ATTORNEYS' FEES

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

36. WAIVER

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

37. SEVERABILITY

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

38. NO THIRD-PARTY BENEFICIARIES

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

39. APPLICABLE LAW

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

40. RIGHTS AND REMEDIES OF THE AGENCY

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

41. BINDING ON SUCCESSORS

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

42. ENTIRE AGREEMENT; MODIFICATION

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

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

PENINSULA CORRIDOR JOINT POWERS BOARD :

Signature:_____

Print: Michelle Bouchard

Title: Executive Director

Date:_____

ATTEST:

By:_____
Agency Secretary

APPROVED AS TO FORM:

By:_____
Attorney for the Agency

CONSULTANT: (See footnote below)*

Signature:_____

Print:_____

Title:_____

Date:_____

Signature:_____

Print:_____

Title:_____

Date:_____

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

(1) the President, Vice President, or Chair of the Board; and

(2) the Secretary, Assistant Secretary, Treasurer or Chief Financial Officer.

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

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

ATTACHMENT B: INSURANCE REQUIREMENTS

INSURANCE

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

A. MINIMUM TYPES AND SCOPE OF INSURANCE

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

a. Workers' Compensation with Statutory Limits and/or Federal Employer's Liability ("FELA") coverage (whichever is applicable) to its employees, as required by the Federal Employer's Liability Act of 1908, applying to Interstate railroad employees, or, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto, governing the liability of employers to their employees.

b. If FELA applies, it shall be in accordance with federal statutes and have minimum limits of $10,000,000 per occurrence.

c. If the California Labor Code requiring Workers' Compensation applies, the CONTRACTOR shall also maintain Employer's Liability coverage with minimum limits of **$1 million**.

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

- Waiver of Subrogation.

2. Commercial General Liability Insurance.

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

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

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

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

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

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

3. Business Automobile Liability Insurance.

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

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

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

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

4. Property Insurance.

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

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

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

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

   - Waiver of Subrogation.

5. Professional Liability Insurance.

A Professional Liability insurance policy covering errors and omissions and the resulting damages including, but not limited to, economic loss to the JPB and having minimum limits of liability of **$3 million** per claim or occurrence and **$3 million** annual aggregate. The policy shall include coverage for all services and work performed under this Agreement.

B. ENDORSEMENTS

1. Additional Insured.

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

officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

2. Waiver of Subrogation.

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

3. Primary Insurance.

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

4. Separation of Insureds.

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

C. EVIDENCE OF INSURANCE

1. All Coverages.

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

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

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

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

D. GENERAL PROVISIONS

1. Notice of Cancellation.

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

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

OR

Email Address: smt.certificates@instracking.com

OR

Fax: (562) 435-2999

2. Acceptable Insurers.

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

3. Self-insurance.

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

4. Failure to Maintain Insurance.

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

5. Claims Made Coverage.

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

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

6. Deductibles and Retentions.

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

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

EXHIBIT A: SCOPE OF SERVICES

A. INTRODUCTION

The On-Call Alternative Project Delivery Negotiation Support Services contract will provide support to the Agency in implementing Alternative Project Delivery methods, including Construction Manager General Contractor (CMGC) and other potential future alternative project delivery methods, such as Design Build, applied by the Agency.

The following scope of services present the Agency's general consideration for the required Services. The Proposer is encouraged to provide additional added value task suggestions based on its work with Owners delivering projects applying alternative project delivery methods.

B. SCOPE OF SERVICES AND DELIVERABLES

CONSULTANT(s) shall provide Professional Services necessary to support the validation and oversight services supporting the Agency in their Pre-construction Phase Work prior to agreeing on the Total Contract Price (TCP) for the Construction Phase Work and issuing Notice to Proceed (NTP) to the CMGC Contractor (Contractor).

Scope of work may include, but is not limited to, the following types of tasks:

Provide the Independent Cost Estimate (ICE) at the 65 percent, 95 percent, and final design milestones, including addressing the Proposer's approach to:

- Create the production-based ICE based on quantities provided by the Designer
- Validate the Designer's major quantities to prepare the ICE
- Conduct ICE Quality Assurance/Quality Control procedures
- Complete cost estimate review and reconciliation between the three Project estimates; the ICE, the Designer's Engineer's Estimate, and the Contractor's draft and final TCP estimates

Support the Agency with its TCP negotiations at the 65 percent, 95 percent, and final design milestones.

- Provide 3rd party independent cost estimate using a contractor style built up method
- Reviewing TCP documentation provided by the Contractor to validate reasonableness of submitted TCPs.
- Providing written review comments resulting from the TCP reviews
- Participating in discussions with the Contractor to resolve discrepancies or differences noted in the TCP reviews.

- Support for evaluation and negotiation
    - General Conditions
    - Subcontractor bids
    - General Contractor's identified self-performed work
    - Allowances
    - Incentive programs
    - Risk table and programs
    - Insurance
    - Liquidated damages
    - Other commercial terms
    - Contract terms
- Review of CM/GC Open Book pricing to evaluate total contract price

Support the Agency in collaboration with the Designer and Contractor as they develop the Project Risk Register and develop the Risk Allocation and Mitigation Plan including risk-based cost assessment.

Reviewing, commenting, and validating the Contractor's Construction Phase Work planning, including but not limited to:

- Construction Phase schedule, staging, sequencing, phasing, and Contractor's updates to Primavera 6 CPM Schedules and Heavy Bid Estimating Estimates.
- Project Management Plan
- Conduct of Construction Plan
- Subcontracting and Management Plan
- Safety Management Plan
- Utility Relocation Plan

EXHIBIT B: CONSULTANT'S PROPOSAL AND LABOR RATES

EXHIBIT C: SBE REQUIREMENTS

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

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

1. SBE POINT PREFERENCE

The Agency has established a contract specific SBE point preference of five points. The point preference will be granted to Proposers that are either (1) an SBE; or (2) committed to subcontracting with one or more certified SBEs.

Points received through the SBE preference will be added to each Proposer's total evaluation score. Preference points will be aggregated with proposal evaluation scoring to determine the highest ranked Proposer. Each Proposer must provide the **Form 7 SBE Preference Form** with their proposal to receive a point preference. If a 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 asnon-responsible."

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

4. AVAILABLE SBE/DBE RESOURCES

The Agency recognizes SBE certifications performed by the following:

A. DBE pursuant to U.S. DOT regulations, 49 CFR Part 26. This includes DBE certifications performed by the California Unified Certification Program, or any other state Unified Certification Program. A statewide directory of DBEs is available at https://caltrans.dbesystem.com.

B. Small Business Administration (SBA) 8(a) provided that a firm's average annual gross receipts do not exceed the cap of $30.4 million.

C. Small Business certification performed by the California Department of General Services (DGS) for the following industries only: (a) Construction (NAICS 230000); (b) Manufacturing (NAICS 310000-330000); (c) Wholesaling (NAICS 420000); and (d) Trucking (NAICS 484000).

D. All Microbusiness (MB) certifications by the DGS for ALL industries.

E. SBE certification by the Santa Clara Valley Transportation Authority.

F. SBE certification by the Los Angeles County Metropolitan Transportation Authority.

5. SBE ELIGIBILITY

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

A. A firm (including affiliates) must be an existing small business as defined by SBA regulations, 13 CFR Part 121, for the appropriate type(s) of work that your firm performs.

B. Even if your firm meets the above requirement, your firm's (including affiliates') average annual gross receipts over the previous three years cannot exceed a maximum cap of $30.4 million.

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

6. COUNTING SBE PARTICIPATION

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

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

A. SBE Consultant

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

B. SBE Subconsultant

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

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

C. SBE Joint Venture Partner

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

D. SBE Manufacturer

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

E. SBE Regular Dealer

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

F. Other SBEs

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

G. SBE Trucking Company

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

Count the entire amount of fees and commissions charged for providing the management and supervision of transportation services using trucks it leases from

a non-SBE trucking company, including owner-operator, provided that it is responsible for the overall management and supervision of the service and that it uses at least one truck that it owns, insures and operates with its own employees on the Agreement.

7. CONTRACT COMPLIANCE

A. Substitution of Subconsultants

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

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

B. Change to a Firm's SBE Status

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

C. Prompt Payment to Subconsultants

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

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

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

by the Agency's incremental inspection and approval have been satisfactorily completed.

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

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

D. Monthly Electronic Reporting Requirements

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

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

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

If the Consultant fails to comply with the monthly electronic reporting requirements within the time period required in this section and has not received written approval for an extension, the Consultant agrees to pay a sum of $50 each day the monthly report is late as liquidated damages. The amount of liquidated damages is not a

penalty and covers reasonable damages that the Agency will sustain, and which are impractical to determine in advance. The Agency may deduct the amount of liquidated damages from monies due to the Consultant.

E. SBE Outreach Efforts for Work Directive Proposals
The Consultant agrees to make its best efforts to encourage SBE participation on each Work Directive (WD) issued pursuant to this Contract. In each WD proposal, the Consultant shall:

1) Identify any Subconsultants, including SBEs or DBEs, to perform work on the WD by submitting an updated **Form 5: Designation of Subconsultants**; and

2) If Subconsultants are used, submit a narrative summary of the SBE outreach efforts the Consultant performed to encourage SBE participation on the WD, and information regarding the Consultant's communications and negotiations with SBE firms, if applicable.

8. ADMINISTRATIVE REMEDIES

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

END OF SBE REQUIREMENTS

EXHIBIT D: WORK DIRECTIVES

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

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

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

A. Issuance:

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

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

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

- Other data to support a demonstration of good faith efforts.

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

B. Amendments and Compensation:

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

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

WD Amendments:

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

WD Compensation and Rates:

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

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

C. WD Reporting and Invoicing:

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

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

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

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

D. Meetings:

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

E. Agency's Rights:

Although it is the Agency's intention to satisfy its Services needs by contracting with Consultant, the Agency's expressly reserves the right to contract for future Services with other firms for projects that may arise. Such Services will be obtained through a

separate competitive solicitation, and the Agency's shall solely determine how such specific projects will be awarded.

F. Consultant's Key Personnel:

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

~ END OF WORK DIRECTIVES ~

EXHIBIT E: FEDERAL CLAUSES

In its performance of the Contract, Contractor will comply with all of the applicable Federal Transit Administration (FTA) clauses identified below, as indicated by a checked box next to the clause title.

☒ **DEFINITIONS**.

☒ **1. FLY AMERICA REQUIREMENTS**.

☒ **2. ENERGY CONSERVATION**.

☒ **3. RECYCLED PRODUCTS**.

☒ **4. CARGO PREFERENCE REQUIREMENTS**.

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

☒ **6. FEDERAL CHANGES**.

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

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

☒ **9 CIVIL RIGHTS REQUIREMENTS**.

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

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

☒ **12. NOTIFICATION REGARDING FALSE CLAIMS, FRAUD, WASTE, ABUSE, AND OTHER LEGAL MATTERS.**

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

☐ **14. VETERANS PREFERENCE**.

☒ **15. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**.

☒ **16. LOBBYING**.

☒ **17. CLEAN WATER AND AIR REQUIREMENTS**

☐ **18. BUY AMERICA REQUIREMENTS**.

☐ **19. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS**.

☐ **20. ACCESSIBILITY**

☐ **21. BUS TESTING**.

☐ **22. DAVIS-BACON ACT REQUIREMENTS**.

☐ **23. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

☐ **24. SEISMIC SAFETY**.

☐ **25. CHARTER SERVICE OPERATIONS**.

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

☐ **27. SCHOOL BUS OPERATIONS**.

☐ **28. SUBSTANCE ABUSE REQUIREMENTS**.

☐ **29. DOMESTIC PREFERENCES FOR PROCUREMENTS**.

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

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

CLAUSES

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

2. **ENERGY CONSERVATION**. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act, 42 U.S.C. § 6321 *et seq*.

3. **RECYCLED PRODUCTS**. The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

4. **CARGO PREFERENCE REQUIREMENTS**. The Contractor agrees: (a) to use privately owned United States Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract by ocean vessels to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Agency (through the Contractor in the case of a subcontractor's bill-of-lading); and (c) to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, Material, or commodities by ocean vessel.

5. **ACCESS TO RECORDS AND REPORTS**. Contractor must provide all authorized representatives of the Agency, the FTA Administrator, the State Auditor and the Comptroller General of the United States access to any books, documents, papers and records of the Contractor which are related to performance of this Contract for the purposes of making audits, copies, examinations, excerpts and transcriptions. Contractor also agrees to retain and maintain, and will require its subcontractors to retain and maintain, all books, records, accounts and reports related to this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain the same until the Agency, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

6. **FEDERAL CHANGES**. Contractor must at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (29) dated February 7, 2022 [NOTE: This is updated annually]) between the Agency and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply constitutes a material breach of this Contract.

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

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

a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq*. and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining

to the underlying Contract or the FTA assisted project for which this Contract is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5353(l) on the Contractor, to the extent the Federal Government deems appropriate.

c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses will not be modified, except to identify the subcontractor/subconsultant who will be subject to the provisions.

9. CIVIL RIGHTS REQUIREMENTS.

a. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

b. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Contract:

i. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Chapter 60, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive

Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the performance of the Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

ii. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

iii. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

10. SAFE OPERATION OF MOTOR VEHICLES. The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or the Agency. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or

a privately-owned vehicle when on official business in connection with the work performed under this Contract.

11. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS. The preceding provisions include, in part, certain terms and conditions required by U.S. DOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1F, dated March 18, 2013, as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any the Agency requests which would cause the Agency to be in violation of the FTA terms and conditions.

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

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

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

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

"Knowledge," as used in this section, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or

other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the Contractor's possession.

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

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

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

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

a. Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the requisite skills and abilities to perform the construction work required

under a third party contract in connection with a capital project supported with funds appropriated or made available for 49 U.S.C. chapter 53, and

b. Will not be required to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

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

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

16. **LOBBYING**. Contractor shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Contractor shall certify that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying

contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded to the Agency. Contractor shall ensure that all of its subcontractors/subconsultants under this Contract shall certify the same. The Agency is responsible for keeping the certification of the Contractor, who is in turn responsible for keeping the certification forms of subcontractors/subconsultants. The Bidder shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities," which is included with the Bid Documents, including instructions for completion.

17. **CLEAN WATER AND AIR REQUIREMENTS**. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et *seq*., and the Clean Air Act, as amended, 42 U.S.C. 7401 et *seq*. The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office. The Contractor also agrees to include these requirements in each subcontract exceeding $150,000 financed in part or in whole with federal assistance provided by the FTA.

18. **BUY AMERICA REQUIREMENTS**. The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. All bidders or proposers must submit the appropriate Buy America certification to the Agency with their bids or proposals, except those subject to a general waiver. Proposals that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

19. **PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS**. Contractor agrees to comply with pre-award and post-delivery requirements set forth in 49 U.S.C. § 5323(m) and FTA's implementing regulations at 49 C.F.R. Part 663. Contractor must submit the following certifications with its bid:

a. Pre-Award Buy America Certification: The Contractor must complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Contractor certifies compliance with Buy America, it must submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

b. Pre-Award Solicitation Specifications Certification: The Contractor shall submit evidence that is capable of producing rolling stock that meets the Agency's specifications set forth in the solicitation.

c. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor must submit evidence of (1) the manufacturer's self-certification sticker information that the vehicle complies with applicable FMVSS in 49 CFR Part 571, as may be amended, or (2) the manufacturer's self-certification statement that the vehicle is not subject to the FMVSS in 49 CFR Part 571, as may be amended.

20. ACCESSIBILITY. The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended; 29 USC § 794; 49 USC § 5301(6); 49 CFR Parts 27, 37, 38, and 39 and any implementing requirements and regulations FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

21. BUS TESTING. The Contractor [Manufacturer] agrees to comply with 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

a. A manufacturer of a new bus model or a bus produced with a major change in components or configuration must provide a copy of the final test report to the Agency at a point in the procurement process specified by the Agency which will be prior to the Agency's final acceptance of the first vehicle.

b. A manufacturer who releases a report under paragraph (a) above shall provide notice to the operator of the testing facility that the report is available to the public.

c. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the Agency prior to the Agency's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

d. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and

is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

22. DAVIS-BACON ACT REQUIREMENTS.

a. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section I (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Subsection (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which such work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (A)(4) of this section) and the Davis-Bacon poster (WH- 1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

iii. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

iv. (a) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage

rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt sand so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

c. Payrolls and basic records

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

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

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

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

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

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

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

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

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

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

d. Apprentices and trainees

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

predetermined rate for the work performed until an acceptable program is approved.

ii. Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

iii. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

e. Compliance with Copeland Act requirements - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

f. Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses

as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower subcontractor with all the contract clauses in 29 CFR 5.5.

g. Contract termination: Debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

h. Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

i. Disputes Concerning Labor Standards - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

j. Certification of eligibility

   i. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

   ii. No part of this Contract shall be subcontracted to person or firm ineligible for an award of a government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
   iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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

a. Overtime Requirements – Neither the Contractor nor its subcontractors may permit any laborer or mechanic in any workweek in which he or she is employed on such work under this Contract to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. Violation, Liability for Unpaid Wages, Liquidated Damages – In the event of any violation of the clause set forth in paragraph A of this Section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this Section in the sum of $10.00 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph A of this Section.

c. Withholding for Unpaid Wages and Liquidated Damages – Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from any moneys payable on account of work performed by Contractor under any such contract or any other Federal contract with Contractor or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this Section.

d. Subcontracts – The Contractor shall insert in any subcontract the clauses set forth in this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Section.

e. Payrolls and Basic Records – Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits

or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and shall also maintain records that show the costs anticipated or the actual cost incurred in providing such benefits. Should the Contractor employ apprentices or trainees under approved programs, it shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

f. Occupational Safety and Health Act – The Contractor agrees to comply with Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 333, and applicable DOL regulations, "Safety and Health Regulations for Construction", 29 CFR Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

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

24. SEISMIC SAFETY. The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT)

Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

25. CHARTER SERVICE OPERATIONS. The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

26. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

a. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

b. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on

the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

c. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

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

27. **SCHOOL BUS OPERATIONS**. Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles or facilities.

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

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

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

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

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

If the Contractor is included in the Agency's Random Testing Program, the Contractor is not released from all other DOT regulations such as: adhering to DOT's hiring requirements, including making inquiries of past DOT-regulated employers and pre-employment testing; conducting reasonable suspicion and post-accident testing when warranted; and training safety-sensitive employees and their supervisors for the requisite time required by law. Contractor agrees to timely notify the Agency with names of their safety-sensitive employees, including any additions or deletions during the contract term.

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

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

AGREEMENT BETWEEN

THE PENINSULA CORRIDOR JOINT POWERS BOARD (AGENCY)

AND

HDR ENGINEERING, INC. (CONSULTANT)

AGREEMENT SUMMARY[1]

Board of Directors' Date of Award: October 3, 2019

Resolution Number: 2019-35

Effective Date of Agreement: December 1, 2019

Services to be Performed (Section 1): On-Call Environmental Planning, Permitting and Support Services

Term of Agreement (Section 3):
Five-year base term, with up to two, one-year option terms

Five-Year Base Term:	December 1, 2019 – November 30, 2024
Two, One-Year Option Terms	December 1, 2024 – November 30, 2026

Consultant's Key Representative (Section 4):

Name: Cathy LaFata, AICP CTP
Title: Contract/Project Manager
E-mail: Cathy.LaFata@hdrinc.com
Phone: (510) 368-9517
Mailing Address: HDR Engineering, Inc.
100 Pringle Ave, Suite 400,
Walnut Creek, CA 94596

Compensation (Section 5): Board approved not-to-exceed, aggregate amount of $7,000,000 for the base term, and $1,750,000 per one-year option term to be shared as a pool with other awarded firms.

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

This AGREEMENT for On-Call Environmental Planning, Permitting and Support Services (Agreement) is entered into by and between the Peninsula Corridor Joint Powers Board (AGENCY) located at 1250 San Carlos Avenue, San Carlos, CA 94070 and HDR Engineering, Inc. (CONSULTANT), a Nebraska Corporation with offices located at 100 Pringle Ave., Suite 400, Walnut Creek (the Parties).

1. SCOPE OF SERVICES

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

The scope of the CONSULTANT's services will consist of the services set forth in the Request for Proposals dated May 14, 2019, attached hereto and incorporated herein as Exhibit A, as supplemented by CONSULTANT's written proposal dated June 14, 2019, attached hereto and incorporated herein as Exhibit B-1.

2. AGREEMENT DOCUMENTS

This Agreement consists of the following documents:

a) This Agreement
b) Work Directives, if applicable
c) Exhibit A, Request for Proposals
d) Exhibit B, CONSULTANT's Cost Proposal/Labor Rates (negotiated)
e) Exhibit B-1, CONSULTANT's Proposal
f) Exhibit C, Insurance Requirements

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

3. TERM OF AGREEMENT

The term of this Agreement will be for a five-year base term commencing on December 1, 2019 through November 30, 2024, with up to two additional one-year option terms commencing on December 1, 2024 through November 30, 2026, if

exercised. The CONSULTANT will furnish the AGENCY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Solicitation Documents.

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

It is understood that the term of the Agreement, and any option term granted thereto as specified herein are subject to the AGENCY's right to terminate the Agreement in accordance with Section 22 of this Agreement.

4. CONSULTANT'S REPRESENTATIVE

At all times during the term of this Agreement, Contract/Project Manager, Cathy LaFata or designee will serve as the primary staff person of CONSULTANT to undertake, render, and oversee all of the services under this Agreement. Upon written notice by the Consultant and approval by the AGENCY, which will not be unreasonably withheld, the CONSULTANT may substitute this person with another person, who will possess similar qualifications and experience for this position.

5. COMPENSATION

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

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

There is no guarantee of any particular amount of compensation to the CONSULTANT under this Agreement. However, the maximum compensation that the AGENCY has authorized to be expended for this Contract will not exceed **$7,000,000** and a not-to-exceed aggregate amount of **$1,750,000** per option term if exercised. The AGENCY will pay the CONSULTANT in accordance with Section 6.

5.1. GENERAL

Compensation for each WD performed under the Agreement will be Specified Rates of Compensation (SRC), Not-to-Exceed, Firm Fixed Price (NTE-FFP) or Cost plus Fixed-Fee with a ceiling (CPFF).

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

On an annual basis, no later than 60 days before the start of a succeeding Agreement year, CONSULTANT, upon its written request and receipt of AGENCY's written approval, may adjust prospectively its labor rates. Increases in future labor rates shall be limited, if requested, to the most recent Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco/Oakland/Hayward, CA area available to the AGENCY, or up to a maximum of 3.5 percent escalation, whichever is lower. The effective date of the CPI-U adjustment, if any, will commence either (1) the first day of the second and/or subsequent year(s) of the Agreement, or (2) the date of the CONSULTANT's request, whichever event is later. Upon written approval by the AGENCY, the negotiated changes shall remain in effect for the subsequent Agreement year. If the CONSULTANT does not submit a request at least 60 days before the start of the succeeding Agreement year, the CONSULTANT waives any CPI-U increase for that year.

Fixed Fees shall be agreed to prior to the signing of the Agreement and shall apply and remain fixed throughout the life of the Agreement.

5.2 COST OF WORK

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

5.3 DIRECT LABOR

5.3.1 GENERAL

Direct Labor Rates shall be as set forth in Exhibit B to this Agreement and shall **stay in effect for the first year of the Agreement.** The hourly rates (direct labor costs) are subject to salary administration as set forth in Title 48 Code of Federal Regulations Part 31.205-6.

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

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

5.3.2 STRAIGHT TIME

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

5.3.3 OVERTIME

The AGENCY will reimburse CONSULTANT, and subconsultants, the straight time portion and premium time portion (if payable to the employee in accordance with the CONSULTANT'S employment policies) of its employee's actual overtime pay during performance of services under this Agreement, provided that the AGENCY has approved the overtime, in writing, prior to the incurring of said overtime.

5.4 CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

5.4.1 GENERAL

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

The agreed-upon multipliers shall be used for CONSULTANT's, and subconsultants', home office and AGENCY-furnished field office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in Exhibit B, CONSULTANT's Cost Proposal/Labor Rates.

5.4.2 PAYROLL BURDEN

CONSULTANT and THE AGENCY agree that the following will be considered as Payroll Burdens and as such will be paid to CONSULTANT, and subconsultant's, as compensation for said costs, as set forth below. "Payroll Burden" is defined as: The cost of all employment taxes, CONSULTANT's, and subconsultnat's, portion of social and retirement charges and contributions imposed by law, or labor contract contributions (if applicable), or regulations, with respect to or measured by CONSULTANT's, and subconsultant's, payroll, including but not

limited to, the CONSULTANT's, and subconsultant', cost of owner-required insurance.

5.4.3 EMPLOYEE BENEFITS

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

5.4.4 INDIRECT COSTS (OFFICE OVERHEAD)

CONSULTANT, and subconsultants, shall be compensated through an agreed-upon multiplier for overhead, which includes those administrative, clerical, word processing, accounting and other support staff utilized in performing services under this Agreement, which are not explicitly included in the Proposal or who have been approved by the AGENCY. These rates will remain fixed for the initial year of the Agreement. These rates will be reviewed annually on the anniversary of the effective date of the Agreement, for the CONSULTANT and its subconsultants and may be adjusted upon AGENCY written approval.

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

5.4.4.2 AGENCY-Furnished Field Office Overhead rate shall apply to CONSULTANT's, and subconsultant's, personnel assigned to an AGENCY-Furnished Field Office on a full-time basis, for a period of at least 12 months. As these rates cannot be pre-determined by audit, the AGENCY reserves the right to negotiate this rate for each firm.

5.5 MAXIMUM FIXED FEES (PROFIT)

5.5.1 GENERAL

Maximum Fixed Fee percentages shall apply throughout the life of the Agreement. The CONSULTANT's fixed fee amount for each Work Directive may be negotiated on an individual work directive basis. Said fixed fee amount shall not

be altered unless there is a significant alteration in the scope, complexity or character of the work to be performed under a Work Directive.

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

- **Environmental Planning Support Services** – **Six Percent (6%)**
- **Consultant Support Services** – **Four Percent (4%)** *

An example of "Consultant Support Services" is when CONSULTANT or subconsultant provides personnel to the AGENCY, through this Agreement, and works as support to the AGENCY on a daily (full-time) basis under AGENCY direction, at AGENCY locations and utilizing AGENCY office furnishings and supplies.

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

5.6 OTHER DIRECT COSTS (ODC's)

5.6.1 GENERAL

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

5.6.2 ALLOWABLE ODC'S

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

5.6.3 SUBCONSULTANTS

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

5.6.4 Limitations on Direct Costs - The following are limitations:

(1) Vehicles - If applicable and approved by the AGENCY, rental

vehicles and their support costs are limited to a total maximum of $500 per month, per vehicle. The standard Internal Revenue Service mileage rates shall apply for use of a personal vehicle.

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

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

- Relocation expenses, travel, temporary accommodations, and/or subsistence related to demobilization travel from the CONSULTANT's dedicated project office or from AGENCY-furnished field office for CONSULTANT and subconsultant personnel who have been permanently assigned to the project. Individuals assigned from domestic locations shall be eligible for up to the cost of returning to the original domestic location. Individuals assigned from international locations shall be eligible for the cost of relocating to the CONSULTANT's or subconsultant's domestic home office or to another domestic location, whichever is less.

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

5.6.5 Unallowable ODC'S

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

- Costs associated with registration for training, seminars, and technical association meetings.

- Costs associated with employee incentive compensation including cash bonuses, suggestion awards, safety awards and other forms of incentive compensation.

- Costs associated with leasing, maintaining, insuring and operating dedicated project vehicles.

- Computer hardware and software support, software licenses, or cellular phone usage.

- Safety equipment such as steel-toed boots, safety vests, and hard hats.

- Insurance

- Cellular phones

- Cost of any normal equipment, tools, or vehicles (unless approved) hired, leased or purchased for the performance of services, provided that the depreciated value of such items purchased by CONSULTANT shall be credited to the AGENCY at the completion of the work performed under this Agreement.

- Shipping

- Drafting supplies

- Surveying supplies

- Models and renderings

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

5.7 Maximum Compensation Amount

There is no guarantee of any particular amount of compensation to CONSULTANT under this Agreement. However, the maximum aggregate compensation that the AGENCY has authorized to be expended for the base contract for this Agreement will not exceed an aggregate amount of **$7,000,000**, excluding options, and excluding the value of other, standalone, AGENCY-awarded contracts developed and/or managed by the CONSULTANT. A maximum not-to-exceed amount as set forth in the WD shall apply for each WD. The AGENCY shall have the option to exercise up to two, additional one-year option terms, with a maximum aggregate not-to-exceed amount of **$1,750,000** for option term, if it is in the best interest of the AGENCY.

A maximum not-to-exceed amount as set forth in the WD shall apply for each WD. Further, it is expressly understood and agreed that in no event shall CONSULTANT be compensated in an amount greater than the amount specified in any individual WD for the services performed under such WD without issuance of a written Amendment to such WD by the AGENCY's Contract Administrator or Procurement Administrator, as applicable.

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

5.8 Flow Down

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

6. MANNER OF PAYMENT

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, contract number **19-J-P-072A**, purchase order number and the AGENCY Project Manager or Contract Administrator name. The AGENCY will endeavor to pay approved invoices/billing statements within 30 calendar days of their receipt. The AGENCY reserves the right to withhold payment to the CONSULTANT if the AGENCY determines that the quantity or quality of the work performed is unacceptable. The AGENCY will provide written notice to the CONSULTANT within 10 business days of the AGENCY's decision not to pay and the reasons for non-payment. Final payment will be withheld until CONSULTANT performs all required Agreement expiration or termination obligations. If CONSULTANT disagrees with the AGENCY's decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes the AGENCY's decision to the AGENCY within 30 calendar days of the AGENCY's notice. If CONSULTANT does not provide written notice in accordance with this section, it waives all rights to challenge the AGENCY's decision.

Submit one copy of each invoice as a PDF via email to: **AccountsPayable@samtrans.com**

7. NOTICES

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

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

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

If to the CONSULTANT: HDR Engineering, Inc
Attn: Cathy LaFata, AICP CTP,
100 Pringle Ave, Suite 400,
Walnut Creek, CA 94596

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

8. OWNERSHIP OF WORK

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

or to such materials. The CONSULTANT may retain a copy of all material produced under this Agreement for its use in its general business activities.

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

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

9. CONFIDENTIALITY

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

The CONSULTANT, its employees, 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/SUBCONSULTANTS

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

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

11. CHANGES

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

12. RESPONSIBILITY: INDEMNIFICATION

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

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

B. Any allegation that materials or services provided by the CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

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

13. INSURANCE

Refer to EXHIBIT C, appended hereto, for the Insurance Requirements.

14. CONSULTANT'S STATUS

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

15. ASSIGNMENT

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

16. AGENCY WARRANTIES

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

17. 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 he will designate in writing from time to time, will represent and act for the AGENCY.

18. WARRANTY OF SERVICES

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

B. In the event that any services provided by the CONSULTANT hereunder are deficient because of CONSULTANT's or subconsultants failure to perform said services in accordance with the warranty standards set forth above, the

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

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

b) The right to have such services done by others and the costs thereof charged to and collected from the CONSULTANT if within 30 days after written notice to the CONSULTANT requiring such re-performance, CONSULTANT fails to give satisfactory evidence to the AGENCY that it has undertaken said re-performance.

c) The right to terminate the Agreement for default.

C. CONSULTANT shall be responsible for all errors and omissions and is expected to pay for all work as a result of errors and omissions.

19. CLAIMS OR DISPUTES

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

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

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

If there is a dispute over any claim, the CONSULTANT will continue to work during the dispute resolution process in a diligent and timely manner as directed by the

AGENCY, and will be governed by all applicable provisions of the Agreement. The CONSULTANT will maintain cost records of all work that is the basis of any dispute.

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

20. REMEDIES

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

21. TEMPORARY SUSPENSION OF WORK

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

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

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

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

22. TERMINATION

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

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

Upon receipt of a notice of termination for default, the CONSULTANT may not commit itself to any further expenditure of time or resources. The AGENCY agrees to remit final payment to the CONSULTANT in an amount to cover only those sums actually due and owing from the AGENCY for work performed in full accordance with the terms of the Agreement as of the effective date of

termination. The AGENCY is not in any manner liable for the CONSULTANT's actual or projected lost profits had the Consultant completed the services required by this Agreement, including, without limitation, services not yet performed, expenses not yet incurred, and milestones not yet achieved. All finished or unfinished documents, and any equipment or materials procured for or produced pursuant to this Agreement become the property of the AGENCY upon the effective date of the termination for default.

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

23. LIQUIDATED DAMAGES

Not applicable.

24. PREVAILING WAGE

Not applicable.

25. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

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

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

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

The CONSULTANT will not discriminate on the basis of race, color, creed, national origin, sex, or age in the performance of this Agreement. The CONSULTANT will

carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, the CONSULTANT agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. The CONSULTANT will obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this Agreement. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the AGENCY deems appropriate.

27. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

In connection with the performance of this Agreement the CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, gender, gender identity, sexual orientation, age (over 40), marital status, pregnancy, medical condition, genetic information, or disability as specified in federal, State, and local laws. The CONSULTANT will 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, or national origin. Such actions will include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

28. CONFLICT OF INTEREST

A. General. Depending on the nature of the work performed, a CONSULTANT of the AGENCY may be subject to the same conflict of interest prohibitions established by the Federal Transit Administration (FTA), Federal Highway Administration (FHWA) and California law that govern AGENCY's employees and officials (Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq.). During the proposal process or the term of the Agreement, CONSULTANT and its employees may be required to disclose financial interests.

The CONSULTANT warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §1090 et seq. or §87100 et seq. during the

performance of services under this Agreement. The CONSULTANT further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

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

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

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

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

If at any time during the term of this Agreement CONSULTANT becomes aware of an organizational conflict of interest in connection with the work performed hereunder, CONSULTANT immediately will provide the AGENCY with written notice of the facts and circumstances giving rise to this organizational conflict of

interest. CONSULTANT's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest.

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

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

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

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

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

29. SUBSTANCE ABUSE PROGRAM

Not applicable.

30. 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.

31. 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.

32. 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.

33. NO THIRD PARTY BENEFICIARIES

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

34. APPLICABLE LAW

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

35. 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.

36. 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.

37. ENTIRE AGREEMENT; MODIFICATION

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

conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

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

PENINSULA CORRIDOR JOINT POWERS BOARD

Signature: E-SIGNED by Jim Hartnett on 2019-10-28 18:02:00 GMT
Print: Jim Hartnett
Title: Executive Director
Date: October 28, 2019

ATTEST:
By: E-SIGNED by Dora Seamans on 2019-10-23 14:56:07 GMT
Dora Seamens
Agency Secretary

APPROVED AS TO FORM:
By: E-SIGNED by Julie Sherman on 2019-10-17 16:42:16 GMT
Julie A. Sherman
Attorney for the Agency

HDR ENGINEERING, INC.

Signature: E-SIGNED by Kenneth Jong on 2019-10-23 07:59:23 GMT
Print: Kenneth E. Jong
Title: Vice President
Date: October 23, 2019

Signature: E-SIGNED by Laurie Vik on 2019-10-22 19:16:36 GMT
Print: Laurie Vik
Title: Assistant Secretary
Date: October 22, 2019

AGREEMENT BETWEEN

THE PENINSULA CORRIDOR JOINT POWERS BOARD (AGENCY)

AND

ICF JONES & STOKES, INC. (CONSULTANT)

AGREEMENT SUMMARY[1]

Board of Directors' Date of Award: October 3, 2019

Resolution Number: 2019-35

Effective Date of Agreement: December 1, 2019

Services to be Performed (Section 1): On-Call Environmental Planning, Permitting and Support Services

Term of Agreement (Section 3):
Five-year base term, with up to two, one-year option terms
Five-Year Base Term: December 1, 2019 – November 30, 2024
Two, One-Year Option Terms: December 1, 2024 – November 30, 2026

Consultant's Key Representative (Section 4):

Name: Rich Walter
Title: Vice President
E-mail: Rich.Walter@icf.com
Phone: (510) 290-1860
Mailing Address: ICF Jones & Stokes, Inc.
201Mission Street, Suite 1500
San Francisco, CA 94105

Compensation (Section 5): Board approved not-to-exceed, aggregate amount of $7,000,000 for the base term, and $1,750,000 per one-year option term to be shared as a pool with other awarded firms.

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

This AGREEMENT for On-Call Environmental Planning, Permitting and Support Services (Agreement) is entered into by and between the Peninsula Corridor Joint Powers Board (AGENCY) located at 1250 San Carlos Avenue, San Carlos, CA 94070 and ICF Jones & Stokes, Inc. (CONSULTANT), a Delaware Corporation with offices located at 201 Mission Street, Suite 1500, San Francisco (the Parties).

1. SCOPE OF SERVICES

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

The scope of the CONSULTANT's services will consist of the services set forth in the Request for Proposals dated May 14, 2019, attached hereto and incorporated herein as Exhibit A, as supplemented by CONSULTANT's written proposal dated June 14, 2019, attached hereto and incorporated herein as Exhibit B-1.

2. AGREEMENT DOCUMENTS

This Agreement consists of the following documents:

a) This Agreement.
b) Work Directives, if applicable
c) Exhibit A, Request for Proposals
d) Exhibit B, CONSULTANT's Cost Proposal/Labor Rates (negotiated)
e) Exhibit B-1, CONSULTANT's Proposal
f) Exhibit C, Insurance Requirements

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

3. TERM OF AGREEMENT

The term of this Agreement will be for a five-year base term commencing December 1, 2019 through November 30, 2024, with up to two additional one-year option terms commencing on December 1, 2024 through November 30, 2026, if exercised. The

CONSULTANT will furnish the AGENCY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Solicitation Documents.

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

It is understood that the term of the Agreement, and any option term granted thereto as specified herein are subject to the AGENCY's right to terminate the Agreement in accordance with Section 22 of this Agreement.

4. CONSULTANT'S REPRESENTATIVE

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

5. COMPENSATION

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

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

There is no guarantee of any particular amount of compensation to the CONSULTANT under this Agreement. However, the maximum compensation that the AGENCY has authorized to be expended for this Contract will not exceed **$7,000,000** and a not-to-exceed aggregate amount of **$1,750,000** per option term if exercised. The AGENCY will pay the CONSULTANT in accordance with Section 6.

5.1. GENERAL

Compensation for each WD performed under the Agreement will be Specified Rates of Compensation (SRC), Not-to-Exceed, Firm Fixed Price (NTE-FFP) or Cost plus Fixed-Fee with a ceiling (CPFF).

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

On an annual basis, no later than 60 days before the start of a succeeding Agreement year, CONSULTANT, upon its written request and receipt of AGENCY's written approval, may adjust prospectively its labor rates. Increases in future labor rates shall be limited, if requested, to the most recent Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco/Oakland/Hayward, CA area available to the AGENCY, or up to a maximum of 3.5 percent escalation, whichever is lower. The effective date of the CPI-U adjustment, if any, will commence either (1) the first day of the second and/or subsequent year(s) of the Agreement, or (2) the date of the CONSULTANT's request, whichever event is later. Upon written approval by the AGENCY, the negotiated changes shall remain in effect for the subsequent Agreement year. If the CONSULTANT does not submit a request at least 60 days before the start of the succeeding Agreement year, the CONSULTANT waives any CPI-U increase for that year.

Fixed Fees shall be agreed to prior to the signing of the Agreement and shall apply and remain fixed throughout the life of the Agreement.

5.2 COST OF WORK

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

5.3 DIRECT LABOR

5.3.1 GENERAL

Direct Labor Rates shall be as set forth in Exhibit B to this Agreement and shall **stay in effect for the first year of the Agreement.** The hourly rates (direct labor costs) are subject to salary administration as set forth in Title 48 Code of Federal Regulations Part 31.205-6.

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

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

5.3.2 STRAIGHT TIME

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

5.3.3 OVERTIME

The AGENCY will reimburse CONSULTANT, and subconsultants, the straight time portion and premium time portion (if payable to the employee in accordance with the CONSULTANT'S employment policies) of its employee's actual overtime pay during performance of services under this Agreement, provided that the AGENCY has approved the overtime, in writing, prior to the incurring of said overtime.

5.4 CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

5.4.1 GENERAL

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

The agreed-upon multipliers shall be used for CONSULTANT's, and subconsultants', home office and AGENCY-furnished field office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in Exhibit B, CONSULTANT's Cost Proposal/Labor Rates.

5.4.2 PAYROLL BURDEN

CONSULTANT and THE AGENCY agree that the following will be considered as Payroll Burdens and as such will be paid to CONSULTANT, and subconsultant's, as compensation for said costs, as set forth below. "Payroll Burden" is defined as: The cost of all employment taxes, CONSULTANT's, and subconsultnat's, portion of social and retirement charges and contributions imposed by law, or labor contract contributions (if applicable), or regulations, with respect to or measured by CONSULTANT's, and subconsultant's, payroll, including but not

limited to, the CONSULTANT's, and subconsultant', cost of owner-required insurance.

5.4.3 EMPLOYEE BENEFITS

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

5.4.4 INDIRECT COSTS (OFFICE OVERHEAD)

CONSULTANT, and subconsultants, shall be compensated through an agreed-upon multiplier for overhead, which includes those administrative, clerical, word processing, accounting and other support staff utilized in performing services under this Agreement, which are not explicitly included in the Proposal or who have been approved by the AGENCY. These rates will remain fixed for the initial year of the Agreement. These rates will be reviewed annually on the anniversary of the effective date of the Agreement, for the CONSULTANT and its subconsultants and may be adjusted upon AGENCY written approval.

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

5.4.4.2 AGENCY-Furnished Field Office Overhead rate shall apply to CONSULTANT's, and subconsultant's, personnel assigned to an AGENCY-Furnished Field Office on a full-time basis, for a period of at least 12 months. As these rates cannot be pre-determined by audit, the AGENCY reserves the right to negotiate this rate for each firm.

5.5 MAXIMUM FIXED FEES (PROFIT)

5.5.1 GENERAL

Maximum Fixed Fee percentages shall apply throughout the life of the Agreement. The CONSULTANT's fixed fee amount for each Work Directive may be negotiated on an individual work directive basis. Said fixed fee amount shall not

be altered unless there is a significant alteration in the scope, complexity or character of the work to be performed under a Work Directive.

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

- **Environmental Planning Support Services** – **Six Percent (6%)**
- **Consultant Support Services** – **Four Percent (4%)** *

An example of "Consultant Support Services" is when CONSULTANT or subconsultant provides personnel to the AGENCY, through this Agreement, and works as support to the AGENCY on a daily (full-time) basis under AGENCY direction, at AGENCY locations and utilizing AGENCY office furnishings and supplies.

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

5.6 OTHER DIRECT COSTS (ODC's)

5.6.1 GENERAL

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

5.6.2 ALLOWABLE ODC'S

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

5.6.3 SUBCONSULTANTS

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

5.6.4 Limitations on Direct Costs - The following are limitations:

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

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

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

- Relocation expenses, travel, temporary accommodations, and/or subsistence related to demobilization travel from the CONSULTANT's dedicated project office or from AGENCY-furnished field office for CONSULTANT and subconsultant personnel who have been permanently assigned to the project. Individuals assigned from domestic locations shall be eligible for up to the cost of returning to the original domestic location. Individuals assigned from international locations shall be eligible for the cost of relocating to the CONSULTANT's or subconsultant's domestic home office or to another domestic location, whichever is less.

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

5.6.5 Unallowable ODC'S

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

- Costs associated with registration for training, seminars, and technical association meetings.

- Costs associated with employee incentive compensation including cash bonuses, suggestion awards, safety awards and other forms of incentive compensation.

- Costs associated with leasing, maintaining, insuring and operating dedicated project vehicles.

- Computer hardware and software support, software licenses, or cellular phone usage.

- Safety equipment such as steel-toed boots, safety vests, and hard hats.

- Insurance

- Cellular phones

- Cost of any normal equipment, tools, or vehicles (unless approved) hired, leased or purchased for the performance of services, provided that the depreciated value of such items purchased by CONSULTANT shall be credited to the AGENCY at the completion of the work performed under this Agreement.

- Shipping

- Drafting supplies

- Surveying supplies

- Models and renderings

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

5.7 Maximum Compensation Amount

There is no guarantee of any particular amount of compensation to CONSULTANT under this Agreement. However, the maximum aggregate compensation that the AGENCY has authorized to be expended for the base contract for this Agreement will not exceed **an aggregate amount of $7,000,000**, excluding options, and excluding the value of other, standalone, AGENCY-awarded contracts developed and/or managed by the CONSULTANT. A maximum not-to-exceed amount as set forth in the WD shall apply for each WD. The AGENCY shall have the option to exercise up to two, additional one-year option terms, with a maximum aggregate not-to-exceed amount of **$1,750,000** for option term, if it is in the best interest of the AGENCY.

A maximum not-to-exceed amount as set forth in the WD shall apply for each WD. Further, it is expressly understood and agreed that in no event shall CONSULTANT be compensated in an amount greater than the amount specified in any individual WD for the services performed under such WD without issuance of a

written Amendment to such WD by the AGENCY's Contract Administrator or Procurement Administrator, as applicable.

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

5.8 Flow Down

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

6. MANNER OF PAYMENT

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, contract number **19-J-P-072B**, purchase order number and the AGENCY Project Manager or Contract Administrator name. The AGENCY will endeavor to pay approved invoices/billing statements within 30 calendar days of their receipt. The AGENCY reserves the right to withhold payment to the CONSULTANT if the AGENCY determines that the quantity or quality of the work performed is unacceptable. The AGENCY will provide written notice to the CONSULTANT within 10 business days of the AGENCY's decision not to pay and the reasons for non-payment. Final payment will be withheld until CONSULTANT performs all required Agreement expiration or termination obligations. If CONSULTANT disagrees with the AGENCY's decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes the AGENCY's decision to the AGENCY within 30 calendar days of the AGENCY's notice. If CONSULTANT does not provide written notice in accordance with this section, it waives all rights to challenge the AGENCY's decision.

Submit one copy of each invoice as a PDF via email to: **AccountsPayable@samtrans.com**

7. NOTICES

All communications relating to the day-to-day activities of the provided services will

be exchanged between the AGENCY's Project Manager or designee, and the CONSULTANT's Vice President, Project Manager or designee.

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

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

If to the CONSULTANT: ICF Jones & Stokes, Inc.
Attn: Rich Walter, Vice President
201Mission Street, Suite 1500
San Francisco, CA 94105

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

8. OWNERSHIP OF WORK

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

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

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

9. CONFIDENTIALITY

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

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

10. USE OF SUBCONTRACTORS/SUBCONSULTANTS

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

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

11. CHANGES

The AGENCY may at any time, by written order, make changes within the scope of work and services described in this Agreement. If such changes cause an increase

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

12. RESPONSIBILITY: INDEMNIFICATION

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

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

B. Any allegation that materials or services provided by the CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

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

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

13. INSURANCE

Refer to EXHIBIT C, appended hereto, for the Insurance Requirements.

14. CONSULTANT'S STATUS

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

15. ASSIGNMENT

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

16. AGENCY WARRANTIES

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

17. 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.

18. WARRANTY OF SERVICES

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

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

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

b) The right to have such services done by others and the costs thereof charged to and collected from the CONSULTANT if within 30 days after written notice to the CONSULTANT requiring such re-performance, CONSULTANT fails to give satisfactory evidence to the AGENCY that it has undertaken said re-performance.

c) The right to terminate the Agreement for default.

C. CONSULTANT shall be responsible for all errors and omissions and is expected to pay for all work as a result of errors and omissions.

19. CLAIMS OR DISPUTES

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

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

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

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

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

20. REMEDIES

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

21. TEMPORARY SUSPENSION OF WORK

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

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

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

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

22. TERMINATION

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

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

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

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

or produced pursuant to this Agreement become the property of the AGENCY upon the effective date of the termination for default.

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

23. LIQUIDATED DAMAGES

Not applicable.

24. PREVAILING WAGE

Not applicable.

25. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

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

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

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

The CONSULTANT will not discriminate on the basis of race, color, creed, national origin, sex, or age in the performance of this Agreement. The CONSULTANT will carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, the CONSULTANT agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs

of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. The CONSULTANT will obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this Agreement. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the AGENCY deems appropriate.

27. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

In connection with the performance of this Agreement the CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, gender, gender identity, sexual orientation, age (over 40), marital status, pregnancy, medical condition, genetic information, or disability as specified in federal, State, and local laws. The CONSULTANT will 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, or national origin. Such actions will include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

28. CONFLICT OF INTEREST

A. General. Depending on the nature of the work performed, a CONSULTANT of the AGENCY may be subject to the same conflict of interest prohibitions established by the Federal Transit Administration (FTA), Federal Highway Administration (FHWA) and California law that govern AGENCY's employees and officials (Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq.). During the proposal process or the term of the Agreement, CONSULTANT and its employees may be required to disclose financial interests.

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

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

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

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

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

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

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

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

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

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

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

29. SUBSTANCE ABUSE PROGRAM

Not applicable.

30. 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.

31. 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.

32. 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.

33. NO THIRD PARTY BENEFICIARIES

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

34. APPLICABLE LAW

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

35. 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.

36. 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.

37. ENTIRE AGREEMENT; MODIFICATION

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

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

PENINSULA CORRIDOR JOINT POWERS BOARD

Signature: E-SIGNED by Jim Hartnett on 2019-10-23 17:51:23 GMT
Print: Jim Hartnett
Title: Executive Director/CEO
Date: October 23, 2019

ATTEST:
By: E-SIGNED by Dora Seamans on 2019-10-23 17:43:31 GMT
Dora Seamens
Agency Secretary

APPROVED AS TO FORM:
By: E-SIGNED by Julie Sherman on 2019-10-17 16:43:22 GMT
Julie A. Sherman
Attorney for the Agency

ICF JONES & STOKES, INC.

Signature: E-SIGNED by Robert Toth on 2019-10-23 17:34:14 GMT
Print: Robert F. Toth
Title: Sr. Vice President, Contracts
Date: October 23, 2019

Signature: E-SIGNED by Rosemarie Jones on 2019-10-23 17:36:13 GMT
Print: Rosemarie Jones
Title: Assistant Secretary
Date: October 23, 2019

AGREEMENT BETWEEN

THE PENINSULA CORRIDOR JOINT POWERS BOARD (AGENCY)

AND

LOUIS BERGER U.S., INC. (CONSULTANT)

AGREEMENT SUMMARY[1]

Board of Directors' Date of Award: October 3, 2019

Resolution Number: 2019-35

Effective Date of Agreement: December 1, 2019

Services to be Performed (Section 1): On-Call Environmental Planning, Permitting and Support Services

Term of Agreement (Section 3):
Five-year base term, with up to two, one-year option terms
Five-Year Base Term: December 1, 2019 – November 30, 2024
Two, One-Year Option Terms: December 1, 2024 – November 30, 2026

Consultant's Key Representative (Section 4):

Name: Lawrence Pesesky
Title: Senior Vice President
E-mail: Lawrence.Pesesky@wsp.com
Phone: B: (212) 612-7917, M: (973) 715-9333
Mailing Address: Louis Berger U.S., Inc.
96 Morton Street, 8th Floor,
New York, NY 10014

Compensation (Section 5): Board approved not-to-exceed, aggregate amount of $7,000,000 for the base term, and $1,750,000 per one-year option term to be shared as a pool with other awarded firms.

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

This AGREEMENT for On-Call Environmental Planning, Permitting and Support Services (Agreement) is entered into by and between the Peninsula Corridor Joint Powers Board (AGENCY) located at 1250 San Carlos Avenue, San Carlos, CA 94070 and Louis Berger U.S., Inc. (CONSULTANT), a New York Corporation located at 96 Morton Street, 8th Floor, New York, NY 10014 (the Parties).

1. SCOPE OF SERVICES

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

The scope of the CONSULTANT's services will consist of the services set forth in the Request for Proposals dated May 14, 2019, attached hereto and incorporated herein as Exhibit A, as supplemented by CONSULTANT's written proposal dated June 14, 2019, attached hereto and incorporated herein as Exhibit B-1.

2. AGREEMENT DOCUMENTS

This Agreement consists of the following documents:

a) This Agreement
b) Work Directives, if applicable
c) Exhibit A, Request for Proposals
d) Exhibit B, CONSULTANT's Cost Proposal/Labor Rates (negotiated)
e) Exhibit B-1, CONSULTANT's Proposal
f) Exhibit C, Insurance Requirements

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

3. TERM OF AGREEMENT

The term of this Agreement will be for a five-year base term commencing December 1, 2019 through November 30, 2024, with up to two additional one-year option terms commencing on December 1, 2024 through November 30, 2026, if exercised. The

CONSULTANT will furnish the AGENCY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Solicitation Documents.

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

It is understood that the term of the Agreement, and any option term granted thereto as specified herein are subject to the AGENCY's right to terminate the Agreement in accordance with Section 22 of this Agreement.

4. CONSULTANT'S REPRESENTATIVE

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

5. COMPENSATION

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

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

There is no guarantee of any particular amount of compensation to the CONSULTANT under this Agreement. However, the maximum compensation that the AGENCY has authorized to be expended for this Contract will not exceed **$7,000,000,** and a not-to-exceed aggregate amount of $1,750,000 per option term if exercised. The AGENCY will pay the CONSULTANT in accordance with Section 6.

5.1. GENERAL

Compensation for each WD performed under the Agreement will be Specified Rates of Compensation (SRC), Not-to-Exceed, Firm Fixed Price (NTE-FFP) or Cost plus Fixed-Fee with a ceiling (CPFF).

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

On an annual basis, no later than 60 days before the start of a succeeding Agreement year, CONSULTANT, upon its written request and receipt of AGENCY's written approval, may adjust prospectively its labor rates. Increases in future labor rates shall be limited, if requested, to the most recent Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco/Oakland/Hayward, CA area available to the AGENCY, or up to a maximum of 3.5 percent escalation, whichever is lower. The effective date of the CPI-U adjustment, if any, will commence either (1) the first day of the second and/or subsequent year(s) of the Agreement, or (2) the date of the CONSULTANT's request, whichever event is later. Upon written approval by the AGENCY, the negotiated changes shall remain in effect for the subsequent Agreement year. If the CONSULTANT does not submit a request at least 60 days before the start of the succeeding Agreement year, the CONSULTANT waives any CPI-U increase for that year.

Fixed Fees shall be agreed to prior to the signing of the Agreement and shall apply and remain fixed throughout the life of the Agreement.

5.2 COST OF WORK

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

5.3 DIRECT LABOR

5.3.1 GENERAL

Direct Labor Rates shall be as set forth in Exhibit B to this Agreement and shall **stay in effect for the first year of the Agreement.** The hourly rates (direct labor costs) are subject to salary administration as set forth in Title 48 Code of Federal Regulations Part 31.205-6.

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

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

5.3.2 STRAIGHT TIME

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

5.3.3 OVERTIME

The AGENCY will reimburse CONSULTANT, and subconsultants, the straight time portion and premium time portion (if payable to the employee in accordance with the CONSULTANT'S employment policies) of its employee's actual overtime pay during performance of services under this Agreement, provided that the AGENCY has approved the overtime, in writing, prior to the incurring of said overtime.

5.4 CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

5.4.1 GENERAL

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

The agreed-upon multipliers shall be used for CONSULTANT's, and subconsultants', home office and AGENCY-furnished field office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in Exhibit B, CONSULTANT's Cost Proposal/Labor Rates.

5.4.2 PAYROLL BURDEN

CONSULTANT and THE AGENCY agree that the following will be considered as Payroll Burdens and as such will be paid to CONSULTANT, and subconsultant's, as compensation for said costs, as set forth below. "Payroll Burden" is defined as: The cost of all employment taxes, CONSULTANT's, and subconsultnat's, portion of social and retirement charges and contributions imposed by law, or labor contract contributions (if applicable), or regulations, with respect to or measured by CONSULTANT's, and subconsultant's, payroll, including but not

limited to, the CONSULTANT's, and subconsultant', cost of owner-required insurance.

5.4.3 EMPLOYEE BENEFITS

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

5.4.4 INDIRECT COSTS (OFFICE OVERHEAD)

CONSULTANT, and subconsultants, shall be compensated through an agreed-upon multiplier for overhead, which includes those administrative, clerical, word processing, accounting and other support staff utilized in performing services under this Agreement, which are not explicitly included in the Proposal or who have been approved by the AGENCY. These rates will remain fixed for the initial year of the Agreement. These rates will be reviewed annually on the anniversary of the effective date of the Agreement, for the CONSULTANT and its subconsultants and may be adjusted upon AGENCY written approval.

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

5.4.4.2 AGENCY-Furnished Field Office Overhead rate shall apply to CONSULTANT's, and subconsultant's, personnel assigned to an AGENCY-Furnished Field Office on a full-time basis, for a period of at least 12 months. As these rates cannot be pre-determined by audit, the AGENCY reserves the right to negotiate this rate for each firm.

5.5 MAXIMUM FIXED FEES (PROFIT)

5.5.1 GENERAL

Maximum Fixed Fee percentages shall apply throughout the life of the Agreement. The CONSULTANT's fixed fee amount for each Work Directive may be negotiated on an individual work directive basis. Said fixed fee amount shall not

be altered unless there is a significant alteration in the scope, complexity or character of the work to be performed under a Work Directive.

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

- **Environmental Planning Support Services** – **Six Percent (6%)**
- **Consultant Support Services** – **Four Percent (4%)** *

An example of "Consultant Support Services" is when CONSULTANT or subconsultant provides personnel to the AGENCY, through this Agreement, and works as support to the AGENCY on a daily (full-time) basis under AGENCY direction, at AGENCY locations and utilizing AGENCY office furnishings and supplies.

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

5.6 OTHER DIRECT COSTS (ODC's)

5.6.1 GENERAL

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

5.6.2 ALLOWABLE ODC'S

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

5.6.3 SUBCONSULTANTS

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

5.6.4 Limitations on Direct Costs - The following are limitations:

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

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

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

- Relocation expenses, travel, temporary accommodations, and/or subsistence related to demobilization travel from the CONSULTANT's dedicated project office or from AGENCY-furnished field office for CONSULTANT and subconsultant personnel who have been permanently assigned to the project. Individuals assigned from domestic locations shall be eligible for up to the cost of returning to the original domestic location. Individuals assigned from international locations shall be eligible for the cost of relocating to the CONSULTANT's or subconsultant's domestic home office or to another domestic location, whichever is less.

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

5.6.5 Unallowable ODC'S

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

- Costs associated with registration for training, seminars, and technical association meetings.

- Costs associated with employee incentive compensation including cash bonuses, suggestion awards, safety awards and other forms of incentive compensation.

− Costs associated with leasing, maintaining, insuring and operating dedicated project vehicles.

− Computer hardware and software support, software licenses, or cellular phone usage.

− Safety equipment such as steel-toed boots, safety vests, and hard hats.

− Insurance

− Cellular phones

− Cost of any normal equipment, tools, or vehicles (unless approved) hired, leased or purchased for the performance of services, provided that the depreciated value of such items purchased by CONSULTANT shall be credited to the AGENCY at the completion of the work performed under this Agreement.

− Shipping

− Drafting supplies

− Surveying supplies

− Models and renderings

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

5.7 Maximum Compensation Amount

There is no guarantee of any particular amount of compensation to CONSULTANT under this Agreement. However, the maximum aggregate compensation that the AGENCY has authorized to be expended for the base contract for this Agreement will not exceed an aggregate amount of **$7,000,000**, excluding options, and excluding the value of other, standalone, AGENCY-awarded contracts developed and/or managed by the CONSULTANT. A maximum not-to-exceed amount as set forth in the WD shall apply for each WD. The AGENCY shall have the option to exercise up to two, additional one-year option terms, with a maximum aggregate not-to-exceed amount of **$1,750,000** for each option term, if it is in the best interest of the AGENCY.

A maximum not-to-exceed amount as set forth in the WD shall apply for each WD. Further, it is expressly understood and agreed that in no event shall CONSULTANT be compensated in an amount greater than the amount specified in any individual WD for the services performed under such WD without issuance of a written Amendment to such WD by the AGENCY's Contract Administrator or Procurement Administrator, as applicable.

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

5.8 Flow Down

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

6. MANNER OF PAYMENT

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, contract number **19-J-P-072C**, purchase order number and the AGENCY Project Manager or Contract Administrator name. The AGENCY will endeavor to pay approved invoices/billing statements within 30 calendar days of their receipt. The AGENCY reserves the right to withhold payment to the CONSULTANT if the AGENCY determines that the quantity or quality of the work performed is unacceptable. The AGENCY will provide written notice to the CONSULTANT within 10 business days of the AGENCY's decision not to pay and the reasons for non-payment. Final payment will be withheld until CONSULTANT performs all required Agreement expiration or termination obligations. If CONSULTANT disagrees with the AGENCY's decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes the AGENCY's decision to the AGENCY within 30 calendar days of the AGENCY's notice. If CONSULTANT does not provide written notice in accordance with this section, it waives all rights to challenge the AGENCY's decision.

Submit one copy of each invoice as a PDF via email to:
AccountsPayable@samtrans.com

7. NOTICES

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

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

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

If to the CONSULTANT: Louis Berger U.S., Inc.
Attn: Lawrence Pesesky, Senior Vice President
96 Morton Street, 8th Floor
New York, NY 10014

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

8. OWNERSHIP OF WORK

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

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

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

intellectual-property or proprietary right of any third party.

9. CONFIDENTIALITY

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

The CONSULTANT, its employees, 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/SUBCONSULTANTS

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

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

11. CHANGES

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

work or services related to the proposed adjustment in compensation. The pertinent changes will be expressed in a written supplement to this Agreement issued by the Contracts and Procurement Department prior to implementation of such changes. Failure to provide written notice and receive AGENCY approval for extra work prior to performing extra work may, at the AGENCY's sole discretion, result in nonpayment of the invoices reflecting such work.

12. RESPONSIBILITY: INDEMNIFICATION

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

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

B. Any allegation that materials or services provided by the CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

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

13. INSURANCE

Refer to EXHIBIT C, appended hereto, for the Insurance Requirements.

14. CONSULTANT'S STATUS

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

15. ASSIGNMENT

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

16. AGENCY WARRANTIES

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

17. 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.

18. WARRANTY OF SERVICES

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

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

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

b) The right to have such services done by others and the costs thereof charged to and collected from the CONSULTANT if within 30 days after written notice to the CONSULTANT requiring such re-performance, CONSULTANT fails to give satisfactory evidence to the AGENCY that it has undertaken said re-performance.

c) The right to terminate the Agreement for default.

C. CONSULTANT shall be responsible for all errors and omissions and is expected to pay for environmental planning, permitting and support services rework as a result of errors and omissions.

19. CLAIMS OR DISPUTES

The CONSULTANT will be solely responsible for providing timely written notice to AGENCY of any claims for additional compensation and/or time in accordance with the provisions of this Agreement. It is the AGENCY's intent to investigate and attempt to resolve any CONSULTANT claims before the CONSULTANT has

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

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

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

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

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

20. REMEDIES

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

21. TEMPORARY SUSPENSION OF WORK

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

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

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

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

22. TERMINATION

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

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

AGENCY may terminate this Agreement immediately without the thirty day cure period.

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

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

23. LIQUIDATED DAMAGES

Not applicable.

24. PREVAILING WAGE

Not applicable.

25. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

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

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

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

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

27. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

In connection with the performance of this Agreement the CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, gender, gender identity, sexual orientation, age (over 40), marital status, pregnancy, medical condition, genetic information, or disability as specified in federal, State, and local laws. The CONSULTANT will 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, or national origin. Such actions will include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

28. CONFLICT OF INTEREST

A. General. Depending on the nature of the work performed, a CONSULTANT of the AGENCY may be subject to the same conflict of interest prohibitions established by the Federal Transit Administration (FTA), Federal Highway Administration (FHWA) and California law that govern AGENCY's employees and officials (Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq.). During the proposal process or the term of the Agreement, CONSULTANT and its employees may be required to disclose financial interests.

The CONSULTANT warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §1090 et seq. or §87100 et seq. during the performance of services under this Agreement. The CONSULTANT further

covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

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

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

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

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

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

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

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

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

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

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

29. SUBSTANCE ABUSE PROGRAM

Not applicable.

30. 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.

31. 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.

32. 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.

33. NO THIRD PARTY BENEFICIARIES

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

34. APPLICABLE LAW

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

35. 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.

36. 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.

37. ENTIRE AGREEMENT; MODIFICATION

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

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

PENINSULA CORRIDOR JOINT POWERS BOARD

Signature: E-SIGNED by Jim Hartnett on 2019-10-28 18:01:00 GMT

Print: Jim Hartnett

Title: Executive Director

Date: October 28, 2019

ATTEST:

By: E-SIGNED by Dora Seamans on 2019-10-23 16:52:16 GMT

Dora Seamens
Agency Secretary

APPROVED AS TO FORM:

By: E-SIGNED by Julie Sherman on 2019-10-17 16:44:33 GMT

Julie A. Sherman
Attorney for the Agency

LOUIS BERGER U.S., INC.

Signature: E-SIGNED by Thomas Lewis on 2019-10-23 16:40:21 GMT

Print: Thomas G. Lewis

Title: President

Date: October 23, 2019

Signature: E-SIGNED by Lawrence Pesesky on 2019-10-22 20:37:57 GMT

Print: Lawrence Pesesky

Title: Senior Vice President

Date: October 22, 2019

FIRST AMENDMENT
TO
CONTRACT 19-J-P-072A
FOR
ON-CALL ENVIRONMENTAL PLANNING, PERMITTING AND SUPPORT SERVICES
CONSULTANT: HDR ENGINEERING, INC.

THIS FIRST AMENDMENT modifies the Agreement for providing On-Call Environmental Planning, Permitting and Support Services (Agreement), effective December 1, 2019, by and between the Peninsula Corridor Joint Powers Board (AGENCY) and HDR Engineering, Inc. (CONSULTANT), collectively referred to as "the Parties."

WHEREAS, on October 3, 2019, pursuant to Board Resolution 2019-35, the AGENCY awarded a contract to a pool of consultant firms, including CONSULTANT to provide On-Call Environmental Planning, Permitting and Support Services for a five-year base term and up to two additional, one-year option terms; and

WHEREAS, on December 7, 2023, pursuant to Resolution 2023-XX, the AGENCY authorized an amendment to increase the aggregate, not-to-exceed amount by $2,000,000 from $7,000,000 to a maximum aggregate compensation amount of $9,000,000, to be shared as a pool for authorized tasks amongst the consultant firms; and

WHEREAS, the Parties now desire to amend the Agreement in accordance with the terms and conditions of this First Amendment.

Now, therefore, the Agreement is hereby amended as follows:

1. The 3rd paragraph of Section 5, "Compensation" of the Agreement, is hereby deleted in its entirety and replaced as follows:

   "There is no guarantee of any particular amount of compensation to the CONSULTANT under this Agreement. However, the maximum compensation that the AGENCY has authorized to be expended for this Contract will not exceed **$9,000,000,** and a not-to-exceed aggregate amount of $1,750,000 per option term if exercised. The AGENCY will pay the CONSULTANT in accordance with Section 6."

Except for those changes expressly specified in this First Amendment, all other provisions, requirements, conditions, and sections of the underlying Agreement shall remain in full force and effect.

PENINSULA CORRIDOR JOINT POWERS BOARD	**HDR ENGINEERING, INC.**
Signature:_____	Signature:_____
Print: Michelle Bouchard	Print: Holly Kennedy
Title: Executive Director, Caltrain	Title: Sr. Vice President
Date:_____	Date:_____

ATTEST:

By:_____
Agency Secretary

APPROVED AS TO FORM:

By: _____
Julie Sherman
Attorney for the Agency

*Note: This Amendment must be executed by two Corporate Officers **from two separate corporate categories,** consisting of:

(1) the President, Vice President or Chair of the Board, ***AND***
(2) the Secretary, Assistant Secretary, Chief Financial Officer, Assistant Chief Financial Officer, Treasurer, or Assistant Treasurer.

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

FIRST AMENDMENT
TO
CONTRACT 19-J-P-072B
ON-CALL ENVIRONMENTAL PLANNING, PERMITTING AND SUPPORT SERVICES
CONSULTANT: ICF JONES & STOKES, INC.

THIS FIRST AMENDMENT modifies the Agreement for providing On-Call Environmental Planning, Permitting and Support Services (Agreement), effective December 1, 2019, by and between the Peninsula Corridor Joint Powers Board (AGENCY) and ICF Jones & Stokes, Inc. (CONSULTANT), collectively referred to as "the Parties."

WHEREAS, on October 3, 2019, pursuant to Board Resolution 2019-35, the AGENCY awarded a contract to a pool of consultant firms, including CONSULTANT to provide On-Call Environmental Planning, Permitting and Support Services for a five-year base term and up to two additional, one-year option terms; and

WHEREAS, on December 7, 2023, pursuant to Resolution 2023-XX, the AGENCY authorized an amendment to increase the aggregate, not-to-exceed amount by $2,000,000 from $7,000,000 to a maximum aggregate compensation amount of $9,000,000, to be shared as a pool for authorized tasks amongst the consultant firms; and

WHEREAS, the Parties now desire to amend the Agreement in accordance with the terms and conditions of this First Amendment.

Therefore, the Agreement is hereby amended as follows:

1. The 3rd paragraph of Section 5, "Compensation" of the Agreement, is hereby deleted in its entirety and replaced as follows:

   "There is no guarantee of any particular amount of compensation to the CONSULTANT under this Agreement. However, the maximum compensation that the AGENCY has authorized to be expended for this Contract will not exceed **$9,000,000,** and a not-to-exceed aggregate amount of $1,750,000 per option term if exercised. The AGENCY will pay the CONSULTANT in accordance with Section 6."

Except for those changes expressly specified in this First Amendment, all other provisions, requirements, conditions, and sections of the underlying Agreement shall remain in full force and effect.

PENINSULA CORRIDOR JOINT POWERS BOARD

Signature:_____

Print: Michelle Bouchard

Title: Executive Director, Caltrain

Date:_____

ICF JONES & STOKES, INC.

Signature:_____

Print: XXXXXXXXXX

Title: XXXXXXXXXX

Date:_____

Signature:_____

Print: XXXXXXX

Title: XXXXXXXXXXX

Date:_____

ATTEST:

By:_____
Agency Secretary

APPROVED AS TO FORM:

By: _____
Julie Sherman
Attorney for the Agency

*Note: This Amendment must be executed by <u>two</u> Corporate Officers **from two separate corporate categories,** consisting of:

(1) the President, Vice President or Chair of the Board, ***AND***
(2) the Secretary, Assistant Secretary, Chief Financial Officer, Assistant Chief Financial Officer, Treasurer, or Assistant Treasurer.

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

FIRST AMENDMENT
TO
CONTRACT 19-J-P-072C
ON-CALL ENVIRONMENTAL, PERMITTING AND SUPPORT SERVICES
CONSULTANT: LOUIS BERGER U.S., INC.

THIS AMENDMENT modifies the Agreement for providing On-Call Environmental Planning, Permitting and Support Services (Agreement), effective December 1, 2019, by and between the Peninsula Corridor Joint Powers Board (AGENCY) located at 1250 San Carlos Avenue, San Carlos, CA 94070 and Louis Berger U.S., Inc. (CONSULTANT), located at 96 Morton Street, 8th Floor New York, NY 10014.

WHEREAS, pursuant to Board Resolution 2019-35, the AGENCY awarded a contract to a pool of consultant firms, including CONSULTANT to provide On-Call Environmental Planning, Permitting and Support Services for a five-year base term and up to two additional, one-year option terms; and

WHEREAS, the CONSULTANT has informed the AGENCY that effective January 2, 2020, Louis Berger U.S., Inc. will change its name to WSP USA Solutions Inc. and its address to One Penn Plaza, New York, NY 10019; and

WHEREAS, the parties now desire to amend the Agreement in accordance with the terms and conditions of this First Amendment.

Therefore, the Agreement is hereby amended as follows:

1. All references in the Agreement, and Exhibits A, B, B-1 and C attached thereto, to Louis Berger U.S., Inc. shall be changed to read WSP USA Solutions Inc.

2. Section 7 of the Agreement, Notices, is hereby amended by deleting the second paragraph and addresses in their entirety and replacing with the following:

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

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

If to the CONSULTANT: WSP USA Solutions, Inc.
Attn: Lawrence Pesesky, SVP
One Penn Plaza, 4th Floor
New York, NY 10019

Except for those changes expressly specified in this First Amendment, all other provisions, requirements, conditions, and sections of the underlying Agreement shall remain in full force and effect.

PENINSULA CORRIDOR JOINT POWERS BOARD

Signature: E-SIGNED by Concepcion Gayotin on 2020-02-10 21:05:38 GMT

Print: Concepcion Gayotin

Title: Manager of Procurement

Date: February 10, 2020

WSP USA SOLUTIONS INC.

Signature: E-SIGNED by Lawrence Pesesky on 2020-02-10 17:17:45 GMT

Print: Lawrence Pesesky

Title: Senior Vice President

Date: February 10, 2020

Signature: E-SIGNED by Mark Sadowski on 2020-02-10 20:46:05 GMT

Print: Mark Sadowski

Title: Assistant Secretary

Date: February 10, 2020

SECOND AMENDMENT
TO
CONTRACT 19-J-P-072C
ON-CALL ENVIRONMENTAL PLANNING, PERMITTING AND SUPPORT SERVICES
CONSULTANT: WSP USA SOLUTIONS, INC.

THIS SECOND AMENDMENT modifies the Agreement for providing On-Call Environmental Planning, Permitting and Support Services (Agreement), effective December 1, 2019, by and between the Peninsula Corridor Joint Powers Board (AGENCY) and WSP USA Solutions Inc.(CONSULTANT), collectively referred to as "the Parties."

WHEREAS, on October 3, 2019, pursuant to Board Resolution 2019-35, the AGENCY awarded a contract to a pool of consultant firms, including CONSULTANT to provide On-Call Environmental Planning, Permitting and Support Services for a five-year base term and up to two additional, one-year option terms; and

WHEREAS, the Agreement has been previously amended as follows:

AMENDMENT 1 – effective January 2, 2020, the CONSULTANT informed the AGENCY that Louis Berger U.S., Inc. changed its name to WSP USA Solutions Inc. and its address to One Penn Plaza, New York, NY 10019.

WHEREAS, on December 7, 2023, pursuant to Resolution 2023-XX, the AGENCY authorized an amendment to increase the aggregate, not-to-exceed amount by $2,000,000 from $7,000,000 to a maximum aggregate compensation amount of $9,000,000, to be shared as a pool for authorized tasks amongst the consultant firms; and

WHEREAS, the Parties now desire to amend the Agreement in accordance with the terms and conditions of this Second Amendment.

Therefore, the Agreement is hereby amended as follows:

1. The 3rd paragraph of Section 5, "Compensation" of the Agreement, is hereby deleted in its entirety and replaced as follows:

   "There is no guarantee of any particular amount of compensation to the CONSULTANT under this Agreement. However, the maximum

compensation that the AGENCY has authorized to be expended for this Contract will not exceed **$9,000,000,** and a not-to-exceed aggregate amount of $1,750,000 per option term if exercised. The AGENCY will pay the CONSULTANT in accordance with Section 6."

Except for those changes expressly specified in the First and Second Amendments, all other provisions, requirements, conditions, and sections of the underlying Agreement shall remain in full force and effect.

PENINSULA CORRIDOR JOINT POWERS BOARD

Signature:_____

Print: Michelle Bouchard

Title: Executive Director, Caltrain

Date:_____

WSP USA SOLUTIONS INC.

Signature:_____

Print: Lawrence Pesesky

Title: Senior Vice President

Date:_____

Signature:_____

Print: Mark Sadowski

Title: Assistant Secretary

Date:_____

ATTEST:

By:_____
Agency Secretary

APPROVED AS TO FORM:

By: _____
Julie Sherman
Attorney for the Agency

*Note: This Amendment must be executed by <u>two</u> Corporate Officers **from two separate corporate categories,** consisting of:

(1) the President, Vice President or Chair of the Board, ***AND***
(2) the Secretary, Assistant Secretary, Chief Financial Officer, Assistant Chief Financial Officer, Treasurer, or Assistant Treasurer.

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

Peninsula Corridor Joint Powers Board
Staff Report

To: Finance Committee

Through: Michelle Bouchard, Executive Director

From: Kate Jordan Steiner, Chief Financial Officer

Subject: **Acceptance of Quarterly Fuel Hedge Update**

☐ Finance Committee Recommendation ☐ Technology, Operations, Planning, and Safety Committee Recommendation ☐ Advocacy and Major Projects Committee Recommendation

Purpose and Recommended Action

Staff proposes the Board to review, accept, and enter into the record the presentation providing an update on the implementation of a fuel hedging strategy for Caltrain.

Discussion

The purpose of this presentation is to provide an update on the implementation and performance status of the Fuel Hedging Program (Program) established for Caltrain.

Under this Program, the staff will continue to work with Linwood Capital, LLC in order to:

- Purchase new fuel hedge contracts for the upcoming fiscal year as market conditions allow.
- Maintain the size of the hedge in order to protect Caltrain's fuels budget against volatile price movements in the diesel fuel market.

Background

The Program implemented for Caltrain is designed to minimize large budget variances resulting from the volatility of diesel fuel prices. An effective hedging strategy can increase budget certainty and facilitate a more effective utilization of budgetary resources. The purpose of the Program is not to speculate on the price of fuel but to manage risk, particularly as it relates to Caltrain's annual budget.

FY 2024 History

- As of September 30th, the fuel hedging program had realized net gains of $395,061.54 for the time period July 2023 through September 2023 – the first quarter of FY 2024. This is approximately $0.48 per gallon of realized gain for Q1 FY 2024. The approximate cost of fuel before taxes and fees and after the effect of the hedge is $2.94 per gallon from July 2023 through September 2023.

- Total dollar budget for fuel for Q1 FY 2024 is $3,044,392 based on $2.69 per gallon budget before tax and fees and budgeted consumption of 1,131,744 gallons for the quarter. Estimated total cost before tax and fees and after hedging for Q1 FY 2024 is $2,405,940 or $2.94 per gallon on 819,204 gallons. This renders an approximate Q1 FY 2024 budget surplus of $638,452.

FY 2024 Prospective

- For the remainder of FY 2024, there is currently an unrealized gain of $1,210,897.80 which is $0.36/gallon on all projected gallons October 2023 through June 2024. This assumes projected consumption of 4,490,072 gallons for the entirety of FY 2024.
- For the remainder of FY 2024, approximately 90% (after tax) of the anticipated fuel usage is hedged at an average price of $2.63/gallon excluding taxes and fees ($3.36/gallon with taxes and fees) versus a currently planned budget estimate of $2.69/gallon, excluding taxes and fees.
- The remaining un-hedged gallons for the remainder of FY 2024 have a projected cost of $3.03 excluding taxes and fees (3.76 with tax and fees) as of 9/30/23.
- For the remainder of FY 2024, the expected weighted average cost of all gallons net of hedge and excluding tax and fees is $2.67/gallon and including taxes and fees is $3.40/gallon.
- Total dollar budget for fuel for the remainder of FY 2024 is $9,042,220 based on $2.69 per gallon before tax and fees and estimated total remaining consumption of 3,361,420 gallons. The estimated total cost before tax and fees and after hedging for the remainder of FY 2024 as of 9/30/23 is $8,974,888 or $2.67 per gallon.
- The current expected budget surplus for the entirety of FY 2024 is $697,465 given current volume projections.

Budget Impact

There is no impact on the budget.

Prepared By:	Connie Mobley-Ritter	Director, Treasury	650-508-7765
	Kevin Beltz	Manager, Debt and Investments	650-508-6405