



JPB Board of Directors  
Meeting of January 4, 2024

Supplemental Reading File

Agenda

<u>Item #</u>	<u>Subject</u>
6.d.	Annual Comprehensive Financial Report
6.h.	Draft Agreement 24-J-P-003A On-Call CM Services_Ghirardelli
6.h.	Draft Agreement 24-J-P-003C On-Call CM Services_Gannett
6.h.	Fleming Draft Agreement 24-J-P-003C On-Call CM Services_WSP
6.i.	Draft Agreement 24-J-P-010A On-Call GEC- AECOM
6.i.	Draft Agreement 24-J-P-010B On-Call GEC- HDR
6.i.	Draft Agreement 24-J-P-010C On-Call GEC- TYLin
6.j.	Draft Agreement 24-J-P-002A On-Call PMO Services_Ghirardelli
6.j.	Draft Agreement 24-J-P-002B On-Call PMO Services_Jacobs
6.j.	Draft Agreement 24-J-P-002C On-Call PMO Services_Consor
6.l.	Draft Agreement IFB 24-J-C-028 Mini-High Platform Project

<u>#</u>	<u>Subject</u>
1	Staff Report - Diridon Station Business Case Update

- 2 Staff Report - On-Call Communication and Signal Services Update
- 3 Staff Report - On-Call Transportation Planning and Consultant Support Services Update
- 4 Staff Report - Receive Update on New Fare Media Based Ridership Estimation Model
- 5 Staff Report - State and Federal Legislative Update
- 6 CP Quarterly Report - December 2023

# Peninsula Corridor Joint Powers Board San Carlos, California



A Joint Powers Authority  
Established by Agreement among:

City and County of San Francisco  
San Mateo County Transit District  
Santa Clara Valley Transportation Authority



# Annual Comprehensive Financial Report

Fiscal Years Ended June 30, 2023 and 2022

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**PENINSULA CORRIDOR  
JOINT POWERS BOARD**

*San Carlos, California*

*Annual Comprehensive Financial Report*  
Fiscal Years Ended June 30, 2023 and 2022

**Prepared by the Finance Division**

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# *Section I*

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## **INTRODUCTORY**

Letter of Transmittal

GFOA Certificate of Achievement

Board of Directors

Executive Management

Organization Chart

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Table of Credits

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**December 19, 2023**

**To the Board of Directors of the Peninsula Corridor Joint Powers Board and the Citizens of San Francisco, San Mateo, and Santa Clara Counties  
San Carlos, California**

**Annual Comprehensive Financial Report Year Ended June 30, 2023**

We are pleased to present the Annual Comprehensive Financial Report (ACFR) of the Peninsula Corridor Joint Powers Board (JPB) for the fiscal year July 1, 2022, through June 30, 2023. This transmittal letter provides a summary of the JPB's finances, services, achievements, and economic prospects for readers without a technical background in accounting or finance. This fiscal year reflects continued challenges as the agency moves forward in its recovery from the COVID pandemic. This letter will address those impacts where appropriate. Readers desiring a more detailed discussion of the JPB's financial results may refer to the Management's Discussion and Analysis in the Financial Section.

Management assumes sole responsibility for all the information contained in this report, including its presentation and the adequacy of its disclosures. To the best of our knowledge, we believe this report to be complete and reliable in all material respects. To provide a reasonable basis for making this representation, we have established a comprehensive system of internal controls designed to protect the JPB's assets from loss, to identify and record transactions accurately, and to compile the information necessary to produce financial statements in conformity with generally accepted accounting principles. Because the cost of internal controls should not exceed the likely benefits, the JPB's internal control system intends to provide reasonable, but not absolute, assurance that the financial statements are free from material misstatement.

To test the performance of the internal control system, the JPB contracted for independent auditing services from Brown Armstrong Accountancy Corporation, a certified public accounting firm licensed to practice in the State of California. The auditor expressed an opinion that the JPB's financial statements are fairly stated in all material respects and in compliance with accounting principles generally accepted in the United States of America. This conclusion is the most favorable kind, commonly known as an "unmodified" or "clean" opinion.

**PROFILE OF THE ORGANIZATION**

***Purpose***

The JPB is responsible for the Caltrain passenger rail service on the San Francisco Peninsula and south into Santa Clara County. Caltrain owns and operates the rail system that has been a central part of Peninsula communities since 1865. The rail line on which service is operated currently extends from San Francisco 77 miles south to Gilroy,

serving 31 stations. Spanning San Francisco, San Mateo, and Santa Clara counties, Caltrain directly serves 20 cities and provides critical connections to other transit services. The JPB owns 51 miles of the rail line and operates on Union Pacific owned track for the remaining 26 miles.

### ***Entity***

The JPB is a Joint Powers Authority that is legally and financially independent from its three member agencies, namely the San Mateo County Transit District (District), the Santa Clara Valley Transportation Authority (VTA), and the City and County of San Francisco (CCSF), and is not a component unit of any other organization. Furthermore, the JPB has no component unit organizations under its control. Therefore, this ACFR and the financial statements contained within represent solely the activities, transactions, and status of the JPB.

### ***History***

In 1980, after two years of negotiations, the California Department of Transportation (Caltrans) and the Southern Pacific Transportation Company (Southern Pacific) executed a purchase-of-service agreement for maintaining passenger rail service between San Francisco and San Jose. Service under this agreement began in 1980 with Southern Pacific operating the trains while receiving subsidies to cover its operating costs from Caltrans and the three member agencies and with Caltrans providing contract administration, service planning, marketing, engineering, scheduling, fare management, customer support, and performance monitoring.

In 1988, CCSF, the District, and VTA commissioned a study that recommended transferring responsibility for the rail service from the state to the local level. The three member agencies accomplished this objective in October 1991, executing a new joint powers agreement that formed the current JPB. Two months later, the JPB purchased the rail right-of-way between San Francisco and San Jose (Mainline) and perpetual trackage rights between San Jose and Gilroy (Gilroy Extension) from Southern Pacific.

The JPB Member Agencies and the California Transportation Commission funded this acquisition. The JPB holds title to all right-of-way property located in the County of San Francisco and the County of Santa Clara. The JPB holds title to all right-of-way property in the County of San Mateo as tenants in common with the District, each to an undivided 50% share. Pursuant to a 2022 agreement between the JPB and its member agencies, the District is in the process of conveying its tenant in common interest on the right-of-way property in the County of San Mateo to the JPB. In addition, the JPB holds trackage rights that extend south from the end of its property ownership in San Jose to Gilroy over a rail line owned by the Union Pacific Railroad. Those rights include the rights to operate five daily two-way train pairs.

The JPB assumed responsibility for the operation of Caltrain service from Caltrans in 1992. Amtrak served as the JPB's contracted rail operator until May 2012. The Caltrain Board of Directors, at its September 2011 meeting, authorized the award of a new operating contract to TransitAmerica Services, Inc. (TASI). The contract carried a 5-year base term with the ability to execute 5 additional one-year options. In 2017, the JPB exercised all 5 of the option years, extending the contract with TASI to June 2022. In January 2021, the JPB extended the contract through June 2027 in order to enable the completion of construction of the Federal Transit Administration (FTA)-funded corridor electrification project and subsequent start-up of service in the electrified environment.

### ***Governance***

The joint powers agreement establishes a nine-person Board of Directors (Board) that governs the operations, maintenance, repair, improvements, and expansion of Caltrain. Each of the three Member Agencies appoints three persons to serve on the Board. The JPB also created a nine-person Citizens Advisory Committee (CAC) composed of three citizens from each JPB county. The principal objective of the CAC is to articulate the interests and needs of current and future customers.

On August 4, 2022, the JPB, the District, VTA, and CCSF approved a Memorandum of Understanding (MOU) relating to the JPB's governance. The MOU established a permanent, separate Executive Director position for Caltrain while authorizing five additional management positions for the agency: Chief of Staff, Director of Government and Community Affairs, Director of Budgets and Financial Analysis, Director of Real Estate, and Director of Grants and Fund Management. The General Manager of the District formerly served as the Executive Director of Caltrain. Under this agreement, the Executive Director reports directly to the Caltrain Board of Directors and the District provides services to Caltrain in the areas of Human Resources, Contracts and Procurements, Information Technology, Civil Rights, Accounting, Treasury, Budgets, Finance, Communications, Government and External Affairs, Real Estate, Grants, and Safety and Security. Subsequent to the MOU, the District and Caltrain also agreed to add a Chief Safety Officer position for Caltrain reporting to the Caltrain Executive Director. The MOU also provides for repayment of the District's initial investment in the Caltrain Right of Way; upon repayment, the District is required to reconvey its tenancy in common interest in the Right of Way to the JPB. The repayment is now complete and, as discussed above, the District is now in the process of reconveying its interest to the JPB.

### ***Administration***

The joint powers agreement as first executed in 1988, and as amended and restated in 1996, and as modified by the 2022 MOU, designates the District as the Managing Agency to provide management, administrative, and staff services for Caltrain under the direction and oversight of the JPB Board. The JPB reimburses the District for the direct and administrative costs incurred in providing the Managing Agency services. Some administrative costs are determined by overhead rates approved by the FTA. Currently, the District provides the following services for the JPB:

The *Communications Division* is responsible for customer service, marketing, sales, advertising, distribution services, public information, fare media, media relations, legislative activities, and community outreach.

The *Finance Division* is responsible for financial accounting and reporting, capital and operational budgeting, payroll and vendor disbursements, investments and cash management, debt management, revenue control, purchasing, contract administration, grant administration, financial planning and analysis, and risk management.

The *Information Technology (IT) Division* is responsible for the innovation and technology of the District including but not limited to Cybersecurity, Database Administration, IT Infrastructure, IT Applications and Software, Network Administration, and Systems Administration.

The *People and Culture Division* is responsible for Office of Civil Rights (OCR), Employee and Labor Relations (ER), and Human Resources (HR) Services. OCR consists of Civil Rights and EEO; Diversity, Equity, Inclusion & Belonging (DEIB); Disadvantage and Small Business Enterprise (DBE/SBE) Administration; Contract (Labor) Compliance; and Title VI. ER consists of Employee and Labor Relations, Drugfree and Pull Notice Programs, Training and Development, and Employee Engagement. Human Resources consists of Benefits, Employee Services (Day-to-Day Administration), HR Policies, Leave of Absences (LOA), Retirement, Talent Acquisition (Recruitment), HR Strategies, and HR/Rail Shared Services.

### ***Rail Division***

The *Rail Division* operates under the direction of the Caltrain Executive Director, and is responsible for Caltrain operations and maintenance oversight (including administration of the rail service-operating contract), state-of-good-repair, operations planning, engineering, rail safety, capital project planning, and delivery including design, construction, and integration of electrified service. The *Caltrain Modernization Program (CalMod)* is responsible for the implementation of the electrification project that will upgrade the performance, operating efficiency, capacity, safety and reliability of Caltrain's commuter rail service.

## ***Budgetary Control***

State law requires the JPB to adopt an annual budget by resolution of the Board. In FY23, the Board adopted an amendment to the JPB Balanced Budget and Financial Reserve Policy to require appropriating funds for operating and capital budgets on a biennial basis each even numbered fiscal year, beginning with fiscal year 2024 and 2025. Instituting a biennial budget for both the operating and capital budgets allowed the agency to focus on longer-term financial planning for operation of an electrified railroad while facilitating coordination with members agencies on capital improvements and obligations. The Board monitors budget-to-actual performance through monthly staff reports. The Financial Section of this report includes a supplemental schedule that compares actual results on a budgetary basis of accounting to the final adopted budgets.

The Board has delegated the authority to transfer budget amounts between divisions and departments to the Executive Director or his/her designee. However, any increase to the expenditure budget as a whole requires the approval of the Board. In addition, the JPB uses an encumbrance system to reduce budget balances by issuing purchase orders to avoid over-commitment of resources.

The JPB employs the same basis and principles of accounting for both budgeted and actual revenues and expenses, except that actual proceeds from the sale of capital assets, unrealized investment gains and losses, depreciation and amortization, and inter-fund transfers are not included in the budget. As a special purpose organization established pursuant to joint powers legislation, the JPB is not subject to the State of California's Gann Act requiring adherence to an annual appropriation limit.

## **FINANCIAL AND ECONOMIC OUTLOOK**

### ***Local Economy***

The Bay Area continues its rebound from the pandemic, but high inflation and massive tech layoffs clouded the Bay Area economy with uncertainty in FY23. The second half of 2022 reflected the highest inflation since the early 1980s, which led to concerns of slower economic growth and a possible recession. To combat high and persistent inflation, the Federal Reserve implemented aggressive interest rate hikes starting in March 2022. As a result, inflation dipped in June 2023 to its lowest pace in more than 2 years, indicating price increases are cooling amid the Federal Reserve's rate-hiking regime. On employment, despite the massive tech industry layoffs in late 2022 and early 2023, the Bay Area job market powered through with robust job gains in spring 2023, partly thanks to the ascendance of artificial intelligence, and strong job growth in the education, health services, and construction sectors, further underscoring the diversity of the region's economy and its ability to withstand industry-specific turbulence. For the remainder of 2023 and into 2024, the pace of inflation on housing, consumer goods/services and job markets growth remain key factors and can present continued challenges to Bay Area economy.

According to the state of California Employment Development Department (EDD), the unemployment rate in the San Francisco-Redwood City-South San Francisco Metropolitan Area was 3.2 percent in June 2023, up from a revised 2.9 percent in May 2023, and higher than estimates a year-ago of 2.5 percent. The unemployment rate in the San Jose-Sunnyvale-Santa Clara Area was 3.7 percent in June 2023, up from a revised 3.3 percent in May 2023, and above estimates a year-ago of 2.7 percent. This compares with an unadjusted unemployment rate of 4.9 percent for California and 3.8 percent for the nation during the same period.

The unemployment rate was 3.2 percent in San Francisco County, 3.1 percent in San Mateo County, and 3.6 percent in Santa Clara County. Per the EDD, between May 2022 and May 2023, the total number of jobs in the counties of San Francisco and San Mateo increased by 30,600 or 2.6 percent. Between June 2022 and June 2023, the combined employment in the South Bay Counties of San Benito and Santa Clara increased by 32,900 or 2.8 percent.

COVID, and the changes it brought to the workplace as we knew it, has had a more dramatic impact on Caltrain's ridership than any occurrence in its history. With ridership dropping by 97 percent in the early days of the shelter-in-place order, the pandemic posed a unique and serious challenge to Caltrain as the service adapted to the new normal. Caltrain's historical reliance on farebox revenues made the agency especially vulnerable to that drop, resulting in substantial budget deficits. However, despite these challenges, Caltrain was quick to react in order to protect the health and safety of its riders and employees. In addition, Caltrain received federal funds to reduce the budget deficits.

Fortunately, Caltrain's ridership continues to trend upward. In June 2023, weekday ridership exceeded 20,000 on average, approximately 33% of the pre-COVID level. Weekend ridership had been growing at a higher rate through 2022; however, in early 2023 Caltrain embarked on a series of partial weekend closures in order to accelerate work on the Electrification Project, which has impacted ridership growth due to the need for customers to transfer to substitute bus service. Nonetheless, special events during the Spring and Summer of 2023 led to a steady increase in weekend ridership from April through June of this year.

Caltrain continues to operate a schedule featuring 104 trains each weekday, including hourly all-stop local trains throughout the day as well as a number of peak-hour limited and express trains to provide faster travel times and several different service options to increase ridership demand. On September 12, 2022, Caltrain implemented a schedule adjustment increasing service to 22<sup>nd</sup> St and South San Francisco stations by adding stops to existing limited trains, as well as adjusting the evening schedule to provide better transfers with the Bay Area Rapid Transit District (BART) at the Millbrae Transit Center.

Additionally, there have been several temporary weekday schedule reductions to accommodate Peninsula Corridor Electrification Project (PCEP) construction, along with the partial weekend closures mentioned above, with the goal of initiating electrified revenue service in September 2024.

In May 2023, Caltrain's Executive Director authorized a promotional fare reduction, which postponed previously approved May 2022 fare changes to further alleviate the economic effects of the COVID-19 pandemic on riders, incentivize Caltrain ridership, and potentially increase overall fare revenue. This action extended the ongoing postponement of Caltrain fares, after the Board voted to delay the implementation of certain previously approved fare increases in both June 2021 and May 2022. Caltrain has taken additional steps during the pandemic to enhance affordability – for example, providing a 50% discounted fare promotion in both September 2021 and April 2022 in addition to implementing and expanding a donation program for unused institutional pass products. Caltrain has also formed a Ridership Recovery Growth Force to develop specific customer acquisition strategies including community partnerships, brand campaigns, and engagement events.

Housing production has increased in recent years but is projected to be primarily made up of apartments and condominiums. Housing affordability remains a major issue for the entire Bay Area, with median home selling prices as of June 2023 at \$1.4 million in San Francisco and San Mateo Counties, and \$1.6 million in Santa Clara County. Per Redfin, San Francisco County home prices were down 8.8% compared to last year. San Mateo County home prices were down 4.1%, while Santa Clara County were up 2.6%. Home ownership will continue to be expensive in the entire Bay area with high inflation, higher interest rates, and low inventory. Because of this, the relatively high cost of living, and a greater ability to work remotely, population growth in all 3 counties is not expected to grow but continue to decline through 2027.

Job growth continues to improve, both nationally and in the Bay Area with the San Jose metro area outpacing other parts of the Bay Area in terms of overall employment recovery. The median household income in 2022 was \$146,300, \$136,700, and \$148,600 in Santa Clara County, San Francisco County, and San Mateo County, respectively, placing the three counties among the wealthiest regions in California.

## ***Measure RR***

In 2020, the voters of San Francisco, San Mateo, and Santa Clara Counties approved a ballot measure, known as Measure RR, which levies a one-eighth (1/8) of one percent (0.125%) retail transactions and use tax for a period of thirty (30) years in all three counties. This tax provides the first and only dedicated funding source for Caltrain. The purpose of Measure RR is to fund the operating and capital expenses of the JPB rail service and to support the operating and capital needs required to implement the Long-Range Service Vision adopted by the Board as part of the Caltrain Business Plan. The revenue from Measure RR in the fiscal year 2023 is \$121.6 million.

Caltrain's Citizens Advisory Committee (CAC), in its capacity as the independent oversight committee for the Measure RR sales tax, is responsible for providing information to the taxpayers of the three counties to ensure that the tax proceeds have been expended for the purposes set forth in the Measure RR ballot language. On March 15, 2023, the CAC held a public hearing on the annual Measure RR audit report conducted by Brown Armstrong, Accountancy Corporation, an independent accounting firm. On June 21, 2023, the CAC approved the annual Measure RR report.

As the only Bay Area transit system without a dedicated revenue source prior to the passage of Measure RR, Caltrain was heavily reliant on passenger fares to maintain operations, making the service especially vulnerable to a pandemic. The measure RR will allow Caltrain to invest in the operation and expansion of faster, more frequent electrified service with the added capacity necessary to accommodate expected increases in ridership demand in the decades to come. It will also allow the system to advance equity policies to help ensure Caltrain is accessible and affordable to all members of the communities it serves.

Despite operating without a dedicated funding source for so many years, Caltrain had grown to become the seventh largest commuter railroad in the country, the largest carrier of bikes of any American transit system, and the nation's most efficient railroad pre-COVID as measured by farebox recovery. Even after the pandemic, Caltrain remains the eighth largest commuter rail system in the nation.

## ***Long-Term Financial and Strategic Planning***

In 2017, Caltrain launched a Business Plan process that provided a major update to Caltrain's plans, policies, and financial projections given the financial performance of Caltrain at that time. As part of the Business Plan process, in October 2019, the Caltrain Board of Directors unanimously adopted a Long-Range Service Vision for the railroad, which provides high-level policy guidance to evolve the Caltrain corridor and service from a traditional commuter railroad to a regional rail system operating at transit-level frequencies throughout the day.

In fall of 2020, the Caltrain Board of Directors adopted an Equity, Connectivity, Recovery, and Growth Policy Framework to direct Caltrain's focus on COVID response and recovery in the near-term, while still supporting longer-term progress towards achieving the Service Vision. As the Caltrain team focused on COVID response and recovery, staff also participated in the Metropolitan Transportation Commission (MTC)-led Blue Ribbon Transit Recovery Task Force initiative (Task Force).

In July 2021, the Task Force approved 27 specific near-term actions to accelerate regional recovery and create a better connected, more efficient, and more customer-focused Bay Area transit system. Caltrain has been a leader in many Task Force-initiated projects, including Regional Network Management and the Rail Partnerships Study. Both initiatives are focused on creating frameworks for better regional decision-making on capital projects, operations, and funding. Caltrain will continue to collaborate with its regional partners, in particular the rail operators, to provide a better customer experience and greater value to corridor communities.



Due to lasting impacts of the COVID-19 pandemic on ridership, revenue, and traditional funding sources, Caltrain has continued to face significant financial challenges, including an ongoing structural deficit in its operating budget. In November 2022, Caltrain began the process of developing a Strategic Financial Plan in response to the ongoing impacts of the COVID-19 pandemic on Caltrain's finances. The objective of the Strategic Financial Plan was to forecast Caltrain's operating position over the next ten years while sustaining a competitive and attractive level of service; maintaining a commitment to equity; building ridership by holding fares steady; and completing electrification. A special Board workshop was conducted on April 6, 2023, to present the Strategic Financial Plan, which concluded that Caltrain can effectively manage its operating costs and use its financial resources to delay the fiscal cliff by two years until FY26, but Caltrain still needs significant additional funding to support both operations and its capital investments moving forward. The Strategic Financial Plan also estimated a cumulative 10-year operating deficit as high as \$545 million based on numerous revenue and cost assumptions.

Caltrain is currently reviewing the Strategic Financial Plan to assess what changes may be merited given the financial performance of Caltrain since April 2023. Factors that influence the system's projected operating results include, but are not limited to, ridership, Measure RR revenues, service levels, fare policy and pass programs, incremental impacts of electrified service on operating revenues and costs, and cost containment strategies, among other factors. Caltrain currently anticipates presenting an update to the Strategic Financial Plan in the first quarter of 2024.

Caltrain's current capital program focuses on maintaining the JPB's assets in a state-of-good-repair, enhancing the reliability of the system, and delivering electrified service from San Francisco to San Jose by 2024. The capital program also reflects Caltrain's ongoing planning for the next generation of system improvements that are needed through the fiscal year 2024 timeframe to expand system capacity and continue preparations for the Caltrain/High Speed Rail (HSR) blended system. Over the coming year, Caltrain will continue to work on the development of a formal 10-year Capital Improvement Plan (CIP), which will provide the organization with a roadmap to the agency's investments in capital projects and programs, improve the organization's understanding of Caltrain's long-term funding needs, and support the implementation of new potential funding strategies.

## **MAJOR INITIATIVES**

### ***Caltrain Electrification***

The Peninsula Corridor Electrification Project (PCEP) is the largest component of the Caltrain Capital Improvement Program. PCEP will electrify the Caltrain Corridor from San Francisco's 4<sup>th</sup> and King Caltrain Station to approximately the Tamien Caltrain Station, convert diesel-hauled to Electric Multiple Unit (EMU) trains, and enable faster and more frequent service. PCEP includes electrification and other projects that will upgrade the performance, efficiency, capacity, safety, and reliability of Caltrain's service. Electrification provides the foundation for future improvements, including full conversion to a zero-emission fleet, platform and station improvements, the extension of service to Downtown San Francisco, and other projects that allow Caltrain to grow and evolve with the Bay Area.

### ***Regional Service Coordination***

Caltrain is at the heart of the Peninsula transportation network and collaborates with other Bay Area transit agencies to provide connections between systems. These connections are with the District (SamTrans), the San Francisco Municipal Transportation Agency (SFMTA/Muni), BART, VTA, Capitol Corridor, Altamont Corridor Express (ACE), Dumbarton Express, and the Alameda-Contra Costa Transit District (AC Transit) as follows:

- **SamTrans Bus Service:** Passengers may connect to SamTrans at most stations in San Mateo County.
- **Muni Light Rail and Muni Bus:** Passengers may connect to the Muni Light Rail N-Judah and T-Third lines and the Muni Bus lines 30 and 45 across from the San Francisco Caltrain Station.
- **BART:** Passengers may connect to BART at the Millbrae Transit Center.

- VTA Light Rail: Caltrain passengers may connect to the VTA system at the Mountain View station and the Diridon and Tamien stations in San Jose.
- VTA Bus Service: Passengers may connect to VTA buses at most stations in Santa Clara County.
- Amtrak's Capitol Corridor: Passengers may connect to Caltrain at the San Jose Diridon station.
- ACE: Passengers may connect to Caltrain at the Santa Clara and San Jose Diridon stations.
- Dumbarton Express: Passengers may connect to the DB Express at the Palo Alto station.

In addition to service connectivity, Caltrain is one of the Bay Area transit agencies that is a partner in Clipper, an electronic fare payment card. The program is coordinated by the Metropolitan Transportation Commission, which is the region's planning organization.

### ***State-of-Good-Repair Program***

This program includes system-wide, scheduled improvements on infrastructure, tracks, bridges, signal and communication equipment, stations, right-of-way fencing, ticket vending equipment, and preventative maintenance and strategic replacement of the Caltrain rolling stock. In order to ensure these assets are kept in a state-of-good-repair, replacement and rehabilitation of these assets must be done at intervals recommended by industry or manufacturer standards. Failure to maintain this program could lead to higher costs of operating these assets due to higher maintenance costs and operational delays that occur when these assets are out of service or in a state of disrepair.

Projects reaching substantial completion in fiscal year (FY) 23 include Bayshore Station Overpass Pedestrian Bridge Rehabilitation in San Francisco, Next Generation Clipper Validator Site Preparation, and closed-circuit television (CCTV) Assessment.

Projects currently underway include Guadalupe River Bridge Replacement in San Jose which began construction; the San Francisquito Creek Bridge Conceptual Design & Community Engagement, which has been redefined to undertake additional alternative analyses; the Migration to Digital Voice Radio System, which completed design; and the Broadband Wireless Communication System project, which issued Notice to Proceed.

Rolling stock activities completed in FY23 include various component replacements on locomotives and cars to improve reliability, safety, and customer experience. Of note, a complete mid-life overhaul project is currently in progress on six MP-36-3C locomotives that will remain in service following electrification. Through FY23, two vehicles have been overhauled and returned, and two others were undergoing rehabilitation. The remaining two vehicles are scheduled to begin rehabilitation in FY24.

### ***Caltrain Safety Improvements***

Caltrain safety improvements include station redesign, grade crossing improvements, construction of grade separations, right-of-way fencing, and closed-circuit camera systems. In addition to these capital projects, Caltrain is improving safety through a focused safety culture development program, safety performance dashboards, roadway worker protection enhancements, and risk-based hazard management.

Ongoing improvements to stations include the demolition of existing narrow center platforms and construction of new platforms, installation of center fencing between the existing mainline tracks through the platform area, and installation of new pedestrian underpasses and/or signalized pedestrian at-grade crossings with pedestrian gates. The South San Francisco Station is an example of such a station project.

The grade crossing improvement program was developed to make grade crossings in San Francisco, San Mateo, and Santa Clara Counties safer for both vehicular and pedestrian traffic. Projects are developed using a hazard analysis tool.

Grade crossing improvement projects undertaken in FY23 included the completion of the Mary Avenue Signal Preemption project, beginning of the work at the Watkins Ave. grade crossing, and 100% design completion for 16<sup>th</sup> Street (San Francisco), Mission Bay (San Francisco), East Meadow (Palo Alto), Whipple Ave. (Redwood City), Ravenswood (Menlo Park), and Main St. (Redwood City).

Grade separation projects aim to improve safety by separating vehicle traffic from rail crossings. Caltrain is working with numerous other cities to help plan, design, and eventually construct grade separations at some of the busiest intersections along the rail line. In FY23, those efforts included the Broadway Burlingame Grade Separation project that advanced to 65% design; the Mountain View Transit Center and Grade Separation project that advanced to 65% design; the Rengstorff Grade Separation project that advanced into 65% design; South Linden and Scott that began preliminary design; and the following projects which are in the planning stage – Whipple Avenue, Bernardo Avenue, Sunnyvale, Middle Avenue, and the North Fair Oaks Bicycle and Pedestrian Crossing.

The safety-fencing project is an ongoing annual project to install high security fencing along the right-of-way to deter trespassing as well as illegal dumping.

The emphasis on safety culture development is evident by the creation of Caltrain's core value: Safety First and Always. Bi-weekly and monthly safety culture messaging; safety moments at all meetings; a Safety Champions program; and development of safety reporting, training, communication, and recognition programs further emphasize safety as our primary core value. Caltrain has also created the Caltrain Executive Safety Committee that meets monthly to ensure compliance to the Caltrain Safety Plan.

A renewed emphasis on data-based decision making has led to the development of Safety Performance dashboards that include both lagging and leading performance indicators, enabling a more proactive approach to safety that will help reduce the chance of injury and damage to property.

Roadway Worker Protection (RWP) has also been a focus in the aftermath of a train collision incident in March 2022. Gaps were discovered in RWP programs that contributed to the San Bruno incident, and Caltrain has closed those gaps through revised RWP training; changed to a safer fouling distance – 10 feet from the rail and 10 feet from the overhead wires; improved processes for issuing track and time protection; and investment in a software based enhanced employee protection system that adds yet another layer of RWP.

Finally, Caltrain has created an enterprise-wide Hazard/Risk Register and Risk Based Hazard Management processes that are being integrated into many Caltrain processes to ensure risk is being considered in prioritization and decision making across all departments.

## **FUTURE OF CALTRAIN – SYSTEM EXPANSION AND CONNECTIONS**

Prior to California High Speed Rail's anticipated arrival, additional system upgrades must also be planned, funded, and constructed. These include high-speed rail station modifications and the Transbay Joint Powers Authority's (TJPA) rail extension from the Caltrain 4<sup>th</sup> and King station to the new Salesforce Transit Center in downtown San Francisco. The blended system may also necessitate passing tracks that allow high-speed rail trains to bypass the Caltrain trains; grade crossing upgrades, including potential grade separations; a storage and maintenance facility; and other system upgrades such as expanded platforms that allow for longer trains and level boarding.

Prior to the onset of the pandemic, Caltrain operated 92 diesel locomotive-hauled trains per day on weekdays between San Francisco and San Jose with limited service further south to Gilroy. In the peak period, it operated 5 trains per peak hour per direction. The railroad expanded service to 104 trains per day at the end of August 2021 with an emphasis on more frequent service during off-peak and evening hours, with 4 trains per hour per direction in the peak periods. After electrification is complete, pending anticipated approval from the FTA, Caltrain plans to extend

the timeline for implementation of increased service levels to 114 trains per day (6 trains per hour per direction in the peak periods) until the railroad achieves an Average Weekday Ridership level of 63,598 riders, which was the 2019 Average Weekday Ridership level before the COVID-19 pandemic.

As discussed above, the Long-Range Service Vision (Service Vision) was adopted by the JPB to guide the long-range development of the Caltrain rail service and supporting plans, policies, and projects. The Service Vision was based on detailed technical analysis undertaken by Caltrain and its partner agencies as part of the Caltrain Business Plan process. The Service Vision directs the railroad to plan for substantially expanded rail service that in the long-term will address the local and regional mobility needs of the corridor while supporting local economic development activities. When fully realized, this service will provide:

- A mixture of express and local services operated in an evenly spaced, bidirectional pattern.
- Accommodation of California High Speed Rail, Capitol Corridor, Altamont Corridor Express, and freight services in accordance with the terms of existing agreements.
- Incremental development of corridor projects and infrastructure.
- Continued planning for a potential “higher” growth level of service as well as potential new regional and mega-regional connections.

The Service Vision will be periodically reaffirmed to ensure that it continues to provide relevant and useful guidance to the railroad. Such reaffirmations will occur in regular intervals of no less than five years and in response to significant changes to JPB or partner projects that materially influence the substance of the Service Vision.

In March 2023, the JPB entered into a Memorandum of Understanding with the Transportation Agency of Monterey County to collaborate on the continued development of a potential extension of Caltrain services along the Union Pacific Railroad (UPRR) Coast Main Line Track, between the City of Gilroy at Milepost (MP) 77.4, to the City of Salinas at MP 114.94. The implementation of this project is contingent on funding availability and the parties’ execution of an operations and maintenance agreement.

## **FINANCIAL POLICIES**

The JPB uses a comprehensive set of internal and board adopted financial policies. These policies address items such as cash management, reserves, and debt management. The policies are reviewed regularly by staff and are brought to the JPB Board for amendment and/or re-adoption as necessary.

## **AWARDS AND ACKNOWLEDGMENTS**

The JPB staff and its contracted service providers bring an effective combination of skill, experience and dedication to carrying out the agency's mission. Together, they plan, develop, and finance the creation of a modern, coordinated multimodal transportation system offering convenient access to the many areas of the Bay Area and beyond.

The Government Finance Officers Association (GFOA) recognized the JPB's 2022 Annual Comprehensive Financial Report for excellence in financial reporting and the Certificate of Achievement appears immediately following this transmittal letter. To be awarded a certificate, a report must be easy to read and efficiently organized, while satisfying both generally accepted accounting principles and applicable legal requirements. We believe our 2023 Annual Comprehensive Financial Report also meets the requirements for a Certificate of Achievement and have submitted it to the GFOA for evaluation. We would like to thank our independent audit firm, Brown Armstrong Accountancy Corporation, for its timely and expert guidance in this matter.

The Annual Comprehensive Financial Report requires the dedicated effort of many individuals working together as a team. We would like to extend our grateful recognition to all the individuals who assisted in both the preparation of this report and the processing of financial transactions throughout the fiscal year. Finally, we wish to thank the Board of Directors for their interest and support in the development of a reliable financial management and reporting system.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michelle Bouchard". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michelle Bouchard  
Executive Director

A handwritten signature in black ink, appearing to read "Kate Jordan Steiner". The signature is cursive and includes a long horizontal line extending to the right.

Kate Jordan Steiner  
Chief Financial Officer



Government Finance Officers Association

Certificate of  
Achievement for  
Excellence in  
Financial Reporting

Presented to

**Peninsula Corridor Joint Powers Board California**

For its Annual Comprehensive

Financial Report

For the Fiscal Year Ended

June 30, 2022

*Christopher P. Morill*

Executive Director/CEO

***Representing City and County of San Francisco:***

Steve Heminger

Monique Zmuda

Shamann Walton

***Representing San Mateo County Transit District:***

Jeff Gee, Chair

Rico E. Medina

Ray Mueller

***Representing Santa Clara Valley Transportation Authority:***

Devora "Dev" Davis, Vice Chair

Cindy Chavez

Pat Burt

**EXECUTIVE DIRECTOR**

Michelle Bouchard

**EXECUTIVE OFFICERS**

Robert Barnard, Deputy Chief, Design and Construction

Dahlia Chazan, Deputy Chief, Caltrain Planning

Tabby Davenport, Director, Safety and Security

Casey Fromson, Chief Communications Officer

John Hogan, Chief Operating Officer, Rail

Kate Jordan Steiner, Chief Financial Officer

Nate Kramer, Chief People & Culture Officer

Mehul Kumar, Chief Information & Technology Officer

Michael Meader, Chief Safety Officer

Dora Seamans, Executive Officer, District Secretary

Pranaya Shrestha, Chief Officer, Caltrain Planning, CalMod

Vacant, Chief of Staff

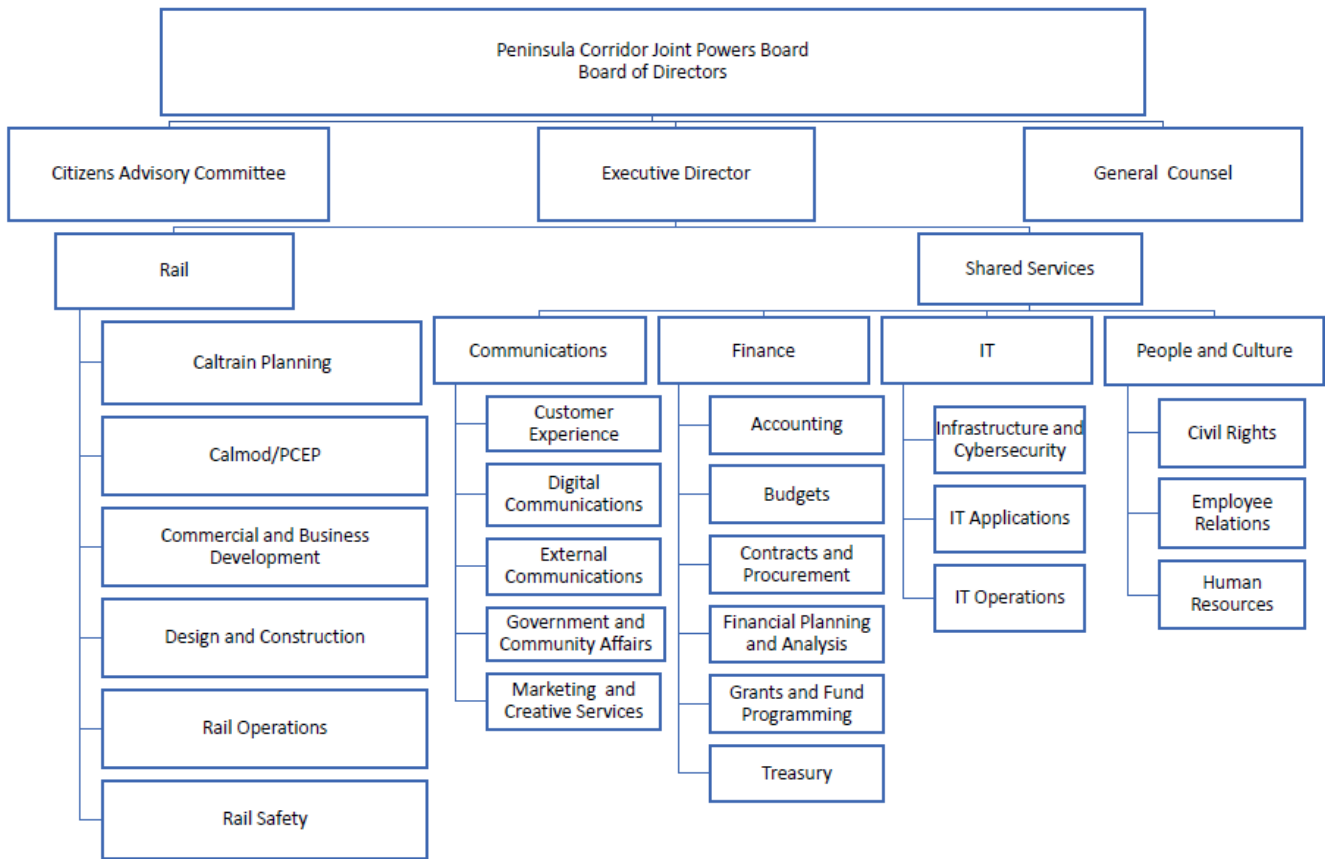
Vacant, Chief of Commercial and Business Development

**GENERAL COUNSEL**

Olson Remcho, LLP

James Harrison, Esq.







The following individuals contributed to the production of the fiscal year 2023 Annual Comprehensive Financial Report:

**Finance:**

Chief Financial Officer

Director, Accounting

Budget Manager

Director, Treasury

Manager, Grants and Capital Accounting

Kate Jordan Steiner

Annie To

Jeannie Chen

Connie Mobley-Ritter, MBA, CTP

Danny Susantin, CPFO

**Audit Firm:**

Brown Armstrong Accountancy Corporation

Partner

Manager

Ryan L. Nielsen, CPA

Melissa L. Cabezzas, CPA

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# *Section II*

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## **FINANCIAL**

Independent Auditor's Report

Management's Discussion and Analysis

Basic Financial Statements:

- Statements of Net Position
- Statements of Revenues, Expenses, and Changes in Net Position
- Statements of Cash Flows
- Notes to the Financial Statements

Supplementary Information

- Supplementary Schedule of Revenues and Expenses – Comparison of Budget to Actual (Budgetary Basis)
- Notes to Supplementary Schedule

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## INDEPENDENT AUDITOR'S REPORT

To the Board of Directors of the  
Peninsula Corridor Joint Powers Board  
San Carlos, California

### Report on the Financial Statements

#### *Opinions*

We have audited the accompanying financial statements of the Peninsula Corridor Joint Powers Board (JPB) as of and for the fiscal years ended June 30, 2023 and 2022, and the related notes to the financial statements, which collectively comprise the JPB's basic financial statements as listed in the table of contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the JPB, as of June 30, 2023 and 2022, and the respective changes in financial position, and cash flows thereof for the fiscal years then ended in accordance with accounting principles generally accepted in the United States of America.

#### *Basis for Opinions*

We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the JPB and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

#### *Responsibilities of Management for the Financial Statements*

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the JPB's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

## ***Auditor's Responsibilities for the Audit of the Financial Statements***

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards*, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the JPB's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the JPB's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

### ***Required Supplementary Information***

Accounting principles generally accepted in the United States of America require that management's discussion and analysis, as listed in the table of contents, be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.



### ***Supplementary Information***

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the JPB's basic financial statements. The accompanying supplementary schedule of revenues and expenses – comparison of budget to actual (budgetary basis) is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the supplementary schedule of revenues and expenses – comparison of budget to actual (budgetary basis) is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

### ***Other Information***

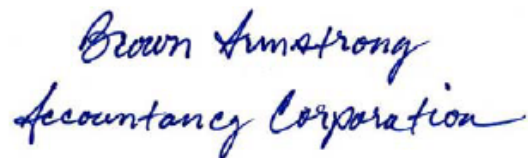
Management is responsible for the other information included in the annual report. The other information comprises the introductory and statistical sections but does not include the basic financial statements and our auditor's report thereon. Our opinions on the basic financial statements do not cover the other information, and we do not express an opinion or any form of assurance thereon.

In connection with our audit of the basic financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the basic financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

### ***Other Reporting Required by Government Auditing Standards***

In accordance with *Government Auditing Standards*, we have also issued our report dated December 19, 2023, on our consideration of the JPB's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the JPB's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the JPB's internal control over financial reporting and compliance.

BROWN ARMSTRONG  
ACCOUNTANCY CORPORATION

A handwritten signature in blue ink that reads "Brown Armstrong Accountancy Corporation". The signature is written in a cursive, flowing style.

Bakersfield, California  
December 19, 2023

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***MANAGEMENT'S DISCUSSION AND ANALYSIS***

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## MANAGEMENT'S DISCUSSION AND ANALYSIS

This discussion and analysis of the Peninsula Corridor Joint Powers Board's (JPB) financial performance provides an overview of the JPB's activities for the fiscal year ended June 30, 2023, with comparisons to prior fiscal years ended June 30, 2022, and June 30, 2021. We encourage readers to consider the information presented here in conjunction with the transmittal letter contained in the Introductory Section and with the statements and related notes contained in the Financial Section.

### ***FINANCIAL HIGHLIGHTS***

- At June 30, 2023, the JPB's assets and deferred outflows of resources exceeded its liabilities and deferred inflows of resources by \$3,446.3 million (net position). Of this amount, \$141.8 million represents unrestricted net position, which may be used to meet the JPB's ongoing obligations. At June 30, 2022, the JPB's assets exceeded its liabilities and deferred inflows of resources by \$3,228.4 million. Of this amount, \$280.6 million represents unrestricted net position.
- The JPB's total net position increased by \$217.9 million and \$505.1 million in fiscal years 2023 and 2022, respectively, mainly because of capital contributions.

### ***OVERVIEW OF THE FINANCIAL STATEMENTS***

The Financial Section of this report presents the JPB's financial statements as two components: basic financial statements and notes to the financial statements. It also includes supplementary information.

#### **Basic Financial Statements**

The *Statement of Net Position* presents information on assets, deferred outflows of resources, liabilities, and deferred inflows of resources, with the difference between them reported as *net position*. Changes in net position over time may provide an indicator as to whether the financial position of the JPB is improving or deteriorating.

The *Statement of Revenues, Expenses, and Changes in Net Position* reports how net position has changed during the fiscal year. It compares related operating revenues and operating expenses connected with the JPB's principal business of providing rail service. Operating expenses include the cost of direct services to passengers, administrative expenses, contracted services, and depreciation on capital assets. All other revenues and expenses are reported as nonoperating.

The *Statement of Cash Flows* reports inflows and outflows of cash, classified into four major categories:

- *Cash flows from operating activities* include transactions and events reported as components of operating income in the statement of revenues, expenses, and changes in net position.
- *Cash flows from noncapital financing activities* include operating grant proceeds and operating subsidy payments from third parties as well as other nonoperating items.
- *Cash flows from capital and related financing activities* include the borrowing and repayment (principal and interest) of capital-related debt, the acquisition and construction of capital assets, and the proceeds of capital grants and contributions.
- *Cash flows from investing activities* include proceeds from the sale of investments, receipt of interest, and changes in the fair value of investments subject to reporting as cash equivalents. Outflows in this category include the purchase of investments.

## Notes to the Financial Statements

Various notes provide additional information that is essential to a full understanding of the data provided in the basic financial statements and are found immediately following the financial statements to which they refer.

### Other Information

This report also presents certain *supplementary* information concerning compliance with the JPB's annual budget. This *supplementary* information, as well as associated notes, can be found immediately following the *basic financial statements* and the accompanying notes.

### Analysis of Basic Financial Statements

Total assets increased by \$93.8 million or 2.5% to \$3,834.9 million at June 30, 2023, compared to June 30, 2022, and increased by \$710.7 million or 23.5% at June 30, 2022, compared to June 30, 2021. The increase for fiscal year 2023 was mainly due to activities in construction in progress. The increase for fiscal year 2022 was mainly due to activities in construction in progress and restricted investment with fiscal agents. Current assets decreased by \$204.2 million or 40.6% to \$298.8 million in fiscal year 2023. In fiscal year 2022, current assets increased by \$180.2 million or 55.8% compared to fiscal year 2021. The decrease for fiscal year 2023 was due to a decrease in cash and cash equivalents and restricted investment with fiscal agents. The increase for fiscal year 2022 was due to increases in cash and cash equivalents, restricted investment with fiscal agents, and receivables – transaction and use tax.

Total capital assets, net of accumulated depreciation and amortization increased by \$298.0 million or 9.2% at June 30, 2023, to \$3,536.1 million from \$3,238.1 million on June 30, 2022, and increased by \$530.5 million or 19.6% from \$2,707.6 million at June 30, 2022, compared to June 30, 2021. Investments in capital assets, before depreciation and amortization, consist of acquisitions and improvements to the right-of-way (\$1,439.5 million or 30.5%), rail vehicles (\$338.4 million or 7.2%), facilities and equipment (\$145.9 million or 3.1%), office equipment (\$13.8 million or 0.3%), intangible asset – trackage rights (\$8.0 million or 0.2%), right-to-use lease assets (\$1.9 million or 0.0%), and construction in progress (\$2,775.1 million or 58.8%) in fiscal year 2023.

In fiscal year 2022, investments in capital assets, before depreciation and amortization, consist of acquisitions and improvements to the right-of-way (\$1,436.0 million or 32.9%), rail vehicles (\$338.1 million or 7.7%), facilities and equipment (\$145.2 million or 3.3%), office equipment (\$13.8 million or 0.3%), intangible asset – trackage rights (\$8.0 million or 0.2%), right-to-use lease assets (\$0.6 million or 0.0%), and construction in progress (\$2,424.0 million or 55.5%).

Total deferred outflows of resources increased by \$1.0 million to \$1.0 million at June 30, 2023, compared to June 30, 2022. The fiscal year 2023 increase was due to an increase in unrealized loss related to fuel-hedge derivatives.

Total liabilities decreased by \$127.8 million or 25.0% to \$382.6 million at June 30, 2023, compared to June 30, 2022, and increased by \$204.7 million or 67.0% to \$510.4 million at June 30, 2022, compared to June 30, 2021. The fiscal year 2023 decrease was mainly due to a decrease in the revolving credit facility and accounts payable and accrued liabilities offset by an increase in unearned revenue. The fiscal year 2022 increase was mainly due to an increase in the revolving credit facility and revenue bonds payable – long-term, partially offset by a decrease in unearned member contributions.

Total deferred inflows of resources increased by \$4.7 million or 199.1% at June 30, 2023, to \$7.0 million from \$2.4 million on June 30, 2022, and increased by \$0.9 million or 57.1% from \$1.5 million at June 30, 2021. The fiscal year 2023 increase was due to an increase in leases. The fiscal year 2022 increase was due to increases in unrealized gain related to fuel-hedge derivatives and leases.

Total net position was \$3,446.3 million at June 30, 2023, which represents an increase of \$217.9 million or 6.7% from June 30, 2022, and \$3,228.4 million at June 30, 2022, which represents an increase of \$505.1 million or 18.5% from June 30, 2021. The increase was largely due to capital contributions received associated with the Caltrain electrification project. Net investment in capital assets was \$3,304.5 million at June 30, 2023, representing 95.9% of the total net position; \$2,947.8 million at June 30, 2022, representing 91.3% of total net position; and \$2,652.2 million at June 30, 2021, representing 97.4% of total net position. The JPB's net investment in capital assets represents right-of-way improvements, rail vehicles, lease assets, and facilities and equipment, less any related outstanding debt that was used to acquire those assets. The JPB uses these capital assets to provide a variety of services to its customers. Accordingly, these assets are not available for future spending. Although the JPB's investment in capital assets is reported net of related debt, it should be noted that the resources used to repay this debt must be provided from other sources, since the capital assets themselves cannot be used to liquidate these liabilities. The remaining balances of \$141.8 million, \$280.6 million, and \$71.1 million were unrestricted at June 30, 2023, 2022, and 2021, respectively, and may be used to meet the JPB's ongoing obligations to its citizens and creditors.

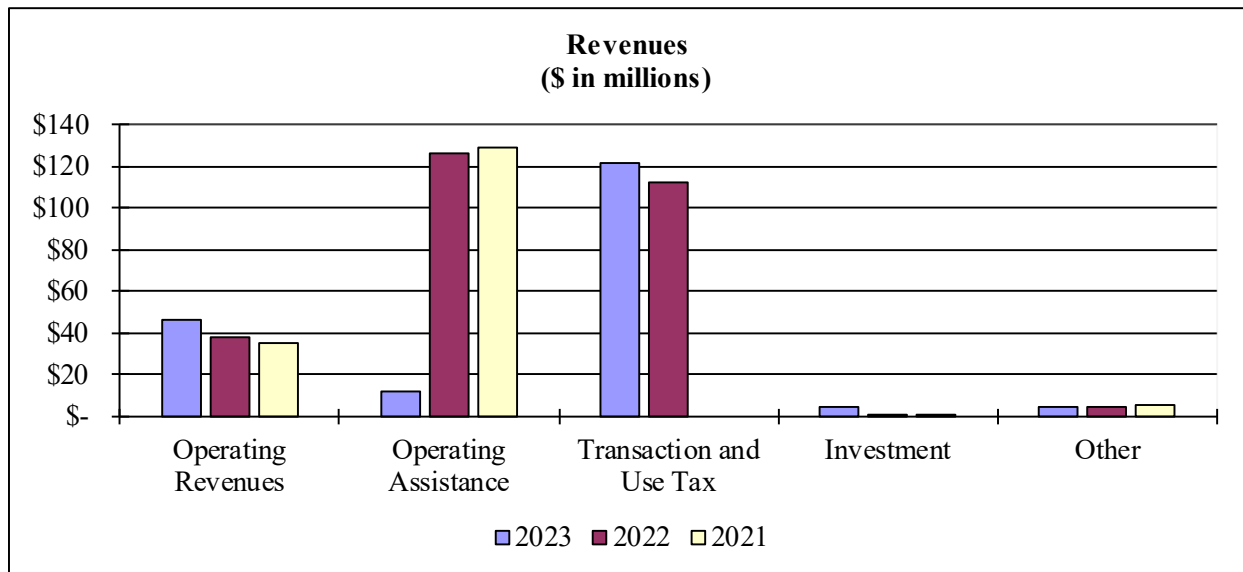
**NET POSITION**  
(in thousands)

	<u>2023</u>	<u>2022</u>	<u>2021</u>
<b>Assets:</b>			
Current assets	\$ 298,846	\$ 503,067	\$ 322,821
Capital assets, net of depreciation/amortization	<u>3,536,086</u>	<u>3,238,071</u>	<u>2,707,573</u>
<b>Total assets</b>	<u>3,834,932</u>	<u>3,741,138</u>	<u>3,030,394</u>
<b>Deferred outflows of resources:</b>			
Derivatives	<u>977</u>	<u>-</u>	<u>-</u>
<b>Total deferred outflows of resources</b>	<u>977</u>	<u>-</u>	<u>-</u>
<b>Liabilities:</b>			
Current liabilities	158,855	285,008	249,824
Long-term liabilities	<u>223,754</u>	<u>225,412</u>	<u>55,854</u>
<b>Total liabilities</b>	<u>382,609</u>	<u>510,420</u>	<u>305,678</u>
<b>Deferred inflows of resources:</b>			
Derivatives	-	1,826	1,346
Leases	<u>7,031</u>	<u>525</u>	<u>151</u>
<b>Total deferred inflows of resources</b>	<u>7,031</u>	<u>2,351</u>	<u>1,497</u>
<b>Net position:</b>			
Net investment in capital assets	3,304,463	2,947,760	2,652,168
Unrestricted	<u>141,806</u>	<u>280,607</u>	<u>71,051</u>
<b>Total net position</b>	<u>\$ 3,446,269</u>	<u>\$ 3,228,367</u>	<u>\$ 2,723,219</u>

## Revenue Highlights

Operating revenues increased to \$46.7 million in fiscal year 2023, a \$9.0 million or 23.8% increase from fiscal year 2022 and increased to \$37.7 million in fiscal year 2022, a \$2.5 million or 7.1% increase from fiscal year 2021. The increase in fiscal year 2023 was mostly due to an increase in passenger fares. The increase in fiscal year 2022 was mostly due to an increase in parking, shuttle, and pass revenues.

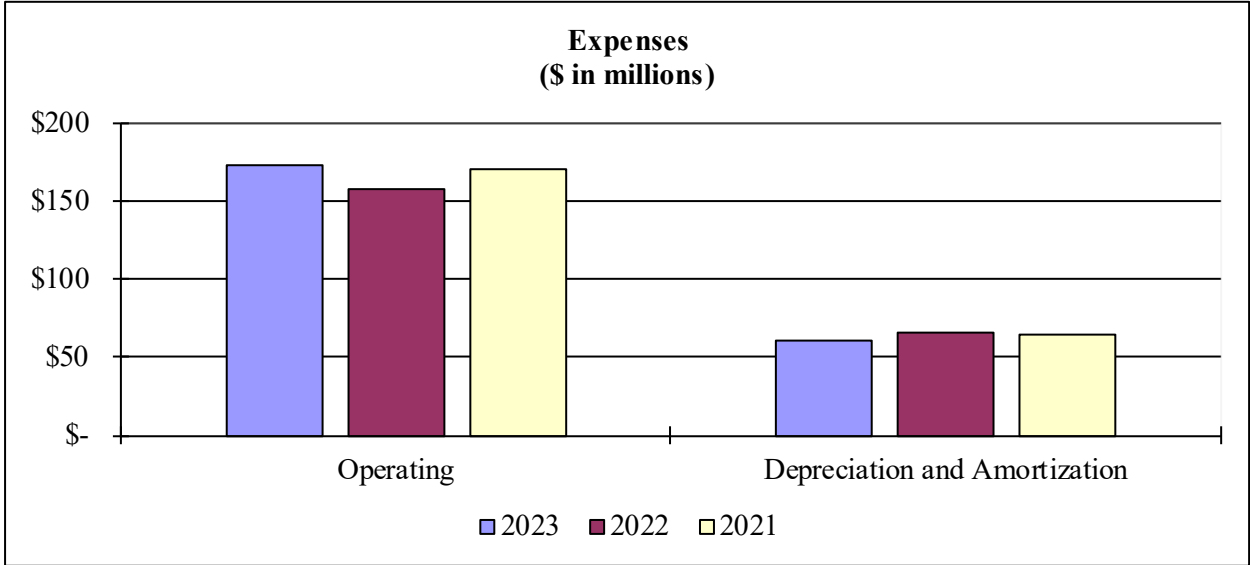
Nonoperating revenues decreased by \$101.3 million or 41.6% to \$142.5 million at June 30, 2023, compared to June 30, 2022, and increased by \$108.6 million or 80.4% in fiscal year 2022 compared to fiscal year 2021. The decrease in fiscal year 2023 was mainly due to the federal, state, and local operating assistance. The increase in fiscal year 2022 was mainly due to the transaction and use tax (Measure RR) funding of \$112.6 million and the American Rescue Plan Act (ARPA) funding of \$116.0 million.





**Expense Highlights**

Total operating expenses of \$173.3 million in fiscal year 2023 were \$16.1 million or 10.3% higher than fiscal year 2022, and in fiscal year 2022, \$13.7 million or 8.0% lower than fiscal year 2021. The total expense increase in fiscal year 2023 was mostly due to increases in contract services and insurance. The total expense increase in fiscal year 2022 was mostly due to an increase in utilities and supplies and fuel. Depreciation and amortization for fiscal year 2023 was \$60.6 million, a \$5.1 million or 7.7% decrease over fiscal year 2022. In fiscal year 2022, depreciation and amortization were \$65.7 million, a \$0.5 million or 0.8% increase over fiscal year 2021. The decrease in depreciation and amortization expenses in fiscal year 2023 was due to less assets capitalized and depreciated.



**CHANGES IN NET POSITION**  
(in thousands)

	2023	2022	2021
Operating revenues:			
Passenger fares	\$ 43,330	\$ 33,236	\$ 32,440
Parking, shuttle, and pass revenues	2,239	2,778	1,547
Advertising	821	412	114
Other	275	1,268	1,108
Total operating revenues	<u>46,665</u>	<u>37,694</u>	<u>35,209</u>
Operating expenses:			
Contract services	117,289	108,946	122,030
Insurance	11,855	6,148	8,473
Fuel	15,995	13,491	7,088
Parking, shuttle, and pass expenses	1,507	3,254	3,211
Professional services	2,445	2,944	11,061
Wages and benefits	14,063	11,356	13,068
Utilities and supplies	2,836	5,118	2,083
Maintenance services	773	609	503
Temporary services, rent, and other	5,808	5,298	3,330
Debt fees	716	-	-
Total operating expenses	<u>173,287</u>	<u>157,164</u>	<u>170,847</u>
Operating loss before depreciation and amortization	(126,622)	(119,470)	(135,638)
Depreciation and amortization	<u>(60,582)</u>	<u>(65,656)</u>	<u>(65,112)</u>
Operating loss	(187,204)	(185,126)	(200,750)
Nonoperating revenues (expenses)			
Federal, state, and local operating assistance	11,644	126,118	129,634
Transaction and use tax	121,645	112,620	-
Rental income	1,300	1,237	1,125
Investment income	4,838	679	334
Nonoperating expenses	(2,351)	(2,210)	(2,890)
Expense for noncapitalized projects	(31,059)	(19,954)	-
Other income	3,059	3,172	4,085
Total nonoperating revenues (expenses)	<u>109,076</u>	<u>221,662</u>	<u>132,288</u>
Net income (loss) before capital contributions	(78,128)	36,536	(68,462)
Capital contributions	<u>296,030</u>	<u>468,612</u>	<u>434,567</u>
Change in net position	217,902	505,148	366,105
Net position - beginning of year	<u>3,228,367</u>	<u>2,723,219</u>	<u>2,357,114</u>
Net position - end of year	<u>\$ 3,446,269</u>	<u>\$ 3,228,367</u>	<u>\$ 2,723,219</u>

## Capital Program

The JPB incurred capital expenses of \$356.4 million and recognized related revenue in the form of capital contributions of \$296.0 million in fiscal year 2023, which was a \$172.6 million or 36.8% decrease in capital contributions in fiscal year 2023 over fiscal year 2022. The fiscal year 2023 capital sources mainly consisted of federal grants (\$92.1 million or 31.1%), state grants (\$156.7 million or 52.9%), and local assistance including the three member agencies (\$47.2 million or 16.0%). The JPB incurred capital expenses of \$595.1 million and recognized related revenue in the form of capital contributions of \$468.6 million in fiscal year 2022, which was a \$34.0 million or 7.8% increase in capital contributions in fiscal year 2022 over fiscal year 2021. The JPB's capital contributions are comprised of federal grants, state grants, and local assistance including the member agencies which are on a reimbursement basis and therefore tied to the related capital expenses. The reason for the decrease in fiscal year 2023 was due to less activities on right-of-way improvement projects. The reason for the increase in fiscal year 2022 compared to fiscal year 2021 was due to more activities on right-of-way improvement projects.

Following is a summary of the JPB's major capital expenses for fiscal year 2023:

- Peninsula Corridor Electrification program (\$274.0 million)
- Caltrain modernization program (\$32.3 million)
- Grade crossing and separations (\$26.1 million)
- Communications (\$7.7 million)
- Bridge improvements (\$6.4 million)

Additional information about the JPB's capital activities appears in Note 6 – Capital Assets in the notes to the financial statements.

## Debt

At the end of fiscal year 2023, the JPB had \$52.07 million in outstanding 2019 Series A Farebox Revenue bonds, including the unamortized premium, \$1.4 million less than the bonds outstanding at the end of fiscal year 2022. In February 2019, the JPB issued \$56,218,000 in 2019 Series A Farebox Revenue Bonds; this issuance used \$24,087,000 of the proceeds to fully pay and legally defease the 2007 Series A Farebox Revenue Bonds and used \$11,363,000 to fully payoff the 2015 Series A Farebox Revenue Bonds. In addition, \$20,768,000 of the proceeds were used for building acquisitions. Principal on the 2019 Series A Farebox Revenue Bonds is payable on October 1, 2021, and annually thereafter on October 1 of each year through 2049.

At the end of fiscal year 2023, the JPB had \$170.7 million in outstanding 2022 Series A Measure RR Sales Tax Revenue Bonds (Green Bonds – Climate Bond Certified), \$1.1 million less than the bonds outstanding at the end of fiscal year 2022. In February 2022, the JPB issued \$140,000,000 in 2022 Measure RR Sales Tax Revenue Bonds (Green Bonds – Climate Bond Certified) Series A along with a premium of \$32,179,642. \$150,463,899 of the proceeds are allocated to certain improvements to the Caltrain system, including electrification; \$21,000,000 of the proceeds were set aside to fund capitalized interest costs of the bonds. Principal on the 2022 Series A Measure RR Sales Tax Revenue Bonds (Green Bonds – Climate Bond Certified) is payable on June 1, 2025, and annually thereafter on June 1 of each year through 2051.

More information regarding the JPB's long-term debt activity can be found in Note 9 – Revenue Bonds Payable in the notes to the financial statements.

## **Economic Factors and Next Year's Budget**

The JPB Board of Directors (Board) approved the Fiscal Year 2024 Operating Budgets on June 1, 2023. The Fiscal Year 2024 Operating Budgets continue to support a high level of service and reliability that the community has come to expect from Caltrain, as it makes every effort to control costs.

The Fiscal Year 2024 Operating Budgets consist of \$194.8 million and \$192.7 million in revenues and expenses, respectively. The major components of revenue include operating revenue of \$56.2 million, primarily from Caltrain fares, Go Pass, and other income, and \$138.6 million in contributed revenue, which mainly includes State Transit Assistance formula funds, Measure RR funds, Low-Carbon Transit Operations Program funds, and State Rail Assistance funds. Operating expenses are projected to be \$152.8 million with the Rail Operator Contract, security service costs, fuel costs, insurance costs, facilities and equipment maintenance costs, and utility costs making up a significant part of the budget. Administrative expenses are projected to be \$36.2 million.

The Fiscal Year 2024 Capital Budget was also approved on June 1, 2023, and amended on September 7, 2023. The \$53.3 million Capital Budget consists primarily of critical infrastructure and equipment state-of-good-repair (SOGR), operational improvements, and planning. The fiscal year 2024 Capital Budget will be funded by federal, state, regional, and local grants as well as funds provided by the member agencies and others. The adopted budget includes \$15.0 million contributions from the member agencies.

Some of the highlights of the capital budget include:

- Guadalupe Bridges Replacement.
- San Francisquito Creek Bridge Emergency North Channel Restoration.
- San Francisquito Bridge Acoustic Monitoring System.
- SOGR MOW Track.
- SOGR MOW Track – Track Equipment.
- San Mateo Replacement Parking Track.
- DTX Support Project.

## ***Requests for Information***

This financial report is designed to provide our citizens, taxpayers, customers, and creditors with a general overview of the JPB's finances and to demonstrate accountability for the funds it manages. Please direct any questions about this report or requests for additional information about the JPB's finances to: Peninsula Corridor Joint Powers Board, Attn: Chief Financial Officer, 1250 San Carlos Avenue, San Carlos, California 94070-1306.

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***BASIC FINANCIAL STATEMENTS***

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	<b>2023</b>	<b>2022</b>
<b>ASSETS:</b>		
Current assets:		
Cash and cash equivalents (Note 3)	\$ 22,980	\$ 200,370
Restricted cash (Note 3)	6,505	5,545
Total cash and cash equivalents	29,485	205,915
Due from other governmental agencies	169,431	162,014
Receivables - transaction and use tax	20,886	21,619
Receivables from member agencies (Note 16)	22,113	12,246
Accounts receivable - other, net of allowance	10,640	3,544
Lease receivable	7,105	529
Inventory	8,291	8,084
Prepaid items	2,386	-
Commodity derivative contracts	778	4,672
Restricted investments with fiscal agents (Note 3)	27,731	84,444
Total current assets	298,846	503,067
Noncurrent assets:		
Capital assets:		
Depreciable (Note 6)		
Right-of-way improvements	1,202,236	1,199,128
Rail vehicles	338,413	338,072
Facilities and equipment	145,879	145,177
Office equipment	13,765	13,750
Less accumulated depreciation	(1,186,380)	(1,127,638)
Depreciable assets, net	513,913	568,489
Nondepreciable		
Construction in progress (Note 2L)	2,775,062	2,424,021
Right-of-way (Note 6)	237,254	236,968
Intangible assets - trackage rights (Note 6)	8,000	8,000
Nondepreciable assets	3,020,316	2,668,989
Right-to-use lease assets, net (Note 15)	1,857	593
Total noncurrent assets	3,536,086	3,238,071
Total assets	3,834,932	3,741,138
<b>DEFERRED OUTFLOWS OF RESOURCES:</b>		
Derivatives (Note 12)	977	-
Total deferred outflows of resources	977	-

	<u>2023</u>	<u>2022</u>
<b>LIABILITIES:</b>		
Current liabilities:		
Accounts payable and accrued liabilities	72,140	133,477
Interest payable	1,150	1,165
Self-insurance claims liabilities (Note 10)	2,274	2,292
Unearned member contributions (Note 16)	28,979	31,405
Unearned revenue	29,785	18,460
Revolving credit facility (Note 17)	20,964	95,716
Current portion of long-term debt (Note 9)	2,609	1,805
Current portion of lease liabilities (Note 15)	899	632
Other	55	56
Total current liabilities	<u>158,855</u>	<u>285,008</u>
Noncurrent liabilities:		
Self-insurance claims liabilities - long-term (Note 10)	2,572	1,897
Revenue bonds payable - long-term (Note 9)	220,162	223,515
Lease liabilities - long-term (Note 15)	1,020	-
Total noncurrent liabilities	<u>223,754</u>	<u>225,412</u>
Total liabilities	<u>382,609</u>	<u>510,420</u>
<b>DEFERRED INFLOWS OF RESOURCES:</b>		
Derivatives (Note 12)	-	1,826
Leases	7,031	525
Total deferred inflows of resources	<u>7,031</u>	<u>2,351</u>
<b>NET POSITION:</b>		
Net investment in capital assets	3,304,463	2,947,760
Unrestricted	141,806	280,607
Total net position	<u>\$ 3,446,269</u>	<u>\$ 3,228,367</u>

	<b>2023</b>	<b>2022</b>
<b>OPERATING REVENUES:</b>		
Passenger fares	\$ 43,330	\$ 33,236
Parking, shuttle, and pass revenues	2,239	2,778
Advertising	821	412
Other	275	1,268
Total operating revenues	<u>46,665</u>	<u>37,694</u>
<b>OPERATING EXPENSES:</b>		
Contract services (Note 13A)	117,289	108,946
Insurance	11,855	6,148
Fuel	15,995	13,491
Parking, shuttle, and pass expenses	1,507	3,254
Professional services	2,445	2,944
Wages and benefits	14,063	11,356
Utilities and supplies	2,836	5,118
Maintenance services	773	609
Temporary services, rent, and other	5,808	5,298
Debt fees	716	-
Total operating expenses before depreciation and amortization	<u>173,287</u>	<u>157,164</u>
Depreciation and amortization	<u>60,582</u>	<u>65,656</u>
Total operating expenses	<u>233,869</u>	<u>222,820</u>
Operating loss	<u>(187,204)</u>	<u>(185,126)</u>
<b>NONOPERATING REVENUES (EXPENSES):</b>		
Federal, state, and local operating assistance (Note 7)	11,644	126,118
Transaction and use tax	121,645	112,620
Rental income	1,300	1,237
Investment income	4,838	679
Interest expense	(2,351)	(2,210)
Expense for noncapitalized projects	(31,059)	(19,954)
Other income	3,059	3,172
Total nonoperating revenues (expenses), net	<u>109,076</u>	<u>221,662</u>
Income (Loss) before capital contributions	(78,128)	36,536
Capital contributions (Note 11)	<u>296,030</u>	<u>468,612</u>
Change in net position	217,902	505,148
<b>NET POSITION:</b>		
Beginning of year	<u>3,228,367</u>	<u>2,723,219</u>
End of year	<u>\$ 3,446,269</u>	<u>\$ 3,228,367</u>



	<u>2023</u>	<u>2022</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Cash received from customers	\$ 39,500	\$ 39,293
Rent and other cash receipts	4,360	4,033
Payments to vendors for services	(160,073)	(145,470)
Payments to employees	(14,063)	(11,356)
	<u>(130,276)</u>	<u>(113,500)</u>
<b>CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES:</b>		
Operating grants received	11,644	126,118
Transaction and use tax	122,377	91,001
	<u>134,021</u>	<u>217,119</u>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES:</b>		
Acquisition and construction of capital assets	(449,074)	(612,741)
Capital contributions from grants	287,647	496,644
Proceeds from (payments on) the revolving credit facility	(74,752)	35,416
Payment of capital debt	(3,180)	(1,749)
Proceeds from revenue bond	-	172,180
Interest paid on capital debt	(2,366)	(2,045)
	<u>(241,725)</u>	<u>87,705</u>
Net cash provided by (used for) capital and related financing activities		
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchase of investment	56,712	(82,160)
Investment income received	4,838	679
	<u>61,550</u>	<u>(81,481)</u>
Net cash provided by (used for) investing activities		
Net increase (decrease) in cash and cash equivalents	(176,430)	109,843
Cash and cash equivalents, beginning of year	205,915	96,072
Cash and cash equivalents, end of year	<u>\$ 29,485</u>	<u>\$ 205,915</u>

	<u>2023</u>	<u>2022</u>
<b>RECONCILIATION OF OPERATING LOSS TO NET CASH USED FOR OPERATING ACTIVITIES:</b>		
Operating loss	\$ (187,204)	\$ (185,126)
Adjustments to reconcile operating loss to net cash used for operating activities:		
Depreciation and amortization	60,582	65,656
Rent and other cash receipts	4,358	4,409
Effect of changes in:		
Receivables	(7,096)	2,571
Lease receivables	(70)	(1,348)
Prepaid items	(2,386)	-
Inventory	(207)	26
Commodity derivative contracts	1,091	149
Accounts payable and accrued liabilities	(1)	-
Claims liabilities	657	163
Net cash used for operating activities	<u>\$ (130,276)</u>	<u>\$ (113,500)</u>
<b>NONCASH INVESTING AND CAPITAL ACTIVITIES:</b>		
Change in fair value of investments	\$ (977)	\$ 1,826
Noncash capital contributions	-	-
Net noncash investing and capital activities	<u>\$ (977)</u>	<u>\$ 1,826</u>

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Notes are essential to present fairly the information contained in the overview level of the basic financial statements. Narrative explanations are intended to communicate information that is not readily apparent or cannot be included in the statements and schedules themselves, and to provide additional disclosures as required by the Governmental Accounting Standards Board.

## **NOTE 1 – ORGANIZATION**

In 1987, representatives of the City and County of San Francisco (CCSF), the San Mateo County Transit District (District), and the Santa Clara Valley Transportation Authority (VTA) formed the Peninsula Corridor Joint Powers Board (JPB) to plan for the full transfer of administrative and financial responsibility for the Caltrain rail service from the State of California to the local level. In October 1991, a Joint Powers Agreement (Agreement) signed by the three parties (Member Agencies) stipulated the JPB membership and powers, specified financial commitments for each member, and detailed other administrative procedures, including designating the District as the Managing Agency.

The JPB acquired the rail corridor right-of-way between San Francisco and San Jose (Mainline) and perpetual trackage rights between San Jose and Gilroy (Gilroy Extension) from Southern Pacific Transportation Company in December 1991, with contributions provided by the District, the San Mateo County Transportation Authority, VTA for Gilroy trackage rights only, and the California Transportation Commission. The JPB holds title to the Mainline located in all three counties. Because the District advanced an initial contribution in the amount of \$82 million on behalf of all the Member Agencies to complete the funding package to acquire the right-of-way, the JPB and the District are currently tenants in common as to all right-of-way property located in San Mateo County. However, pursuant to a memorandum of understanding (MOU) between the JPB and the Member Agencies executed in 2022, the District is required to convey its interest in the right-of-way to the JPB upon payment by the Metropolitan Transportation Commission to the District of \$19.6 million. The District received these funds in full in September 2023.

Under a 2008 agreement between the JPB and the three Member Agencies, the District is authorized to serve as Managing Agency of the JPB until it no longer chooses to do so. The District continues to serve as Managing Agency, as modified by the 2022 MOU, which transfers some authority to the JPB.

The JPB assumed an expanded role in July 1992 as the State of California Department of Transportation (Caltrans) and the District coordinated the transfer of Caltrain operations and administration to the JPB. The JPB selected the National Railroad Passenger Corporation (Amtrak) as the contract operator, and Amtrak operated the rail service from July 1, 1992, through May 25, 2012. TransitAmerica Services, Inc., (TASI) assumed operations and maintenance of the service on May 26, 2012.

The JPB is governed by a nine-member Board of Directors (Board) representing the three Member Agencies. The base term of the Agreement establishing the JPB expired in 2001, but the Agreement provides that it continues on a year-to-year basis, with a Member Agency's withdrawal requiring a minimum one-year advance written notice to the JPB and the other Member Agencies.

To enhance public involvement, the JPB established a Citizen Advisory Committee (CAC) composed of three representatives from each of the JPB counties. The CAC's principal function is to assist the JPB by articulating the interests and needs of transit users and potential customers.

## **NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

### **A. Financial Reporting Entity**

The accompanying financial statements include the financial activities of the JPB only.

## NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

### **B. Implementation of Governmental Accounting Standards Board (GASB) Statements**

#### *Effective this Fiscal Year*

GASB Statement No. 93 – In May 2020, GASB issued Statement No. 93, *Replacement of Interbank Offered Rates*. The objectives of this statement are to address those and other accounting and reporting implications resulting from the replacement of an Interbank Offered Rate (IBOR) by providing exceptions for certain hedging derivative instruments to the hedge accounting termination provisions when an IBOR is replaced and providing clarification to the hedge accounting termination provisions, removing the London Interbank Offered Rate (LIBOR) as a benchmark interest rate for the qualitative evaluation of the effectiveness of an interest rate swap, identifying a Secured Overnight Financing Rate and the Effective Federal Funds Rate as appropriate benchmark interest rates for the qualitative evaluation of the effectiveness of an interest rate swap, and providing an exception to the lease modifications guidance in GASB Statement No. 87, as amended, for certain lease contracts that are amended solely to replace an IBOR as the rate upon which variable payments depend. The requirements of this statement are effective for reporting periods beginning after June 15, 2021, or fiscal year 2021/2022, except the removal of LIBOR as a benchmark interest rate which is effective for periods beginning after December 31, 2022, or fiscal year 2023/2024. There is no net effect to the financial statements.

GASB Statement No. 94 – In March 2020, GASB issued Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*. The objectives of this statement improve financial reporting by addressing issues related to public-private and public-public partnership arrangements (PPPs). The requirements of this statement are effective for reporting periods beginning after June 15, 2022, or fiscal year 2022/2023. There is no net effect to the financial statements.

GASB Statement No. 96 – In May 2020, GASB issued Statement No. 96, *Subscription-Based Information Technology Arrangements*. The objective of this statement is to provide guidance on the accounting and financial reporting for subscription-based information technology arrangements (SBITAs) for government end users (governments). This statement (1) defines a SBITA; (2) establishes that a SBITA results in a right-to-use subscription asset—an intangible asset—and a corresponding subscription liability; (3) provides the capitalization criteria for outlays other than subscription payments, including implementation costs of a SBITA; and (4) requires note disclosures regarding a SBITA. The requirements of this statement are effective for reporting periods beginning after June 15, 2022, or fiscal year 2022/2023. There is no net effect to the financial statements.

#### *Effective in Future Fiscal Years*

GASB Statement No. 91 – In May 2019, GASB issued Statement No. 91, *Conduit Debt Obligations*. The objectives of this statement are to provide a single method of reporting conduit debt obligations by issuers and eliminate diversity in practice associated with commitments extended by issuers, arrangements associated with conduit debt obligations, and related note disclosures by clarifying the existing definition of a conduit debt obligation; establishing that a conduit debt obligation is not a liability of the issuer; establishing standards for accounting and financial reporting of additional commitments and voluntary commitments extended by issuers and arrangements associated with conduit debt obligations; and improving required note disclosures. The requirements of this statement are effective for reporting periods beginning after December 15, 2022, or fiscal year 2023/2024. The JPB is evaluating the impact of this statement on the financial statements.

## NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

### **B. Implementation of Governmental Accounting Standards Board Statements** (Continued)

#### *Effective in Future Fiscal Years* (Continued)

GASB Statement No. 99 – *Omnibus 2022*. The requirements of this statement are effective as follows:

- The requirements related to the extension of the use of LIBOR, accounting for Supplemental Nutrition Assistance Program (SNAP) distributions, disclosures of nonmonetary transactions, pledges of future revenues by pledging governments, clarification of certain provisions in GASB Statement No. 34, as amended, and terminology updates related to GASB Statement No. 53 and GASB Statement No. 63 are effective upon issuance.
- The requirements related to leases, PPPs, and SBITAs are effective for fiscal years beginning after June 15, 2022, and all reporting periods thereafter.
- The requirements related to financial guarantees and the classification and reporting of derivative instruments within the scope of GASB Statement No. 53 are effective for fiscal years beginning after June 15, 2023, and all reporting periods thereafter.

The JPB will implement GASB Statement No. 99 if and where applicable.

GASB Statement No. 100 – *Accounting Changes and Error Corrections*. The requirements of this statement are effective for accounting changes and error corrections made in fiscal years beginning after June 15, 2023, and all reporting periods thereafter. Earlier application is encouraged. The JPB will implement GASB Statement No. 100 if and where applicable.

GASB Statement No. 101 – *Compensated Absences*. The requirements of this statement are effective for fiscal years beginning after December 15, 2023, and all reporting periods thereafter. Earlier application is encouraged. The JPB will implement GASB Statement No. 101 if and where applicable.

### **C. Basis of Accounting**

The JPB accounts for its transactions in a single enterprise fund and maintains its records using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

### **D. Cash and Cash Equivalents**

For purpose of the statement of cash flows, the JPB considers all highly liquid investments with an initial maturity of three months or less when purchased to be cash equivalents. Cash and cash equivalents also include amounts invested in the Local Agency Investment Fund (LAIF) and the San Mateo County Investment Pool (see Note 3).

## NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

### **E. Accounts Receivable – Other**

During the course of normal operations, the JPB carries various receivable balances for services and rent. At June 30, 2023 and 2022, the allowances for doubtful accounts included in accounts receivable – other, were \$176,769 and \$178,353, respectively.

### **F. Inventories**

Inventories consist principally of spare parts that are recorded when purchased and expensed when used. Inventories are stated at average cost which approximates market and are maintained by TASI as part of its contractual agreement.

### **G. Investments**

Investment transactions are recorded on the trade date at fair value. Fair value is defined as the amount that the JPB could reasonably expect to receive for an investment in a current sale from a willing buyer and is based on current market prices.

### **H. Restricted Investments with Fiscal Agents**

Provisions of the JPB's trust agreements related to its farebox and Measure RR transaction and use tax revenue bonds require that certain restricted investments accounts be established. These accounts are held by the fiscal agent and include funds for payment of principal and interest on the farebox and Measure RR transaction and use tax revenue bonds.

### **I. Restricted and Unrestricted Resources**

When both restricted and unrestricted resources are available for the same purpose (e.g., construction projects), the JPB's policy is to use all available restricted resources first before unrestricted resources are utilized.

### **J. Capital Assets**

Capital assets are recorded at historical cost or appraised value. However, donated capital assets are recorded at estimated acquisition value at the date of donation plus ancillary charges, if any. The JPB defines capital assets as assets with a cost greater than \$5,000 and an estimated useful life in excess of one year. Donated assets are recorded at acquisition value on the date donated. Major additions and replacements are capitalized. Maintenance repairs and additions of a minor nature are expensed as incurred.

## NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

### K. Depreciation and Amortization

Depreciation and amortization are calculated using the straight-line method over the following estimated useful lives:

- Right-of-way improvements – 3 to 40 years
- Rail vehicles – 10 to 36 years
- Facilities and equipment – 4 to 35 years
- Office equipment – 3 to 5 years
- Right-to-use lease assets – varies

### L. Construction in Progress

(In thousands)	2023	2022
Caltrain Modernization program	\$ 2,394,982	\$ 2,088,620
Bridge improvements	18,379	11,985
Rolling stock - purchase/improvements	32,408	32,758
Grade crossing and separations	229,584	203,520
System-wide track improvements	263	562
Station improvements	87,699	84,681
Safety	3,521	1,418
Communications	8,226	477
Total Construction in Progress	<u>\$ 2,775,062</u>	<u>\$ 2,424,021</u>

Caltrain Modernization program includes purchases of new Electric Multiple Unit (EMU) trains.

### M. Bond Issuance Costs

Bond issuance costs are expensed upon the issuance of related debt.

### N. Unearned Member Contributions

Unearned member contributions are the result of advances from the Member Agencies. To the extent that these amounts exceed committed funds (see Note 16), they may be refunded to the Member Agencies or used to offset future required contributions.

### O. Unearned Revenue

Unearned revenue represents fares, rents, and state assistance amounts received which have not yet been earned. Advance ticket sales are included as unearned revenue until earned.



## NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

### **P. Member Agency Assistance**

Amounts received from Member Agencies for operations are recognized as revenues when operating and administrative expenses are incurred. Amounts received from Member Agencies for acquisition of assets or matching grants are recognized as capital contributions when capital expenses are incurred.

### **Q. Federal, State, and Local Operating Assistance**

Federal, state, and local operating assistance are recorded as revenue when operating expenses are incurred.

### **R. Wages and Benefits**

Personnel costs of the JPB represent the allocated costs of District employees addressing JPB functions in the District's capacity as Managing Agency. Participation in pension plans, compensated absences, and postretirement health care benefits for these employees are administered by the District.

### **S. Operating/Nonoperating Revenues and Expenses**

The JPB distinguishes operating revenues and expenses from nonoperating items. Operating revenues and expenses generally result from directly providing services in connection with the JPB's principal operations of commuter rail service. These revenues are primarily passenger fares and parking, shuttle, and pass revenues. Operating expenses include the cost of sales and services, administrative expenses, contracted services, and depreciation on capital assets. All other revenues and expenses (including member contributions) not meeting this definition are reported as nonoperating revenues and expenses.

### **T. Use of Estimates**

The preparation of basic financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts and disclosures at the date of the financial statements.

### **U. Deferred Outflows and Deferred Inflows of Resources**

In addition to assets, the statements of net position will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, deferred outflows of resources, represents a consumption of net assets that applies to a future period(s) and so will not be recognized as an outflow of resources (expense) until then.

In addition to liabilities, the statements of net position will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, deferred inflows of resources, represents an acquisition of net assets that applies to a future period(s) and so will not be recognized as an inflow of resources (revenue) until that time.

## NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

### V. Fair Value Measurements

Accounting principles generally accepted in the United States of America provide guidance for determining a fair value measurement for reporting purposes, applying fair value to investments, and disclosures related to a hierarchy established by accounting principles generally accepted in the United States of America. The fair value hierarchy, which has three levels, is based on the valuation inputs used to measure fair value: Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs include inputs that are directly observable for the investment including quoted prices for similar investments and inputs that are not directly observable but are derived from observable market data through correlation; and Level 3 inputs are significant unobservable inputs.

### W. Reclassifications

For the fiscal year ended June 30, 2023, certain classifications have been changed to improve financial statement presentation. For comparative purposes, prior year balances have been reclassified to conform with the fiscal year 2023 presentation.

### X. Subsequent Events

Subsequent events have been evaluated through December 19, 2023, the date these financial statements were available to be issued.

## NOTE 3 – CASH AND INVESTMENTS

The JPB's investments are carried at fair value, as required by accounting principles generally accepted in the United States of America. The JPB adjusts the carrying value of its investments to reflect their fair value at each fiscal year-end and includes the effects of these adjustments in income for that fiscal year.

The JPB is in compliance with the Board approved Investment Policy and California Government Code requirements.

The JPB's cash and investments as of June 30 are classified in the statements of net position as follows (in thousands):

	<u>2023</u>	<u>2022</u>
Cash and cash equivalents	\$ 22,980	\$ 200,370
Restricted cash	6,505	5,545
Restricted investments with fiscal agents	<u>27,731</u>	<u>84,444</u>
Total Cash and Investments	<u>\$ 57,216</u>	<u>\$ 290,359</u>

**NOTE 3 – CASH AND INVESTMENTS (Continued)**

	2023	2022
Cash on hand	\$ 1	\$ 1
Deposits with financial institutions	28,592	205,283
Investments	28,623	85,075
Total Cash and Investments	<u>\$ 57,216</u>	<u>\$ 290,359</u>

***Investments Authorized by the California Government Code and the JPB's Investment Policy***

The table below identifies the investment types that are authorized for the JPB by the California Government Code or the JPB's investment policy, when more restrictive, that address interest rate risk, credit risk, and concentration of credit risk. This table does not address investments of debt proceeds held by bond trustees that are governed by the provisions of debt agreements of the JPB, rather than the general provisions of the JPB's investment policy.

<b>Authorized Investment Type</b>	<b>Minimum Credit Rating</b>	<b>Maximum Maturity</b>	<b>Maximum Percentage of Portfolio</b>	<b>Maximum Investment in One Issuer</b>
U.S. Treasury Obligations	None	15 years	100%	N/A
U.S. Agency Securities	None	15 years	100%	N/A
Banker's Acceptances	None	180 days	40%	30%
Commercial Paper (\$500 Mil. Min. Assets). Local agencies with less than \$100M of investment assets under management may invest no more than 25% of the agency's money in eligible commercial paper	A1/P1/F1	270 days	40%	10%
Negotiable Certificates of Deposit	None	5 years	30%	N/A
Repurchase Agreements	None	1 year	100%	N/A
Reverse Repurchase Agreements	None	92 days	20%	N/A
Medium-Term Notes	A	5 years	30%	10%
Shares of Beneficial Interest Issued by Diversified Management Companies	None	N/A	20%	10%
Local Government Investment Pools	None	N/A	100%	N/A
Asset-Backed and Mortgage-Backed securities	AA	5 years	20%	N/A
Municipal Obligations	None	10 years	100%	N/A
Supranational Obligations	AA	5 years	30%	N/A
Local Agency Investment Fund (LAIF)	None	N/A	None	\$75M
San Mateo County Investment Pool	None	N/A	Up to the current state limit	N/A

***Investments Authorized by Debt Agreements***

Investments of debt proceeds held by bond trustees are governed by provisions of the debt agreements, rather than the general provisions of the California government code or the JPB's investment policy. These provisions allow for the acquisition of investment agreements with maturities of up to 30 years and money market funds.

**NOTE 3 – CASH AND INVESTMENTS (Continued)**

***Disclosure Relating to Interest Rate Risk***

Interest rate risk is the risk incurred when changes in market interest rates adversely affect the fair value of an investment. Generally, the longer the maturity of an investment, the greater the sensitivity of its fair value to changes in market interest rates. One of the ways that the JPB manages its exposure to interest rate risk is by purchasing a combination of short and long-term investments and by timing cash flows from maturities so that a portion of the portfolio is maturing or coming close to maturity evenly over time as necessary to provide the cash flow and liquidity needed for operations.

The JPB's weighted average maturity of its investment portfolio at June 30, 2023, was as follows (in thousands):

Investment Type	Amount	Weighted Average Maturity (in years)
LAIF	\$ 337	0.71
San Mateo County Investment Pool	555	1.65
Held by Bond Trustee:		
Money Market Mutual Funds	<u>27,731</u>	-
Total Investment Portfolio	<u>\$ 28,623</u>	
Portfolio Weighted Average Maturity		1.29

The JPB's weighted average maturity of its investment portfolio at June 30, 2022, was as follows (in thousands):

Investment Type	Amount	Weighted Average Maturity (in years)
LAIF	\$ 87	0.80
San Mateo County Investment Pool	544	1.81
Held by Bond Trustee:		
Money Market Mutual Funds	<u>84,444</u>	-
Total Investment Portfolio	<u>\$ 85,075</u>	
Portfolio Weighted Average Maturity		0.75

### NOTE 3 – CASH AND INVESTMENTS (Continued)

#### *Disclosures Relating to Credit Risk*

Credit risk is the risk that an issuer of an investment will not fulfill its obligation to the holder of the investment. This is measured by the assignment of a rating by a nationally recognized statistical rating organization. Presented below is the minimum rating required by (where applicable) the California Government Code, the JPB's investment policy, or debt agreements, and the actual rating as of June 30, 2023 and 2022, for each investment type (in thousands):

Investment Type	Amount	Rating as of June 30, 2023	
		S&P Rating AAA	Not Rated
LAIF	\$ 337	\$ -	\$ 337
San Mateo County Investment Pool	555	-	555
Held by Bond Trustee:			
Money Market Mutual Funds	27,731	27,731	-
Total	<u>\$ 28,623</u>	<u>\$ 27,731</u>	<u>\$ 892</u>

Investment Type	Amount	Rating as of June 30, 2022	
		S&P Rating AAA	Not Rated
LAIF	\$ 87	\$ -	\$ 87
San Mateo County Investment Pool	544	-	544
Held by Bond Trustee:			
Money Market Mutual Funds	84,444	84,444	-
Total	<u>\$ 85,075</u>	<u>\$ 84,444</u>	<u>\$ 631</u>

#### *Concentration of Credit Risk*

The investment policy of the JPB contains limitations on the amount that can be invested in any one issuer beyond that stipulated by the California Government Code. The JPB does not have any investments in any one issuer (other than U.S. Treasury securities, mutual funds, and external investment pools) that represent five percent or more of the JPB's total investments at June 30, 2023, or June 30, 2022.

#### *Fair Value Measurements*

Fair value measurements are categorized based on the valuation inputs used to measure fair value: Level 1 inputs are quoted prices in active markets for identical asset assets; Level 2 inputs include inputs that are directly observable for the investment including quoted prices for similar investments and inputs that are not directly observable but are derived from observable market data through correlation; and Level 3 inputs are significant unobservable inputs. Investments in LAIF and the San Mateo County Investment Pool are uncategorized as deposits and withdrawals are made on the basis of \$1 and not fair value.

### NOTE 3 – CASH AND INVESTMENTS (Continued)

#### *Fair Value Measurements* (Continued)

The following is the JPB's fair value hierarchy table as of June 30, 2023 (in thousands):

<u>Investment Type</u>	<u>Total</u>	<u>Level 2 Inputs</u>	<u>Uncategorized</u>
LAIF	\$ 337	\$ -	\$ 337
San Mateo County Investment Pool	555	-	555
Money Market Mutual Funds	<u>27,731</u>	<u>27,731</u>	<u>-</u>
Total Investments by Fair Value Type	<u>\$ 28,623</u>	<u>\$ 27,731</u>	<u>\$ 892</u>

The following is the JPB's fair value hierarchy table as of June 30, 2022 (in thousands):

<u>Investment Type</u>	<u>Total</u>	<u>Level 2 Inputs</u>	<u>Uncategorized</u>
LAIF	\$ 87	\$ -	\$ 87
San Mateo County Investment Pool	544	-	544
Money Market Mutual Funds	<u>84,444</u>	<u>84,444</u>	<u>-</u>
Total Investments by Fair Value Type	<u>\$ 85,075</u>	<u>\$ 84,444</u>	<u>\$ 631</u>

#### *Custodial Credit Risk*

The custodial credit risk for deposits is the risk that, in the event of the failure of a depository financial institution, the JPB will not be able to recover its deposits or will not be able to recover collateral securities that are in the possession of an outside party. The custodial credit risk for investments is the risk that, in the event of the failure of the counterparty (e.g., broker-dealer) to a transaction, the JPB will not be able to recover the value of its investment or collateral securities that are in possession of another party. The California Government Code and the JPB's Investment Policy do not contain legal or policy requirements that would limit the exposure to custodial credit risk for deposits or investments. The California Government Code requires that a financial institution secure deposits made by state or local governmental units by pledging securities in an undivided collateral pool held by a depository regulated under state law (unless so waived by the governmental unit). The fair value of the pledged securities in the collateral pool must equal at least 110 percent of the total amount deposited by the public agencies. California law also allows financial institutions to secure the JPB's deposits by pledging first trust deed mortgage notes having a value of 150 percent of the secured public deposits.

As of June 30, 2023 and 2022, the JPB had \$57,215,535 and \$290,358,685, respectively, of deposits with financial institutions. Additionally, the JPB is required to hold certain capital fund amounts in interest bearing accounts. These balances are in excess of the \$250,000 FDIC limit; however due to California State Law, the excess balances are collateralized with pledged securities by the financial institutions holding the JPB's deposits.

### **NOTE 3 – CASH AND INVESTMENTS (Continued)**

#### ***Investment in San Mateo County Investment Pool***

The JPB is a voluntary participant that invested in the San Mateo County Treasurer's Investment Pool (County Pool) at June 30, 2023 and 2022, in the amount of \$554,663 and \$544,072, respectively.

The County Pool is a governmental investment pool managed and directed by the elected San Mateo County Treasurer. It is not registered with the Securities and Exchange Commission. The fair value of the JPB's investment in this pool is reported in the accompanying financial statements at amounts based upon the JPB's pro-rata share of the fair value provided by the County Pool for the entire portfolio (in relation to the amortized cost of that portfolio). The balance available for withdrawal is based on the accounting records maintained by the County Pool, which are recorded on an amortized cost basis.

#### ***Investment in State Investment Pool***

The JPB is a voluntary participant in LAIF which is regulated by the California Government Code under the oversight of the Treasurer of the State of California. LAIF is not registered with the Securities and Exchange Commission. The fair value of the JPB's investment in this pool is reported in the accompanying financial statements at amounts based upon the JPB's pro-rata share of the fair value provided by LAIF for the entire LAIF portfolio (in relation to the amortized cost of that portfolio). The balance available for withdrawal is based on the accounting records maintained by LAIF, which are recorded on an amortized cost basis.

As of June 30, 2023, the JPB had a contractual withdrawal value of \$336,793 in the pool. As of June 30, 2022, the JPB had a \$87,125 contractual withdrawal value in the pool.

### **NOTE 4 – GILROY EXTENSION**

The JPB holds trackage rights that extend south from the end of its property ownership in San Jose to Gilroy over a rail line owned by the Union Pacific Railroad. Those rights include the rights to operate five two-way train pairs. In addition, the Santa Clara Valley Transportation holds the rights to operate five additional train pairs to Gilroy.

### **NOTE 5 – CONTRIBUTED ASSETS FROM CALTRANS**

In order to facilitate the purchase of the Mainline and the Gilroy Extension on a timely basis, and to provide for an orderly transition to local administration in a manner that would assure no service interruption, Caltrans and the JPB executed an agreement memorializing various commitments. Caltrans granted the JPB the right to use and control various real and personal property. These properties included: stations, locomotives, passenger cars ("rolling stock"), inventories, and other property associated with Caltrain service. The agreement required that Caltrans transfer all of its rights, titles, and interests in these properties to the JPB, in accordance with Public Utilities Code Section 99234.7.

## NOTE 5 – CONTRIBUTED ASSETS FROM CALTRANS (Continued)

On April 4, 1996, the JPB's Board approved a resolution accepting transfer of rolling stock and station sites subject to certain terms and conditions outlined in the resolution. The transfer of rolling stock to the JPB was completed in December 1996, and the transfer of station sites was completed in May 1997. The rolling stock and station sites transferred were recorded at their appraised value as contributed capital in the amount of \$106,710,000 and \$60,432,365, respectively. Station sites consist principally of land and were capitalized as right-of-way.

## NOTE 6 – CAPITAL ASSETS

Capital asset activity for the fiscal year ended June 30, 2023, was as follows (in thousands):

	Balance June 30, 2022	Additions and Transfers	Deletions and Transfers	Balance June 30, 2023
Depreciable and amortized capital assets:				
Right-of-way improvements	\$ 1,199,128	\$ 4,048	\$ (940)	\$ 1,202,236
Rail vehicles	338,072	341	-	338,413
Facilities and equipment	145,177	702	-	145,879
Office equipment	13,750	15	-	13,765
Total depreciable and amortized capital assets	<u>1,696,127</u>	<u>5,106</u>	<u>(940)</u>	<u>1,700,293</u>
Accumulated depreciation/amortization for:				
Right-of-way improvements	761,680	46,862	(940)	807,602
Rail vehicles	273,766	8,075	-	281,841
Facilities and equipment	78,725	4,567	-	83,292
Office equipment	13,467	178	-	13,645
Total accumulated depreciation/amortization	<u>1,127,638</u>	<u>59,682</u>	<u>(940)</u>	<u>1,186,380</u>
Capital assets non-depreciable/nonamortizable:				
Right-of-way	236,968	286	-	237,254
Construction in progress	2,424,021	356,147	(5,106)	2,775,062
Intangible asset - trackage rights	8,000	-	-	8,000
Total non-depreciable/nonamortizable capital assets	<u>2,668,989</u>	<u>356,433</u>	<u>(5,106)</u>	<u>3,020,316</u>
Capital assets, net	<u>\$ 3,237,478</u>	<u>\$ 301,857</u>	<u>\$ (5,106)</u>	<u>\$ 3,534,229</u>



**NOTE 6 – CAPITAL ASSETS (Continued)**

Capital asset activity for the fiscal year ended June 30, 2022, was as follows (in thousands):

	Balance June 30, 2021	Additions and Transfers	Deletions and Transfers	Balance June 30, 2022
Depreciable and amortized capital assets:				
Right-of-way improvements	\$ 1,188,736	\$ 10,392	\$ -	\$ 1,199,128
Rail vehicles	337,025	1,047	-	338,072
Facilities and equipment	145,065	461	(349)	145,177
Office equipment	13,767	(2)	(15)	13,750
<b>Total depreciable and amortized capital assets</b>	<b>1,684,593</b>	<b>11,898</b>	<b>(364)</b>	<b>1,696,127</b>
Accumulated depreciation/amortization for:				
Right-of-way improvements	710,610	51,071	(1)	761,680
Rail vehicles	265,139	8,627	-	273,766
Facilities and equipment	74,279	4,794	(348)	78,725
Office equipment	13,306	176	(15)	13,467
<b>Total accumulated depreciation/amortization</b>	<b>1,063,334</b>	<b>64,668</b>	<b>(364)</b>	<b>1,127,638</b>
Capital assets non-depreciable/nonamortizable:				
Right-of-way	236,968	-	-	236,968
Construction in progress	1,840,831	595,088	(11,898)	2,424,021
Intangible asset - trackage rights	8,000	-	-	8,000
<b>Total non-depreciable/nonamortizable capital assets</b>	<b>2,085,799</b>	<b>595,088</b>	<b>(11,898)</b>	<b>2,668,989</b>
<b>Capital assets, net</b>	<b>\$ 2,707,058</b>	<b>\$ 542,318</b>	<b>\$ (11,898)</b>	<b>\$ 3,237,478</b>

Depreciation/amortization expense for the fiscal years ended June 30, 2023 and 2022 was \$59,680,437 and \$64,667,724, respectively.

**NOTE 7 – OPERATING ASSISTANCE**

Member Agencies provided operating funding to the JPB prior to fiscal year 2022. Net operating and administrative costs were apportioned on the basis of mutually agreed contribution rates, updated on an annual basis prior to fiscal year 2022. In fiscal years 2023 and 2022, due to the funding from Measure RR transaction and use tax, the JPB did not request member agencies contributions. Funding allocations for the fiscal years ended June 30 were:

	2023	2022
District - Operating	0.00%	0.00%
VTA - Operating	0.00%	0.00%
CCSF - Operating	0.00%	0.00%

**NOTE 7 – OPERATING ASSISTANCE (Continued)**

Federal, state, and local operating assistance revenue amounts included in the statements of revenues, expenses, and changes in net position for the fiscal years ended June 30 were (in thousands):

	2023	2022
Member Agency local funds	\$ 84	\$ -
Assembly Bill 434 operating assistance	40	80
American Rescue Plan Act (ARPA)	-	115,996
State transit assistance	11,520	10,042
Total	<u>\$ 11,644</u>	<u>\$ 126,118</u>

**NOTE 8 – CAPITAL ASSISTANCE**

Capital expenses are primarily funded by federal and state grants, equal annual contributions from all three Member Agencies, and proceeds from Revenue Bonds (See Note 9 – Revenue Bonds Payable). Costs of capital replacement and enhancement projects that are not covered by outside funding sources are allocated to the Member Agencies based upon the terms of the Joint Powers Agreement.

**A. Member Agencies**

On an annual basis, the Board determines the amount to be contributed to a Capital Contingency Fund (CCF) to cover unanticipated necessary capital improvements. The total amount contributed to the CCF was \$1,325,000 and \$990,000 for the fiscal years ended June 30, 2023 and 2022.

In fiscal years 2023 and 2022, the JPB received capital reimbursements and capital advances from the Member Agencies totaling \$37,648,269 and \$43,744,085, respectively. The unexpended amounts at June 30, 2023 and 2022, are shown as Unearned Member Contributions. (See Note 16 – Related Parties.)

**B. Federal and State Grants**

At June 30, 2023 and 2022, the JPB had federal, state, and local grants/allocations that provide funding for Caltrain capital projects. Capital additions for the fiscal years ended June 30, 2023 and 2022, applicable to these projects were \$296,030,449 and \$468,612,379, respectively. The related federal participation was \$92,120,447 and \$277,219,356 for fiscal years ended June 30, 2023 and 2022, respectively.

The JPB had receivables of \$23,778,148 and \$43,960,063 at June 30, 2023 and 2022, respectively, for qualifying capital project expenditures under Federal Transit Administration (FTA) grant contracts in excess of reimbursements, which is reported as due from other governmental agencies. In addition, the JPB has receivables of \$145,479,734 and \$99,333,706 at June 30, 2023 and 2022, respectively, for qualifying capital project expenditures under various state grants, which also is reported as due from other governmental agencies.

## NOTE 8 – CAPITAL ASSISTANCE (Continued)

### B. Federal and State Grants (Continued)

Under the terms of the grants, proceeds from equipment sold during its useful life are refundable to the federal government in proportion to the related capital grant funds received, unless the net book value or proceeds from sale are under grant-prescribed limits.

## NOTE 9 – REVENUE BONDS PAYABLE

### Composition and Changes

The JPB generally incurs long-term debt to finance projects or purchase assets, which will have useful lives equal to or greater than the related debt. The JPB's debt issues and transactions are summarized below and discussed in detail thereafter.

Long-term debt activity for the fiscal year ended June 30, 2023, was as follows (in thousands):

	Balance July 1, 2022	Additions	Retirements	Balance June 30, 2023	Current Portion
2019 Series A Revenue Bonds	\$ 46,515	\$ -	\$ 1,175	\$ 45,340	\$ 1,235
Add: Unamortized premium, net	6,991	-	264	6,727	264
2022 Series A Revenue Bonds	140,000	-	-	140,000	-
Add: Unamortized premium, net	31,814	-	1,110	30,704	1,110
Total long-term debt	<u>\$ 225,320</u>	<u>\$ -</u>	<u>\$ 2,549</u>	<u>\$ 222,771</u>	<u>\$ 2,609</u>

Long-term debt activity for the fiscal year ended June 30, 2022, was as follows (in thousands):

	Balance July 1, 2021	Additions	Retirements	Balance June 30, 2022	Current Portion
2019 Series A Revenue Bonds	\$ 47,635	\$ -	\$ 1,120	\$ 46,515	\$ 1,175
Add: Unamortized premium, net	7,255	-	264	6,991	264
2022 Series A Revenue Bonds	-	140,000	-	140,000	-
Add: Unamortized premium, net	-	32,180	366	31,814	366
Total long-term debt	<u>\$ 54,890</u>	<u>\$ 172,180</u>	<u>\$ 1,750</u>	<u>\$ 225,320</u>	<u>\$ 1,805</u>

### Description of the JPB's Long-Term Debt Issues

#### A. 2019 Series A Farebox Revenue Bonds

In February 2019, the JPB issued \$47,635,000 in 2019 Series A Farebox Revenue Bonds along with a premium of \$8,111,446 and other sources related to the defeasance of prior bond issuances netted proceeds of \$56,217,759; \$24,087,000 of the proceeds were used to fully pay and legally defease the 2007 Series A Farebox Revenue Bonds and \$11,363,000 were used to fully payoff 2015 Series A Farebox Revenue Bonds. \$20,768,000 of the proceeds are allocated for building acquisitions or to finance other improvements to Caltrain. The 2019 Series A Farebox Revenue Bonds carry a fixed

## **NOTE 9 – REVENUE BONDS PAYABLE (Continued)**

### **Description of the JPB’s Long-Term Debt Issues (Continued)**

#### **A. 2019 Series A Farebox Revenue Bonds (Continued)**

coupon of 5.0 percent with interest due on April 1 and October 1 of each year through October 1, 2037. Principal on the 2019 Series A Farebox Revenue Bonds is payable on October 1, 2021, and annually thereafter on October 1 of each year through 2049.

The refunding resulted in a difference between the reacquisition price and the net carrying amount of the old debt of \$84,342. The JPB completed the refunding to reduce its total debt service payments over the next 11.9 years (average life of the refunded 2007 Series A Farebox Revenue Bonds) by \$3.4 million and to obtain an economic gain (difference between the present values of the old and new debt service payments) of \$3.6 million (present value of prior debt and net present value savings).

The 2019 Series A Farebox Revenue Bonds are special obligations of the JPB payable from and secured by a pledge of farebox revenues. For pledge purposes, the term “farebox revenues” means the amounts generated and collected in connection with the operation of Caltrain, including passenger fares; parking, shuttle, and pass revenues; and other revenues from operations. Farebox revenues does not include grants from the state or the federal government. The amount and terms of pledged revenue are the outstanding secured debt service as noted on the debt service requirement schedule in the following paragraph.

#### **B. 2022 Series A Measure RR Sales Tax Revenue Bonds (Green Bonds – Climate Bond Certified)**

In February 2022, the JPB issued \$140,000,000 in 2022 Measure RR Sales Tax Revenue Bonds (Green Bonds – Climate Bond Certified) Series A along with a premium of \$32,179,642. \$150,463,899 of the proceeds are allocated to certain improvements to the Caltrain system, including electrification; \$21,000,000 of the proceeds were set aside to fund capitalized interest costs of the bonds; and \$715,743 of the proceeds were allocated to the cost of issuance of the bonds. The 2022 Series A Measure RR Sales Tax Revenue Bonds (Green Bonds – Climate Bond Certified) carry a coupon of 5.0% with interest payable semiannually on June 1 and December 1, commencing June 1, 2022. Principal payments on the 2022 Series A Measure RR Sales Tax Revenue Bonds (Green Bonds – Climate Bond Certified) begins June 1, 2025, and are payable annually thereafter on June 1 of each year through 2051.

The 2022 Series A Measure RR Sales Tax Revenue Bonds (Green Bonds – Climate Bond Certified) are limited obligations of the JPB payable from and secured by certain revenues from sales and use tax on taxable transactions within the City and County of San Francisco, San Mateo County, and Santa Clara County, at a rate of one-eighth of one percent (1/8%) after deducting amounts payable to the California Department of Tax and Fee Administration (CDTFA) in connection with the collection and disbursement of the sales tax pursuant to the agreement between the CDTFA and the JPB.

#### **C. Pledged Revenues and Annual Debt Service Payments**

The amount of farebox pledged revenues recognized during the fiscal years ended June 30, 2023 and 2022, were \$46,665,873 and \$37,695,156, respectively. The amount of Measure RR Sales Tax pledged revenues recognized during the fiscal years ended June 30, 2023 and 2022, were

**NOTE 9 – REVENUE BONDS PAYABLE (Continued)****Description of the JPB’s Long-Term Debt Issues (Continued)****C. Pledged Revenues and Annual Debt Service Payments (Continued)**

\$121,645,143 and \$112,619,647, respectively. The total debt service requirement for the 2019 Series A Farebox Revenue Bonds and for the 2022 Series A Measure RR Sales Tax Revenue Bonds (Green Bonds – Climate Bond Certified) for the fiscal years ended June 30, 2023 and 2022, was \$10,471,375 and \$5,204,306, respectively; the first payment on the 2019 Series A Farebox Revenue Bonds debt was October 1, 2019, with repayment of principal starting October 1, 2021, and continuing as laid out in the table below. Annual principal and interest payments for the 2019 Series A Farebox Revenue Bonds were as follows (in thousands):

Year Ending June 30:	Principal	Interest	Total
2024	\$ 1,235	\$ 2,236	\$ 3,471
2025	1,300	2,173	3,473
2026	1,365	2,106	3,471
2027	1,435	2,036	3,471
2028	1,510	1,963	3,473
2029-2033	8,790	8,569	17,359
2034-2038	11,275	6,073	17,348
2039-2043	6,370	3,843	10,213
2044-2048	8,175	2,034	10,209
2049-2050	3,885	197	4,082
Total	\$ 45,340	\$ 31,230	\$ 76,570

The 2022 Series A Measure RR Sales Tax Revenue Bonds (Green Bonds – Climate Bond Certified) were the first bonds issued by the JPB as Green Bonds as certified by Climate Bonds Initiative (CBI) and verified by Kestrel Verifiers under the standards of the 2015 Paris Agreement. The bonds were issued with ratings of AA+ by Standard & Poor’s Rating Services (S&P) and AAA by Kroll Bond Rating Agency, LLC (KBRA). The first principal payment for the 2022 Series A Measure RR Sales Tax Revenue Bonds (Green Bonds – Climate Bond Certified) debt is scheduled for June 1, 2025. Annual debt service payments are as follows:

Year Ending June 30:	Principal	Interest	Total
2024	\$ -	\$ 7,000	\$ 7,000
2025	2,560	7,000	9,560
2026	2,690	6,872	9,562
2027	2,825	6,738	9,563
2028	2,965	6,596	9,561
2029-2033	17,200	30,604	47,804
2034-2038	21,950	25,853	47,803
2039-2043	28,020	19,787	47,807
2044-2048	35,755	12,046	47,801
2049-2051	26,035	2,646	28,681
Total	\$ 140,000	\$ 125,142	\$ 265,142

## NOTE 10 – INSURANCE PROGRAMS

The JPB is exposed to various risks of loss including, but not limited to, those related to torts; theft of, damage to, and destruction of assets; errors and omissions; and natural disasters. The JPB is self-insured for a portion of its public liability and damage to property. As of June 30, 2023 and 2022, coverage provided by self-insurance and excess coverage (purchased by or for the JPB) is generally summarized as follows:

Type of Coverage	Self-Insured Retention	Excess Insurance
Railroad Liability	\$2,000,000 Self-Insured Retention	\$323,000,000 Per Occurrence/ Annual Aggregate (\$200,000,000 carried by the JPB and \$100,000,000 carried by the Caltrain operator, TASI) plus an additional \$23,000,000 xs \$300,000,000 carried by JPB for a total of \$323,000,000
Real and Personal Property	\$500,000 Maximum Self-Insured Retention	\$400,000,000
Public Official Liability	\$75,000 Self-Insured Retention	\$15,000,000 Aggregate
Special Events	\$25,000 Self-Insured Retention Per Occurrence	\$2,000,000 Per Occurrence / \$4,000,000 Aggregate
Environmental Liability	\$50,000 Self-Insured Retention	\$10,000,000 2-Year Policy Aggregate (FY23-FY24)
Federal Employees Liability Act (FELA)	\$500,000 Self-Insured Retention	\$50,000,000 Annual Aggregate

All rolling stock is insured at full replacement value. Total insurable values (TIV) covering all rolling stock, real and personal property, tunnels, bridges, and stations exceeds \$1 billion. The JPB carries a \$400,000,000 loss limit per occurrence. Terrorism coverage is included. The JPB owns four parcels of vacant property that do not require flood insurance. Earthquake coverage remains cost prohibitive; as such, it is not procured. To date, there have been no significant reductions in any of the JPB's insurance coverage. Settlements have not exceeded coverages for each of the past three fiscal years.

The unpaid claims liabilities are based on the results of actuarial studies and include amounts for claims incurred but not reported. Claims liabilities are calculated considering the effects of inflation, recent claim settlement trends including frequency and amount of payouts, and other economic and social factors. Annual expense is charged using various allocation methods that include actual costs, trends in claims experience, and number of participants. The estimate of the claims liability also includes amounts for incremental claim adjustment expenses related to specific claims and other claim adjustment expense regardless of whether allocated to specific claims. It is the JPB's practice to obtain full actuarial studies annually. Changes in the balances of self-insured claims liabilities for public liability and property damage for the fiscal years ended June 30, 2023 and 2022, were as follows (in thousands):

**NOTE 10 – INSURANCE PROGRAMS (Continued)**

	2023	2022
Self-insured claims liabilities, beginning of year	\$ 4,189	\$ 4,030
Incurred claims and changes in estimates	2,801	383
Claim payments and related costs	<u>(2,144)</u>	<u>(224)</u>
Total self-insured claims liabilities	4,846	4,189
Less current portion	<u>2,274</u>	<u>2,292</u>
Noncurrent portion	<u>\$ 2,572</u>	<u>\$ 1,897</u>

**NOTE 11 – CAPITAL CONTRIBUTIONS**

The JPB receives capital grants and contributions from the federal, state, and local governments for the acquisition and improvement of capital assets. Capital grants and contributions used for capital purposes are recorded as capital contributions and the cost of the related assets is included in capital assets.

Depreciation and amortization on assets acquired with capital contributions is included in the statements of revenues, expenses, and changes in net position. Capital contributions earned for the fiscal years ended June 30 were as follows (in thousands):

	2023	2022
Contributions from the federal government	\$ 92,120	\$ 277,219
Contributions from the state	156,737	140,466
Contributions from local governments	<u>47,173</u>	<u>50,927</u>
Total	<u>\$ 296,030</u>	<u>\$ 468,612</u>

**NOTE 12 – HEDGE PROGRAM**

In order to create more certain future diesel fuel costs and to manage the budget risk caused by uncertain future diesel fuel prices, the JPB established a diesel fuel hedging program. The hedging instruments used are New York Harbor Ultra Low Sulfur Diesel (“NYHRBRULSD”) futures contracts with a notional amount of 42,000 gallons each as listed on the NYMEX. As of June 30, 2023, the JPB had 106 futures contracts covering the period from July 2023 to June 2024. As of June 30, 2022, the JPB had 87 futures contracts covering the period from July 2022 to June 2023.

The JPB enters into futures contracts to hedge its price exposures to diesel fuel which is used in its vehicles to provide transportation. These contracts are derivative instruments. The effectiveness of the hedge is determined according to GASB Statement No. 53 (*Accounting and Financial Reporting for Derivative Instruments*) rules, which require a statistically strong relationship between the price of the futures contracts and the JPB’s cost of diesel fuel from its supplier in order to insure that the futures

**NOTE 12 – HEDGE PROGRAM (Continued)**

contracts effectively hedge the expected cash flows associated with diesel fuel purchases/exposures. The JPB applies hedge accounting for derivatives that are deemed effective hedges. Under hedge accounting, the increase (decrease) in the fair value of a hedge is reported as a deferred cash flow on the statements of net position. For the reporting period, all of the JPB’s derivatives meet the effectiveness tests. Net gains/losses from completed hedges become an element of diesel fuel cost.

For diesel fuel futures contracts, the fair values are determined according to exchange settlement prices and the prices at which the futures contracts were purchased where each contract has a volume of 42,000 gallons. The following is a summary of the fair values and notional amounts of derivative instruments (diesel futures contracts) outstanding as of June 30, 2023 and 2022 (in thousands).

	2023 Change in Fair Value		Fair Value June 30, 2023		Notional
	Classification	Amount	Classification	Amount	
Effective Cash Flow Hedges					
Futures contracts	Deferred Inflow	\$ (2,804)	Derivative Instruments	\$ (977)	4,452 Gallons

	2022 Change in Fair Value		Fair Value June 30, 2022		Notional
	Classification	Amount	Classification	Amount	
Effective Cash Flow Hedges					
Futures contracts	Deferred Inflow	\$ 480	Derivative Instruments	\$ 1,826	3,938 Gallons

**Credit Risk**

The JPB is exposed to credit risk in the amount of the derivative’s fair value. When the fair value of any derivative has a positive market value, the risk is that the counterparty will not fulfill its obligations. The counterparty for diesel futures contracts is the New York Mercantile Exchange Clearinghouse. Futures do not have credit risk because the clearing house guarantees against default risk by taking both sides of all transactions where positions are marked-to-market on a daily basis. Futures contracts are highly regulated by the Commodity Futures Trading Commission.

**Basis Risk**

The JPB is exposed to basis risk on its expected fuel hedge contracts because the future fuel purchases are based on a pricing point different from the pricing point at which the future contracts are expected to settle NYHRBRULSD.

**Market Risk**

The JPB is exposed to market risk arising from adverse changes in the market prices of the commodity.



## **NOTE 13 – COMMITMENT AND CONTINGENCIES**

### **A. Operating Contract**

The JPB Board awarded a contract to TASI of St. Joseph, MO, at the September 1, 2011 Board meeting. TASI provides rail operations, maintenance, and support services for a base term of five years plus five months of mobilization, with five, one-year option terms. Mobilization efforts began on October 1, 2011, and TASI began its service on May 26, 2012. The contract with TASI has been extended to 2027. Amtrak continued to provide services through the mobilization period.

This is a Cost Plus Performance Fee based contract. All direct costs are reimbursable and TASI has the opportunity to earn up to \$4.5 million per year as a performance fee. The first year budget plus mobilization costs were negotiated prior to the contract award. A performance fee program and quantifiable metrics are discussed and agreed upon annually by the parties in key areas such as safety and on-time performance. These metrics are measured quarterly with the exception of adherence to the budget which will be measured annually. TASI's reported results are also independently verified and validated by a third party consultant. The expenses billed to the JPB by TASI for providing rail operation services for the fiscal years ended June 30, 2023 and 2022, are recorded as Contract Services in the statements of revenues, expenses, and changes in net position.

### **B. Litigation**

As of June 30, 2023 and 2022, the JPB had accrued amounts that management believes are adequate to resolve claims and lawsuits which arose during the normal course of business. A few claims and lawsuits remain outstanding for which the JPB cannot determine the ultimate and resulting liability, if any. However, the JPB's management and its counsel believe the ultimate outcome of these claims and lawsuits will not materially impact the JPB's financial position.

#### **Caltrain Collision with Hi-Rail Maintenance Vehicles on March 10, 2022**

On March 10, 2022, at approximately 10:30 a.m., a southbound Caltrain train struck three stationary on-track (or hi-rail) maintenance vehicles at milepost (MP) 11.6 on main track 2 near San Bruno, California. The maintenance vehicles were on-track to pick-up catenary poles for installation along the right-of-way (ROW) as part of the Peninsula Corridor Electrification Project (PCEP). Balfour Beatty Infrastructure, Inc. (BBI) is the PCEP contractor, and TransitAmerica Services, Inc. (TASI) provides signaling services on the ROW. The National Transportation Safety Board (NTSB), which has not yet issued its final report, has stated that the TASI roadway worker-in-charge released exclusive track occupancy while the hi-rail vehicles were still on the track. The locomotive derailed, and all three maintenance vehicles were destroyed. Leaking fuel from the hi-rail maintenance vehicles resulted in a fire that spread to one of the passenger rail cars. Fourteen people reported injuries: 12 passengers, one train crew member (a TASI employee), and one maintenance contractor (a BBI employee). Of these, seven were transported to local hospitals, and seven were treated and released at the scene. The incident remains under NTSB investigation.

The following plaintiffs have filed lawsuits in San Mateo Superior Court related to the incident against the JPB and other entities:

- Phillip Merlino and Carolina Campnuevo: Mr. Merlino, a BBI employee, was injured in the accident and is seeking damages related to the accident, and his wife, Ms. Campnuevo, has brought a cause of action for loss of consortium.

## NOTE 13 – COMMITMENT AND CONTINGENCIES (Continued)

### B. Litigation (Continued)

#### **Caltrain Collision with Hi-Rail Maintenance Vehicles on March 10, 2022**

- William Bryan: Mr. Bryan was the TASI locomotive engineer on the Caltrain train involved in the incident. He seeks damages related to the incident.
- The following plaintiffs, who were passengers on the Caltrain train, have also brought suit seeking damages related to the incident:
  - Mary Liu
  - Lawrence Walton
  - Isaac Ortiz
  - Victor Morales

The JPB tendered all claims and lawsuits arising out of the March 10, 2022, accident to TASI and, subject to a reservation of rights, TASI agreed to indemnify and defend the JPB in these cases. The JPB has also agreed to defend and indemnify several other entities named in the lawsuit, and then the JPB tendered those requests to TASI, which accepted them subject to a reservation of rights. As a result, in addition to defending the JPB in all of the above cases, TASI is also defending the District in the Merlino/Campnuevo and Liu cases, and VTA in the Morales and Ortiz case (these plaintiffs filed together).

These cases have all been related but not consolidated. No alternative dispute resolution (ADR), mediation, or trial dates have been set, and currently the parties are engaged in discovery. No depositions have occurred. Vince Castillo of the firm Castillo, Moriarty, Tran & Robinson has been retained by TASI to represent it, the JPB, the District, and VTA in these cases.

In addition to these lawsuits, BBI notified the JPB in 2022 that it incurred losses of \$2,397,426 as a result of the incident, including approximately \$900,000 in property damage related to the destroyed hi-rail vehicles and related equipment; \$200,000 in workers compensation claims to date; and \$1,141,245 in labor costs to BBI and its subcontractors related to suspension of PCEP work on the ROW due to the incident.

#### ***William Rogers, et al. v. JPB, et al. (San Mateo Superior Court, Case No. 23-CIV-03335)***

On August 25, 2022, at approximately 1:00 a.m., William Rogers, an employee of Modern Rail Systems (MRS), which is a subcontractor to BBI under the PCEP contract, was performing work near MP 31.7, near Palo Alto, California. While walking across a bridge adjacent to the tracks to reach a signal house, the employee fell approximately 25 feet through the wooden deck structure, onto the Oregon Expressway below the bridge. Mr. Rogers was injured and transported to Stanford Medical Center. On July 20, 2023, Mr. Rogers and his wife Sarah Rogers filed suit against the JPB in San Mateo County Superior Court. Mr. Rogers seeks damages related to the accident and Ms. Rogers has filed a claim for loss of consortium. Plaintiffs also named TASI, Herzog Transit Services (TASI's parent company), and the District as defendants. The JPB has agreed to defend and indemnify TASI and Herzog, subject to a reservation of rights, and the District. No ADR, mediation, or trial dates have been set in the case, and currently the parties are engaged in discovery. No depositions have occurred. Todd Master of the firm Ridley Master has been retained by the JPB to represent it, TASI, and the District in these cases.

## NOTE 13 – COMMITMENT AND CONTINGENCIES (Continued)

### B. Litigation (Continued)

#### *Abel and Erika Cuevas et al. v. JPB, et al (Santa Clara Superior Court, Case No. 21CV385375)*

The parents of Abel Cuevas have brought this wrongful death action against the JPB and Union Pacific Railroad Company (UP) for the death of their 17-year-old son, who was walking on main track 2 (MT2) between Capitol Station and the Skyway Drive grade crossing in San Jose on the morning of May 16, 2021, when he was struck by a Caltrain train traveling from the Central Equipment Maintenance & Operations Facility in San Jose to Gilroy. This portion of the track is owned by Union Pacific Railroad Company (UP) and runs parallel to Monterey Road. While this stretch of track is not fenced-off, there are “no trespassing” signs posted along the right-of-way at each intersection on Monterey Road, which would be the most likely entry points to the right-of-way by a pedestrian. There is no sidewalk on the railroad side of Monterey Road but there is approximately a 45-foot area of flat, dirt space with some trees, between Monterey Road and MT2, where a trespasser could walk without being close to the tracks. Abel Cuevas was struck from behind and was apparently wearing earbuds. The train engineer had sounded the horn multiple times and continuously for six seconds before impact.

The JPB agreed to defend and indemnify UP in this case pursuant to a trackage rights agreement between the parties. Todd Master of the law firm Ridley Master represents the JPB and UP in the case.

Mediation was held on September 7, 2023, but the parties were unable to settle the case. The parties have, however, continued to engage in post-mediation settlement discussions. Recently, the JPB made a global settlement offer of \$1.5 million and plaintiffs countered with a global demand of \$6.5 million. The JPB’s self-insured retention is \$2 million. Further mediation is scheduled for May 29, 2024. Trial is scheduled for June 3, 2024.

#### *Etzel Williams et al. v. JPB, et al. (San Mateo Superior Court, Case No. 03763)*

On October 25, 2022, the four adult children of Cynthia Robinson filed this wrongful lawsuit against the JPB and the City of Burlingame. Ms. Robinson sustained fatal injuries when her vehicle was struck by a northbound Caltrain train on August 17, 2021, at approximately 4:35 p.m. at the Broadway crossing in Burlingame. Kevin Allen of the Allen Law Office represents the JPB in this case. Discovery is ongoing but no ADR or trial date has been scheduled. Mediation is scheduled for February 6, 2024.

**NOTE 13 – COMMITMENT AND CONTINGENCIES (Continued)**

**C. PTMISEA Grants**

The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, approved by the voters as Proposition 1B on November 7, 2006, includes a program of funding in the amount of \$4 billion to be deposited in the Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA). Of this amount, \$3.6 billion in the PTMISEA is available to project sponsors in California for allocation to eligible public transportation projects. The following table shows the changes in activity related to the PTMISEA grant funds during the fiscal years as well as the remaining commitment as of June 30, 2023 and 2022 (in thousands):

	PTMISEA South Terminal Project (Fund 3605)	PTMISEA Community Based Overlay Signal System (Fund 3607)	PTMISEA Rolling Stock State-of-Good- Repair (Fund 3623)	PTMISEA Rolling Stock State-of-Good- Repair (Fund 3634)
Total Allocations as of June 30, 2022	\$ 875	\$ 210	\$ 692	\$ 130
Adjustments	-	-	-	(1)
Net Expenditures	<u>(875)</u>	<u>(210)</u>	<u>(692)</u>	<u>(129)</u>
Unspent balance at June 30, 2023	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
	PTMISEA Electrification Improvements (Fund 3638)	PTMISEA Community Based Overlay Signal System (Fund 3647)	PTMISEA Interest Earned (Fund 3636)	
Total Allocations as of June 30, 2022	\$ 36	\$ 317	\$ 221	
Adjustments	(1)	-	-	
Interest Earned, Net of Bank Charges	-	-	2	
Net Expenditures	<u>(35)</u>	<u>(302)</u>	<u>(214)</u>	
Unspent balance at June 30, 2023	<u>\$ -</u>	<u>\$ 15</u>	<u>\$ 9</u>	

**NOTE 13 – COMMITMENT AND CONTINGENCIES (Continued)**

**C. PTMISEA Grants (Continued)**

	PTMISEA South Terminal Project (Fund 3605)	PTMISEA Community Based Overlay Signal System (Fund 3607)	PTMISEA Rolling Stock State-of-Good- Repair (Fund 3623)	PTMISEA Rolling Stock State-of-Good- Repair (Fund 3634)
Total Allocations as of June 30, 2021	\$ 959	\$ 345	\$ 770	\$ 464
Adjustments	-	-	-	-
Net Expenditures	<u>(84)</u>	<u>(135)</u>	<u>(78)</u>	<u>(334)</u>
Unspent balance at June 30, 2022	<u>\$ 875</u>	<u>\$ 210</u>	<u>\$ 692</u>	<u>\$ 130</u>

	PTMISEA Electrification Improvements (Fund 3638)	PTMISEA Community Based Overlay Signal System (Fund 3647)	PTMISEA Interest Earned (Fund 3636)
Total Allocations as of June 30, 2021	\$ 36	\$ 1,314	\$ 313
Adjustments	-	-	-
Interest Earned, Net of Bank Charges	-	-	2
Net Expenditures	<u>-</u>	<u>(997)</u>	<u>(94)</u>
Unspent balance at June 30, 2022	<u>\$ 36</u>	<u>\$ 317</u>	<u>\$ 221</u>

**NOTE 14 – LEASING TRANSACTIONS**

In February 2002, the JPB entered into a leasing transaction (the 2002 Lease Transaction) with respect to 38 Nippon Sharyo trailer cars, 14 Nippon Sharyo cab cars, and 13 GM F40PH-2 locomotives (collectively, the “Equipment”). The JPB leased the Equipment to a trust under a Head Lease and simultaneously leased back the Equipment under a Sublease. The leasing transaction terminated and restructured a portion of “a 1996 leasing transaction” (the “1996 Transaction”) that had not been previously terminated. The JPB received net proceeds in the amount of \$2,392,510, which represents the difference between the appraised value of the Equipment and the termination cost associated with the remaining portion of the 1996 Transaction and certain required deposits and expenses. The Equipment remains on the books of the JPB at its original cost and is being depreciated over the original useful life determined at the date of acquisition. The net proceeds have been recorded as Lease-Leaseback income for the fiscal year ended June 30, 2002. The JPB has an option to purchase the Equipment for an agreed upon purchase price in January 2026.

At the outset of the lease, a portion of the Head Lease payment was deposited under agreements with two debt payment undertakers whose repayment obligations are guaranteed, as the case may be, by Assured Guaranty Municipal Corporation (“AGM”) as successor to Financial Security Assurance (“FSA”), or Swiss Reinsurance Corporation (“Swiss Re”). Another portion of the Head Lease payment was deposited under an agreement with an equity payment undertaker whose repayment obligations are guaranteed by AGM as successor to FSA. The repayment obligations of AGM and Swiss Re under their respective debt undertaking agreements are due in amounts and at times that correspond to the JPB’s scheduled payments under the Sublease. The repayment obligations of AGM under the equity payment agreement are due in amounts and at times that correspond to the JPB’s purchase option dates under the 2002 Lease Transaction.

#### **NOTE 14 – LEASING TRANSACTIONS (Continued)**

At the time of the 2002 Lease Transaction, FSA was rated “Aaa/AAA” by Moody’s Investors Service (“Moody’s”) and Standard & Poor’s Ratings Services (“S&P”). Although the debt and equity payment undertaking arrangements do not represent a legal defeasance of the JPB’s obligations under the Sublease, management believes that these transactions are structured in such a way that it is not probable that the JPB will need to access other monies to make Sublease payments or pay the purchase option prices in 2026. Therefore, the assets and the Sublease obligations are not recorded on the financial statements of the JPB as of June 30, 2023 and 2022.

The terms of the 2002 Lease Transaction require the JPB to replace AGM and Swiss Re within certain timeframes if their ratings are downgraded below certain rating minimums. On January 17, 2013, Moody’s downgraded AGM to “A2”, which is below the threshold of “Aa3” under the 2002 Lease Transaction with respect to AGM’s role as surety provider and guarantor of the equity payment agreement. The current Moody’s AGM rating of “A1” remains below the required threshold.

Failure of the JPB to replace AGM following a downgrade by either Moody’s or S&P to below the applicable rating threshold within specified timeframes could allow the equity investor to issue a default notice to the JPB. Because replacement of AGM is not practicable, the JPB could become liable to pay termination costs as provided in certain schedules of the 2002 Lease Transaction. The scheduled termination costs as of June 30, 2023, less the accreted value under the equity payment agreement, would approximate \$14.3 million. The equity investor under the 2002 Lease Transaction has provided forbearance letters to the JPB with respect to replacing AGM since the Moody’s downgrade to below “Aa3” and has not demanded that the JPB replace AGM.

#### **NOTE 15 – GASB STATEMENT NO. 87, *LEASES***

The JPB, as a lessee, has entered into various leases for office space, tower space, land, and parking with lease terms expiring between fiscal year 2023 and 2028 with some leases containing options to renew.

The JPB, as a lessor, has entered into lease agreements for mainly commercial and ground lease transactions. The lease terms are expiring between fiscal year 2025 and 2122 with some leases containing options to renew.

The JPB adopted GASB Statement No. 87, *Leases*, in fiscal year 2022 with a conversion date of July 1, 2020. In accordance with the adopted standard, the JPB, as a lessee, is required to recognize intangible right-to-use lease assets and corresponding lease liabilities, and as a lessor, lease receivables and deferred inflows of resources, for all leases that are not considered short-term. The JPB has adopted the following policies to assist in determining lease treatment according to the standard (unless otherwise specified, the following policies pertain to agreements in which the JPB acts as lessee, and agreements in which the JPB acts as lessor):

*Basis of Lease Classification* – The maximum possible lease term(s) is non-cancelable by both lessee and lessor, and is more than 12 months will not be considered short-term.

*Term* – At the time of lease commencement or conversion, the term of the lease will include possible extension periods that are deemed to be reasonably certain given all available information, regarding the likelihood of renewal.

**NOTE 15 – GASB STATEMENT NO. 87, LEASES** (Continued)

*Discount Rate* – Unless explicitly stated in the lease agreement, known by the JPB, or the JPB is able to determine the rate implicit within the lease, the discount rate used to calculate lease right-to-use lease assets and liabilities in the case of agreements in which the JPB acts as lessee, or deferred inflows of resources and related lease receivable, in the case of agreements in which the JPB acts as lessor, is the annual 110% Applicable Federal Rates (AFR). The Short-term annual 110% AFR applies to a lease term that is less than three years, the Mid-term annual 110% AFR applies to a lease term that is between three to nine years, and the Long-term annual 110% AFR applies to a lease term that is longer than nine years. The Short-term annual 110% AFR was 0.13% for July 2021 and 2.62% for July 2022, the Mid-term annual 110% AFR was 1.10% for July 2021 and 3.30% for July 2022, and the Long-term annual 110% AFR was 2.28% for July 2021 and 3.54% for July 2022. The July 2021 and July 2022 AFR were used for applicable leases beginning in fiscal years 2022 and 2023, respectively.

*Variable Payments* – Variable payments based on the future performance of the lessee or lessor or usage of the underlying asset are not included in the measurement of lease assets or liabilities. For fiscal years 2022 and 2023, as a lessee, all leases are based on fixed payments and do not have variable payment components. For fiscal years 2022 and 2023, as a lessor, all leases are based on fixed payments and variable payments based on the Consumer Price Index (CPI).

*Residual Value Guarantees* – There were no residual guarantees included in the measurement of lease assets and liabilities, or deferred inflow of resources and lease receivables, for fiscal years 2022 and 2023.

*Remeasurement* – There were no remeasurements for fiscal years 2022 and 2023 due to (1) early termination which included a termination fee, (2) reduction in monthly lease payment, and (3) a change in the discount rate.

Lease related assets by major class of underlying assets at June 30 were as follows (in thousands):

	Balance at June 30, 2022	Additions	Reductions	Balance at June 30, 2023
Right-to-use lease assets:				
Office space	\$ 1,066	\$ 953	\$ (1,066)	\$ 953
Land	-	-	-	-
Parking	-	1,196	-	1,196
Tower space	4	15	(4)	15
Total right-to-use lease assets	<u>1,070</u>	<u>2,164</u>	<u>(1,070)</u>	<u>2,164</u>
Accumulated amortization for:				
Office space	472	697	(1,066)	103
Land	-	-	-	-
Parking	-	199	-	199
Tower space	5	4	(4)	5
Total accumulated amortization	<u>477</u>	<u>900</u>	<u>(1,070)</u>	<u>307</u>
Total right-to-use lease assets, net	<u>\$ 593</u>	<u>\$ 1,264</u>	<u>\$ -</u>	<u>\$ 1,857</u>

**NOTE 15 – GASB STATEMENT NO. 87, LEASES (Continued)**

	Balance at June 30, 2021	Additions	Reductions	Balance at June 30, 2022
Right-to-use lease assets:				
Office space	\$ 1,913	\$ 1,066	\$ (1,913)	\$ 1,066
Land	91	-	(91)	-
Parking	13	-	(13)	-
Tower space	4	-	-	4
Total right-to-use lease assets	<u>2,021</u>	<u>1,066</u>	<u>(2,017)</u>	<u>1,070</u>
Accumulated amortization for:				
Office space	1,435	952	(1,915)	472
Land	62	28	(90)	-
Parking	6	6	(12)	-
Tower space	3	2	-	5
Total accumulated amortization	<u>1,506</u>	<u>988</u>	<u>(2,017)</u>	<u>477</u>
Total right-to-use lease assets, net	<u>\$ 515</u>	<u>\$ 78</u>	<u>\$ -</u>	<u>\$ 593</u>

As a lessee, the JPB recognized \$901,198 and \$988,109 of lease related amortization expense in fiscal years 2023 and 2022, respectively. The JPB also recognized \$30,269 and \$2,043 of lease related interest expense in fiscal years 2023 and 2022, respectively.

As a lessor, the JPB recognized \$64,476 and \$1,997 in lease related interest revenue in fiscal years 2023 and 2022, respectively. The JPB also recognized revenues from lease related deferred inflows of resources of \$215,269 and \$78,237 in fiscal years 2023 and 2022, respectively.

Lease related obligations consist of the following:

	Balance at July 1, 2022	Additions	Retirements	Balance June 30, 2023	Current Portion
Lease liabilities	<u>\$ 632</u>	<u>\$ 1,919</u>	<u>\$ 632</u>	<u>\$ 1,919</u>	<u>\$ 899</u>
Total long-term debt	<u>\$ 632</u>	<u>\$ 1,919</u>	<u>\$ 632</u>	<u>\$ 1,919</u>	<u>\$ 899</u>
	Balance at July 1, 2021	Additions	Retirements	Balance June 30, 2022	Current Portion
Lease liabilities	<u>\$ 593</u>	<u>\$ 631</u>	<u>\$ 592</u>	<u>\$ 632</u>	<u>\$ 632</u>
Total long-term debt	<u>\$ 593</u>	<u>\$ 631</u>	<u>\$ 592</u>	<u>\$ 632</u>	<u>\$ 632</u>



**NOTE 15 – GASB STATEMENT NO. 87, LEASES (Continued)**

A summary of the combined remaining principal and interest amounts by fiscal year for the lease liabilities are shown below:

<u>Year Ending June 30:</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2024	\$ 899	\$ 46	\$ 945
2025	472	24	496
2026	248	14	262
2027	257	6	263
2028	43	-	43
Total	<u>\$ 1,919</u>	<u>\$ 90</u>	<u>\$ 2,009</u>

**NOTE 16 – RELATED PARTIES**

**A. Operating Expenses Paid to the District**

The District serves as the Managing Agency of the JPB, providing management and administrative personnel and facilities (see Note 1). The District is compensated based on actual costs incurred and administrative overhead. Total expenses billed to the JPB by the District, which were included as operating expenses in the accompanying statements of revenues, expenses, and changes in net position, were as follows (in thousands):

	<u>2023</u>	<u>2022</u>
Wages and fringe benefits	\$ 13,280	\$ 11,080
Overhead	783	276
Total	<u>\$ 14,063</u>	<u>\$ 11,356</u>

**B. Receivables from Member Agencies**

The JPB is owed amounts from Member Agencies for grants and prior obligations. The balances at June 30 are as follows (in thousands):

	<u>2023</u>	<u>2022</u>
District	\$ 4,883	\$ 1,202
VTA	8,254	1,076
CCSF	8,976	9,968
Total	<u>\$ 22,113</u>	<u>\$ 12,246</u>

**C. Payables to the District**

Amounts due to the District as Managing Agency at June 30, 2023 and 2022, total \$5,595,981 and \$3,012,217, respectively, and are included in accrued liabilities.

**NOTE 16 – RELATED PARTIES (Continued)**

**D. Unearned Member Contributions**

The JPB recognizes Member Agencies' advances as contributed capital when expenses are incurred or assets are purchased. Accordingly, some Member Agencies' payments are classified as Unearned Member Contributions. The balances at June 30 were as follows (in thousands):

	<u>2023</u>	<u>2022</u>
District	\$ 16,464	\$ 18,279
VTA	11,115	11,734
CCSF	<u>1,400</u>	<u>1,392</u>
Total	<u>\$ 28,979</u>	<u>\$ 31,405</u>
Committed for:		
Centralized traffic control system	\$ 1	\$ 1
Farebox capital	1	1
Capital Contingency Fund	2,334	2,650
Capital contribution, Member's local match	<u>26,643</u>	<u>28,753</u>
Total Committed	<u>28,979</u>	<u>31,405</u>
Uncommitted funds:		
District	-	-
VTA	-	-
CCSF	<u>-</u>	<u>-</u>
Total Uncommitted	<u>-</u>	<u>-</u>
Total	<u>\$ 28,979</u>	<u>\$ 31,405</u>

**NOTE 17 – REVOLVING CREDIT FACILITY**

Cash flow projections for the Peninsula Corridor Electrification Project (PCEP) forecast funding gaps between the time payments are due for work performed and the timing of receipts from the funding sources associated with such work, most of which are available on a reimbursement basis. At its highest point, the funding gap is currently projected to be approximately \$120 million.

In December 2016, the JPB secured the 2016 Credit Facility to assist the JPB in meeting its cash flow needs in connection with the PCEP. The amount outstanding under the 2016 Credit Facility may not exceed \$170 million at any one time. This Credit Facility commitment was reduced March 31, 2019, to a level not to exceed \$120 million. Funds drawn will be applied to fund cash flow mismatch with respect to the PCEP and the 2018 TIRCP Grant Projects and/or to enable the JPB to access the 2018 TIRCP Grant awarded to the JPB to fund a portion of the 2018 TIRCP Grant Projects. Funds drawn by the JPB pursuant to the 2016 Credit Facility constitute loans made to the JPB by the provider of the 2016 Credit Facility.

**NOTE 17 – REVOLVING CREDIT FACILITY (Continued)**

On August 16, 2021, the JPB replaced the existing Credit Facilities with two new Credit Facilities. The new Credit Facilities were issued in the amounts of \$100 million each for PCEP project funding (PCEP Credit Facility) and Working Capital funding (Working Capital Facility). The terms on the new Credit Facilities is set forth in the Fee and Pricing Agreements for each credit line. There are two ongoing fees associated with the revolving credit facilities: an undrawn and a draw fee. For those amounts available to the JPB but undrawn and not used at a particular time, the Lender will charge a commitment fee equal to 0.23 percent times the undrawn amount. For those amounts drawn and used under the revolving credit facility, the Lender will charge a draw fee (i.e., and interest rate). The draw fee for Tax Exempt draws is equal to the following formula: The Secured Overnight Financing Rate (SOFR) plus an Applicable Tax-Exempt Margin, which currently stands at 0.36% based on the Current S&P rating of AA+. The draw fee for Taxable draws is equal to the Secured Overnight Financing Rate (SOFR) plus an applicable Taxable Margin, which currently stands at 0.45% based on the current S&P rating of AA+. As of June 30, 2023, there was no outstanding (drawn) revolving credit line balances on the PCEP Credit Facility and \$20,964 million for the Working Capital Facility.

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***SUPPLEMENTARY INFORMATION***

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	<b>Budget (Unaudited)</b>	<b>Actual</b>	<b>Variance with Final Budget</b>
<b>OPERATING REVENUES:</b>			
Passenger fares	\$ 46,479	\$ 43,330	\$ (3,149)
Parking, shuttle, and pass revenues	2,151	2,239	88
Advertising	128	821	693
Other	342	275	(67)
Total operating revenues	<u>49,100</u>	<u>46,665</u>	<u>(2,435)</u>
<b>OPERATING EXPENSES:</b>			
Contract services	119,513	117,289	2,224
Insurance	10,620	11,855	(1,235)
Fuel	17,539	15,995	1,544
Parking, shuttle, and pass expenses	1,593	1,507	86
Professional services	2,868	2,445	423
Wages and benefits	14,077	14,063	14
Utilities and supplies	2,893	2,836	57
Maintenance services	540	773	(233)
Temporary services, rent, and other	6,968	5,808	1,160
Debt fees	-	716	(716)
Total operating expenses	<u>176,611</u>	<u>173,287</u>	<u>3,324</u>
Operating loss	<u>(127,511)</u>	<u>(126,622)</u>	<u>889</u>
<b>NONOPERATING REVENUES (EXPENSES):</b>			
Federal, state, and local operating assistance	11,328	11,644	316
Transaction and use tax	114,300	121,645	7,345
Rental income	935	1,300	365
Investment income	105	3,468	3,363
Interest expense	(2,582)	(2,351)	231
Expense for noncapitalized projects	-	(31,059)	(31,059)
Other income	846	3,059	2,213
Total nonoperating revenues (expenses), net	<u>124,932</u>	<u>107,706</u>	<u>17,226</u>
Net loss	<u>(2,579)</u>	<u>(18,916)</u>	<u>(16,337)</u>
<b>CAPITAL OUTLAY:</b>			
Capital assistance	90,957	296,030	205,073
Capital debt financing	-	60,402	60,402
Capital expenditures	(90,957)	(356,432)	(265,475)
Net capital outlay	<u>-</u>	<u>-</u>	<u>-</u>
Deficiency of Revenues and Nonoperating Income under Expenses, Capital Outlay, and Debt Principal Payment	<u>\$ (2,579)</u>	<u>\$ (18,916)</u>	<u>\$ (16,337)</u>

## NOTE 1 – BUDGETARY BASIS OF ACCOUNTING

The Peninsula Corridor Joint Powers Board (JPB) prepares its budget on a basis of accounting that differs from accounting principles generally accepted in the United States of America (GAAP). The actual results of operations are presented in the supplementary schedule on the budgetary basis to provide a meaningful comparison of actual results with budget. In addition, certain budget amounts have been reclassified to conform to the presentation of actual amounts in the supplementary schedule. Budgeted amounts presented are the final adopted budget. The primary difference between the budgetary basis of accounting and GAAP concerns capital assets. Depreciation and amortization expense per GAAP and amortization of lease are not budgeted and budgeted capital expenses are not recorded as an expense per GAAP. In addition, unrealized gains and losses under Governmental Accounting Standards Board (GASB) Statement No. 31 are not recognized on a budgetary basis as well as some long-term expenses such as bond related payments. The capital expense budget does not include the carry-over budget from 2022.

## NOTE 2 – RECONCILIATION OF BUDGETARY BASIS TO GAAP BASIS

Deficiency of Revenues and Nonoperating Income under Expenses, Capital Outlay, and Debt Principal Payment		\$	(18,916)
Reconciling Items			
Capital expenditures	\$	356,432	
Depreciation and amortization		(60,582)	
Capital debt financing		(60,402)	
GASB Statement No. 31 unrealized gain/loss		(3)	
Bond premium amortization		<u>1,373</u>	
Subtotal reconciling items			<u>236,818</u>
Change in net position, GAAP basis		\$	<u>217,902</u>



# *Section III*

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## **STATISTICAL**

### Financial Trends

- Net Position and Changes in Net Position

### Revenue Capacity

- Revenue Base and Revenue Rate
- Principal Revenue Payers

### Debt Capacity

- Ratio of Outstanding Debt
- Bonded Debt
- Direct and Overlapping Debt
- Debt Limitations
- Pledged Revenue Coverage
- Sales Tax Receipts

### Demographics and Economic Information

- Population, Income, and Unemployment Rates
- Principal Employers

### Operating Information

- Farebox Recovery and Passenger Miles
- Employees (Full-Time Equivalents)
- Capital Assets

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## STATISTICAL SECTION

The Statistical Section of the Peninsula Corridor Joint Powers Board (JPB) Annual Comprehensive Financial Report represents detailed information as a context for understanding the information in the financial statements, note disclosures, and supplementary information for assessing the JPB's economic condition.

### **Financial Trends**

These schedules contain trend information to assist readers in understanding and assessing how the JPB's financial position has changed over time.

### **Revenue Capacity**

These schedules contain information to assist readers in understanding and assessing the factors affecting the JPB's ability to generate passenger fares.

### **Debt Capacity**

These schedules assist readers in understanding and assessing the JPB's debt burden and its capacity to issue future debt.

### **Demographic and Economic Information**

These schedules present socioeconomic indicators to assist readers in understanding the environment within which the JPB's financial activities take place.

### **Operating Information**

These schedules contain contextual information about the JPB's operations and resources to assist readers in using financial statement information as a tool to understand and assess the JPB's economic condition.

	<u>2023</u>	<u>2022</u>	<u>2021</u>	<u>2020</u>
<b>OPERATING REVENUES:</b>				
Passenger fares	\$ 43,330	\$ 33,236	\$ 32,440	\$ 76,094
Parking, shuttle, and pass revenues	2,239	2,778	1,547	6,045
Advertising	821	412	114	1,469
Other	275	1,268	1,108	849
Total operating revenues	<u>46,665</u>	<u>37,694</u>	<u>35,209</u>	<u>84,457</u>
<b>OPERATING EXPENSES:</b>				
Contract services	117,289	108,946	122,030	107,037
Insurance	11,855	6,148	8,473	4,166
Fuel	15,995	13,491	7,088	9,311
Parking, shuttle, and pass expenses	1,507	3,254	3,211	5,591
Professional services	2,445	2,944	11,061	5,535
Wages and benefits	14,063	11,356	13,068	17,355
Utilities and supplies	2,836	5,118	2,083	2,059
Maintenance services	773	609	503	1,391
Temporary services, rent, and other	5,808	5,298	3,330	4,579
Debt fees	716	-	-	-
Total operating expenses	<u>173,287</u>	<u>157,164</u>	<u>170,847</u>	<u>157,024</u>
Operating loss before depreciation and amortization	(126,622)	(119,470)	(135,639)	(72,567)
Depreciation and amortization	<u>(60,582)</u>	<u>(65,656)</u>	<u>(65,112)</u>	<u>(66,966)</u>
Operating loss	<u>(187,204)</u>	<u>(185,126)</u>	<u>(200,750)</u>	<u>(139,533)</u>
<b>NONOPERATING REVENUES:</b>				
Federal, state, and local operating assistance	11,644	126,118	129,634	63,044
Transaction and use tax	121,645	112,620	-	-
Rental income	1,300	1,237	1,125	534
Investment income	4,838	679	334	495
Other income	3,059	3,172	4,085	1,201
Total nonoperating revenues	<u>142,486</u>	<u>243,826</u>	<u>135,178</u>	<u>65,274</u>
<b>NONOPERATING EXPENSES:</b>				
Interest expense	(2,351)	(2,210)	(2,890)	(2,642)
Expense for noncapitalized projects	(31,059)	(19,954)	-	-
Total nonoperating expenses	<u>(33,410)</u>	<u>(22,164)</u>	<u>(2,890)</u>	<u>(2,642)</u>
Net loss before capital contributions	(78,128)	36,536	(68,462)	(76,901)
Capital contributions	<u>296,030</u>	<u>468,612</u>	<u>434,567</u>	<u>361,303</u>
Change in net position	217,902	505,148	366,105	284,402
<b>NET POSITION:</b>				
Beginning of year	3,228,367	2,723,219	2,355,685	2,071,282
Prior period adjustment per GASB 87 <sup>[1]</sup>	-	-	1,429	-
Beginning of year, as restated	<u>3,228,367</u>	<u>2,723,219</u>	<u>2,357,114</u>	<u>2,071,282</u>
End of year	<u>\$ 3,446,269</u>	<u>\$ 3,228,367</u>	<u>\$ 2,723,219</u>	<u>\$ 2,355,685</u>
<b>COMPONENTS OF NET POSITION:</b>				
Net investment in capital assets	\$ 3,304,463	\$ 2,947,760	\$ 2,652,168	\$ 2,312,715
Unrestricted	<u>141,806</u>	<u>280,607</u>	<u>71,051</u>	<u>42,970</u>
Net position, end of year	<u>\$ 3,446,269</u>	<u>\$ 3,228,367</u>	<u>\$ 2,723,219</u>	<u>\$ 2,355,685</u>

[1] Per Governmental Accounting Standards Board (GASB) Statement No. 87 effective as of fiscal year 2021, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources.

Source: Current and prior years' Annual Comprehensive Financial Reports.

This table presents revenues and expenses, contributions, depreciation and amortization, and net position components.

<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>
\$ 102,668	\$ 97,050	\$ 92,429	\$ 86,959	\$ 83,351	\$ 74,846
7,894	7,790	7,911	7,226	5,990	5,859
1,050	1,016	370	190	227	86
1,165	1,180	1,321	1,057	1,194	1,354
<u>112,777</u>	<u>107,036</u>	<u>102,031</u>	<u>95,432</u>	<u>90,762</u>	<u>82,145</u>
99,541	92,899	89,639	82,942	78,240	75,238
4,129	1,188	7,105	35	6,593	3,874
11,184	10,322	8,613	8,312	12,118	14,797
5,280	5,916	5,629	6,104	5,316	5,476
2,068	2,178	1,514	1,618	1,255	1,322
16,765	13,911	13,561	12,943	11,501	10,668
2,189	2,063	2,179	2,172	2,068	1,524
1,643	1,668	1,508	1,054	1,039	1,007
4,528	2,782	2,886	2,664	1,981	1,854
-	-	-	-	-	-
<u>147,327</u>	<u>132,927</u>	<u>132,634</u>	<u>117,844</u>	<u>120,111</u>	<u>115,760</u>
(34,550)	(25,891)	(30,603)	(22,412)	(29,349)	(33,616)
<u>(78,890)</u>	<u>(100,097)</u>	<u>(83,922)</u>	<u>(93,540)</u>	<u>(75,300)</u>	<u>(73,452)</u>
<u>(113,440)</u>	<u>(125,988)</u>	<u>(114,525)</u>	<u>(115,952)</u>	<u>(104,649)</u>	<u>(107,068)</u>
35,070	25,346	25,489	25,078	27,578	29,522
-	-	-	-	-	-
1,901	2,070	1,861	1,781	1,764	1,728
714	93	28	111	242	206
3,210	1,198	2,413	613	1,007	4,044
<u>40,895</u>	<u>28,707</u>	<u>29,791</u>	<u>27,583</u>	<u>30,590</u>	<u>35,500</u>
(3,222)	(1,501)	(1,302)	(1,301)	(1,192)	(1,120)
-	-	-	-	-	-
<u>(3,222)</u>	<u>(1,501)</u>	<u>(1,302)</u>	<u>(1,301)</u>	<u>(1,192)</u>	<u>(1,120)</u>
(75,767)	(98,782)	(86,036)	(89,670)	(75,251)	(72,688)
<u>405,162</u>	<u>321,303</u>	<u>246,767</u>	<u>131,329</u>	<u>115,225</u>	<u>111,349</u>
329,393	222,521	160,731	41,659	39,974	38,661
1,741,889	1,519,366	1,358,635	1,316,975	1,277,001	1,238,339
-	-	-	-	-	-
<u>1,741,889</u>	<u>1,519,366</u>	<u>1,358,635</u>	<u>1,316,975</u>	<u>1,277,001</u>	<u>1,238,339</u>
<u>\$ 2,071,282</u>	<u>\$ 1,741,889</u>	<u>\$ 1,519,366</u>	<u>\$ 1,358,635</u>	<u>\$ 1,316,974</u>	<u>\$ 1,277,001</u>
\$ 2,030,255	\$ 1,707,243	\$ 1,484,730	\$ 1,323,485	\$ 1,282,932	\$ 1,246,218
41,027	34,646	34,636	35,150	34,043	30,783
<u>\$ 2,071,282</u>	<u>\$ 1,741,889</u>	<u>\$ 1,519,366</u>	<u>\$ 1,358,635</u>	<u>\$ 1,316,975</u>	<u>\$ 1,277,001</u>

	<u>2023</u>	<u>2022</u>	<u>2021</u>	<u>2020</u>
Passenger fares (in thousands)	\$ 43,330	\$ 33,236	\$ 32,440	\$ 75,789
<b>Revenue Base</b>				
Number of passengers (in thousands)	6,678	4,055	1,296	13,684
Source: National Transit Database (NTD)				
Four-zone fare structure				
Full adult fare:				
One-way (Ticket Machine)	\$ 10.50	\$ 10.50	\$ 10.50	\$ 10.50
One-way (Clipper Card)	9.95	9.95	-	-
Day Pass	21.00	21.00	21.00	21.00
8-ride <sup>[1]</sup>	-	-	-	-
Monthly Pass	238.80	238.80	298.50	298.50
Eligible discount fare:				
One-way (Ticket Machine)	\$ 4.75	\$ 4.75	\$ 4.75	\$ 4.75
One-way (Clipper Card)	4.60	4.60	-	-
Day Pass	10.50	10.50	10.50	10.50
8-ride <sup>[1]</sup>	-	-	-	-
Monthly pass	110.40	110.40	138.00	138.00

[1] 8-ride tickets replaced 10-ride tickets effective on March 2, 2009. 8-ride tickets were discontinued on October 1, 2017.

Source: Annual Comprehensive Financial Reports, Caltrain codified tariff, and Caltrain board reports on passenger counts; National Transit Database.

This table presents passenger fares, number of passengers, and four-zone revenue fare structure.

<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>
\$ 102,668	\$ 97,050	\$ 92,429	\$ 86,959	\$ 83,351	\$ 74,846
17,797	18,944	18,743	19,233	18,567	17,029
\$ 10.50	\$ 10.50	\$ 9.75	\$ 9.75	\$ 9.25	\$ 9.25
-	-	-	-	-	-
21.00	21.00	19.50	19.50	18.50	18.50
-	-	68.10	68.10	64.75	64.75
298.50	278.60	243.80	243.80	232.00	232.00
\$ 4.75	\$ 4.75	\$ 4.75	\$ 4.75	\$ 4.50	\$ 4.50
-	-	-	-	-	-
10.50	10.50	9.75	9.75	9.25	9.25
-	-	34.05	34.05	32.25	32.25
138.00	128.80	121.90	121.90	116.00	116.00

The JPB does not have major revenue payers as most of the operating revenues are derived from passenger fares.



<u>Fiscal Year</u>	<u>Revenue Bonds (in thousands)<sup>[1]</sup></u>	<u>Personal Income for San Mateo County<sup>[2]</sup></u>	<u>As a Percent of Personal Income</u>
2023	\$ 222,771	\$ 117,533	189.539%
2022	225,320	114,109	197.460%
2021	54,890	110,787	49.546%
2020	55,153	107,560	51.276%
2019	55,417	101,056	54.838%
2018	34,496	96,306	35.819%
2017	34,514	89,223	38.683%
2016	34,532	81,489	42.376%
2015	34,551	78,525	44.000%
2014	23,564	71,027	33.176%

[1] Source: Current and prior years' Annual Comprehensive Financial Reports.

[2] Data include retroactive revisions by the U.S. Department of Commerce, Bureau of Economic Analysis. Personal Income and Per Capital Personal Income data for 2021, 2022, and 2023 is based on an estimated three percent annual increase over 2020.

Source data for table is the FY22 San Mateo County Annual Comprehensive Financial Report.

This table presents the capacity of the JPB to issue Revenue Bonds based on the total personal income for San Mateo County.

<b>Fiscal Year</b>	<b>Revenue Bonds</b>	<b>Operating Contributions / Transaction and Use Tax</b>	<b>As a Percent of Operating Contributions / Transaction and Use Tax</b>
2023	\$ 222,771	\$ 121,645	183.1%
2022	225,320	112,620	200.1%
2021	54,890	28,538	192.3%
2020	55,153	28,035	196.7%
2019	55,417	25,448	217.8%
2018	34,496	20,448	168.7%
2017	34,514	20,448	168.8%
2016	34,532	19,727	175.0%
2015	34,551	19,829	174.2%
2014	23,564	17,236	136.7%

Source: Current and prior years' Annual Comprehensive Financial Reports.

This table presents the capacity of the JPB to issue Revenue Bonds based on the total member contributions from the District, VTA, and CCSF prior to fiscal year 2023 and the Measure RR transaction and use tax since fiscal year 2022.

The JPB does not have overlapping debt with other governmental agencies.

The JPB does not have a legal debt limit.

<b>Fiscal Year</b>	<b>Pledged Revenue</b>	<b>Debt Service (Farebox Revenue Bonds)</b>			<b>Debt Coverage</b>
		<b>Principal</b>	<b>Interest</b>	<b>Total</b>	
2023	\$ 46,665	\$ 1,175	\$ 2,296	\$ 3,471	13
2022	37,694	1,120	2,354	3,474	11
2021	35,206	-	2,382	2,382	15
2020	84,458	-	2,283	2,283	37
2019	112,777	-	1,451	1,451	78
2018	107,036	-	1,282	1,282	83
2017	102,031	-	1,292	1,292	79
2016	95,433	-	1,282	1,282	74
2015	90,763	-	1,148	1,148	79
2014	82,145	-	1,103	1,103	74

<b>Year</b>	<b>Pledged Revenue</b>	<b>Debt Service (Measure RR Sales Tax Revenue Bonds)</b>			<b>Debt Coverage</b>
		<b>Principal</b>	<b>Interest</b>	<b>Total</b>	
2023	\$ 121,645	\$ -	\$ 7,000	\$ 7,000	17
2022	112,620	-	1,731	1,731	65

Source: Current and prior years' Annual Comprehensive Financial Reports.

These tables present the relationship between total farebox and Measure RR transaction and use tax revenues and total principal and interest payments, as well as the JPB's ability to meet its debt obligations.

<b>Major Industry Group</b>	<b>2022</b>			<b>2013</b>		
	<b>Rank</b>	<b>Percent of Sales Receipts</b>	<b>Amount</b>	<b>Rank</b>	<b>Percent of Sales Receipts</b>	<b>Amount</b>
County and State Pool	1	22.1%	\$ 46,690	4	12.3%	\$ 17,490
Autos and Transportation	2	16.1%	34,151	2	16.5%	23,510
General Consumer Goods	3	15.6%	32,985	1	22.0%	31,380
Business and Industry	4	14.5%	30,750	6	11.5%	16,367
Restaurants and Hotels	5	11.8%	24,979	3	12.5%	17,835
Building and Construction	6	8.0%	16,843	7	8.0%	11,360
Fuel and Service Stations	7	7.3%	15,457	5	11.5%	16,431
Food and Drugs	8	4.5%	9,556	8	5.3%	7,594
Transfers and Unidentified	9	0.1%	181	9	0.3%	418
<b>Total</b>			<b>\$ 211,592</b>			<b>\$ 142,385</b>

Source: County-wide sales tax receipts provided for the County of San Mateo by Major Industry Group by Hinderliter, de Llamas and Associates (HDL).

<b>Major Industry Group</b>	<b>2022</b>			<b>2013</b>		
	<b>Rank</b>	<b>Percent of Sales Receipts</b>	<b>Amount</b>	<b>Rank</b>	<b>Percent of Sales Receipts</b>	<b>Amount</b>
County and State Pool	1	24.9%	\$ 46,516	3	14.2%	\$ 23,550
Restaurants and Hotels	2	21.9%	40,887	2	25.0%	41,400
General Consumer Goods	3	20.1%	37,581	1	28.1%	46,605
Business and Industry	4	10.1%	18,799	4	10.2%	16,838
Building and Construction	5	5.9%	11,072	7	4.9%	8,125
Food and Drugs	6	5.9%	11,009	6	6.1%	10,045
Autos and Transportation	7	5.6%	10,430	8	4.8%	7,978
Fuel and Service Stations	8	5.2%	9,746	5	6.7%	11,065
Transfers and Unidentified	9	0.3%	522	9	0.0%	25
<b>Total</b>			<b>\$ 186,562</b>			<b>\$ 165,631</b>

Source: County-wide sales tax receipts provided for the City and County of San Francisco by Major Industry Group by Hinderliter, de Llamas and Associates (HDL).

<b>Major Industry Group</b>	<b>2022</b>			<b>2013</b>		
	<b>Rank</b>	<b>Percent of Sales Receipts</b>	<b>Amount</b>	<b>Rank</b>	<b>Percent of Sales Receipts</b>	<b>Amount</b>
Business and Industry	1	29.1%	\$ 164,461	1	24.1%	\$ 90,099
County and State Pool	2	18.9%	106,425	3	13.7%	51,270
General Consumer Goods	3	13.7%	77,520	2	20.4%	76,285
Autos and Transportation	4	12.9%	72,527	4	12.8%	47,627
Restaurants and Hotels	5	9.9%	56,087	5	10.3%	38,351
Building and Construction	6	6.9%	38,883	7	6.7%	24,950
Fuel and Service Stations	7	5.1%	28,660	6	8.0%	29,926
Food and Drugs	8	3.3%	18,728	8	4.0%	14,881
Transfers and Unidentified	9	0.2%	1,027	9	0.0%	105
<b>Total</b>			<b>\$ 564,318</b>			<b>\$ 373,494</b>

Source: County-wide sales tax receipts provided for the County of Santa Clara by Major Industry Group by Hinderliter, de Llamas and Associates (HDL).



<b>Fiscal Year</b>	<b>Population <sup>[1]</sup></b>	<b>Total Personal Income (in millions) <sup>[2]</sup></b>	<b>Per Capita Personal Income <sup>[2]</sup></b>	<b>Average Unemployment Rates <sup>[3]</sup></b>
2023	738,705 *	\$ 117,533 *	\$ 154,993 *	3.1%
2022	744,662	114,109	150,479	2.1%
2021	751,596	110,786	146,096	5.0%
2020	771,061	107,559	141,841	10.8%
2019	774,231	101,056	132,133	2.2%
2018	772,372	96,306	125,332	2.5%
2017	770,256	89,223	116,077	2.9%
2016	765,895	81,488	106,115	3.3%
2015	759,155	78,525	102,639	3.3%
2014	758,581	71,027	93,802	4.2%

[1] Data include retroactive revisions by the State of California Department of Finance, Demographic Research Unit.

[2] Data include retroactive revisions by the U.S. Department of Commerce Bureau of Economic Analysis.

[3] Data include retroactive revisions by the State of California Employment Development Department. Unemployment rates are non-seasonally adjusted for June.

\* 2023 Population growth is based on 0.8% decline from 2022.

\* Personal Income and Per Capita Personal Income data for 2021, 2022, and 2023 is based on an estimated three percent annual increase over 2020. Source data for table is the fiscal year 2022 San Mateo County Annual Comprehensive Financial Report.

Source: County of San Mateo fiscal year 2022 Annual Comprehensive Financial Report.

This table highlights San Mateo County's total population, total personal and per capita income, and percentage of unemployed residents

<b>Fiscal Year</b>	<b>Population <sup>[1]</sup></b>	<b>Total Personal Income (in millions) <sup>[2]</sup></b>	<b>Per Capita Personal Income <sup>[2]</sup></b>	<b>Average Unemployment Rates <sup>[3]</sup></b>
2023	804,508 *	\$ 141,274 *	\$ 175,597 *	3.2%
2022	804,534	137,159	170,483	3.3%
2021	815,201	136,122	166,980	6.9%
2020	870,014	125,500	144,250	4.8%
2019	881,549	117,636	133,442	2.3%
2018	880,696	115,445	131,083	2.6%
2017	879,166	106,007	120,576	3.1%
2016	876,103	96,161	109,760	3.4%
2015	862,004	89,533	103,867	4.0%
2014	852,469	77,233	90,600	5.2%

[1] U.S. Census Bureau. Fiscal years 2020 and 2021 were updated from last year's Annual Comprehensive Financial Report with newly available data.

[2] U.S. Bureau of Economic Analysis. Fiscal years 2019, 2020, and 2021 were updated from last year's Annual Comprehensive Financial Report with newly available data.

[3] California Employment Development Department.

\* 2023 Population Estimate reflects a small decline from 2022.

\* Personal Income and Per Capita Personal Income data for 2023 is based on an estimated three percent annual increase over 2022. Source data for table is the fiscal year 2022 San Francisco City and County Annual Comprehensive Financial Report.

Source: Fiscal year 2022 San Francisco City and County Annual Comprehensive Financial Report.

This table highlights the City and County of San Francisco's total population, total personal and per capita income, and percentage of unemployed residents.

<b>Year</b>	<b>Population <sup>[1]</sup></b>	<b>Total Personal Income (in millions) <sup>[2]</sup></b>	<b>Per Capita Personal Income <sup>[2]</sup></b>	<b>Average Unemployment Rates <sup>[3]</sup></b>
2023	1,892,187 *	\$ 257,704	\$ 135,128	3.6%
2022	1,894,783 *	250,198	131,192	2.2%
2021	1,934,171	242,911	127,371	5.2%
2020	1,961,969	235,835	123,661	10.7%
2019	1,954,286	223,625	115,997	2.6%
2018	1,956,598	209,020	107,877	2.9%
2017	1,938,180	190,002	98,032	3.5%
2016	1,927,888	170,673	88,920	4.0%
2015	1,889,638	158,729	82,756	4.6%
2014	1,868,558	141,874	74,883	6.1%

[1] Data include retroactive revisions by the State of California Department of Finance, Demographic Research Unit.

[2] U.S. Department of Commerce – Bureau of Economic Analysis. Actual data is available through 2020. Years 2021, 2022, and 2023 data are preliminary and assume a 3% increase over the prior year.

[3] California Employment Development Department.

\* 2023 Population estimate is based on 0.1% decline from 2022.

Source: County of Santa Clara fiscal year 2022 Annual Comprehensive Financial Reports.

This table highlights Santa Clara County’s total population, total personal and per capita income, and percentage of employed residents.

<b>Employers in San Mateo County</b>	<b>Business Type</b>	<b>2021*</b>			<b>2013</b>		
		<b>Number of Employees</b>	<b>Rank</b>	<b>Percent of Total County Employment</b>	<b>Number of Employees</b>	<b>Rank</b>	<b>Percent of Total County Employment</b>
Meta (Facebook Inc.)	Social Network	15,407	1	3.51%	2,865	7	0.75%
Genentech Inc.	Biotechnology	12,000	2	2.73%	8,800	2	2.30%
Oracle Corp.	Hardware and Software	9,149	3	2.08%	6,524	3	1.71%
United Airlines	Airline	7,894	4	1.80%	10,000	1	2.62%
County of San Mateo	Government	5,705	5	1.30%	5,929	4	1.55%
Gilead Sciences Inc.	Biotechnology	4,190	6	0.95%	2,596	8	0.68%
YouTube	Online Video-Streaming Platform	2,384	7	0.54%			
Sony Interactive Entertainment	Interactive Entertainment	1,855	8	0.42%			
Alaska Airlines	Airline	1,591	9	0.36%			
Electronic Arts Inc.	Video Game Developer and Publisher	1,478	10	0.34%			
Visa USA/Visa International	Global Payments Technology				2,895	6	0.76%
Kaiser Permanente	Healthcare				3,911	5	1.02%
Mills-Peninsula Health Services	Healthcare				2,200	9	0.58%
Safeway Inc	Retail Grocer				2,195	10	0.57%
<b>Total</b>		<b>61,653</b>		<b>14.03%</b>	<b>47,915</b>		<b>12.54%</b>

\* The latest information available for principal employers in San Mateo County.

Source: San Francisco Business Times - 2022 Book of Lists; California Employment Development Department (provided by San Mateo County Controller's office) from the fiscal year 2022 County of San Mateo Annual Comprehensive Financial Report.

This table presents the top 10 principal employers in San Mateo County for 2021 and 2013.

Employers in San Francisco City and County	2021*			2012		
	Number of Employees	Rank	Percent of Total City Employment	Number of Employees	Rank	Percent of Total City Employment
City and County of San Francisco	35,802	1	6.38%	25,458	1	5.33%
University of California, San Francisco	29,500	2	5.26%	22,664	2	4.74%
Salesforce	10,603	3	1.89%	4,000	9	0.84%
San Francisco Unified School District	10,322	4	1.84%	8,189	5	1.71%
Sutter Health	6,100	5	1.09%			
Wells Fargo & Co	5,899	6	1.05%	8,300	4	1.74%
Uber Technologies Inc.	5,500	7	0.98%			
Allied Universal	4,095	8	0.72%			
Kaiser Permanente	3,921	9	0.70%	3,581	10	0.75%
First Republic Bank	3,042	10	0.54%			
PG&E Corporation				4,415	7	0.92%
California Pacific Medical Center				8,559	3	1.79%
Gap, Inc				6,000	6	1.26%
State of California				4,184	8	0.88%
Total	<u>114,784</u>		<u>20.45%</u>	<u>95,350</u>		<u>19.96%</u>
Total City and County Employment	<u>561,308</u>			<u>477,650</u>		

\* The latest information available for principal employers in the City and County of San Francisco.

Source: Fiscal year 2022 City and County of San Francisco Annual Comprehensive Financial Report. City and County of San Francisco data is provided by Office of the Controller's Payroll and Personnel Services Division. The University of California, San Francisco data is from the Data Source Corporate Personnel Data Warehouse. All other data is obtained from the San Francisco Business Times Book of Lists.

This table presents the top 10 principal employers in San Francisco City and County for 2021 and 2012.

Company or Organization	2022*			2013		
	Estimated Number of Employees	Rank	Percent of Total County Employment	Estimated Number of Employees	Rank	Percent of Total County Employment
Google LLC	41,665	1	4.10%	11,000	6	1.27%
Apple Inc.	25,000	2	2.46%	12,000	5	1.39%
Tesla Motors Inc.	22,000	3	2.16%	0		
County of Santa Clara	20,912	4	2.06%	15,564	2	1.80%
Stanford University	15,750	5	1.55%	14,369	3	1.66%
Stanford Health Care (formerly Hospital & Clinics)	15,708	6	1.54%	7,936	7	0.92%
Kaiser Permanente Northern California	14,675	7	1.44%	13,500	4	1.56%
Cisco Systems Inc.	10,847	8	1.07%	16,494	1	1.90%
Applied Materials Inc	8,500	9	0.84%			
City of San Jose	7,627	10	0.75%	5,495	9	0.63%
Lockheed Martin Space Systems Co.	n/a		n/a	6,800	8	0.79%
Intel Corporation	n/a		n/a	5,400	10	0.62%
<b>Total - Top 10 Employers</b>	<u>182,684</u>			<u>108,558</u>		
Total County Employment	<u>1,016,800</u>			<u>865,900</u>		

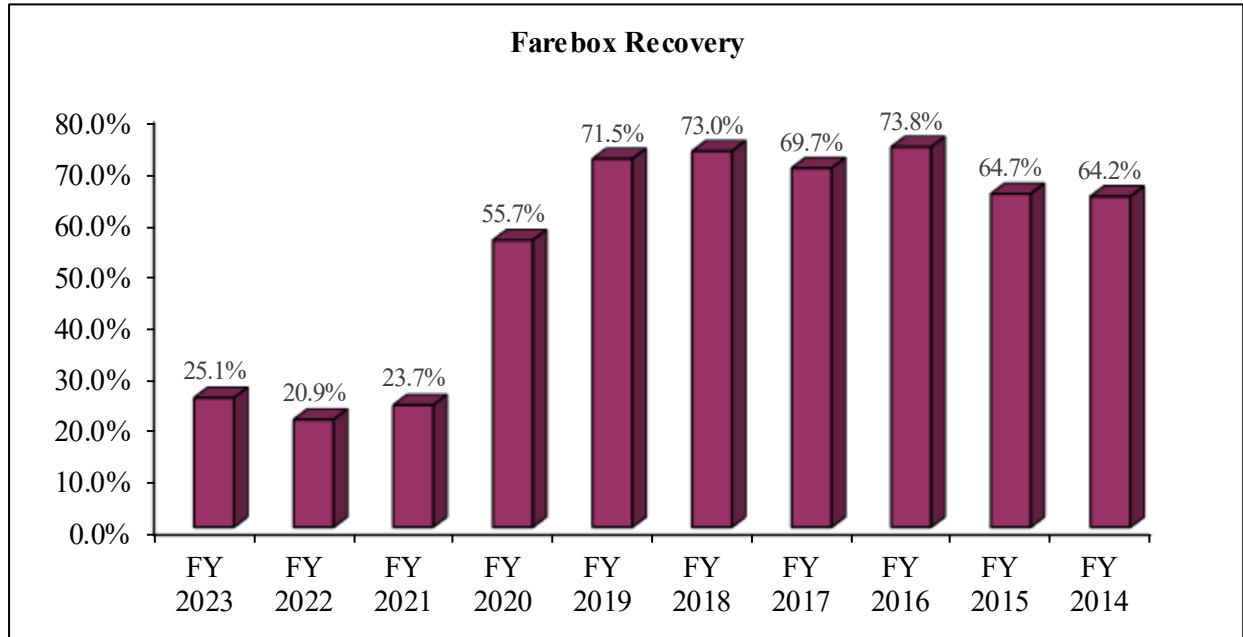
\* The latest information available for principal employers in Santa Clara County.

Source: County Employment Data is from California Employee Development Department. Fiscal year 2021 estimated number of employees is from Silicon Valley/San Jose Business Journal July 8-14-2022. All other data is from the fiscal year 2022 County of Santa Clara Annual Comprehensive Financial Report.

This table lists the top 10 principal employers in Santa Clara County for 2022 and 2013.

**FAREBOX RECOVERY**

The farebox recovery table shows the relationship between total passenger fares and operating expenses. The Board of Directors (Board) adopted a farebox recovery rate goal minimum of 65 percent effective December 2018.

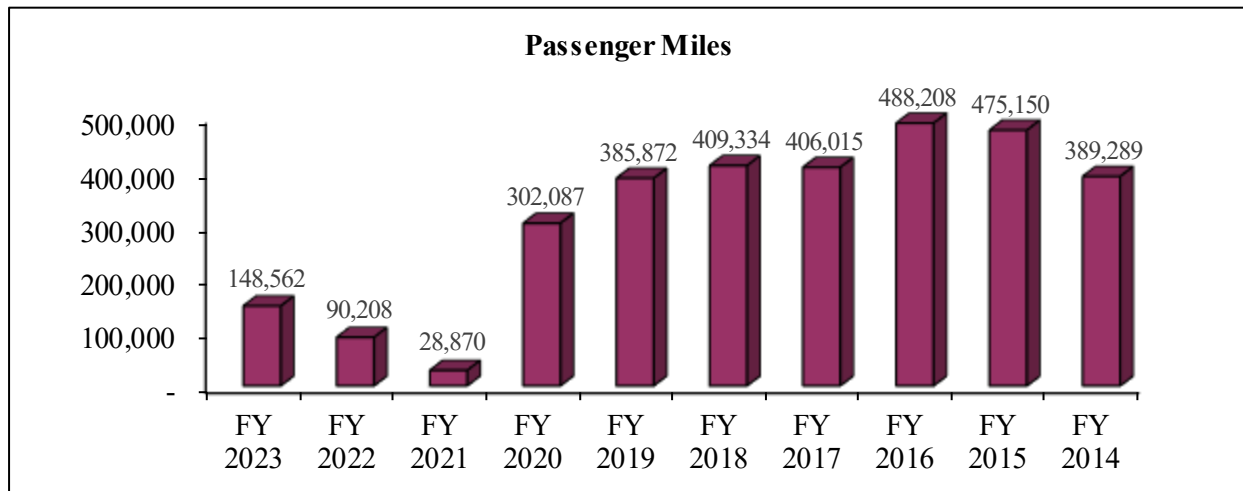


**PASSENGER MILES**

*(in thousands)*

Total passenger miles

Caltrain moved to a 104 weekday train schedule at the end of August 2021.



Source: The JPB's National Transportation Database.

<b><u>DIVISION</u></b>	<b><u>FULL-TIME EQUIVALENTS (FTEs)</u></b>									
	<b><u>2023</u></b>	<b><u>2022</u></b>	<b><u>2021</u></b>	<b><u>2020</u></b>	<b><u>2019</u></b>	<b><u>2018</u></b>	<b><u>2017</u></b>	<b><u>2016</u></b>	<b><u>2015</u></b>	<b><u>2014</u></b>
<b>EXECUTIVE</b>	4.61	0.90	0.90	0.90	0.52	0.52	0.56	0.70	0.76	0.85
<b>PUBLIC AFFAIRS</b>	-	-	-	-	-	-	-	5.35	4.80	4.80
<b>OPERATIONS, ENGINEERING, AND CONSTRUCTION</b>	128.91	94.12	95.19	79.13	84.38	62.60	42.88	51.64	49.64	47.81
<b>PLANNING AND DEVELOPMENT</b>	7.61	7.79	8.08	8.09	7.00	6.70	8.45	6.43	5.95	6.40
<b>FINANCE AND ADMINISTRATION</b>	26.12	26.21	27.74	28.96	28.10	29.86	33.71	29.44	29.40	31.00
<b>CALTRAIN MODERNIZATION PROGRAM</b>	8.00	9.00	9.00	9.00	9.00	17.45	8.25	9.95	5.95	4.95
<b>CUSTOMER SERVICE AND MARKETING</b>	21.12	18.20	18.41	17.34	15.09	16.79	24.01	11.27	11.14	14.61
<b>TOTAL FTEs</b>	<b><u>196.37</u></b>	<b><u>156.22</u></b>	<b><u>159.32</u></b>	<b><u>143.42</u></b>	<b><u>144.09</u></b>	<b><u>133.92</u></b>	<b><u>117.85</u></b>	<b><u>114.78</u></b>	<b><u>107.64</u></b>	<b><u>110.42</u></b>

Note: The JPB went through a reorganization in fiscal year 2010; Caltrain Modernization Program division was added in fiscal year 2013 as a replacement for the Peninsula Rail department.

Source: The JPB's annual capital and operating budget.

This table presents the total full-time equivalents (FTEs) by division.



	<u>2023</u>	<u>2022</u>	<u>2021</u>	<u>2020</u>
Depreciable and amortized capital assets				
Right-of-way improvements	\$ 1,202,236	\$ 1,199,128	\$ 1,188,736	\$ 1,192,985
Rail vehicles	338,413	338,072	337,025	333,025
Facilities and equipment	145,879	145,177	145,065	145,121
Office equipment	<u>13,765</u>	<u>13,750</u>	<u>13,767</u>	<u>13,354</u>
Total depreciable and amortized capital assets	<u>1,700,293</u>	<u>1,696,127</u>	<u>1,684,593</u>	<u>1,684,485</u>
Accumulated depreciation and amortization				
Right-of-way improvements	(807,602)	(761,680)	(710,610)	(666,113)
Rail vehicles	(281,841)	(273,766)	(265,139)	(258,608)
Facilities and equipment	(83,292)	(78,725)	(74,279)	(70,530)
Office equipment	<u>(13,645)</u>	<u>(13,467)</u>	<u>(13,306)</u>	<u>(13,229)</u>
Total accumulated depreciation and amortization	<u>(1,186,380)</u>	<u>(1,127,638)</u>	<u>(1,063,334)</u>	<u>(1,008,480)</u>
Non-depreciable capital assets				
Right-of-way	237,254	236,968	236,968	236,340
Construction in progress	2,775,062	2,424,021	1,840,831	1,447,512
Intangible asset - trackage rights*	<u>8,000</u>	<u>8,000</u>	<u>8,000</u>	<u>8,000</u>
Total non-depreciable capital assets	<u>3,020,316</u>	<u>2,668,989</u>	<u>2,085,799</u>	<u>1,691,852</u>
Capital assets, net	<u>\$ 3,534,229</u>	<u>\$ 3,237,478</u>	<u>\$ 2,707,058</u>	<u>\$ 2,367,857</u>

\* Per GASB Statement No. 51 effective as of fiscal year 2009, trackage rights are a non-depreciable capital asset. The activity for fiscal year 2009 has been restated to reflect the change.

Source: Annual Comprehensive Financial Reports.

This table presents the total non-depreciable capital assets, total depreciable capital assets, and total accumulated depreciation and amortization.

<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>
\$ 1,183,600	\$ 1,170,025	\$ 1,131,890	\$ 1,033,142	\$ 972,866	\$ 804,003
333,787	333,572	312,738	300,680	284,023	284,128
136,599	130,231	130,942	128,365	128,584	127,653
14,529	18,129	2,669	1,085	1,084	869
<u>1,668,515</u>	<u>1,651,957</u>	<u>1,578,239</u>	<u>1,463,272</u>	<u>1,386,557</u>	<u>1,216,653</u>
(632,433)	(579,398)	(515,275)	(452,151)	(399,280)	(341,424)
(246,236)	(230,537)	(206,161)	(190,840)	(161,494)	(149,882)
(66,271)	(61,357)	(57,522)	(52,459)	(48,396)	(43,790)
(13,927)	(9,105)	(1,342)	(928)	(854)	(648)
<u>(958,867)</u>	<u>(880,397)</u>	<u>(780,300)</u>	<u>(696,378)</u>	<u>(610,024)</u>	<u>(535,744)</u>
233,711	226,973	226,972	226,972	226,972	226,893
1,124,618	735,025	486,333	356,152	305,977	354,256
8,000	8,000	8,000	8,000	8,000	8,000
<u>1,366,329</u>	<u>969,998</u>	<u>721,305</u>	<u>591,124</u>	<u>540,949</u>	<u>589,149</u>
<u>\$ 2,075,977</u>	<u>\$ 1,741,558</u>	<u>\$ 1,519,244</u>	<u>\$ 1,358,017</u>	<u>\$ 1,317,482</u>	<u>\$ 1,270,058</u>

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

**AGREEMENT SUMMARY\***

**Board of Directors' Date of Award: January 4, 2024**

**Resolution Number: TBD**

**Effective Date of Agreement: January 17, 2024**

**Services to be Performed (Section 1): On-Call Construction Management Services**

**Term of Agreement (Section 3): Seven (7) years, no options.**

**Consultant's Key Representative (Section 4): Charlie Kreuger, PE, QSP**

**Compensation (Section 5): Board approved aggregate amount: \$40,000,000**

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

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DRAFT

This AGREEMENT for ON-CALL CONSTRUCTION MANAGEMENT SERVICES (Agreement) is entered into by and between the Peninsula Corridor Joint Power Board (AGENCY) located at 1250 San Carlos Avenue, San Carlos, CA 94070 and Ghirardelli Associates, Inc. (CONSULTANT), a California Corporation located at Gateway Place, Suite 470, San Jose, CA 95110 (“the Parties”).

## **1. SCOPE OF SERVICES**

This is an Agreement to provide On-Call Construction Management 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 construction management 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 4, 2023, the Scope of Services of which is attached hereto and incorporated herein as Appendix A, as supplemented by CONSULTANT’s written proposal dated September 12, 2023 attached hereto and incorporated herein as Appendix B.

## **2. AGREEMENT DOCUMENTS**

This Agreement consists of the following documents:

- (1) This Agreement including Exhibit A-1 Insurance Requirements
- (2) Exhibit A, Scope of Services
- (3) Exhibit B, CONSULTANT’s Proposal including negotiated cost/labor rates
- (4) Exhibit C, Work Directives Process
- (5) Exhibit D, Federal Requirements
- (6) Exhibit E, SBE Requirements
- (7) Exhibit F, Labor Code Requirements
- (8) Exhibit G, Services Matrix
- (9) Exhibit H, Construction Schedule

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 seven (7) year term commencing upon January 17, 2024 and ending January 16, 2031. The CONSULTANT will furnish

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

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

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

#### **5. COMPENSATION**

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

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

There is no guaranteed compensation to the CONSULTANT under this Agreement. However, the maximum compensation that the AGENCY has authorized to be expended for this Contract will not exceed Forty Million Dollars (\$40,000,000) 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.

##### **5.1. GENERAL**

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

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

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.

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

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

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

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

## 5.2. COST OF WORK

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



### 5.3. DIRECT LABOR

#### 5.3.1. GENERAL

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

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

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

Increases in hourly rates may not exceed the percentage change of the Consumer Price Index (CPI-U) for the San Francisco/Oakland/Hayward, CA Area or (b) the actual increases in employees' labor rates. Such actual increases must be demonstrated to the Agency's satisfaction.

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

#### 5.3.2. Straight Time

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

#### 5.3.3. Overtime

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

### 5.4. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

#### 5.4.1. General

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

The agreed-upon multipliers shall be used for CONSULTANT's and subconsultants' home office and AGENCY-Furnished Field Office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in Appendix B "Cost Proposal," dated November 6, 2023.

#### 5.4.2. Payroll Burden

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

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

#### 5.4.3. Employee Benefits

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

#### 5.4.4. Indirect Costs (Office Overhead)

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

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

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

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

## 5.5. Maximum Fixed Fees (Profit)

### 5.5.1. General

The Fixed Fee percentages proposed by CONSULTANT shall be considered the maximum Fee percentages applicable 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 the Project."

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

- **Construction Management Services**

Percent (8%) for Consultant's home office (Home); and Percent (8%) for Agency's field office (Field).

- **Subconsultants**

Percent (8%) for Consultant's home office (Home); and  
Percent (8%) for Agency's field office (Field).

- **Consultant Support Services**

Percent (8%)

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

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

- **Subconsultants markup**

- Zero Percent (0%)

## 5.6. OTHER DIRECT COSTS (ODCs)

### 5.6.1. General

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

### 5.6.2. Allowable ODCs

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

### 5.6.3. Subconsultants

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

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

(1) Vehicles - If applicable and approved by the Agencies, rental vehicles and their support costs are limited to a total maximum of \$800 per month, per vehicle. The standard Internal Revenue Service mileage rates shall apply for use of a personal vehicle.

(2) Travel Expenses - All travel and relocation related plans must be approved in writing by the AGENCY prior to the commencement of the travel. If written approval is received for relocations, travel, temporary accommodations and or assistance, FAR 31.205-46(a) Sections 1 and 2 and Federal Travel Regulation (41 CFR 301-304) for San Mateo County, California, will apply. Lodging and per diem rates shall not exceed the U.S. General Services Administration (GSA) rate at the time of travel for

the specific project site. Costs incurred for travel, subsistence, and relocation of personnel engaged in the performance of services under this Agreement, if approved in advance by AGENCY will include the following:

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

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

#### 5.6.5. Unallowable ODCs

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

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

- Models and renderings

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

#### 5.7. Maximum Compensation Amount

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

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

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

#### 5.8. Flow Down

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

### **6. MANNER OF PAYMENT**

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, the contract number #24-J-P-003, Purchase order # [TBD] and the AGENCY Project Manager's [OR Contract Administrator's] name. The AGENCY will endeavor to pay approved invoices/billing statements within 30 calendar days of their receipt. The AGENCY reserves the right to withhold payment to the CONSULTANT if the AGENCY determines that the quantity or quality of the work performed is unacceptable. The AGENCY will provide written notice to the CONSULTANT within 10 calendar days of the AGENCY's decision not to pay and the reasons for non-payment. Final payment will be withheld until CONSULTANT performs all required Agreement expiration or termination obligations. If CONSULTANT disagrees with the AGENCY's decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes the AGENCY's decision to the AGENCY within 30 calendar days of the AGENCY's notice. If CONSULTANT does not provide written notice in accordance with this section, it waives all rights to challenge the AGENCY's decision.

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

## **7. NOTICES**

All communications relating to the day-to-day activities of the provided services will be exchanged between the AGENCY's Project Manager, Alfred Darmousseh or designee, and the CONSULTANT's Project Manager, Charlie Kreuger, PE, QSP.

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 Alfred Darmousseh, PM or designee, and the CONSULTANT's Charlie Kreuger, PE, QSP via electronic mail to: [darmousseha@caltrain.com](mailto:darmousseha@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 Power Board  
1250 San Carlos Avenue  
San Carlos, CA 94070

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

If to the CONSULTANT: Ghirardelli Associates, Inc.  
Attn: Charlie Kreuger, PE, QSP  
Gateway Place, Suite 470,  
San Jose, CA 95110

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 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 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 Exhibit A-1 appended hereto, for the Insurance Requirements.

**14. CONSULTANT'S STATUS**

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

**15. ASSIGNMENT**

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

**16. OTHER GOVERNMENTAL AGENCIES**

Not Applicable.

**17. LITIGATION SUPPORT**

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

**18. AGENCY WARRANTIES**

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

**19. AGENCY REPRESENTATIVE**

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

**20. WARRANTY OF SERVICES**

**A.** CONSULTANT warrants that its professional services will be performed in accordance with the professional standards of practices of comparable construction management 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**

See Appendix D for prevailing wage requirements.

**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. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PROGRAM**

See Appendix F for DBE, Small Business Enterprise, prompt payment and reporting requirements.

**32. CONFLICT OF INTEREST**

**A. General.** Depending on the nature of the work performed, a CONSULTANT of the AGENCY may be subject to the same conflict of interest prohibitions established by the Federal Transit Administration (FTA) 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.

**33. SUBSTANCE ABUSE PROGRAM**

Not Applicable

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

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

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

give reasonable notice to the Proposer prior to releasing any material listed in the confidentiality index.

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

**35. ATTORNEYS' FEES**

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

**36. WAIVER**

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

**37. SEVERABILITY**

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

**38. NO THIRD PARTY BENEFICIARIES**

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

**39. APPLICABLE LAW**

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

**40. RIGHTS AND REMEDIES OF THE AGENCY**

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

**41. BINDING ON SUCCESSORS**

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

**42. ENTIRE AGREEMENT; MODIFICATION**

This Agreement for Services, including any Exhibits, 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 Exhibits, 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 CONSULTANT: (See footnote below)\*  
BOARD:**

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

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

Print: Michelle Bouchard

Print: Randall Bruner \_\_\_\_\_

Title: Executive Director

Title: President/CEO \_\_\_\_\_

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

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

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

Print: Raewyn Butcher \_\_\_\_\_

Title: Executive VP/Secretary \_\_\_\_\_

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

ATTEST:

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

Agency Secretary

APPROVED AS TO FORM:

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

Attorney for the Agency

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

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

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

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

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

AGREEMENT BETWEEN  
PENINSULA CORRIDOR JOINT POWERS BOARD (AGENCY)  
AND  
GANNETT FLEMING, INC. (CONSULTANT)

**AGREEMENT SUMMARY\***

**Board of Directors' Date of Award: January 4, 2024**

**Resolution Number: TBD**

**Effective Date of Agreement: January 17, 2023**

**Services to be Performed (Section 1): On-Call Construction Management Services**

**Term of Agreement (Section 3): Seven (7) years, no options**

**Consultant's Key Representative (Section 4): Rany Chek, PE, QSD**

**Compensation (Section 5): Board approved aggregate amount: \$40,000,000**

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

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DRAFT



This AGREEMENT for On-Call Construction Management 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 Gannett Fleming, Inc. (CONSULTANT), a California Corporation located at 201 Mission Street, Suite 2200, San Francisco, CA 94105 (“the Parties”).

## **1. SCOPE OF SERVICES**

This is an Agreement to provide On-Call Construction Management 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 ordinarily exercised by members of the same profession currently practicing under similar conditions at the same time and locality of the project (“Standard of Care”); (2) carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and (3) will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.

The scope of the CONSULTANT’s services will consist of the services set forth in the Request for Proposals date August 4, 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 12, 2023, attached hereto and incorporated herein as Exhibit B.

## **2. AGREEMENT DOCUMENTS**

This Agreement consists of the following documents:

- (1) This Agreement including Exhibit A-1, Insurance Requirements
- (2) Exhibit A, Scope of Services
- (3) Exhibit B, CONSULTANT’s Proposal including negotiated cost/labor rates
- (4) Exhibit C, Work Directive Process
- (5) Exhibit E, Federal Requirements
- (6) Exhibit E, DBE and SBE Requirements
- (7) Exhibit F, Labor Code Requirements
- (8) Exhibit G, Services Matrix
- (9) Exhibit H, Construction Schedule

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 seven (7) year term commencing upon January 17, 2023 and ending January 16, 2031. The CONSULTANT will furnish the AGENCY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Solicitation Documents.

### 4. CONSULTANT'S REPRESENTATIVE

At all times during the term of this Agreement Rany Check, PE, QSD 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 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 Forty Million Dollars (\$40,000,000) 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.

#### 5.1. GENERAL

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

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

On an annual basis, no later than 60 days before the start of a succeeding contract/Agreement year, CONSULTANT may, upon written request, adjust prospectively the labor rates. Increases in future negotiated Direct Labor Rates shall be limited, if requested, to the most recent Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco/Oakland/Hayward, CA area available to the AGENCY, or up to a maximum of 3.5 percent escalation, whichever is lower. The effective date of the CPI-U adjustment, if any, will commence either the (1) the first day of the second and/or subsequent year(s) of the Agreement, or (2) the date of the CONSULTANT's request, whichever event is later. Upon approval by the AGENCY, the negotiated changes shall remain in effect for the subsequent contract/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.

## 5.2. COST OF WORK

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

## 5.3. DIRECT LABOR

### 5.3.1. GENERAL

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

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

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

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 (b) the actual increases in employees' labor rates. Such actual increases must be demonstrated to the Agency's satisfaction.

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

#### 5.3.2. Straight Time

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

#### 5.3.3. Overtime

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

### 5.4. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

#### 5.4.1. General

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

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

#### 5.4.2. Payroll Burden

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

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

#### 5.4.3. Employee Benefits

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

#### 5.4.4. Indirect Costs (Office Overhead)

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

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

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

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

5.5. Maximum Fixed Fees (Profit)

5.5.1. General

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

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

- **Construction Management Services**

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

- **Subconsultants**

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

- **Consultant Support Services**

Eight Percent (8%)

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

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

- **Subconsultants markup**

– Zero Percent (0%)

## 5.6. OTHER DIRECT COSTS (ODCs)

### 5.6.1. General

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

### 5.6.2. Allowable ODCs

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

### 5.6.3. Subconsultants

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

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

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

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

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

- Travel, accommodations, and subsistence (directly related to the Scope of Services) for business trips to the Project Site, to AGENCY's consultants and suppliers,

or to other locations approved by the AGENCY. Such travel may originate at CONSULTANT's or subconsultant's home office or branch office, or at the CONSULTANT's dedicated field office, or at AGENCY's central or field offices.

#### 5.6.5. Unallowable ODCs

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

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

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

#### 5.7. Maximum Compensation Amount

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

Further, it is expressly understood and agreed that in no event shall CONSULTANT be compensated in an amount greater than the amount specified in any



individual project for the services performed under such project without issuance of a written Amendment to such project by the AGENCY's Procurement Administrator.

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

#### 5.8. Flow Down

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

### 6. MANNER OF PAYMENT

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, the contract number #24-J-P-003, Purchase order # [TBD] and the AGENCY Project Manager's [OR Contract Administrator's] name. The AGENCY will pay approved invoices/billing statements within 30 calendar days of their receipt. The AGENCY reserves the right to withhold payment to the CONSULTANT if the AGENCY determines that the quantity or quality of the work performed is unacceptable. The AGENCY will provide written notice to the CONSULTANT within 10 calendar days of the AGENCY's decision not to pay and the reasons for non-payment. Final payment will be withheld until CONSULTANT performs all required Agreement expiration or termination obligations. If CONSULTANT disagrees with the AGENCY's decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes the AGENCY's decision to the AGENCY within 30 calendar days of the AGENCY's notice. If CONSULTANT does not provide written notice in accordance with this section, it waives all rights to challenge the AGENCY's decision.

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

### 7. NOTICES

All communications relating to the day-to-day activities of the provided services will be exchanged between the AGENCY's Alfred Darmousseh, PM or designee, and the CONSULTANT's Rany Chek, PE, QSP.

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 Alfred Darmousseh, PM or designee, and the

CONSULTANT's Rany Chek, PE, QSP via electronic mail to: [DarmoussehA@caltrain.com](mailto:DarmoussehA@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 Power Board  
1250 San Carlos Avenue  
San Carlos, CA 94070

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

If to the CONSULTANT: Gannett Fleming, Inc.  
Attn: Rany Chek  
207 Senate Avenue  
Camp Hill, PA 17011-2316

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.

Notwithstanding anything to the contrary herein, CONSULTANT shall retain all common law, statutory, and other reserved rights including copyright in its pre-existing intellectual property, standard design elements, and architectural/engineering details that are neither unique to AGENCY nor related to the business of AGENCY, and AGENCY shall be granted a non-exclusive license to reproduce such design elements and details in conjunction with its use on the project. CONSULTANT shall have no liability for any claims, losses, or damages caused AGENCY's use, alteration, or modification of CONSULTANT's pre-existing materials or the work product on other projects or for purposes outside the scope of the Agreement without CONSULTANT's prior review and written approval.

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 unless compelled by court order or operation of law.

## **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 Exhibit A-1 appended hereto, for the Insurance Requirements.

**14. CONSULTANT'S STATUS**

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

**15. ASSIGNMENT**

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

**16. OTHER GOVERNMENTAL AGENCIES**

Not Applicable.

**17. LITIGATION SUPPORT**

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

**18. AGENCY WARRANTIES**

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

**19. AGENCY REPRESENTATIVE**

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

**20. WARRANTY OF SERVICES**

**A.** CONSULTANT warrants that its professional services will be performed in accordance with the Standard of Care.

**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 reasonable 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 negligent errors and omissions and is expected to pay for all work as a result of negligent 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 materially 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 materially 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**

See Exhibit D for prevailing wage requirements.



**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. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PROGRAM**

See Exhibit F for DBE, Small Business Enterprise, prompt payment and reporting requirements.

**32. CONFLICT OF INTEREST**

**A. General.** Depending on the nature of the work performed, a CONSULTANT of the AGENCY may be subject to the same conflict of interest prohibitions established by the Federal Transit Administration (FTA) 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.

**33. SUBSTANCE ABUSE PROGRAM**

Not Applicable

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

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

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

give reasonable notice to the Proposer prior to releasing any material listed in the confidentiality index.

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

**35. ATTORNEYS' FEES**

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

**36. WAIVER**

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

**37. SEVERABILITY**

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

**38. NO THIRD PARTY BENEFICIARIES**

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

**39. APPLICABLE LAW**

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

**40. RIGHTS AND REMEDIES OF THE AGENCY**

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

**41. BINDING ON SUCCESSORS**

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

**42. ENTIRE AGREEMENT; MODIFICATION**

This Agreement for Services, including any Exhibits, 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 Exhibits, 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:**

**GANNETT FLEMING, INC. : (See footnote below)\***

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

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

Print: Michelle Bouchard

Print: Rany Chek \_\_\_\_\_

Title: Executive Director

Title: Vice President \_\_\_\_\_

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

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

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

Print: Lea Ann Schmolze

Title: Secretary

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

**ATTEST:**

By: \_\_\_\_\_  
Agency Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Attorney for the Agency

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

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

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

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



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

**AGREEMENT SUMMARY\***

**Board of Directors' Date of Award: January 4, 2024**

**Resolution Number: TBD**

**Effective Date of Agreement: January 17, 2024**

**Services to be Performed (Section 1): On-Call Construction Management Services**

**Term of Agreement (Section 3): Seven (7) years, no options.**

**Consultant's Key Representative (Section 4): Bart Littell, PE**

**Compensation (Section 5): Board approved aggregate amount: \$40,000,000**

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

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DRAFT

This AGREEMENT for ON-CALL CONSTRUCTION MANAGEMENT SERVICES (Agreement) is entered into by and between the Peninsula Corridor Joint Powers Board (AGENCY) located at 1250 San Carlos Avenue, San Carlos, CA 94070 and WSP USA, Inc., a New York Corporation located at One Penn Plaza, 4th Floor | New York, NY 10119 (“the Parties”).

## **1. SCOPE OF SERVICES**

This is an Agreement to provide On-Call Construction Management 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 similar expertise in providing construction management 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 4, 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 12, 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-1, Insurance Requirements
- (2) Exhibit A, Scope of Services
- (3) Exhibit B, CONSULTANT’s Proposal including negotiated cost/labor rates.
- (4) Exhibit C, Work Directives/Task Orders,
- (5) Exhibit D, Federal Requirements
- (6) Exhibit E, DBE and SBE Requirements
- (7) Exhibit F, Labor Code Requirements
- (8) Exhibit G, Services Matrix
- (9) Exhibit H, Construction Schedule

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 seven (7) year term commencing upon January 17, 2024 and ending January 16, 2031. The CONSULTANT will furnish the AGENCY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Solicitation Documents.

### 4. CONSULTANT'S REPRESENTATIVE

At all times during the term of this Agreement Bart Littel, PE 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 C.

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

There is no guaranteed compensation to the CONSULTANT under this Agreement. However, the maximum compensation that the AGENCY has authorized to be expended for this Contract will not exceed **Forty Million Dollars (\$40,000,000)** 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.

#### 5.1. GENERAL

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

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

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.

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

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

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

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

## 5.2. COST OF WORK

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

## 5.3. DIRECT LABOR

### 5.3.1. GENERAL

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

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

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

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 (b) the actual increases in employees' labor rates. Such actual increases must be demonstrated to the Agency's satisfaction.

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

### 5.3.2. Straight Time

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

### 5.3.3. Overtime

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

## 5.4. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

### 5.4.1. General

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

The agreed-upon multipliers shall be used for CONSULTANT's and subconsultants' home office and AGENCY-Furnished Field Office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in Exhibit B "Cost Proposal," dated November 3, 2023.

### 5.4.2. Payroll Burden

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

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

### 5.4.3. Employee Benefits

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

### 5.4.4. Indirect Costs (Office Overhead)

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

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



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

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

## 5.5. Maximum Fixed Fees (Profit)

### 5.5.1. General

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

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

- **Construction Management Services**

Percent (8%) for Consultant's home office (Home); and Percent (8%) for Agency's field office (Field).

- **Subconsultants**

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

Percent (8%) for Agency's field office (Field).

- **Consultant Support Services**

Percent (\_8%)

*An example of "Consultant Support Services" is when CONSULTANT or subconsultant provides personnel to the JPB, through this Agreement and works as support to the JPB on a daily*

*(full-time) basis under JPB direction, at JPB locations and utilizing JPB office furnishings and supplies.*

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

- **Subconsultants markup**

- Zero Percent (0%)

5.6. OTHER DIRECT COSTS (ODCs)

5.6.1. General

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

5.6.2. Allowable ODCs

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

5.6.3. Subconsultants

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

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

(1) Vehicles - If applicable and approved by the Agencies, leased and/or rental vehicles and their support costs are limited to a total maximum of \$800 per month, per vehicle. The standard Internal Revenue Service mileage rates shall apply for use of a personal vehicle.

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

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

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

#### 5.6.5. Unallowable ODCs

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

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

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

#### 5.7. Maximum Compensation Amount

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

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

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

#### 5.8. Flow Down

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

### **6. MANNER OF PAYMENT**

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, the contract number #24-J-P-003, Purchase order # [TBD] and the AGENCY Project Manager's or Contract Administrator's. The AGENCY will endeavor to pay approved invoices/billing statements within 30 calendar days of their receipt. The AGENCY reserves the right to withhold payment to the CONSULTANT if the AGENCY determines that the quantity or quality of the work performed is unacceptable. The AGENCY will provide written notice to the CONSULTANT within 10 calendar days of the AGENCY's decision not to pay and the reasons for non-payment. Final payment will be withheld until CONSULTANT performs all required Agreement expiration or termination obligations. If CONSULTANT disagrees with the AGENCY's decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes the AGENCY's decision to the AGENCY within 30 calendar days of the AGENCY's notice. If CONSULTANT does not provide written notice in accordance with this section, it waives all rights to challenge the AGENCY's decision.

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

## 7. **NOTICES**

All communications relating to the day-to-day activities of the provided services will be exchanged between the AGENCY's Alfred Darmousseh, Manager Construction Services or designee, and the CONSULTANT's Bart Little, PE.

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 Alfred Darmousseh, PM or designee, and the CONSULTANT's Bart Little, PE via electronic mail to: DarmoussehA@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 Power Board  
1250 San Carlos Avenue  
San Carlos, CA 94070

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

If to the CONSULTANT: Bart Littell, PE  
425 Market Street, 17th Floor  
San Francisco, CA 94105

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

## 8. **OWNERSHIP OF WORK**

### A. **General**

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

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

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

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

## **9. CONFIDENTIALITY**

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

The CONSULTANT, its employees, subcontractors, subconsultants and agents, will not release any reports, information, or other materials prepared in connection with this Agreement, whether deemed confidential or not, without the approval of the AGENCY’s 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 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 Exhibit A-1 appended hereto, for the Insurance Requirements.

**14. CONSULTANT'S STATUS**

Neither the CONSULTANT nor any party contracting with the CONSULTANT will be deemed to be an agent or employee of the AGENCY. The CONSULTANT is and will be an independent CONSULTANT and the legal relationship

of any person performing services for the CONSULTANT will be one solely between that person and the CONSULTANT.

**15. ASSIGNMENT**

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

**16. OTHER GOVERNMENTAL AGENCIES**

Not Applicable.

**17. LITIGATION SUPPORT**

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

**18. AGENCY WARRANTIES**

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

**19. AGENCY REPRESENTATIVE**

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

**20. WARRANTY OF SERVICES**

**A.** CONSULTANT assures that its professional services will be performed in accordance with the professional standards of practices of comparable construction management firms at the time the services are rendered. In addition, CONSULTANT will provide such specific assurances 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 violations of the standard of care and is expected to pay for all work as a resulting there from 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**

See Exhibit E for prevailing wage requirements.

**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. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PROGRAM**

See Exhibit F for DBE, Small Business Enterprise, prompt payment and reporting requirements.

**32. CONFLICT OF INTEREST**

**A. General.** Depending on the nature of the work performed, a CONSULTANT of the AGENCY may be subject to the same conflict of interest prohibitions established by the Federal Transit Administration (FTA) 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.

**33. SUBSTANCE ABUSE PROGRAM**

Not Applicable

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

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

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

CONSULTANT agrees to indemnify, defend, and hold harmless the AGENCY, its directors, officers, employees, and agents, from any and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the proposer information), and pay any and all cost and expenses, including attorneys' fees, related to the withholding of the information included in the confidentiality



index or in the redacted version of the proposal or in this Agreement. If CONSULTANT fails to accept a tender of a defense, the AGENCY reserves the right to resolve all claims at its sole discretion, without limiting any rights stated herein.

**35. ATTORNEYS' FEES**

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

**36. WAIVER**

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

**37. SEVERABILITY**

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

**38. NO THIRD PARTY BENEFICIARIES**

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

**39. APPLICABLE LAW**

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

**40. RIGHTS AND REMEDIES OF THE AGENCY**

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

**41. BINDING ON SUCCESSORS**

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

**42. ENTIRE AGREEMENT; MODIFICATION**

This Agreement for Services, including any Exhibits, 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 Exhibits, the terms of this Agreement will prevail.

DRAFT

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

**PENINSULA CORRIDOR JOINT POWERS CONSULTANT: (See footnote below)\*  
BOARD:**

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

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

Print: Michelle Bouchard

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

Title: Executive Director

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

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

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

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

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

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

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

ATTEST:

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

Agency Secretary

APPROVED AS TO FORM:

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

Attorney for the Agency

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

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

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

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

**THE AGREEMENT**  
**BETWEEN**  
**PENINSULA CORRIDOR JOINT POWERS BOARD (AGENCY)**  
**AND**  
**AECOM TECHNICAL SERVICES, INC. (CONSULTANT)**

**AGREEMENT SUMMARY\***

<b>Board of Directors' Date of Award:</b>	January 4, 2024
<b>Resolution Number:</b>	2024-00
<b>Effective Date of Agreement:</b>	January 4, 2024
<b>Services to be Performed (Section 1):</b>	On-Call General Engineering Consultant (GEC) Design Services for Various Projects
<b>Term of Agreement (Section 3):</b>	Five (5) year term with two (2) one-year option terms
<b>CONSULTANT's Key Representative (Section 4):</b>	Marlen Alfonso Perez, PE, Associate Vice President, Program Manager AECOM Technical Services, Inc. 300 S. Grand Avenue Los Angeles, CA 90071 <a href="mailto:Marlen.alfonso@aecom.com">Marlen.alfonso@aecom.com</a>
<b>Compensation (Section 5): Board approved aggregate amount:</b>	\$50,000,000

\*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 General Engineering Consultant (GEC) Design Services for Various Projects (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 AECOM Technical Services, Inc. (CONSULTANT), a California Corporation located at 300 S. Grand Avenue, Los Angeles, CA 90071 (“the Parties”).

## **1. SCOPE OF SERVICES**

This is an Agreement to provide On-Call General Engineering Consultant (GEC) Design Services for Various Projects. 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 ordinarily exercised by members of the same profession currently practicing under similar conditions at the same time and locality of the Project; (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 July 28, 2023, the Scope of Services which is attached hereto and incorporated herein as Exhibit A, as supplemented by CONSULTANT’s written proposal dated September 8, 2023, attached hereto and incorporated herein as Exhibit C.

## **2. AGREEMENT DOCUMENTS**

This Agreement consists of the following documents:

- (1) This Agreement, including Attachment 1, Insurance Requirements
- (2) Exhibit A, Scope of Services;
- (3) Work Directives;
- (4) Exhibit B, Work Directives Process
- (5) Exhibit C, CONSULTANT’s Proposal, including negotiated cost/labor rates;
- (6) Exhibit D, Federal Requirements;
- (7) Exhibit E, SBE Requirements;
- (8) Exhibit F, Labor Code Requirements;

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

## **3. TERM OF AGREEMENT**

The term of this Agreement will be for a five (5) year term commencing upon January 4, 2024, and ending on January 3, 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 two 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 are subject to the AGENCY's right to terminate the Agreement in accordance with Section 23 of this Agreement.

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

At all times during the term of this Agreement, Marlen Alfonso Perez 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 C.

It is expressly understood and agreed that in no event will the CONSULTANT be compensated in an amount greater than the amount specified in any individual Work Directive for the services performed under such Work Directive. Any amendments 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 **Fifty Million Dollars (\$50,000,000)** 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.

##### **5.1. GENERAL**

Compensation performed under the Agreement will 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.

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

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

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

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

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

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

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

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

#### **5.3.2. Straight Time**

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

#### **5.3.3. Overtime**

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

### **5.4. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS**

#### **5.4.1. General**

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

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

#### **5.4.2. Payroll Burden**

CONSULTANT and the AGENCY agree that the following will be considered as



Payroll Burdens and as such will be paid to CONSULTANT, and subconsultants, as compensation for said costs, as set forth below. "Payroll Burden" is defined as:

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

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

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

#### **5.4.4. Indirect Costs (Office Overhead)**

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

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

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

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

### **5.5. Maximum Fixed Fees (Profit)**

#### **5.5.1. General**

The Fixed Fee percentages proposed by CONSULTANT shall be considered the maximum Fee percentages applicable 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 the Project.

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

**General Engineering Consultant Services**

- Ten Percent (10%)\* for CONSULTANT's home office (Home) and
- Eight Percent (8%) for AGENCY's field office (Field).
- Subconsultants markup – Zero Percent (0%)

**5.6. OTHER DIRECT COSTS (ODCs)**

**5.6.1. General**

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

**5.6.2. Allowable ODCs**

Examples of allowable include, but are not limited to: mileage, parking, tolls, mail costs, film, photo developing, facsimiles, printing/copying, plan reproduction, blueprint services and subconsultants directly associated with the project. Expenditures for each allowable ODC more than \$500 per month, and not included above, shall require advance approval by the AGENCY. Supporting documentation is required for reimbursement of all ODCs.

**5.6.3. Subconsultants**

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

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

- (1) Vehicles - If applicable and approved by the Agencies, rental vehicles and their support costs are limited to a total maximum of \$500 per month, per vehicle. The standard Internal Revenue Service mileage rates shall apply for use of a personal vehicle.
- (2) Travel Expenses - All travel and relocation related plans must be approved in writing by the AGENCY prior to the commencement of the travel. If written approval is received for relocations, travel, temporary accommodations and or assistance, FAR 31.205-46(a) Sections 1 and 2 and Federal Travel Regulation (41 CFR 301-304) for San Mateo County, California, will apply. Lodging and per diem rates shall not exceed the U.S. General Services Administration (GSA) rate at the time of travel for the specific project site. Costs incurred for travel, subsistence, and relocation of personnel engaged in the performance of services under this

Agreement, if approved in advance by AGENCY will include the following:

- Relocation expenses, travel, temporary accommodations, and/or subsistence related to mobilization travel to the CONSULTANT's dedicated project office or to AGENCY-Furnished Field Office for CONSULTANT and subconsultant personnel permanently assigned to the project. Such expenses shall be reduced by any amount received from others by CONSULTANT or subconsultant for demobilization from the prior project assignment.
- Travel, accommodations and subsistence (directly related to the Scope of Services) for business trips to the Project Site, to AGENCY's CONSULTANTS and suppliers, or to other locations approved by the AGENCY. Such travel may originate at CONSULTANT's or subconsultant's home office or branch office, or at the CONSULTANT's dedicated field office, or at AGENCY's central or field offices.

#### **5.6.5. Unallowable ODCs**

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

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

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

#### **5.7. Maximum Compensation Amount**

A maximum compensation amount is set forth in the Agreement and each work

directive.

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 compensation 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 compensation amount as set forth in the project shall be at CONSULTANT's own risk.

#### **5.8. Flow Down**

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

### **6. MANNER OF PAYMENT**

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, the Contract number 24-J-P-010, Purchase order # and the AGENCY Project Manager's name. The AGENCY will endeavor to pay approved invoices/billing statements within 30 calendar days of their receipt. The AGENCY reserves the right to withhold payment to the CONSULTANT if the AGENCY determines that the quantity or quality of the work performed is unacceptable. **Furthermore, the AGENCY reserves the right to withhold payment for any invoice that does not match the PO lines until CONSULTANT resubmits a corrected invoice.** The AGENCY will provide written notice to the CONSULTANT within 10 calendar days of the AGENCY's decision not to pay and the reasons for non-payment. Final payment will be withheld until CONSULTANT performs all required Agreement expiration or termination obligations. If CONSULTANT disagrees with the AGENCY's decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes the AGENCY's decision to the AGENCY within 30 calendar days of the AGENCY's notice. If CONSULTANT does not provide written notice in accordance with this section, it waives all rights to challenge the AGENCY's decision.

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

[AccountsPayable@samtrans.com](mailto:AccountsPayable@samtrans.com)

### **7. NOTICES**

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

Notices informing CONSULTANT of the AGENCY's decision to exercise Agreement options (that were exercisable in the AGENCY's sole discretion) will be exchanged between the

AGENCY's Project Manager or designee, and the CONSULTANT's Program Manager via electronic mail to: [Marlen.alfonso@aecom.com](mailto:Marlen.alfonso@aecom.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: Marlen Alfonso, PE, Associate VP, Program Manager  
AECOM Technical Services, Inc.  
300 Grand Avenue  
Los Angeles, CA 90071

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**

Upon payment in full for all services performed under this Agreement, all reports, designs, drawings, plans, specifications, schedules, and other materials first 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. Any modification or reuse of such materials for purposes other than those intended by the applicable work directive shall be at

AGENCY's sole risk and without liability to CONSULTANT. 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 and tender of appropriate payment 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 first 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.

Notwithstanding anything to the contrary herein, CONSULTANT shall retain all common

law, statutory, and other reserved rights including copyright in its pre-existing intellectual property, standard design elements, and architectural/engineering details that are neither unique to AGENCY nor related to the business of AGENCY, and AGENCY shall be granted a non-exclusive license to reproduce such design elements and details in conjunction with its use on the Project. CONSULTANT shall have no liability for any claims, losses, or damages caused by AGENCY's use, alteration, or modification of CONSULTANT's pre-existing materials or the work product on other projects or for purposes outside the scope of this Agreement without CONSULTANT's prior review and written approval.

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 unless compelled by court order or operation of law after providing the AGENCY with notice of such order or operation.

## **10. USE OF SUBCONSULTANTS**

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

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

## **11. CHANGES**

The AGENCY may at any time, by written order, make changes within the Scope of Services and services described in this Agreement. If such changes cause an increase or decrease in the budgeted cost of or the time required for performance of the agreed-upon work, an equitable adjustment as mutually agreed will be made in the limit on compensation as set forth in Section 5 or in the time of required performance as set forth in Section 3, or both. In the event that CONSULTANT encounters any unanticipated conditions or contingencies that may affect the Scope of Services or services and result in an adjustment in the amount of compensation specified herein, or identifies any AGENCY conduct (including actions, inaction, and written or oral

communications other than a formal Contract modification) that the CONSULTANT regards as a change to the Contract terms and conditions, CONSULTANT will so advise the AGENCY immediately upon notice of such condition or contingency. The written notice will explain the circumstances giving rise to the unforeseen condition or contingency and will set forth the proposed adjustment in compensation. This notice will be given to the AGENCY prior to the time that CONSULTANT performs work or services related to the proposed adjustment in compensation. The pertinent changes will be expressed in a written supplement to this Agreement issued by the Contracts and Procurement Department prior to implementation of such changes. Failure to provide written notice and receive AGENCY approval for extra work prior to performing extra work may, at the AGENCY's sole discretion, result in nonpayment of the invoices reflecting such work.

## **12. RESPONSIBILITY: INDEMNIFICATION**

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

- A. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the CONSULTANT caused by a negligent act or omission or 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 1, Insurance Requirements appended hereto, for the Insurance Requirements.

## **14. CONSULTANT'S STATUS**

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

## **15. ASSIGNMENT**

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

## **16. OTHER GOVERNMENTAL AGENCIES**

Not applicable.

## **17. AGENCY WARRANTIES**

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

## **18. AGENCY REPRESENTATIVE**

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

## **19. WARRANTY OF SERVICES**

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

## **20. CLAIMS OR DISPUTES**

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

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



compensation may be due, the nature of the costs involved, and the amount of the potential claim.

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

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

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

## **21. REMEDIES**

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

## **22. TEMPORARY SUSPENSION OF WORK**

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

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

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

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

## **23. TERMINATION**

A. **Termination for Convenience.** The AGENCY may terminate this Agreement for convenience at any time by giving 60 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 first procured for or produced pursuant to this Agreement as of the date of termination are the property of the AGENCY upon the effective date of the termination for convenience. CONSULTANT and its subconsultants must cooperate in good faith in any transition to other vendors or consultants as the AGENCY deems necessary. Failure to so cooperate is a breach of the Agreement and grounds for the termination for convenience to be treated as a termination for default.

- B. Termination for Default.** If the CONSULTANT materially 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 30 days 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 first procured for or produced pursuant to this Agreement become the property of the AGENCY upon the effective date of the termination for default.

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

## **24. LIQUIDATED DAMAGES**

Not Applicable.

**25. PREVAILING WAGE**

See Exhibit F, Labor Code Requirements.

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

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

If, as a result of the audit, it is determined by the AGENCY's auditor or staff that reimbursement of any costs including profit or fee under this Agreement was in excess of that represented and relied upon during price negotiations or represented as a basis

for payment, the CONSULTANT agrees to reimburse the AGENCY for those costs within sixty (60) days of written notification by the AGENCY.

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

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

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

**28. EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

In connection with the performance of this Agreement, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The CONSULTANT shall take affirmative actions to ensure that applicants are employed and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national

origin, or any other characteristic protected under state, federal, or local laws. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The CONSULTANT further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

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

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

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

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

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

The CONSULTANT will include the provisions of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24,

1965, so that such provisions will be binding upon each subconsultants or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of such direction, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

## **29. SBE AND PROMPT PAYMENT REQUIREMENTS**

See Exhibit E for DBE, SBE, prompt payment and reporting requirements.

## **30. CONFLICT OF INTEREST**

### **A. General.**

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

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

§87100 et seq. during the performance of services under this Agreement. The CONSULTANT further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

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

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

### **B. Organizational Conflicts of Interest.**

CONSULTANT will take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement and other solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or Contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to

the AGENCY; a firm or person's objectivity in performing the Contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a Contract as a result of information gained in performance of this or some other Agreement.

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

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

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

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

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

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

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

### **31. SUBSTANCE ABUSE PROGRAM**

Not Applicable.

### **32. CALIFORNIA PUBLIC RECORD ACT REQUESTS (CPRA)**

CONSULTANT consents to the release of this Agreement, the redacted version of its proposal, and the release of any portion of its proposal not included in its confidentiality index, and waives all claims against the AGENCY, its directors, officers, employees and agents, for the disclosure of such information. If the CONSULTANT did not include a

confidentiality index in its proposal, the AGENCY will have no obligation to withhold any information from disclosure and may release the information sought without liability to the AGENCY.

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

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

### **33. ATTORNEYS' FEES**

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

### **34. WAIVER**

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

### **35. SEVERABILITY**

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

### **36. NO THIRD PARTY BENEFICIARIES**

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

### **37. APPLICABLE LAW**

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

### **38. RIGHTS AND REMEDIES OF THE AGENCY**

The rights and remedies of the AGENCY provided herein will not be exclusive and are

in addition to any other rights and remedies provided by law or under the Agreement.

**39. BINDING ON SUCCESSORS**

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

**40. ENTIRE AGREEMENT; MODIFICATION**

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

**41. FORCE MAJEURE**

Neither party shall be responsible for a delay in its respective performance under this Agreement, other than a delay in payment for services already performed, if such delay is caused by extraordinary weather conditions or other natural catastrophes, war, terrorist attacks, sabotage, computer viruses, riots, strikes, lockouts or other industrial disturbances, acts of governmental agencies or authorities, discovery of hazardous materials or differing and unforeseeable site conditions, or other events beyond the reasonable control of the claiming party.

**42. CONSEQUENTIAL DAMAGES WAIVER**

Notwithstanding any other provision to the contrary in this Agreement and to the fullest extent permitted by law, in no event shall either party, its parents, affiliates and subsidiaries or their respective directors officers or employees be liable to the other for any indirect, incidental, special, or consequential damages whatsoever (including, without limitation, lost profits, loss of revenue, loss of use or interruption of business) arising out of or related to this agreement, even if advised of the possibility of such damages, and consultant hereby releases agency and agency hereby releases consultant from any such liability



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: \_\_\_\_\_

**AECOM TECHNICAL SERVICES, INC:  
(See footnote below)\***

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

Print: Marlen Alfonso Perez

Title: PE, Associate VP, Program Manager

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

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

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

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

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

**ATTEST:**

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

AGENCY Secretary

**APPROVED AS TO FORM:**

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

Attorney for the AGENCY

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

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

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

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

**THE AGREEMENT**  
**BETWEEN**  
**PENINSULA CORRIDOR JOINT POWERS BOARD (AGENCY)**  
**AND**  
**HDR ENGINEERING, INC. (CONSULTANT)**

**AGREEMENT SUMMARY\***

**Board of Directors' Date of Award:** January 4, 2024

**Resolution Number:** 2024-XX

**Effective Date of Agreement:** January 4, 2024

**Services to be Performed (Section 1):** On-Call General Engineering Consultant (GEC)  
Design Services for Various Projects

**Term of Agreement (Section 3):** Five (5) year term with two (2) one-year option terms

**CONSULTANT's Key Representative (Section 4):**  
Adrian Gunderson, PE, Lead Project Manager  
HDR Engineering, Inc.  
3003 Oak Road Suite 500  
Walnut Creek, CA 94597  
[adrian.gunderson@hdrinc.com](mailto:adrian.gunderson@hdrinc.com)

**Compensation (Section 5): Board approved aggregate amount:** \$50,000,000

\*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 General Engineering Consultant (GEC) Design Services for Various Projects (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 California Corporation located at 3003 Oak Road Suite 500, Walnut Creek, CA 94597 (“the Parties”).

## **1. SCOPE OF SERVICES**

This is an Agreement to provide On-Call General Engineering Consultant (GEC) Design Services for Various Projects. 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 ordinarily exercised by members of the same profession currently practicing under similar conditions at the same time and locality of the Project; (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 July 28, 2023, the Scope of Services which is attached hereto and incorporated herein as Exhibit A, as supplemented by CONSULTANT’s written proposal dated September 8, 2023, attached hereto and incorporated herein as Exhibit C.

## **2. AGREEMENT DOCUMENTS**

This Agreement consists of the following documents:

- (1) This Agreement, including Attachment 1, Insurance Requirements
- (2) Exhibit A, Scope of Services;
- (3) Work Directives;
- (4) Exhibit B, Work Directives Process
- (5) Exhibit C, CONSULTANT’s Proposal, including negotiated cost/labor rates;
- (6) Exhibit D, Federal Requirements;
- (7) Exhibit E, SBE Requirements;
- (8) Exhibit F, Labor Code Requirements;

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

## **3. TERM OF AGREEMENT**

The term of this Agreement will be for a five (5) year term commencing upon January 4, 2024, and ending on January 3, 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 two 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 are subject to the AGENCY's right to terminate the Agreement in accordance with Section 23 of this Agreement.

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

At all times during the term of this Agreement Adrian Gunderson 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 C.

It is expressly understood and agreed that in no event will the CONSULTANT be compensated in an amount greater than the amount specified in any individual Work Directive for the services performed under such Work Directive. Any amendments 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 **Fifty Million Dollars (\$50,000,000)** 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.

##### **5.1. GENERAL**

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

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

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

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

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

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

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

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

#### **5.3.2. Straight Time**

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

#### **5.3.3. Overtime**

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

### **5.4. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS**

#### **5.4.1. General**

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

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

#### **5.4.2. Payroll Burden**

CONSULTANT and the AGENCY agree that the following will be considered as Payroll Burdens and as such will be paid to CONSULTANT, and

subconsultants, as compensation for said costs, as set forth below. "Payroll Burden" is defined as:

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

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

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

#### **5.4.4. Indirect Costs (Office Overhead)**

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

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

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

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

### **5.5. Maximum Fixed Fees (Profit)**

#### **5.5.1. General**

The Fixed Fee percentages proposed by CONSULTANT shall be considered

the maximum Fee percentages applicable 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 the Project.

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

### **General Engineering Consultant Services**

- Ten Percent (10%)\* for CONSULTANT's home office (Home) and
- Eight Percent (8%) for AGENCY's field office (Field).
- Subconsultants markup – Zero Percent (0%)

## **5.6. OTHER DIRECT COSTS (ODCs)**

### **5.6.1. General**

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

### **5.6.2. Allowable ODCs**

Examples of allowable include, but are not limited to: mileage, parking, tolls, mail costs, film, photo developing, facsimiles, printing/copying, plan reproduction, blueprint services and subconsultants directly associated with the project. Expenditures for each allowable ODC more than \$500 per month, and not included above, shall require advance approval by the AGENCY. Supporting documentation is required for reimbursement of all ODCs.

### **5.6.3. Subconsultants**

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

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

- (1) Vehicles - If applicable and approved by the Agencies, rental vehicles and their support costs are limited to a total maximum of \$500 per month, per vehicle. The standard Internal Revenue Service mileage rates shall apply for use of a personal vehicle.
- (2) Travel Expenses - All travel and relocation related plans must be approved in writing by the AGENCY prior to the commencement of the travel. If written approval is received for relocations, travel, temporary accommodations and or assistance, FAR 31.205-46(a) Sections 1 and 2 and Federal Travel Regulation (41 CFR 301-304) for San Mateo County, California, will apply. Lodging and per diem rates shall not exceed the

U.S. General Services Administration (GSA) rate at the time of travel for the specific project site. Costs incurred for travel, subsistence, and relocation of personnel engaged in the performance of services under this Agreement, if approved in advance by AGENCY will include the following:



- Relocation expenses, travel, temporary accommodations, and/or subsistence related to mobilization travel to the CONSULTANT's dedicated project office or to AGENCY-Furnished Field Office for CONSULTANT and subconsultant personnel permanently assigned to the project. Such expenses shall be reduced by any amount received from others by CONSULTANT or subconsultant for demobilization from the prior project assignment.
- Travel, accommodations and subsistence (directly related to the Scope of Services) for business trips to the Project Site, to AGENCY's CONSULTANTS and suppliers, or to other locations approved by the AGENCY. Such travel may originate at CONSULTANT's or subconsultant's home office or branch office, or at the CONSULTANT's dedicated field office, or at AGENCY's central or field offices.

#### **5.6.5. Unallowable ODCs**

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

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

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

#### **5.7. Maximum Compensation Amount**

A maximum compensation amount is set forth in the Agreement and each work directive.

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 compensation 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 compensation amount as set forth in the project shall be at CONSULTANT's own risk.

#### **5.8. Flow Down**

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

### **6. MANNER OF PAYMENT**

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, the Contract number 24-J-P-010, Purchase order # and the AGENCY Project Manager's name. The AGENCY will endeavor to pay approved invoices/billing statements within 30 calendar days of their receipt. The AGENCY reserves the right to withhold payment to the CONSULTANT if the AGENCY determines that the quantity or quality of the work performed is unacceptable. **Furthermore, the AGENCY reserves the right to withhold payment for any invoice that does not match the PO lines until CONSULTANT resubmits a corrected invoice.** The AGENCY will provide written notice to the CONSULTANT within 10 calendar days of the AGENCY's decision not to pay and the reasons for non-payment. Final payment will be withheld until CONSULTANT performs all required Agreement expiration or termination obligations. If CONSULTANT disagrees with the AGENCY's decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes the AGENCY's decision to the AGENCY within 30 calendar days of the AGENCY's notice. If CONSULTANT does not provide written notice in accordance with this section, it waives all rights to challenge the AGENCY's decision.

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

[AccountsPayable@samtrans.com](mailto:AccountsPayable@samtrans.com)

### **7. NOTICES**

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

Notices informing CONSULTANT of the AGENCY's decision to exercise Agreement options (that were exercisable in the AGENCY's sole discretion) will be exchanged between the AGENCY's Project Manager or designee, and the CONSULTANT's Program Manager via electronic mail to: [adrian.gunderson@hdrinc.com](mailto:adrian.gunderson@hdrinc.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:            Adrian Gunderson, PE, Lead Project Manager  
   HDR Engineering, Inc.  
   3003 Oak Road Suite 500  
   Walnut Creek, CA 94597

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**

Upon payment in full for all services performed under this Agreement, all reports, designs, drawings, plans, specifications, schedules, and other materials first 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. Any modification or reuse of such materials for purposes other than those intended by the applicable work directive shall be at

AGENCY's sole risk and without liability to CONSULTANT. 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 and tender of appropriate payment 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 first 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.

Notwithstanding anything to the contrary herein, CONSULTANT shall retain all common law, statutory, and other reserved rights including copyright in its pre-existing intellectual property, standard design elements, and architectural/engineering details that are neither unique to AGENCY nor related to the business of AGENCY, and AGENCY shall be granted a non-exclusive license to reproduce such design elements and details in conjunction with its use on the Project. CONSULTANT shall have no liability for any claims, losses, or damages caused by AGENCY's use, alteration, or modification of CONSULTANT's pre-existing materials or the work product on other projects or for purposes outside the scope of this Agreement without CONSULTANT's prior review and written approval.

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 unless compelled by court order or operation of law after providing the AGENCY with notice of such order or operation.

## **10. USE OF SUBCONSULTANTS**

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

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

## **11. CHANGES**

The AGENCY may at any time, by written order, make changes within the Scope of Services and services described in this Agreement. If such changes cause an increase or decrease in the budgeted cost of or the time required for performance of the agreed-upon work, an equitable adjustment as mutually agreed will be made in the limit on

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

## **12. RESPONSIBILITY: INDEMNIFICATION**

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

- A. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the CONSULTANT caused by a negligent act or omission or 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 1, Insurance Requirements appended hereto, for the Insurance Requirements.

## **14. CONSULTANT'S STATUS**

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

## **15. ASSIGNMENT**

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

## **16. OTHER GOVERNMENTAL AGENCIES**

Not applicable.

## **17. AGENCY WARRANTIES**

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

## **18. AGENCY REPRESENTATIVE**

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

## **19. WARRANTY OF SERVICES**

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

## **20. CLAIMS OR DISPUTES**

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

The CONSULTANT will not be entitled to the payment of any additional compensation

for any cause, including any act, or failure to act, by the AGENCY, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given the AGENCY due written notice of a potential claim. The potential claim will set forth the reasons for which the CONSULTANT believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

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

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

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

## **21. REMEDIES**

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

## **22. TEMPORARY SUSPENSION OF WORK**

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

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

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

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

## **23. TERMINATION**

- A. Termination for Convenience.** The AGENCY may terminate this Agreement for convenience at any time by giving 60 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 first procured for or produced pursuant to this Agreement as of the date of termination are the property of the AGENCY upon the effective date of the termination for convenience. CONSULTANT and its subconsultants must cooperate in good faith in any transition to other vendors or consultants as the AGENCY deems necessary. Failure to so cooperate is a breach of the Agreement and grounds for the termination for convenience to be treated as a termination for default.
- B. Termination for Default.** If the CONSULTANT materially 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 30 days 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 first procured for or produced pursuant to this Agreement become the property of the AGENCY upon the effective date of the termination for default.

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



**24. LIQUIDATED DAMAGES**

Not Applicable.

**25. PREVAILING WAGE**

See Exhibit F, Labor Code Requirements.

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

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

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

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

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

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

**28. EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

In connection with the performance of this Agreement, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics

protected under federal, state, or local laws. The CONSULTANT shall take affirmative actions to ensure that applicants are employed and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The CONSULTANT further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

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

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

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

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

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

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

## **29. SBE AND PROMPT PAYMENT REQUIREMENTS**

See Exhibit E for DBE, SBE, prompt payment and reporting requirements.

## **30. CONFLICT OF INTEREST**

### **A. General.**

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

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

§87100 et seq. during the performance of services under this Agreement. The CONSULTANT further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

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

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

### **B. Organizational Conflicts of Interest.**

CONSULTANT will take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work

performed under this Agreement and other solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or Contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to the AGENCY; a firm or person's objectivity in performing the Contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a Contract as a result of information gained in performance of this or some other Agreement.

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

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

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

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

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

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

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

### **31. SUBSTANCE ABUSE PROGRAM**

Not Applicable.

### **32. CALIFORNIA PUBLIC RECORD ACT REQUESTS (CPRA)**

CONSULTANT consents to the release of this Agreement, the redacted version of its

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

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

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

### **33. ATTORNEYS' FEES**

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

### **34. WAIVER**

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

### **35. SEVERABILITY**

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

### **36. NO THIRD PARTY BENEFICIARIES**

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

### **37. APPLICABLE LAW**

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

**38. RIGHTS AND REMEDIES OF THE AGENCY**

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

**39. BINDING ON SUCCESSORS**

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

**40. ENTIRE AGREEMENT; MODIFICATION**

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

**41. FORCE MAJEURE**

Neither party shall be responsible for a delay in its respective performance under this Agreement, other than a delay in payment for services already performed, if such delay is caused by extraordinary weather conditions or other natural catastrophes, war, terrorist attacks, sabotage, computer viruses, riots, strikes, lockouts or other industrial disturbances, acts of governmental agencies or authorities, discovery of hazardous materials or differing and unforeseeable site conditions, or other events beyond the reasonable control of the claiming party.

**42. CONSEQUENTIAL DAMAGES WAIVER**

Notwithstanding any other provision to the contrary in this Agreement and to the fullest extent permitted by law, in no event shall either party, its parents, affiliates and subsidiaries or their respective directors officers or employees be liable to the other for any indirect, incidental, special, or consequential damages whatsoever (including, without limitation, lost profits, loss of revenue, loss of use or interruption of business) arising out of or related to this agreement, even if advised of the possibility of such damages, and consultant hereby releases agency and agency hereby releases consultant from any such liability

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:**

**HDR ENGINEERING, INC.: (See footnote below)\***

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

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

Print: Michelle Bouchard

Print: Adrian Gunderson

Title: Executive Director

Title: PE, Lead Project Manager

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

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

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

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

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

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

**ATTEST:**

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

AGENCY Secretary

**APPROVED AS TO FORM:**

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

Attorney for the AGENCY

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

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

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

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

**THE AGREEMENT**  
**BETWEEN**  
**PENINSULA CORRIDOR JOINT POWERS BOARD (AGENCY)**  
**AND**  
**T.Y. LIN INTERNATIONAL (CONSULTANT)**

**AGREEMENT SUMMARY\***

**Board of Directors' Date of Award:** January 4, 2024

**Resolution Number:** 2024-XX

**Effective Date of Agreement:** January 4, 2024

**Services to be Performed (Section 1):** On-Call General Engineering Consultant (GEC)  
Design Services for Various Projects

**Term of Agreement (Section 3):** Five (5) year term with two (2) one-year option terms

**CONSULTANT's Key Representative (Section 4):**  
Jeffrey Hurley, Rail & Transit Manager  
T.Y. Lin International  
1731 Technology Drive, Suite 755  
San Jose, CA 95110  
[jeffrey.hurley@tylin.com](mailto:jeffrey.hurley@tylin.com)

**Compensation (Section 5): Board approved aggregate amount:** \$50,000,000

\*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 General Engineering Consultant (GEC) Design Services for Various Projects (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 T.Y. Lin International (CONSULTANT), a California Corporation located at 1731 Technology Drive, Suite 755, San Jose, CA 95110 (“the Parties”).

## **1. SCOPE OF SERVICES**

This is an Agreement to provide On-Call General Engineering Consultant (GEC) Design Services for Various Projects. 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 ordinarily exercised by members of the same profession currently practicing under similar conditions at the same time and locality of the Project; (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 July 28, 2023, the Scope of Services which is attached hereto and incorporated herein as Exhibit A, as supplemented by CONSULTANT’s written proposal dated September 8, 2023, attached hereto and incorporated herein as Exhibit C.

## **2. AGREEMENT DOCUMENTS**

This Agreement consists of the following documents:

- (1) This Agreement, including Attachment 1, Insurance Requirements
- (2) Exhibit A, Scope of Services;
- (3) Work Directives;
- (4) Exhibit B, Work Directives Process
- (5) Exhibit C, CONSULTANT’s Proposal, including negotiated cost/labor rates;
- (6) Exhibit D, Federal Requirements;
- (7) Exhibit E, SBE Requirements;
- (8) Exhibit F, Labor Code Requirements;

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

## **3. TERM OF AGREEMENT**

The term of this Agreement will be for a five (5) year term commencing upon January 4, 2024, and ending on January 3, 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 two 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 are subject to the AGENCY's right to terminate the Agreement in accordance with Section 23 of this Agreement.

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

At all times during the term of this Agreement Adrian Gunderson 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 C.

It is expressly understood and agreed that in no event will the CONSULTANT be compensated in an amount greater than the amount specified in any individual Work Directive for the services performed under such Work Directive. Any amendments 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 **Fifty Million Dollars (\$50,000,000)** 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.

##### **5.1. GENERAL**

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

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

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

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

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

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

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

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

#### **5.3.2. Straight Time**

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

#### **5.3.3. Overtime**

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

### **5.4. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS**

#### **5.4.1. General**

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

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

#### **5.4.2. Payroll Burden**

CONSULTANT and the AGENCY agree that the following will be considered as Payroll Burdens and as such will be paid to CONSULTANT, and

subconsultants, as compensation for said costs, as set forth below. "Payroll Burden" is defined as:

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

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

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

#### **5.4.4. Indirect Costs (Office Overhead)**

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

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

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

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

### **5.5. Maximum Fixed Fees (Profit)**

#### **5.5.1. General**

The Fixed Fee percentages proposed by CONSULTANT shall be considered

the maximum Fee percentages applicable 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 the Project.

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

### **General Engineering Consultant Services**

- Ten Percent (10%)\* for CONSULTANT's home office (Home) and
- Eight Percent (8%) for AGENCY's field office (Field).
- Subconsultants markup – Zero Percent (0%)

## **5.6. OTHER DIRECT COSTS (ODCs)**

### **5.6.1. General**

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

### **5.6.2. Allowable ODCs**

Examples of allowable include, but are not limited to: mileage, parking, tolls, mail costs, film, photo developing, facsimiles, printing/copying, plan reproduction, blueprint services and subconsultants directly associated with the project. Expenditures for each allowable ODC more than \$500 per month, and not included above, shall require advance approval by the AGENCY. Supporting documentation is required for reimbursement of all ODCs.

### **5.6.3. Subconsultants**

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

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

- (1) Vehicles - If applicable and approved by the Agencies, rental vehicles and their support costs are limited to a total maximum of \$500 per month, per vehicle. The standard Internal Revenue Service mileage rates shall apply for use of a personal vehicle.
- (2) Travel Expenses - All travel and relocation related plans must be approved in writing by the AGENCY prior to the commencement of the travel. If written approval is received for relocations, travel, temporary accommodations and or assistance, FAR 31.205-46(a) Sections 1 and 2 and Federal Travel Regulation (41 CFR 301-304) for San Mateo County, California, will apply. Lodging and per diem rates shall not exceed the

U.S. General Services Administration (GSA) rate at the time of travel for the specific project site. Costs incurred for travel, subsistence, and relocation of personnel engaged in the performance of services under this Agreement, if approved in advance by AGENCY will include the following:

- Relocation expenses, travel, temporary accommodations, and/or subsistence related to mobilization travel to the CONSULTANT's dedicated project office or to AGENCY-Furnished Field Office for CONSULTANT and subconsultant personnel permanently assigned to the project. Such expenses shall be reduced by any amount received from others by CONSULTANT or subconsultant for demobilization from the prior project assignment.
- Travel, accommodations and subsistence (directly related to the Scope of Services) for business trips to the Project Site, to AGENCY's CONSULTANTS and suppliers, or to other locations approved by the AGENCY. Such travel may originate at CONSULTANT's or subconsultant's home office or branch office, or at the CONSULTANT's dedicated field office, or at AGENCY's central or field offices.

#### **5.6.5. Unallowable ODCs**

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

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

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

#### **5.7. Maximum Compensation Amount**

A maximum compensation amount is set forth in the Agreement and each work directive.

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 compensation 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 compensation amount as set forth in the project shall be at CONSULTANT's own risk.

#### **5.8. Flow Down**

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

### **6. MANNER OF PAYMENT**

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, the Contract number 24-J-P-010, Purchase order # and the AGENCY Project Manager's name. The AGENCY will endeavor to pay approved invoices/billing statements within 30 calendar days of their receipt. The AGENCY reserves the right to withhold payment to the CONSULTANT if the AGENCY determines that the quantity or quality of the work performed is unacceptable. **Furthermore, the AGENCY reserves the right to withhold payment for any invoice that does not match the PO lines until CONSULTANT resubmits a corrected invoice.** The AGENCY will provide written notice to the CONSULTANT within 10 calendar days of the AGENCY's decision not to pay and the reasons for non-payment. Final payment will be withheld until CONSULTANT performs all required Agreement expiration or termination obligations. If CONSULTANT disagrees with the AGENCY's decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes the AGENCY's decision to the AGENCY within 30 calendar days of the AGENCY's notice. If CONSULTANT does not provide written notice in accordance with this section, it waives all rights to challenge the AGENCY's decision.

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

[AccountsPayable@samtrans.com](mailto:AccountsPayable@samtrans.com)

### **7. NOTICES**

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

Notices informing CONSULTANT of the AGENCY's decision to exercise Agreement options (that were exercisable in the AGENCY's sole discretion) will be exchanged between the AGENCY's Project Manager or designee, and the CONSULTANT's Program Manager via electronic mail to: [adrian.gunderson@hdrinc.com](mailto:adrian.gunderson@hdrinc.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: Jeffrey Hurley  
T.Y. Lin International  
1731 Technology Drive Suite 755  
San Jose, CA 95110

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**

Upon payment in full for all services performed under this Agreement, all reports, designs, drawings, plans, specifications, schedules, and other materials first 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. Any modification or reuse of such materials for purposes other than those intended by the applicable work directive shall be at

AGENCY's sole risk and without liability to CONSULTANT. 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 and tender of appropriate payment 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 first 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.

Notwithstanding anything to the contrary herein, CONSULTANT shall retain all common

law, statutory, and other reserved rights including copyright in its pre-existing intellectual property, standard design elements, and architectural/engineering details that are neither unique to AGENCY nor related to the business of AGENCY, and AGENCY shall be granted a non-exclusive license to reproduce such design elements and details in conjunction with its use on the Project. CONSULTANT shall have no liability for any claims, losses, or damages caused by AGENCY's use, alteration, or modification of CONSULTANT's pre-existing materials or the work product on other projects or for purposes outside the scope of this Agreement without CONSULTANT's prior review and written approval.

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 unless compelled by court order or operation of law after providing the AGENCY with notice of such order or operation.

## **10. USE OF SUBCONSULTANTS**

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

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

## **11. CHANGES**

The AGENCY may at any time, by written order, make changes within the Scope of Services and services described in this Agreement. If such changes cause an increase or decrease in the budgeted cost of or the time required for performance of the agreed-upon work, an equitable adjustment as mutually agreed will be made in the limit on compensation as set forth in Section 5 or in the time of required performance as set forth in Section 3, or both. In the event that CONSULTANT encounters any unanticipated conditions or contingencies that may affect the Scope of Services or services and result in an adjustment in the amount of compensation specified herein, or identifies any AGENCY conduct (including actions, inaction, and written or oral

communications other than a formal Contract modification) that the CONSULTANT regards as a change to the Contract terms and conditions, CONSULTANT will so advise the AGENCY immediately upon notice of such condition or contingency. The written notice will explain the circumstances giving rise to the unforeseen condition or contingency and will set forth the proposed adjustment in compensation. This notice will be given to the AGENCY prior to the time that CONSULTANT performs work or services related to the proposed adjustment in compensation. The pertinent changes will be expressed in a written supplement to this Agreement issued by the Contracts and Procurement Department prior to implementation of such changes. Failure to provide written notice and receive AGENCY approval for extra work prior to performing extra work may, at the AGENCY's sole discretion, result in nonpayment of the invoices reflecting such work.

## **12. RESPONSIBILITY: INDEMNIFICATION**

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

- A. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the CONSULTANT caused by a negligent act or omission or 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 1, Insurance Requirements appended hereto, for the Insurance Requirements.

## **14. CONSULTANT'S STATUS**

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

## **15. ASSIGNMENT**

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

## **16. OTHER GOVERNMENTAL AGENCIES**

Not applicable.

## **17. AGENCY WARRANTIES**

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

## **18. AGENCY REPRESENTATIVE**

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

## **19. WARRANTY OF SERVICES**

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

## **20. CLAIMS OR DISPUTES**

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

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

compensation may be due, the nature of the costs involved, and the amount of the potential claim.

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

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

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

## **21. REMEDIES**

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

## **22. TEMPORARY SUSPENSION OF WORK**

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

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

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

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

## **23. TERMINATION**

A. **Termination for Convenience.** The AGENCY may terminate this Agreement for convenience at any time by giving 60 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 first procured for or produced pursuant to this Agreement as of the date of termination are the property of the AGENCY upon the effective date of the termination for convenience. CONSULTANT and its subconsultants must cooperate in good faith in any transition to other vendors or consultants as the AGENCY deems necessary. Failure to so cooperate is a breach of the Agreement and grounds for the termination for convenience to be treated as a termination for default.

- B. Termination for Default.** If the CONSULTANT materially 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 30 days 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 first procured for or produced pursuant to this Agreement become the property of the AGENCY upon the effective date of the termination for default.

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

## **24. LIQUIDATED DAMAGES**

Not Applicable.

**25. PREVAILING WAGE**

See Exhibit F, Labor Code Requirements.

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

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

If, as a result of the audit, it is determined by the AGENCY's auditor or staff that reimbursement of any costs including profit or fee under this Agreement was in excess of that represented and relied upon during price negotiations or represented as a basis

for payment, the CONSULTANT agrees to reimburse the AGENCY for those costs within sixty (60) days of written notification by the AGENCY.

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

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

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

**28. EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

In connection with the performance of this Agreement, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The CONSULTANT shall take affirmative actions to ensure that applicants are employed and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national

origin, or any other characteristic protected under state, federal, or local laws. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The CONSULTANT further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

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

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

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

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

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

The CONSULTANT will include the provisions of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24,



1965, so that such provisions will be binding upon each subconsultants or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of such direction, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

## **29. SBE AND PROMPT PAYMENT REQUIREMENTS**

See Exhibit E for DBE, SBE, prompt payment and reporting requirements.

## **30. CONFLICT OF INTEREST**

### **A. General.**

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

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

§87100 et seq. during the performance of services under this Agreement. The CONSULTANT further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

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

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

### **B. Organizational Conflicts of Interest.**

CONSULTANT will take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement and other solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or Contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to

the AGENCY; a firm or person's objectivity in performing the Contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a Contract as a result of information gained in performance of this or some other Agreement.

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

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

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

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

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

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

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

### **31. SUBSTANCE ABUSE PROGRAM**

Not Applicable.

### **32. CALIFORNIA PUBLIC RECORD ACT REQUESTS (CPRA)**

CONSULTANT consents to the release of this Agreement, the redacted version of its proposal, and the release of any portion of its proposal not included in its confidentiality index, and waives all claims against the AGENCY, its directors, officers, employees and agents, for the disclosure of such information. If the CONSULTANT did not include a

confidentiality index in its proposal, the AGENCY will have no obligation to withhold any information from disclosure and may release the information sought without liability to the AGENCY.

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

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

### **33. ATTORNEYS' FEES**

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

### **34. WAIVER**

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

### **35. SEVERABILITY**

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

### **36. NO THIRD PARTY BENEFICIARIES**

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

### **37. APPLICABLE LAW**

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

### **38. RIGHTS AND REMEDIES OF THE AGENCY**

The rights and remedies of the AGENCY provided herein will not be exclusive and are

in addition to any other rights and remedies provided by law or under the Agreement.

**39. BINDING ON SUCCESSORS**

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

**40. ENTIRE AGREEMENT; MODIFICATION**

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

**41. FORCE MAJEURE**

Neither party shall be responsible for a delay in its respective performance under this Agreement, other than a delay in payment for services already performed, if such delay is caused by extraordinary weather conditions or other natural catastrophes, war, terrorist attacks, sabotage, computer viruses, riots, strikes, lockouts or other industrial disturbances, acts of governmental agencies or authorities, discovery of hazardous materials or differing and unforeseeable site conditions, or other events beyond the reasonable control of the claiming party.

**42. CONSEQUENTIAL DAMAGES WAIVER**

Notwithstanding any other provision to the contrary in this Agreement and to the fullest extent permitted by law, in no event shall either party, its parents, affiliates and subsidiaries or their respective directors officers or employees be liable to the other for any indirect, incidental, special, or consequential damages whatsoever (including, without limitation, lost profits, loss of revenue, loss of use or interruption of business) arising out of or related to this agreement, even if advised of the possibility of such damages, and consultant hereby releases agency and agency hereby releases consultant from any such liability

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: \_\_\_\_\_

**T.Y. LIN INTERNATIONAL: (See footnote below)\***

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

Print: Jeffrey Hurley

Title: Rail & Transit Manager

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

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

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

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

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

**ATTEST:**

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

AGENCY Secretary

**APPROVED AS TO FORM:**

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

Attorney for the AGENCY

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

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

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

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

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

**AGREEMENT SUMMARY\***

**Board of Directors' Date of Award:** January 4, 2024

**Resolution Number:** TBD

**Effective Date of Agreement:** January 17, 2023

**Services to be Performed (Section 1):** On-Call Program Management Oversight Services

**Term of Agreement (Section 3):** Seven (7) year term with no option terms

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

**Name:** Charlie Krueger,

**Title:** Contract Manager

**Company:** Ghirardelli Associates, Inc

**Address:** 2055 Gateway Place, Suite 470, San Jose, CA 95110

**Phone:** 510-867-4452

**Email:** charlie@ghirardelliassoc.com

**Compensation (Section 5):** Board-approved aggregate amount: **\$55,000,000**

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

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This AGREEMENT for On-Call Program Management Oversight

Services (Agreement) is entered into by and between the San Mateo County Transit District Peninsula Corridor Joint Powers Board, (AGENCY) located at 1250 San Carlos Avenue, San Carlos, CA 94070 and GHIRARDELLI ASSOCIATES, INC. (CONSULTANT), a California Corporation located at 2055 Gateway Place, Suite 470, San Jose, CA 95110 (“the Parties”).

## **1. SCOPE OF SERVICES**

This is an Agreement to provide On-Call Program Management Oversight 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 Program Management Oversight 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 31, 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 28, 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-1 Insurance Requirements
- (2) Exhibit A, Scope of Services
- (3) Exhibit B, CONSULTANT’s Proposal including negotiated cost/labor rates.
- (4) Exhibit C, Work Directives
- (5) Exhibit D, SBE Requirements
- (6) Exhibit E, Federal Requirements
- (7) Exhibit F, PMO Services Matrix

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 seven-year term commencing upon January 17, 2024 and ending on January 16, 2031. The CONSULTANT will furnish the AGENCY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Solicitation Documents.

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

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

#### **5. COMPENSATION**

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

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

There is no guaranteed compensation to the CONSULTANT under this Agreement. However, the maximum compensation that the AGENCY has authorized to be expended for this Contract will not exceed \$55,000,000 (Fifty-Five Million Dollars) plus a 10 percent contingency, which may be used at the Agency's discretion if necessary for unforeseen work only. The AGENCY will pay the CONSULTANT in accordance with Section 6.

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

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

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

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## 5.1. GENERAL

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

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

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.

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.

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

5.2. COST OF WORK

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

5.3. DIRECT LABOR

5.3.1. GENERAL

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

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

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

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

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 (b) the actual increases in employees' labor rates. Such actual increases must be demonstrated to the Agency's satisfaction.

5.3.2. Straight Time

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

5.3.3. Overtime

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

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## 5.4. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

### 5.4.1. General

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

The agreed-upon multipliers shall be used for CONSULTANT's and subconsultants' home office and AGENCY-Furnished Field Office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in Exhibit B "Consultants Proposal and Labor Rates," dated September 28, 2023.

### 5.4.2. Payroll Burden

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

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

### 5.4.3. Employee Benefits

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

### 5.4.4. Indirect Costs (Office Overhead)

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

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

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

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

5.5. Maximum Fixed Fees (Profit)

5.5.1. General

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

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

- **Program Management Oversight Services**

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

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

- **Subconsultants**

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

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

- **Consultant Support Services**

Eight Percent (\_8%)

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

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

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Subconsultants markup – Zero Percent (0%)

5.6. OTHER DIRECT COSTS (ODCs)

5.6.1. General

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

5.6.2. Allowable ODCs

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

5.6.3. Subconsultants

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

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

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

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

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

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

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subconsultant's home office or branch office, or at the CONSULTANT's dedicated field office, or at AGENCY's central or field offices.

#### 5.6.5. Unallowable ODCs

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

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

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

#### 5.7. Maximum Compensation Amount

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

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



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

5.8. Flow Down

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

**6. MANNER OF PAYMENT**

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, the contract number **24-J-P-002A**, 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. The AGENCY will provide written notice to the CONSULTANT within 10 calendar days of the AGENCY's decision not to pay and the reasons for non-payment. Final payment will be withheld until CONSULTANT performs all required Agreement expiration or termination obligations. If CONSULTANT disagrees with the AGENCY's decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes the AGENCY's decision to the AGENCY within 30 calendar days of the AGENCY's notice. If CONSULTANT does not provide written notice in accordance with this section, it waives all rights to challenge the AGENCY's decision.

Submit one copy of each invoice as a PDF via email to [AccountsPayable@samtrans.com](mailto:AccountsPayable@samtrans.com) with a "cc" to the Project Manager, and Contract Administrator or Procurement Administrator as applicable.

**NOTICES**

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

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, Robert Tam or designee, and the **Contract Manager, Charlie Krueger.** Via electronic mail to: [charlie@ghirardelliassoc.com](mailto:charlie@ghirardelliassoc.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:

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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: Ghirardelli Associates, Inc  
Attn: Charlie Krueger  
2055 Gateway Place, Suite 470  
San Jose, CA 95110

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.

## **7. 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.

## **8. 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

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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.

**9. 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.

**10. 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.

**11. RESPONSIBILITY: INDEMNIFICATION**

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

**A.** Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the CONSULTANT caused by

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a negligent act or omission or wilful misconduct of the CONSULTANT or its employees, subcontractors, subconsultants or agents; or

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

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

**12. INSURANCE**

Refer to Attachment A-1, appended hereto, for the Insurance Requirements.

**13. 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.

**14. 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.

**15. OTHER GOVERNMENTAL AGENCIES**

Not Applicable.

**16. 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.

**17. AGENCY WARRANTIES**

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

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**18. AGENCY REPRESENTATIVE**

Except when approval or other action is required to be given or taken by the Board of Directors of the AGENCY, the 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.

**19. WARRANTY OF SERVICES**

**A.** CONSULTANT warrants that its professional services will be performed in accordance with the professional standards of practices of comparable program management 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 program management oversight work as a result of errors and omissions.

**20. CLAIMS OR DISPUTES**

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

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

If based on an act or failure to act by the AGENCY, such notice will be given to the AGENCY prior to the time that the CONSULTANT has started performance of the work giving rise

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to the potential claim for additional compensation. In all other cases, notice will be given within 10 days after the happening of the event or occurrence giving rise to the potential claim.

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

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

## **21. REMEDIES**

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

## **22. TEMPORARY SUSPENSION OF WORK**

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

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

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

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

## **23. TERMINATION**

**A. Termination for Convenience.** The AGENCY may terminate this Agreement for convenience at any time by giving sixty days written notice to the CONSULTANT. Upon receipt of such notice, the CONSULTANT may not commit itself to any further expenditure of time or resources, except for costs reasonably necessary to effect the termination. If the AGENCY terminates the Agreement for convenience, the AGENCY agrees to pay the CONSULTANT, in

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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.

**24. LIQUIDATED DAMAGES**

Not Applicable.

**25. PREVAILING WAGE**

Not Applicable.

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

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

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

## **27. UKRAINE/RUSSIA RELATED SANCTIONS**

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

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

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



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## **29. EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

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

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

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

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

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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.

### **30. DISADVANTAGED BUSINESS ENTERPRISES (DBE) POLICY**

See Attachment D for DBE, Small Business Enterprise, prompt payment and reporting requirements.

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

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

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

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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

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after the AGENCY makes final payment under this Agreement. Such lists may be published as part of future AGENCY solicitations.

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

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

**32. SUBSTANCE ABUSE PROGRAM [IF APPLICABLE]**

Not Applicable.

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

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

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

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

**34. 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.

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**35. WAIVER**

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

**36. SEVERABILITY**

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

**37. NO THIRD-PARTY BENEFICIARIES**

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

**38. APPLICABLE LAW**

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

**39. RIGHTS AND REMEDIES OF THE AGENCY**

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

**40. BINDING ON SUCCESSORS**

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

**41. ENTIRE AGREEMENT; MODIFICATION**

This Agreement for Services, including any attachments, constitutes the complete Agreement between the parties and supersedes any prior written or oral communications. This Agreement may be modified or amended only by written instrument signed by both the 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.

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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:**

**GHIRARDELLI ASSOCIATES, INC.:** (See footnote below)\*

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

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

Print: Michelle Bouchard

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

Title: Executive Director

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

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

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

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

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

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

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

ATTEST:

By: \_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Attorney for the Agency

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

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

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

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

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## **ATTACHMENT A-1: INSURANCE REQUIREMENTS**

### **INSURANCE**

The insurance requirements specified in this Section shall cover CONSULTANT's own liability and any liability arising out of work or services performed under this Agreement by any subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") that CONSULTANT authorizes to work under this Agreement. CONSULTANT is required to procure and maintain at its sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement. CONSULTANT is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks; the limit for the Commercial General Liability insurance in each subcontract shall not be less than \$2 million. To the extent that any Agent does not procure and maintain such insurance coverage, CONSULTANT shall assume any and all costs and expenses that may be incurred in fulfilling CONSULTANT's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event CONSULTANT or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the CONSULTANT's insurance be primary without any right of contribution from the JPB. Prior to beginning work under this Agreement, CONSULTANT shall provide the JPB's authorized insurance consultant, Insurance 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 CONSULTANT shall also maintain Employer's Liability coverage with minimum limits of \$5 million.

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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 \$5 million per occurrence or claim and a general aggregate limit of at least \$5 million. Such insurance shall cover all of CONSULTANT's operations both at and away from the project site. Such insurance shall not have any exclusion for Cross Liability or Cross-Suits. In addition, for any construction and public works projects, the insurance shall not have any exclusion for Explosion, Collapse, and Underground perils (xcu) and for construction or demolition work within 50 feet of railroad tracks, the contractual liability exclusion for liability assumed shall be deleted.

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

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

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

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

Products and completed operations insurance shall be maintained for three (1) 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 \$5 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:



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

#### **4. Property Insurance.**

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

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

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

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

- Waiver of Subrogation.

#### **5. Professional Liability including Network Security, Privacy & Media Insurance.**

A Professional Liability insurance policy covering errors and omissions and the resulting damages including, but not limited to, economic loss to the JPB and having minimum limits of liability of \$5 million per claim or occurrence and \$5 million annual aggregate. The policy shall include coverage for all services and work performed under this Agreement. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy coverage, and media coverage.

### **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.

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## **2. Waiver of Subrogation.**

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

## **3. Primary Insurance.**

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

## **4. Separation of Insureds.**

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

# **C. EVIDENCE OF INSURANCE**

## **1. All Coverages.**

Prior to commencing work or entering onto the Property, CONSULTANT shall provide to 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 CONSULTANT under the Agreement. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate. **The JPB Contract number and Project name shall be clearly stated on the face of each Certificate of Insurance.**

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

Email Address: [smt.certificates@instracking.com](mailto:smt.certificates@instracking.com)

OR

Fax: (562) 435-2999

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

#### **D. GENERAL PROVISIONS**

##### **1. Notice of Cancellation.**

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

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

Email Address: [smt.certificates@instracking.com](mailto:smt.certificates@instracking.com)

OR

Fax: (562) 435-2999

##### **2. Acceptable Insurers.**

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

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### **3. Self-insurance.**

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

### **4. Failure to Maintain Insurance.**

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

### **5. Claims Made Coverage.**

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

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

### **6. Deductibles and Retentions.**

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

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

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## **EXHIBIT A: SCOPE OF SERVICES**

### **A. INTRODUCTION**

The On-Call Program Management Oversight Services (PMO) contracts will provide expertise to support various project management oversight functions of the AGENCY'S capital program and projects. Services will be provided on an as-needed basis, and there is no guarantee of any amount of work that will be ordered or allocated or total compensation to be paid to the CONSULTANT(s).

### **B. SCOPE OF SERVICES AND DELIVERABLES**

CONSULTANT(s) shall provide capital program and project management oversight services for the Peninsula Corridor Joint Powers Board (JPB or AGENCY), hereinafter referred to as "AGENCY". Services will be authorized by a Work Directive (WD).

Per the Work Directive (WD) Process described in Part 4, Exhibit C, and on an as-needed basis, CONSULTANT(s) shall analyze the requested Professional Services, identify, assign, and manage the Staff (Position and Title) needed for the successful delivery of each individual project as called for in each WD. The CONSULTANT(s) will manage and control the day-to-day WD activities and deliverables with overall guidance from the appointed AGENCY'S Project Manager. Detailed scope, including required deliverables, will be identified in individual WDs.

### **C. SCOPE OF SERVICES**

CONSULTANT(s) shall provide the Professional Services necessary to support the AGENCY with the delivery of transportation projects and programs. CONSULTANT(s) staff shall work with various divisions and departments within these AGENCY, including but not limited to grants, project management, project controls, finance and accounting, contracts and procurement, budgeting, and executive management. The Program Management Support team shall participate in all meetings required in order to perform and deliver the scope of work described below.

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

- A. Provide, as needed, consultant expertise to support various functions of capital program and project management. Typical assignments will include but will not be limited to project controls, document control, records management, cost estimating, program and project management, and administration support. Program and project management may include providing support on developing project work plans, cost estimates, schedules, cash flow analysis, accruals, reporting, cost control, invoicing, funding, and project risk analysis. Consultant will also provide coordination and support to PCEP to ensure delivery of capital program projects on an as-needed basis. The CONSULTANT(s) services will be provided in accordance with the JPB's Project Management Manual for Caltrain Capital Projects.

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- B. Analyze and recommend improvements to the existing capital project delivery system. Document project delivery processes and/or improvements through the development of a formal Capital Program Management Plan.
  - C. Manage projects to ensure projects are delivered on schedule, on budget, and safely. Lead a project team from project initiation to project completion. Project team may consist of project engineer, project controls, contract officer, and administrators. Support different project delivery methods such as design/bid/build, design/build, and CMGC. Report project status to management, funding agencies, and other external stakeholders.
  - D. Develop and/or refine, and recommend policy and procedures, including appropriate roles and responsibilities of all involved stakeholders in areas such as project planning, project development and management, program and project change control procedures, project budget and funding management, and construction management. Document such recommended policies and procedures through the development and maintenance of manuals on these subjects. Develop and/or refine procedures for project scope definition and control, project reporting, document control and records management, fund management, and guidelines for cost estimating at various stages of a project.
  - E. Assist in the development and/or refinement, implementation, and maintenance of a system to track and manage the use of all capital program and project budgets and grant funds. This will include the production of periodic reports for board presentations, funding agencies, and internal management.
  - F. Develop and/or refine, implement, and maintain systems for budget and invoice tracking for work directives, including maintaining existing work directives and creating requisitions for new work directives in PeopleSoft.
  - G. Assist in the continued refinement and management of project control systems, including the development and maintenance of project controls deliverables such as cash flow analysis, cost control reports, and time-phased budgets with integrated project costs and schedules; the development and tracking of key project performance indicators, including setting up and managing project work breakdown structures, project baseline budgets and schedules, project trends, and forecasting estimate-at-completion cost; analysis of project earned value performance data; and the development of project schedule recovery plans. The system(s) shall enable the monitoring of all costs associated with the AGENCY'S capital programs. This includes but not limited to AGENCY'S staff costs, engineering support costs, Consultant engineering support costs, construction capital costs, right of way capital costs, and program indirect costs. The system shall enable analyzing and reporting of program and project cost and schedule performance, forecasting of total costs to assist with resource planning and estimating, capital cost control, cash flow projections, analysis, and reporting. Periodic reporting shall include monthly reports to internal management, and quarterly reports to the AGENCY'S board of directors.

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- H. The AGENCY current project controls system operates based on cost and scheduling data from PeopleSoft and Primavera, respectively. Any proposed system/program used for the same purpose must be able to perform at equal or better standards. Alternatives must interface with, and accept, downloads from PeopleSoft and Primavera, and must be approved by the AGENCY before contract awards and use.
  - I. Assist in the continued refinement and management of document control systems for programs and projects.
  - J. Provide assistance with the development of capital projects by producing formal studies and developing project-specific estimates of project cost and schedule. Also assist in the development and maintenance of program and project schedules using Primavera Project Planner, or other agency-adopted scheduling software, including the ability to incorporate engineering Consultant and contractor schedules into a master program schedule.
  - K. Provide as-needed program and project management support/training to AGENCY'S staff.

A. **Anticipated Staffing Needs**

Given current projects and past requirements, the AGENCY anticipates the need for the following positions:

- Program Manager – one
- Project Managers – up to six
- Estimator – one
- Scheduler – one
- Project Controls – up to three
- Document Control – up to two
- Contract Administrator – one
- Administrator Assistant - up to two

PROPOSERS, however, should note that actual services contracted for may be less than or greater those noted above.

B. **Deliverables**

In addition to specific deliverables identified in each Work Directive, CONSULTANT(s) shall submit a monthly report to the AGENCY's Contract Administrator named in the Agreement, no later than 7 business days after the end of each CONSULTANT'(s) billing period. The report will cover activities performed on all open Work Directives 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 CONSULTANT(s) has requested from the AGENCY or a 3rd Party agency that may potentially impact the cost or schedule of the work.

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- 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
  - Compare the percent billing to percent work complete

The AGENCY and CONSULTANT(s) shall meet quarterly to review CONSULTANT'(s) performance.

From time to time, the AGENCY may require that Consultant Support staff be provided by the CONSULTANT(s). The purpose is to temporarily augment the AGENCY'S staff and is understood to be the provision of CONSULTANT's (or sub-consultant's) personnel who will provide specific skills and will work at the AGENCY'S facilities. CONSULTANT may be entitled to one-time charges incurred to set up such a WD or negotiated fees for administrative oversight. Consultant support performed in less than 120 consecutive calendar days may be billed at the home Office overhead rate.

In addition, the AGENCY may require the services of an individual, or firm, to provide services which are not known at the time of this solicitation but are consistent with that in this RFP. The AGENCY refers to this as a Pass-through and considers the CONSULTANT(s) to be minimally responsible for the review of the work product of these individuals or firms. CONSULTANT(s) may be entitled to one-time charges incurred to set up such a WD or negotiated fees for administrative oversight. Additional scope, including required deliverables, will be identified in individual Work Directives.



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**EXHIBIT B: CONSULTANT'S PROPOSAL AND LABOR RATES**

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## **EXHIBIT C: WORK DIRECTIVES**

Work Directives (WDs) will be issued pursuant to a qualification-based competitive selection process amongst the on-call consultants at any time during the Contract period of performance. Award of WDs required by the Agency will be based on the technical superiority of a Consultant's proposal in response to a WD Proposal Request. Award will be competed amongst the bench of Consultants, unless a conflict of interest or other valid business reason precludes one or more firms from competing on a specific project. Professional Services are to be provided on an on-call and as-needed basis throughout the term of the Contract and must be completed by the end of the Contract term.

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

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

### A. Issuance:

As needs arise, the Agency will issue a 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 the Agency establishes a DBE goal for a WD, it will include in the WD Proposal Request detailed information and instructions on the DBE goal requirements, related forms, and good faith efforts evaluation. If a DBE goal has been assigned to a WD Proposal Request, Consultant must meet the DBE goal or document that it has made sufficient good faith efforts to meet the goal in its proposal as required by the WD Proposal Request. WD proposals that do not meet the DBE goal, demonstrate good faith efforts to meet the DBE goal, or otherwise do not comply with the DBE requirements set forth in the WD Proposal Request, will be rejected as non-responsive. The Agency will evaluate the Consultant's documentation related to DBE goal achievement or good faith efforts to meet the DBE goal in the WD proposal before a WD is authorized. Good faith efforts will be evaluated on a Work Directive specific basis and in accordance with applicable regulations, but in general, good faith efforts to meet a Work Directive DBE goal may include the following:

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- 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 the Agency determines a Consultant failed to meet a DBE goal and also failed to demonstrate that it made good faith efforts to meet the goal, the Consultant's WD proposal will be rejected as non-responsive and the Consultant shall be afforded a reconsideration hearing, as further specified in the WD Proposal Request.

## B. Evaluation Process

In the event that contracts are awarded to a pool of qualified on-call consultants, during the term of the Agreements, project work shall be administered **pursuant to a qualification-based competitive selection process** amongst the on-call consultants. The WDs will be negotiated with the first-ranked firm from each individual WD competition. Cost proposals submitted shall be sealed and will not be included as a criterion for ranking of consultants. After ranking, cost negotiations will begin with the most qualified consultant, and only then will the cost proposal be opened.

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 Requests. Work will be authorized by the Contract Officer through the issuance of a WD. Work performed by the CONSULTANT prior to issuance of a WD is understood to be at-risk and is not subject to reimbursement to the CONSULTANT.

The following process further describes the WD evaluation process that will be followed in the event that contracts are awarded to a pool of qualified on-call consultants:

### 1) WD Evaluation Committee

An Evaluation Committee (Committee), which will include a minimum of three (3) members of the Agency's staff and possibly one or more outside experts, will review the technical proposals submitted and rank them according to the weighted criteria of each category as set forth in the process below. The Agency reserves the right to request additional information and clarifications during the evaluation and selection process from any or all Consultant regarding their proposals.

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2) WD Evaluation Process

The Consultant's technical WD proposal will be evaluated utilizing the criteria identified in the WD proposal request. In ranking proposals, the Agency will consider the proposal material submitted, oral interviews (if any are held), and any other relevant information about a given Consultant (i.e. references). The Agency will not assume that a Consultant possesses any capability unless such a capability is established by the submitted proposal. Technical Proposals will be evaluated using unique Evaluation Criteria specific to each WD, as determined by the Project Manager, on a case-by-case basis. Evaluation criteria may include but are not limited to, criteria described in Part 1, Section 3, Sub-Section B of this RFP.

3) WD Interviews

Following the initial review and screening of technical WD proposals, one or more Consultants may be invited to participate in the next step of the WD selection process. This step may include the submission of additional information, as described below, and/or participation in an oral interview. If the Agency conducts interviews, it will do so with those Consultants found to be within the "competitive range" in each project category. Attendees at an interview should be restricted to those individuals who will have direct involvement with provision of the WD requirements. The Agency expects that at a minimum the proposed Project Manager will attend the oral interview; other Key Personnel may also attend. The Agency, however, may award a WD without conducting interviews.

4) Revised WD Proposals and Negotiations

The Agency reserves the right to negotiate with the highest-ranked firm, request revised proposals, or request best and final offers if it is in the best interest of the Agency to do so. Upon completion of this step in the WD selection process, the Committee will re-rank the firms remaining in the "competitive range", in accordance with the evaluation criteria set forth above. The Agency will open the cost proposal from the top-ranked firm only, and the Agency will terminate the negotiations with that firm and may open negotiations with the next-highest firm. If negotiations with this firm are also not successful, the Agency may repeat the negotiations process with the next highest ranked firm, or, at its sole discretion, the Agency may reject all remaining proposals. Proposals will be reviewed by and negotiated with the Agency.

C. WD 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.

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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 Work Directive Proposal Request 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 9 Appendices, Appendix B, Section 5** "Compensation" of this RFP.

D. 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.

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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 3<sup>rd</sup> 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.

E. 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.

F. 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.

G. 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**

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## **EXHIBIT D: SBE REQUIREMENTS**

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

No contract-specific DBE participation goal has been established for this Agreement, but DBE goals may be established for specific WDs. Consultant must cooperate with the AGENCY in meeting its commitments and objectives with regard to ensuring non-discrimination 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. DBE ELIGIBILITY**

As used in this document, a DBE is a small business concern that currently meets the criteria for a DBE as established by the California Unified Certification Program (CUCP) or U.S. DOT and is certified as a DBE by the CUCP or U.S. DOT at the time that proposals are due for this solicitation.

For information on DBE criteria and how to become certified as a DBE with the CUCP, please visit: <https://caltrans.dbesystem.com>.

### **4. 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:

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

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

## **5. 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 CUCP or any other state Unified Certification Program. A state-wide 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 (SB) certification performed by the California Department of General Services (DGS) for the following industries only: (a) Construction (NAICS 230000); (b) Manufacturing (NAICS 310000-330000); (c) Wholesaling (NAICS 420000); and (d) Trucking (NAICS 484000).
- D. All Microbusiness (MB) certifications by the 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.

## **6. SBE ELIGIBILITY**

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

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



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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>.

## **7. COUNTING SBE PARTICIPATION**

SBE participation shall be counted and enforced similar to DBE participation 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

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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.

**8. CONTRACT COMPLIANCE**

A. Substitution of Subconsultants

The Consultant shall not terminate an SBE Subconsultant at any tier without prior

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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

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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/DBE Outreach Efforts for WD Proposals

The Consultant agrees to make its best efforts to encourage SBE and DBE participation on each WD issued pursuant to this Contract. Unless otherwise specified in the WD Proposal Request, 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 Designation of Subconsultants Form (Form 5); and
- 2) If Subconsultants are used, provide a narrative summary of the outreach efforts the Consultant performed to encourage SBE and DBE participation on the WD, and information regarding the Consultant's communications and negotiations with SBE and DBE firms, if applicable, by submitting an updated Description of the Selection Process of Subcontractors/Subconsultants Form (Form 9).

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- 3) Note that additional or different requirements may apply to WDs subject to a DBE goal.

**9. 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**

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## **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.**

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**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

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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



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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.

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- 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. Non-discrimination - 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

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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.

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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

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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)

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Voluntarily excluded from participation in any federally assisted Award; or (f) Disqualified from participation in any federally assisted Award.

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

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

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

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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:

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- 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



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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

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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 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.

(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

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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 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 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

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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

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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.

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- 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.

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- 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.

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- 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



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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

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“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.

# EXHIBIT F: PMO SERVICES MATRIX

## ON-CALL PMO SERVICES MATRIX

### Professional Positions

No.	Firm	Prime	Sub	Program Manager (one)	Project Manager (up to six)	Estimator (one)	Scheduler (one)	Project Controls (up to three)	Document Control (up to two)	Contract Administrator (one)	Administrator Assistant (up to two)				
~ PROPOSED ~															
1	Ghirardelli Associates	x		x	x	x	x	x	x	x	x				
2	3Vi, Inc.		x		x		x	x	x		x				
3	Azad Engineering PC		x		x	x	x	x	x		x				
4	M Lee Corporation		x		x		x	x							
5	PSM Associates, Inc.		x		x	x			x						
6	SSC Inc.		x		x	x		x			x				
7	System-Rail		x			x	x		x						
8	Pennino Management Group		x		x			x	x						

**Instructions/Notes:**

1. Place an "x" next to each professional positions your firm is proposing on. Add other positions as needed. Information provided to determine organizational conflict of interest.
- NOTE: PROPOSER(s) must provide evidence of key personnel's qualifications for each professional position selected.**

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AGREEMENT BETWEEN  
PENINSULA CORRIDOR JOINT POWERS BOARD (AGENCY)  
AND  
JACOBS PROJECT MANAGEMENT COMPANY(CONSULTANT)

**AGREEMENT SUMMARY\***

**Board of Directors' Date of Award:** January 4, 2024

**Resolution Number:** TBD

**Effective Date of Agreement:** January 17, 2023

**Services to be Performed (Section 1):** On-Call Program Management Oversight Services

**Term of Agreement (Section 3):** Seven (7) year term with, no option terms

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

**Name:** Elizabeth McDonald

**Title:** Program Manager

**Company:** Jacobs Project Management Company

**Address:** 1999 Bryan Street, Suite 3500, Dallas, TX 75201

**Phone:** 415-307-1085

**Email:** elizabeth.mcdonald@jacobs.com

**Compensation (Section 5):** Board-approved aggregate amount: **\$55,000,000**

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

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This AGREEMENT for On-call Program Management Oversight

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 JACOBS PROJECT MANAGEMENT COMPANY(CONSULTANT), a Texas Corporation located at 1999 Bryan Street, Suite 3500, Dallas, TX 75201("the Parties").

## **1. SCOPE OF SERVICES**

This is an Agreement to provide On-Call Program Management Oversight 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 Program Management Oversight 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 31, 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 28, 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-1 Insurance Requirements
- (2) Exhibit A, Scope of Services
- (3) Exhibit B, CONSULTANT's Proposal including negotiated cost/labor rates.
- (4) Exhibit C, Work Directives
- (5) Exhibit D, SBE Requirements
- (6) Exhibit E, Federal Requirements
- (7) Exhibit F, PMO Services Matrix

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 seven-year term commencing upon January 17, 2024 and ending on January 16, 2031. The CONSULTANT will furnish the AGENCY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Solicitation Documents.

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#### 4. CONSULTANT'S REPRESENTATIVE

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

#### 5. COMPENSATION

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

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

There is no guaranteed compensation to the CONSULTANT under this Agreement. However, the maximum compensation that the AGENCY has authorized to be expended for this Contract will not exceed **Fifty-Five Million Dollars (\$55,000,000)** 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.

##### 5.1. GENERAL

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

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

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

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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.

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

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

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

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

## 5.2. COST OF WORK

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

## 5.3. DIRECT LABOR

### 5.3.1. GENERAL

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

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

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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 (b) the actual increases in employees' labor rates. Such actual increases must be demonstrated to the Agency's satisfaction.

#### 5.3.2. Straight Time

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

#### 5.3.3. Overtime

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

### 5.4. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

#### 5.4.1. General

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

The agreed-upon multipliers shall be used for CONSULTANT's and subconsultants' home office and AGENCY-Furnished Field Office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in Exhibit B "Consultants Proposal and Labor Rates," dated September 28, 2023.

#### 5.4.2. Payroll Burden

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

The cost of all a) employment taxes, b) CONSULTANT's, and subconsultant's, portion of social and retirement charges and c) contributions imposed by law, or labor contract contributions (if applicable), or regulations, with respect to or measured by CONSULTANT's, and

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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 Director's drawings of dividends), employee stock ownership plan, savings plan, retirement plan, relocation benefits, and all other employee benefit plans.

#### 5.4.4. Indirect Costs (Office Overhead)

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

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

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

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

#### 5.5. Maximum Fixed Fees (Profit)

##### 5.5.1. General

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

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

- **Program Management Oversight Services**

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

Four Percent (4%) for Agency's field office (Field);

- **Subconsultants**

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

Four Percent (4%) for Agency's field office (Field);

- **Consultant Support Services**

Eight Percent (8%)

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

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

Subconsultants markup – Zero Percent (0%)

5.6. **OTHER DIRECT COSTS (ODCs)**

5.6.1. **General**

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

5.6.2. **Allowable ODCs**

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

5.6.3. **Subconsultants**

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

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

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

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

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

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

subconsultant's home office or branch office, or at the CONSULTANT's dedicated field office, or at AGENCY's central or field offices.

#### 5.6.5. Unallowable ODCs

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

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

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

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

#### 5.7. Maximum Compensation Amount

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

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

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

#### 5.8. Flow Down

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

### **6. MANNER OF PAYMENT**

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, the contract number 24-J-P-002B, 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. 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



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

Submit one copy of each invoice as a PDF via email to [AccountsPayable@samtrans.com](mailto:AccountsPayable@samtrans.com) with a "cc" to the Project Manager, and Contractor Administrator or Procurement Administrator as applicable.

### NOTICES

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

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, Robert Tam or designee, and the Program Manager, Elizabeth McDonald. Via electronic mail to: elizabeth.mcdonald@jacobs.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: JACOBS PROJECT MANAGEMENT COMPANY  
Attn: Elizabeth McDonald \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.

## 7. 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

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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.

## **8. 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.

## **9. 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.

## **10. 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

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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.

#### **11. RESPONSIBILITY: INDEMNIFICATION**

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

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

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

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

#### **12. INSURANCE**

Refer to Attachment A-1, appended hereto, for the Insurance Requirements.

#### **13. 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.

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**14. 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.

**15. OTHER GOVERNMENTAL AGENCIES**

Not Applicable.

**16. 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.

**17. AGENCY WARRANTIES**

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

**18. AGENCY REPRESENTATIVE**

Except when approval or other action is required to be given or taken by the Board of Directors of the AGENCY, the 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.

**19. WARRANTY OF SERVICES**

**A.** CONSULTANT warrants that its professional services will be performed in accordance with the professional standards of practices of comparable Program Management 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.

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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 program management oversight work as a result of errors and omissions.

## **20. CLAIMS OR DISPUTES**

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

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

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

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

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

## **21. REMEDIES**

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

## **22. TEMPORARY SUSPENSION OF WORK**

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

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wholly or in part. The suspended work will be resumed when the CONSULTANT is provided with written direction from AGENCY to resume the work.

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

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

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

## **23. TERMINATION**

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

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

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

**24. LIQUIDATED DAMAGES**

Not Applicable.

**25. PREVAILING WAGE**

Not Applicable.

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

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

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

**27. UKRAINE/RUSSIA RELATED SANCTIONS**

As a public agency with contracts with state and federal departments and agencies, the AGENCY is required to avoid transactions with any persons or entities subject to economic sanctions. For the purpose of this section, "Economic Sanctions" are defined as those imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. Accordingly, should the AGENCY determine CONSULTANT is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities,

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that shall be grounds for termination of this agreement. The AGENCY shall provide CONSULTANT advance written notice of such termination, allowing CONSULTANT at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the AGENCY.

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

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

**29. EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

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

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

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



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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.

### **30. DISADVANTAGED BUSINESS ENTERPRISES (DBE) POLICY**

See Attachment D for DBE, Small Business Enterprise, prompt payment and reporting requirements.

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

**A. General.** Depending on the nature of the work performed, a CONSULTANT of the AGENCY may be subject to the same conflict of interest prohibitions established by the Federal Transit Administration (FTA), Federal Highway Administration (FHWA) (for Federally-

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

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

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

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

**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

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circumstances giving rise to this organizational conflict of interest. CONSULTANT's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest.

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

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

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

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

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

**32. SUBSTANCE ABUSE PROGRAM [IF APPLICABLE]**

Not Applicable.

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

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

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

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

**34. ATTORNEYS' FEES**

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

**35. WAIVER**

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

**36. SEVERABILITY**

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

**37. NO THIRD-PARTY BENEFICIARIES**

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

**38. APPLICABLE LAW**

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

**39. RIGHTS AND REMEDIES OF THE AGENCY**

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

**40. BINDING ON SUCCESSORS**

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

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**41. ENTIRE AGREEMENT; MODIFICATION**

This Agreement for Services, including any attachments, constitutes the complete Agreement between the parties and supersedes any prior written or oral communications. This Agreement may be modified or amended only by written instrument signed by both the 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.

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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:**

**JACOBS PROJECT MANAGEMENT COMPANY: (See footnote below)\***

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

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

Print: Michelle Bouchard

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

Title: Executive Director

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

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

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

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

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

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

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

**ATTEST:**

By: \_\_\_\_\_  
Agency Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Attorney for the Agency

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

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

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

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

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## **ATTACHMENT A-1: INSURANCE REQUIREMENTS**

### **INSURANCE**

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

#### **A. MINIMUM TYPES AND SCOPE OF INSURANCE**

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

- a. Workers' Compensation with Statutory Limits and/or Federal Employer's Liability ("FELA") coverage (whichever is applicable) to its employees, as required by the Federal Employer's Liability Act of 1908, applying to Interstate railroad employees, or, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto, governing the liability of employers to their employees.
- b. If FELA applies, it shall be in accordance with federal statutes and have minimum limits of \$10,000,000 per occurrence.
- c. If the California Labor Code requiring Workers' Compensation applies, the CONTRACTOR shall also maintain Employer's Liability coverage with minimum limits of \$5 million.

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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 \$5 million per occurrence or claim and a general aggregate limit of at least \$5 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 (1) 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 \$5 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:



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- 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 including Network Security, Privacy & Media Insurance.**

A Professional Liability insurance policy covering errors and omissions and the resulting damages including, but not limited to, economic loss to the JPB and having minimum limits of liability of \$5 million per claim or occurrence and \$5 million annual aggregate. The policy shall include coverage for all services and work performed under this Agreement. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy coverage, and media coverage.

### **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.

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## **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.**

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

Email Address: [smt.certificates@instracking.com](mailto:smt.certificates@instracking.com)

OR

Fax: (562) 435-2999

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

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

Email Address: [smt.certificates@instracking.com](mailto:smt.certificates@instracking.com)

OR

Fax: (562) 435-2999

##### **2. Acceptable Insurers.**

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

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### **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.

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## **EXHIBIT A: SCOPE OF SERVICES**

### **A. INTRODUCTION**

The On-Call Program Management Oversight Services (PMO) contracts will provide expertise to support various project management oversight functions of the AGENCY'S capital program and projects. This solicitation and the resultant contracts will not include any future Peninsula Corridor Electrification Program (PCEP) Project Management Oversight services. However, coordination and support to PCEP will be required at times to ensure delivery of capital program projects. Services will be provided on an as-needed basis, and there is no guarantee of any amount of work that will be ordered or allocated or total compensation to be paid to the CONSULTANT(s).

### **B. SCOPE OF SERVICES AND DELIVERABLES**

CONSULTANT(s) shall provide capital program and project management oversight services for the Peninsula Corridor Joint Powers Board (JPB or AGENCY), hereinafter referred to as "AGENCY". Services will be authorized by a Work Directive (WD).

Per the Work Directive (WD) Process described in Part 4, Exhibit C, and on an as-needed basis, CONSULTANT(s) shall analyze the requested Professional Services, identify, assign, and manage the Staff (Position and Title) needed for the successful delivery of each individual project as called for in each WD. The CONSULTANT(s) will manage and control the day-to-day WD activities and deliverables with overall guidance from the appointed AGENCY'S Project Manager. Detailed scope, including required deliverables, will be identified in individual WDs.

### **C. SCOPE OF SERVICES**

CONSULTANT(s) shall provide the Professional Services necessary to support the AGENCY with the delivery of transportation projects and programs. CONSULTANT(s) staff shall work with various divisions and departments within these AGENCY, including but not limited to grants, project management, project controls, finance and accounting, contracts and procurement, budgeting, and executive management. The Program Management Support team shall participate in all meetings required in order to perform and deliver the scope of work described below.

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

- A. Provide, as needed, consultant expertise to support various functions of capital program and project management. Typical assignments will include but will not be limited to project controls, document control, records management, cost estimating, program and project management, and administration support. Program and project management may include providing support on developing project work plans, cost estimates, schedules, cash flow analysis, accruals, reporting, cost control, invoicing, funding, and project risk analysis. Consultant will also provide coordination and support to PCEP to ensure delivery of capital program projects on an as-needed

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basis. The CONSULTANT(s) services will be provided in accordance with the JPB's Project Management Manual for Caltrain Capital Projects.

- B. Analyze and recommend improvements to the existing capital project delivery system. Document project delivery processes and/or improvements through the development of a formal Capital Program Management Plan.
- C. Manage projects to ensure projects are delivered on schedule, on budget, and safely. Lead a project team from project initiation to project completion. Project team may consist of project engineer, project controls, contract officer, and administrators. Support different project delivery methods such as design/bid/build, design/build, and CMGC. Report project status to management, funding agencies, and other external stakeholders.
- D. Develop and/or refine, and recommend policy and procedures, including appropriate roles and responsibilities of all involved stakeholders in areas such as project planning, project development and management, program and project change control procedures, project budget and funding management, and construction management. Document such recommended policies and procedures through the development and maintenance of manuals on these subjects. Develop and/or refine procedures for project scope definition and control, project reporting, document control and records management, fund management, and guidelines for cost estimating at various stages of a project.
- E. Assist in the development and/or refinement, implementation, and maintenance of a system to track and manage the use of all capital program and project budgets and grant funds. This will include the production of periodic reports for board presentations, funding agencies, and internal management.
- F. Develop and/or refine, implement, and maintain systems for budget and invoice tracking for work directives, including maintaining existing work directives and creating requisitions for new work directives in PeopleSoft.
- G. Assist in the continued refinement and management of project control systems, including the development and maintenance of project controls deliverables such as cash flow analysis, cost control reports, and time-phased budgets with integrated project costs and schedules; the development and tracking of key project performance indicators, including setting up and managing project work breakdown structures, project baseline budgets and schedules, project trends, and forecasting estimate-at-completion cost; analysis of project earned value performance data; and the development of project schedule recovery plans. The system(s) shall enable the monitoring of all costs associated with the AGENCY'S capital programs. This includes but not limited to AGENCY'S staff costs, engineering support costs, Consultant engineering support costs, construction capital costs, right of way capital costs, and program indirect costs. The system shall enable analyzing and reporting of program and project cost and schedule performance, forecasting of total costs to assist with resource planning and estimating, capital cost control, cash flow projections, analysis, and reporting. Periodic reporting shall include monthly reports to internal management, and quarterly reports to the AGENCY'S board of directors.

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- H. The AGENCY current project controls system operates based on cost and scheduling data from PeopleSoft and Primavera, respectively. Any proposed system/program used for the same purpose must be able to perform at equal or better standards. Alternatives must interface with, and accept, downloads from PeopleSoft and Primavera, and must be approved by the AGENCY before contract awards and use.
  - I. Assist in the continued refinement and management of document control systems for programs and projects.
  - J. Provide assistance with the development of capital projects by producing formal studies and developing project-specific estimates of project cost and schedule. Also assist in the development and maintenance of program and project schedules using Primavera Project Planner, or other agency-adopted scheduling software, including the ability to incorporate engineering Consultant and contractor schedules into a master program schedule.
  - K. Provide as-needed program and project management support/training to AGENCY'S staff.

A. **Anticipated Staffing Needs**

Given current projects and past requirements, the AGENCY anticipates the need for the following positions:

- Program Manager – one
- Project Managers – up to six
- Estimator – one
- Scheduler – one
- Project Controls – up to three
- Document Control – up to two
- Contract Administrator – one
- Administrator Assistant - up to two

PROPOSERS, however, should note that actual services contracted for may be less than or greater those noted above.

B. **Deliverables**

In addition to specific deliverables identified in each Work Directive, CONSULTANT(s) shall submit a monthly report to the AGENCY's Contract Administrator named in the Agreement, no later than 7 business days after the end of each CONSULTANT'(s) billing period. The report will cover activities performed on all open Work Directives 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

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CONSULTANT(s) 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
- Compare the percent billing to percent work complete

The AGENCY and CONSULTANT(s) shall meet quarterly to review CONSULTANT'(s) performance.

From time to time, the AGENCY may require that Consultant Support staff be provided by the CONSULTANT(s). The purpose is to temporarily augment the AGENCY'S staff and is understood to be the provision of CONSULTANT's (or sub-consultant's) personnel who will provide specific skills and will work at the AGENCY'S facilities. CONSULTANT may be entitled to one-time charges incurred to set up such a WD or negotiated fees for administrative oversight. Consultant support performed in less than 120 consecutive calendar days may be billed at the home Office overhead rate.

In addition, the AGENCY may require the services of an individual, or firm, to provide services which are not known at the time of this solicitation but are consistent with that in this RFP. The AGENCY refers to this as a Pass-through and considers the CONSULTANT(s) to be minimally responsible for the review of the work product of these individuals or firms. CONSULTANT(s) may be entitled to one-time charges incurred to set up such a WD or negotiated fees for administrative oversight. Additional scope, including required deliverables, will be identified in individual Work Directives.



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**EXHIBIT B: CONSULTANT'S PROPOSAL AND LABOR RATES**

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## **EXHIBIT C: WORK DIRECTIVES**

Work Directives (WDs) will be issued pursuant to a qualification-based competitive selection process amongst the on-call consultants at any time during the Contract period of performance. Award of WDs required by the Agency will be based on the technical superiority of a Consultant's proposal in response to a WD Proposal Request. Award will be competed amongst the bench of Consultants, unless a conflict of interest or other valid business reason precludes one or more firms from competing on a specific project. Professional Services are to be provided on an on-call and as-needed basis throughout the term of the Contract and must be completed by the end of the Contract term.

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

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

### A. Issuance:

As needs arise, the Agency will issue a 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 the Agency establishes a DBE goal for a WD, it will include in the WD Proposal Request detailed information and instructions on the DBE goal requirements, related forms, and good faith efforts evaluation. If a DBE goal has been assigned to a WD Proposal Request, Consultant must meet the DBE goal or document that it has made sufficient good faith efforts to meet the goal in its proposal as required by the WD Proposal Request. WD proposals that do not meet the DBE goal, demonstrate good faith efforts to meet the DBE goal, or otherwise do not comply with the DBE requirements set forth in the WD Proposal Request, will be rejected as non-responsive. The Agency will evaluate the Consultant's documentation related to DBE goal achievement or good faith efforts to meet the DBE goal in the WD proposal before a WD is authorized. Good faith efforts will be evaluated on a Work Directive specific basis and in accordance with applicable regulations, but in general, good faith efforts to meet a Work Directive DBE goal may include the following:

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- 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 the Agency determines a Consultant failed to meet a DBE goal and also failed to demonstrate that it made good faith efforts to meet the goal, the Consultant's WD proposal will be rejected as non-responsive and the Consultant shall be afforded a reconsideration hearing, as further specified in the WD Proposal Request.

## B. Evaluation Process

In the event that contracts are awarded to a pool of qualified on-call consultants, during the term of the Agreements, project work shall be administered **pursuant to a qualification-based competitive selection process** amongst the on-call consultants. The WDs will be negotiated with the first-ranked firm from each individual WD competition. Cost proposals submitted shall be sealed and will not be included as a criterion for ranking of consultants. After ranking, cost negotiations will begin with the most qualified consultant, and only then will the cost proposal be opened.

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 Requests. Work will be authorized by the Contract Officer through the issuance of a WD. Work performed by the CONSULTANT prior to issuance of a WD is understood to be at-risk and is not subject to reimbursement to the CONSULTANT.

The following process further describes the WD evaluation process that will be followed in the event that contracts are awarded to a pool of qualified on-call consultants:

### 1) WD Evaluation Committee

An Evaluation Committee (Committee), which will include a minimum of three (3) members of the Agency's staff and possibly one or more outside experts, will review the technical proposals submitted and rank them according to the weighted criteria of each category as set forth in the process below. The Agency reserves the right to request additional information and clarifications during the evaluation and selection process from any or all Consultant regarding their proposals.

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2) WD Evaluation Process

The Consultant's technical WD proposal will be evaluated utilizing the criteria identified in the WD proposal request. In ranking proposals, the Agency will consider the proposal material submitted, oral interviews (if any are held), and any other relevant information about a given Consultant (i.e. references). The Agency will not assume that a Consultant possesses any capability unless such a capability is established by the submitted proposal. Technical Proposals will be evaluated using unique Evaluation Criteria specific to each WD, as determined by the Project Manager, on a case-by-case basis. Evaluation criteria may include but are not limited to, criteria described in Part 1, Section 3, Sub-Section B of this RFP.

3) WD Interviews

Following the initial review and screening of technical WD proposals, one or more Consultants may be invited to participate in the next step of the WD selection process. This step may include the submission of additional information, as described below, and/or participation in an oral interview. If the Agency conducts interviews, it will do so with those Consultants found to be within the "competitive range" in each project category. Attendees at an interview should be restricted to those individuals who will have direct involvement with provision of the WD requirements. The Agency expects that at a minimum the proposed Project Manager will attend the oral interview; other Key Personnel may also attend. The Agency, however, may award a WD without conducting interviews.

4) Revised WD Proposals and Negotiations

The Agency reserves the right to negotiate with the highest-ranked firm, request revised proposals, or request best and final offers if it is in the best interest of the Agency to do so. Upon completion of this step in the WD selection process, the Committee will re-rank the firms remaining in the "competitive range", in accordance with the evaluation criteria set forth above. The Agency will open the cost proposal from the top-ranked firm only, and the Agency will terminate the negotiations with that firm and may open negotiations with the next-highest firm. If negotiations with this firm are also not successful, the Agency may repeat the negotiations process with the next highest ranked firm, or, at its sole discretion, the Agency may reject all remaining proposals. Proposals will be reviewed by and negotiated with the Agency.

C. WD 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.

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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 Work Directive Proposal Request 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 9 Appendices, Appendix B, Section 5** "Compensation" of this RFP.

D. 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.

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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 3<sup>rd</sup> 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.

E. 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.

F. 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.

G. 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**

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## **EXHIBIT D: SBE REQUIREMENTS**

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

No contract-specific DBE participation goal has been established for this Agreement, but DBE goals may be established for specific WDs. Consultant must cooperate with the AGENCY in meeting its commitments and objectives with regard to ensuring non-discrimination 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. DBE ELIGIBILITY**

As used in this document, a DBE is a small business concern that currently meets the criteria for a DBE as established by the California Unified Certification Program (CUCP) or U.S. DOT and is certified as a DBE by the CUCP or U.S. DOT at the time that proposals are due for this solicitation.

For information on DBE criteria and how to become certified as a DBE with the CUCP, please visit: <https://caltrans.dbesystem.com>.

### **4. 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:

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

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

## **5. 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 CUCP or any other state Unified Certification Program. A state-wide 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 (SB) certification performed by the California Department of General Services (DGS) for the following industries only: (a) Construction (NAICS 230000); (b) Manufacturing (NAICS 310000-330000); (c) Wholesaling (NAICS 420000); and (d) Trucking (NAICS 484000).
- D. All Microbusiness (MB) certifications by the 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.

## **6. SBE ELIGIBILITY**

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

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



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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>.

## **7. COUNTING SBE PARTICIPATION**

SBE participation shall be counted and enforced similar to DBE participation 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

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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.

**8. CONTRACT COMPLIANCE**

A. Substitution of Subconsultants

The Consultant shall not terminate an SBE Subconsultant at any tier without prior

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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

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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/DBE Outreach Efforts for WD Proposals

The Consultant agrees to make its best efforts to encourage SBE and DBE participation on each WD issued pursuant to this Contract. Unless otherwise specified in the WD Proposal Request, 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 Designation of Subconsultants Form (Form 5); and
- 2) If Subconsultants are used, provide a narrative summary of the outreach efforts the Consultant performed to encourage SBE and DBE participation on the WD, and information regarding the Consultant's communications and negotiations with SBE and DBE firms, if applicable, by submitting an updated Description of the Selection Process of Subcontractors/Subconsultants Form (Form 9).

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- 3) Note that additional or different requirements may apply to WDs subject to a DBE goal.

**9. 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**

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## **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.**

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**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

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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



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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.

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- 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. Non-discrimination - 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

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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.

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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

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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)

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Voluntarily excluded from participation in any federally assisted Award; or (f) Disqualified from participation in any federally assisted Award.

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

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

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

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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:

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- 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



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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

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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 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.

(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

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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 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 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

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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

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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.

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- 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.

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- 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.

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- 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



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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

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“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.

# EXHIBIT F: PMO SERVICES MATRIX

REQUEST FOR PROPOSALS FOR PROVISION OF ON-CALL PROGRAM MANAGEMENT OVERSIGHT SERVICES 24-J-P-002												PENINSULA CORRIDOR JOINT POWERS BOARD ON-CALL PMO SERVICES MATRIX PAGE 1 OF 1			
ON-CALL PMO SERVICES MATRIX															
Professional Positions															
No.	Firm	Prime	Sub	Program Manager (one)	Project Manager (up to six)	Estimator (one)	Scheduler (one)	Project Controls (up to three)	Document Control (up to two)	Contract Administrator (one)	Administrator Assistant (up to two)				
~ PROPOSED ~															
1	Jacobs	X		X	X	X		X	X						
2	Arcadis		X		X										
3	Auriga Corporation		X					X							
4	EPC Consultants, Inc.		X		X										
5	Harvest Technical Services, Inc		X				X	X			X				
6	RSE		X		X										
7	SSC Inc		X		X										
8	Triunity Inc.		X						X						
9	VSCE, Inc.		X							X	X				
10	WSP		X		X										
11															
12															
13															
14															
15															

**Instructions/Notes:**  
 1. Place an "x" next to each professional positions your firm is proposing on. Add other positions as needed. Information provided to determine organizational conflict of interest.  
**NOTE: PROPOSER(s) must provide evidence of key personnel's qualifications for each professional position selected.**

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AGREEMENT BETWEEN  
PENINSULA CORRIDOR JOINT POWERS BOARD (AGENCY)  
AND  
CONSOR PMCM, INC. (CONSULTANT)

**AGREEMENT SUMMARY\***

**Board of Directors' Date of Award:** January 4, 2024

**Resolution Number:** TBD

**Effective Date of Agreement:** January 17, 2023

**Services to be Performed (Section 1):** On-Call Program Management Oversight Services

**Term of Agreement (Section 3):** Seven (7) year term with, no option terms

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

**Name:** Ismael G. Pugada,

**Title:** Senior Vice President

**Company:** Consor PMCM, INC

**Address:** 1663 Mission Street, Suite 425, San Francisco, CA 94103

**Phone:** 415-218-2912

**Email:** ismael.pugada@consorpmcm.com

**Compensation (Section 5):** Board-approved aggregate amount: \$55,000,000\_

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

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This AGREEMENT for On-call Program Management Oversight

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 CONSOR PMCM, INC. (CONSULTANT), a California Corporation located at 1663 Mission Street, Suite 425, San Francisco, CA 94103 ("the Parties").

## **1. SCOPE OF SERVICES**

This is an Agreement to provide On-Call Program Management Oversight 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 Program Management Oversight 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 31, 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 28, 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-1 Insurance Requirements
- (2) Exhibit A, Scope of Services
- (3) Exhibit B, CONSULTANT's Proposal including negotiated cost/labor rates.
- (4) Exhibit C, Work Directives
- (5) Exhibit D, SBE Requirements
- (6) Exhibit E, Federal Requirements
- (7) Exhibit F, PMO Services Matrix

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 seven-year term commencing upon January 17, 2024 and ending on January 16, 2031. The CONSULTANT will furnish the AGENCY with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Solicitation Documents.

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#### 4. CONSULTANT'S REPRESENTATIVE

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

#### 5. COMPENSATION

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

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

There is no guaranteed compensation to the CONSULTANT under this Agreement. However, the maximum compensation that the AGENCY has authorized to be expended for this Contract will not exceed **Fifty-Five Million Dollars (\$55,000,000)** 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.

##### 5.1. GENERAL

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

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

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

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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.

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

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

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

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

## 5.2. COST OF WORK

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

## 5.3. DIRECT LABOR

### 5.3.1. GENERAL

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

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

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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 (b) the actual increases in employees' labor rates. Such actual increases must be demonstrated to the Agency's satisfaction.

#### 5.3.2. Straight Time

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

#### 5.3.3. Overtime

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

### 5.4. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

#### 5.4.1. General

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

The agreed-upon multipliers shall be used for CONSULTANT's and subconsultants' home office and AGENCY-Furnished Field Office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in Exhibit B "Consultants Proposal," dated **September 28, 2023**.

#### 5.4.2. Payroll Burden

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

The cost of all a) employment taxes, b) CONSULTANT's, and subconsultant's, portion of social and retirement charges and c) contributions imposed by law, or labor contract contributions (if applicable), or regulations, with respect to or measured by CONSULTANT's, and

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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 Director's drawings of dividends), employee stock ownership plan, savings plan, retirement plan, relocation benefits, and all other employee benefit plans.

#### 5.4.4. Indirect Costs (Office Overhead)

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

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

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

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

#### 5.5. Maximum Fixed Fees (Profit)

##### 5.5.1. General

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

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

- **Program Management Oversight Services**

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

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

- **Subconsultants**

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

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

- **Consultant Support Services**

Eight Percent (\_8%)

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

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

Subconsultants markup – Zero Percent (0%)

5.6. **OTHER DIRECT COSTS (ODCs)**

5.6.1. **General**

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

5.6.2. **Allowable ODCs**

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

5.6.3. **Subconsultants**

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

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

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

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

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

- Travel, accommodations, and subsistence (directly related to the Scope of Services) for business trips to the Project Site, to AGENCY's consultants and suppliers, or to other locations approved by the AGENCY. Such travel may originate at CONSULTANT's or

subconsultant's home office or branch office, or at the CONSULTANT's dedicated field office, or at AGENCY's central or field offices.

#### 5.6.5. Unallowable ODCs

The following ODCs are not allowable unless they are authorized by prior written approval of the AGENCY's authorized representative:

- Costs associated with registration for training, seminars, and technical association meetings.
- Costs associated with employee incentive compensation including cash bonuses, suggestion awards, safety awards, and other forms of incentive compensation.
- Costs associated with leasing, maintaining, insuring, and operating dedicated project vehicles.
- Computer hardware and software support, software licenses, or cellular phone usage.
- Safety equipment such as steel-toed boots, safety vests, and hard hats.
- Insurance
- Cellular phones

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- Cost of any normal equipment, tools, or vehicles (unless approved) hired, leased or purchased for the performance of services, provided that the depreciated value of such items purchased by CONSULTANT shall be credited to the AGENCY at the completion of the work performed under this Agreement.
  - Shipping
  - Drafting supplies
  - Surveying supplies
  - Models and renderings

All other ODCs that are not identified in 5.6.2 are considered unallowable ODCs and must be authorized by prior written approval of the AGENCY's authorized representative.

#### 5.7. Maximum Compensation Amount

A maximum not-to-exceed amount as set forth in the project shall apply for each project.

Further, it is expressly understood and agreed that in no event shall CONSULTANT be compensated in an amount greater than the amount specified in any individual project for the services performed under such project without issuance of a written Amendment to such project by the AGENCY's Procurement Administrator.

If at any time, CONSULTANT has reason to believe that the total compensation payable for the performance of services under this Agreement will exceed the maximum not-to-exceed amount as set for in the project, CONSULTANT shall notify the AGENCY immediately in writing to that effect, indicating the estimated additional amount necessary to complete the services in the project. Any cost incurred by CONSULTANT in excess of the not-to-exceed amount as set forth in the project shall be at CONSULTANT's own risk.

#### 5.8. Flow Down

CONSULTANT shall include the requirements regarding audits, compensation and reimbursement for costs and fees in its subconsultant's agreements, provided such subconsultants have been approved by the AGENCY.

### **6. MANNER OF PAYMENT**

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, the contract number **24-J-P-002C**, 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. 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



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with the AGENCY's decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes the AGENCY's decision to the AGENCY within 30 calendar days of the AGENCY's notice. If CONSULTANT does not provide written notice in accordance with this section, it waives all rights to challenge the AGENCY's decision.

Submit one copy of each invoice as a PDF via email to [AccountsPayable@samtrans.com](mailto:AccountsPayable@samtrans.com) with a "cc" to the Project Manager, and Contractor Administrator or Procurement Administrator as applicable.

### NOTICES

All communications relating to the day-to-day activities of the provided services will be exchanged between the AGENCY's Project Manager, Robert Tam, or designee, and the CONSULTANT's **Senior Vice President, Ismael G. Pugeda.**

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, Robert Tam or designee, and the **Senior Vice President, Ismael G. Pugeda.** Via electronic mail to: [amr@caltrain.com](mailto:amr@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: **CONSOR PMCM, INC**  
**Attn: Ismael G. Pugeda** \_\_\_\_\_  
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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.

## 7. **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

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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 JPB acknowledges that its use of the work product is limited to the purposes contemplated by the scope of services and the CONSULTANT shall not be liable for any cost or claims arising from unauthorized reuse of modification for other projects or purposes.

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.

## **8. 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.

## **9. 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.

## **10. 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

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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.

#### **11. RESPONSIBILITY: INDEMNIFICATION**

The CONSULTANT will indemnify, keep and save harmless the AGENCY and its directors, officers, agents and employees against any and all suits, claims or actions arising out of any of the following:

**A.** Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the CONSULTANT caused by a negligent act or omission or wilful misconduct of the CONSULTANT or its employees, subcontractors, subconsultants or agents; or

**B.** Any allegation that materials or services provided by the CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

The CONSULTANT further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defense as they are incurred. If any judgment is rendered against the AGENCY or any of the other individuals enumerated above in any such action, the CONSULTANT will, at its expense, satisfy and discharge the same. This indemnification will survive termination or expiration of the Agreement.

#### **12. INSURANCE**

Refer to Attachment A-1, appended hereto, for the Insurance Requirements.

#### **13. 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.

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**14. 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.

**15. OTHER GOVERNMENTAL AGENCIES**

Not Applicable.

**16. 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.

**17. AGENCY WARRANTIES**

The AGENCY makes no warranties, representations, or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

**18. AGENCY REPRESENTATIVE**

Except when approval or other action is required to be given or taken by the Board of Directors of the AGENCY, the 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.

**19. WARRANTY OF SERVICES**

**A.** CONSULTANT warrants that its professional services will be performed in accordance with the professional standards of practices of comparable Program Management 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.

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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 program management oversight work as a result of errors and omissions.

## **20. CLAIMS OR DISPUTES**

The CONSULTANT will be solely responsible for providing timely written notice to AGENCY of any claims for additional compensation and/or time in accordance with the provisions of this Agreement. It is the AGENCY's intent to investigate and attempt to resolve any CONSULTANT claims before the CONSULTANT has performed any disputed work. Therefore, CONSULTANT's failure to provide timely notice will constitute a waiver of CONSULTANT's claims for additional compensation and/or time.

The CONSULTANT will not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the AGENCY, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given the AGENCY due written notice of a potential claim. The potential claim will set forth the reasons for which the CONSULTANT believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

If based on an act or failure to act by the AGENCY, such notice will be given to the AGENCY prior to the time that the CONSULTANT has started performance of the work giving rise to the potential claim for additional compensation. In all other cases, notice will be given within 10 days after the happening of the event or occurrence giving rise to the potential claim.

If there is a dispute over any claim, the CONSULTANT will continue to work during the dispute resolution process in a diligent and timely manner as directed by the AGENCY and will be governed by all applicable provisions of the Agreement. The CONSULTANT will maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached that resolves the CONSULTANT claim, the parties will execute an Agreement modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to the CONSULTANT claim, they may choose to pursue a dispute resolution process or termination of the Agreement.

## **21. REMEDIES**

In the event the CONSULTANT fails to comply with the requirements of this Agreement in any way, the AGENCY reserves the right to implement administrative remedies which may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

## **22. TEMPORARY SUSPENSION OF WORK**

The AGENCY, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as AGENCY may deem necessary. The suspension may be due to the failure on the part of the CONSULTANT to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of the CONSULTANT. The CONSULTANT will comply immediately with the written order of AGENCY to suspend the work

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wholly or in part. The suspended work will be resumed when the CONSULTANT is provided with written direction from AGENCY to resume the work.

If the suspension is due to the CONSULTANT's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of the CONSULTANT, all costs will be at CONSULTANT's expense and no schedule extensions will be provided by AGENCY.

In the event of a suspension of the work, the CONSULTANT will not be relieved of the CONSULTANT's responsibilities under this Agreement, except the obligations to perform the work that the AGENCY has specifically directed CONSULTANT to suspend under this section.

If the suspension is not the responsibility of the CONSULTANT, suspension of all or any portion of the work under this Section may entitle the CONSULTANT to compensation and/or schedule extensions subject to the Agreement requirements.

## **23. TERMINATION**

**A. Termination for Convenience.** The AGENCY may terminate this Agreement for convenience at any time by giving sixty days written notice to the CONSULTANT. Upon receipt of such notice, the CONSULTANT may not commit itself to any further expenditure of time or resources, except for costs reasonably necessary to effect the termination. If the AGENCY terminates the Agreement for convenience, the AGENCY agrees to pay the CONSULTANT, in accordance with the provisions of Sections 5 and 6, all sums actually due and owing from the AGENCY upon the effective date of termination, plus any costs reasonably necessary to effect the termination. CONSULTANT is not entitled to any payments for lost profit on work to be performed after the date of termination, including, without limitation, work not yet performed, and milestones not yet achieved. All finished or unfinished documents and any material procured for or produced pursuant to this Agreement as of the date of termination are the property of the AGENCY upon the effective date of the termination for convenience. CONSULTANT and its 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

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AGENCY for work performed in full accordance with the terms of the Agreement as of the effective date of termination. The AGENCY is not in any manner liable for the CONSULTANT's actual or projected lost profits had the Consultant completed the services required by this Agreement, including, without limitation, services not yet performed, expenses not yet incurred, and milestones not yet achieved. All finished or unfinished documents, and any equipment or materials procured for or produced pursuant to this Agreement become the property of the AGENCY upon the effective date of the termination for default.

C. The rights and remedies of the AGENCY provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**24. LIQUIDATED DAMAGES**

Not Applicable.

**25. PREVAILING WAGE**

Not Applicable.

**26. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS**

All CONSULTANT and subcontractor/subconsultant costs incurred in the performance of this Agreement will be subject to audit. The CONSULTANT and its subcontractors/subconsultants will permit the AGENCY, the State Comptroller, and their authorized representatives, FTA, the U.S. DOT Office of Inspector General, and the Comptroller General of the United States, or any of their authorized representatives to inspect, examine, take excerpts from, transcribe, and copy the CONSULTANT's books, work, documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Agreement at any reasonable time, and to audit and verify statements, invoices or bills submitted by the CONSULTANT pursuant to this Agreement. The CONSULTANT will also provide such assistance as may be required in the course of such audit. The CONSULTANT will retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Agreement.

If, as a result of the audit, it is determined by the AGENCY's auditor or staff that reimbursement of any costs including profit or fee under this Agreement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the CONSULTANT agrees to reimburse the AGENCY for those costs within sixty (60) days of written notification by the AGENCY.

**27. UKRAINE/RUSSIA RELATED SANCTIONS**

As a public agency with contracts with state and federal departments and agencies, the AGENCY is required to avoid transactions with any persons or entities subject to economic sanctions. For the purpose of this section, "Economic Sanctions" are defined as those imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. Accordingly, should the AGENCY determine CONSULTANT is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities,

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that shall be grounds for termination of this agreement. The AGENCY shall provide CONSULTANT advance written notice of such termination, allowing CONSULTANT at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the AGENCY.

**28. NON-DISCRIMINATION ASSURANCE - TITLE VI OF THE CIVIL RIGHTS ACT**

The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, the CONSULTANT agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. The CONSULTANT shall obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this Agreement. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the AGENCY deems appropriate.

**29. EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

In connection with the performance of this Agreement, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The CONSULTANT shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause. The CONSULTANT further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

The CONSULTANT will, in all solicitations or advancements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

The CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such



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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.

### **30. DISADVANTAGED BUSINESS ENTERPRISES (DBE) POLICY**

See Attachment D for DBE, Small Business Enterprise, prompt payment and reporting requirements.

### **31. CONFLICT OF INTEREST**

**A. General.** Depending on the nature of the work performed, a CONSULTANT of the AGENCY may be subject to the same conflict of interest prohibitions established by the Federal Transit Administration (FTA), Federal Highway Administration (FHWA) (for Federally-

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funded Agreements) and California law that govern AGENCY's employees and officials (Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq.). During the proposal process or the term of the Agreement, CONSULTANT and its employees may be required to disclose their financial interests (Fair Political Practices Commission Form 700). Under Section 18700.3 of Title 2, Division 6, of the California Code of Regulations, an employee of CONSULTANT is required to disclose their financial interests on Form 700 if: (1) the person makes certain governmental decisions; or (2) the person serves in a staff capacity with the AGENCY and in that capacity participates in making governmental decisions or performs the same duties for the AGENCY that would typically be performed by an AGENCY employee who is required to file Form 700.

The CONSULTANT warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §1090 et seq. or §87100 et seq. during the performance of services under this Agreement. The CONSULTANT further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, CONSULTANT may be required to publicly disclose financial interests under the AGENCY's Conflict of Interest Code. Upon receipt, the CONSULTANT agrees to promptly submit a Statement of Economic Interest on the form provided by AGENCY.

No person previously in the position of Director, Officer, employee or agent of the AGENCY during his or her tenure or for one (1) year after that tenure will have any interest, direct or indirect, in this Agreement or the proceeds under this Agreement, nor may any such person act as an agent or attorney for, or otherwise represent the CONSULTANT by making any formal or informal appearance, or any oral or written communication, before the AGENCY, or any Officer or employee of the AGENCY, for a period of one (1) year after leaving office or employment with the AGENCY if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant, or contract.

**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

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circumstances giving rise to this organizational conflict of interest. CONSULTANT's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest.

If at any time during the term of this Agreement, AGENCY becomes aware of an organizational conflict of interest in connection with CONSULTANT's performance of the work hereunder, AGENCY will similarly notify CONSULTANT.

In the event a conflict is presented, whether disclosed by CONSULTANT or discovered by AGENCY, the AGENCY will consider the conflict presented and any alternatives proposed and meet with the CONSULTANT to determine an appropriate course of action. The AGENCY's determination as to the manner in which to address the conflict will be final.

During the term of this Agreement, CONSULTANT must maintain lists of its employees, and the Subconsultants and independent consultants used and their employees. CONSULTANT must provide this information to the AGENCY upon request. However, submittal of such lists does not relieve the CONSULTANT of its obligation to assure that no organizational conflicts of interest exist. CONSULTANT will retain this record for five (5) years after the AGENCY makes final payment under this Agreement. Such lists may be published as part of future AGENCY solicitations.

CONSULTANT will maintain written policies prohibiting organizational conflicts of interest and will ensure that its employees are fully familiar with these policies. CONSULTANT will monitor and enforce these policies and will require any subconsultants and affiliates to maintain, monitor, and enforce policies prohibiting organizational conflicts of interest.

Failure to comply with this section may subject the CONSULTANT to damages incurred by the AGENCY in addressing organizational conflicts that arise out of work performed by CONSULTANT, or to termination of this Agreement for breach.

**32. SUBSTANCE ABUSE PROGRAM [IF APPLICABLE]**

Not Applicable.

**33. CALIFORNIA PUBLIC RECORD ACT REQUESTS (CPRA)**

CONSULTANT consents to the release of this Agreement, the redacted version of its proposal, and the release of any portion of its proposal not included in its confidentiality index, and waives all claims against the AGENCY, its directors, officers, employees, and agents, for the disclosure of such information. If the CONSULTANT did not include a confidentiality index in its proposal, the AGENCY will have no obligation to withhold any information from disclosure and may release the information sought without liability to the AGENCY.

Upon receipt of a request pursuant to the CPRA seeking this Agreement, proposal material relating to this RFP, the AGENCY may provide the Agreement, redacted version of the proposal, or may withhold material designated in the confidentiality index that is exempt from disclosure. If the AGENCY determines that information in the confidentiality index is not exempt from disclosure, the AGENCY will give reasonable notice to the Proposer prior to releasing any material listed in the confidentiality index.

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CONSULTANT agrees to indemnify, defend, and hold harmless the AGENCY, its directors, officers, employees, and agents, from any and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the proposer information), and pay any and all cost and expenses, including attorneys' fees, related to the withholding of the information included in the confidentiality index or in the redacted version of the proposal or in this Agreement. If CONSULTANT fails to accept a tender of a defense, the AGENCY reserves the right to resolve all claims at its sole discretion, without limiting any rights stated herein.

**34. ATTORNEYS' FEES**

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding will recover reasonable attorneys' fees, in addition to all court costs.

**35. WAIVER**

Any waiver of any breach or covenant of this Agreement must be in a writing executed by a duly authorized representative of the party waiving the breach. A waiver by any of the parties of a breach or covenant of this Agreement will not be construed to be a waiver of any succeeding breach or any other covenant unless specifically and explicitly stated in such waiver.

**36. SEVERABILITY**

If any provision of this Agreement is deemed invalid or unenforceable, that provision will be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event, the remaining provisions of this Agreement will remain in full force and effect.

**37. NO THIRD-PARTY BENEFICIARIES**

This Agreement is not for the benefit of any person or entity other than the parties.

**38. APPLICABLE LAW**

This Agreement, its interpretation, and all work performed under it will be governed by the laws of the State of California. The 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.

**39. RIGHTS AND REMEDIES OF THE AGENCY**

The rights and remedies of the AGENCY provided herein will not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.

**40. BINDING ON SUCCESSORS**

All of the terms, provisions, and conditions of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors, assigns, and legal representatives.

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**41. ENTIRE AGREEMENT; MODIFICATION**

This Agreement for Services, including any attachments, constitutes the complete Agreement between the parties and supersedes any prior written or oral communications. This Agreement may be modified or amended only by written instrument signed by both the 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.

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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:**

**CONSOR PMCM, INC.:** (See footnote below)\*

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print: Michelle Bouchard

Print: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Agency Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_

Attorney for the Agency

\* Note: If Consultant is a Corporation, this Agreement must be executed by two officers of the corporation, consisting of one officer from each of the two separate categories:

- (1) the President, Vice President, or Chair of the Board; and
- (2) the Secretary, Assistant Secretary, Treasurer or Chief Financial Officer.

In the alternative, this Agreement may be executed by a single Officer or a person other than an Officer provided demonstrating that such individual is authorized to bind the Corporation (e.g. – a copy of a certified resolution from the Corporation’s bylaws).

If the Consultant is a limited liability company (LLC), the Agreement must be executed by an officer or member who has the full and proper authorization to bind the LLC. The Officer or member must provide evidence satisfactory to the AGENCY indicating the individual’s authority to bind the LLC, such as a certified copy of a resolution authorizing the individual to execute written contracts or a copy of the LLC operating agreement.

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## **ATTACHMENT A-1: INSURANCE REQUIREMENTS**

### **INSURANCE**

The insurance requirements specified in this Section shall cover CONTRACTOR's own liability and any liability arising out of work or services performed under this Agreement by any subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") that CONTRACTOR authorizes to work under this Agreement. CONTRACTOR is required to procure and maintain at its sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement. CONTRACTOR is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks; the limit for the Commercial General Liability insurance in each subcontract shall not be less than \$2 million. To the extent that any Agent does not procure and maintain such insurance coverage, CONTRACTOR shall assume any and all costs and expenses that may be incurred in fulfilling CONTRACTOR's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event CONTRACTOR or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the CONTRACTOR's insurance be primary without any right of contribution from the JPB. Prior to beginning work under this Agreement, CONTRACTOR shall provide the JPB's authorized insurance consultant, Insurance Tracking Services, Inc. (ITS), with satisfactory evidence of compliance with the insurance requirements of this Section, by submitting such evidence of compliance to the address indicated in C.1. below.

#### **A. MINIMUM TYPES AND SCOPE OF INSURANCE**

##### **1. Workers' Compensation and Employer's Liability Insurance.**

- a. Workers' Compensation with Statutory Limits and/or Federal Employer's Liability ("FELA") coverage (whichever is applicable) to its employees, as required by the Federal Employer's Liability Act of 1908, applying to Interstate railroad employees, or, as required by Section 3700 et seq. of the California Labor Code, or any subsequent amendments or successor acts thereto, governing the liability of employers to their employees.
- b. If FELA applies, it shall be in accordance with federal statutes and have minimum limits of \$10,000,000 per occurrence.
- c. If the California Labor Code requiring Workers' Compensation applies, the CONTRACTOR shall also maintain Employer's Liability coverage with minimum limits of \$5 million.

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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 \$5 million per occurrence or claim and a general aggregate limit of at least \$5 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 (1) 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 \$5 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:



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- 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 including Network Security, Privacy & Media Insurance.**

A Professional Liability insurance policy covering errors and omissions and the resulting damages including, but not limited to, economic loss to the JPB and having minimum limits of liability of \$5 million per claim or occurrence and \$5 million annual aggregate. The policy shall include coverage for all services and work performed under this Agreement. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy coverage, and media coverage.

### **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.

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## **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.**

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Submit Certificates of Insurance to: Peninsula Corridor  
Joint Powers Board  
C/O Insurance Tracking Services, Inc. (ITS)  
P.O. Box 198  
Long Beach, CA 90801 OR

Email Address: [smt.certificates@instracking.com](mailto:smt.certificates@instracking.com)

OR

Fax: (562) 435-2999

In addition, the CONTRACTOR shall promptly deliver to ITS a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than three 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 canceled.

Submit written notice to:  
Peninsula Corridor Joint Powers Board  
C/O Insurance Tracking Services, Inc. (ITS)  
P.O. Box 198  
Long Beach, CA 90801 OR

Email Address: [smt.certificates@instracking.com](mailto:smt.certificates@instracking.com)

OR

Fax: (562) 435-2999

##### **2. Acceptable Insurers.**

All policies will be issued by insurers acceptable to the JPB (generally with a Best's Rating of A-10 or better).

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### **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.

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## **EXHIBIT A: SCOPE OF SERVICES**

### **A. INTRODUCTION**

The On-Call Program Management Oversight Services (PMO) contracts will provide expertise to support various project management oversight functions of the AGENCY'S capital program and projects. This solicitation and the resultant contracts will not include any future Peninsula Corridor Electrification Program (PCEP) Project Management Oversight services. However, coordination and support to PCEP will be required at times to ensure delivery of capital program projects. Services will be provided on an as-needed basis, and there is no guarantee of any amount of work that will be ordered or allocated or total compensation to be paid to the CONSULTANT(s).

### **B. SCOPE OF SERVICES AND DELIVERABLES**

CONSULTANT(s) shall provide capital program and project management oversight services for the Peninsula Corridor Joint Powers Board (JPB or AGENCY), hereinafter referred to as "AGENCY". Services will be authorized by a Work Directive (WD).

Per the Work Directive (WD) Process described in Part 4, **Exhibit C**, and on an as-needed basis, CONSULTANT(s) shall analyze the requested Professional Services, identify, assign, and manage the Staff (Position and Title) needed for the successful delivery of each individual project as called for in each WD. The CONSULTANT(s) will manage and control the day-to-day WD activities and deliverables with overall guidance from the appointed AGENCY'S Project Manager. Detailed scope, including required deliverables, will be identified in individual WDs.

### **C. SCOPE OF SERVICES**

CONSULTANT(s) shall provide the Professional Services necessary to support the AGENCY with the delivery of transportation projects and programs. CONSULTANT(s) staff shall work with various divisions and departments within these AGENCY, including but not limited to grants, project management, project controls, finance and accounting, contracts and procurement, budgeting, and executive management. The Program Management Support team shall participate in all meetings required in order to perform and deliver the scope of work described below.

Scope of work may include, but is not limited to, the following types of tasks:

- A. Provide, as needed, consultant expertise to support various functions of capital program and project management. Typical assignments will include but will not be limited to project controls, document control, records management, cost estimating, program and project management, and administration support. Program and project management may include providing support on developing project work plans, cost estimates, schedules, cash flow analysis, accruals, reporting, cost control, invoicing, funding, and project risk analysis. Consultant will also provide coordination and support to PCEP to ensure delivery of capital program projects on an as-needed

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basis. The CONSULTANT(s) services will be provided in accordance with the JPB's Project Management Manual for Caltrain Capital Projects.

- B. Analyze and recommend improvements to the existing capital project delivery system. Document project delivery processes and/or improvements through the development of a formal Capital Program Management Plan.
- C. Manage projects to ensure projects are delivered on schedule, on budget, and safely. Lead a project team from project initiation to project completion. Project team may consist of project engineer, project controls, contract officer, and administrators. Support different project delivery methods such as design/bid/build, design/build, and CMGC. Report project status to management, funding agencies, and other external stakeholders.
- D. Develop and/or refine, and recommend policy and procedures, including appropriate roles and responsibilities of all involved stakeholders in areas such as project planning, project development and management, program and project change control procedures, project budget and funding management, and construction management. Document such recommended policies and procedures through the development and maintenance of manuals on these subjects. Develop and/or refine procedures for project scope definition and control, project reporting, document control and records management, fund management, and guidelines for cost estimating at various stages of a project.
- E. Assist in the development and/or refinement, implementation, and maintenance of a system to track and manage the use of all capital program and project budgets and grant funds. This will include the production of periodic reports for board presentations, funding agencies, and internal management.
- F. Develop and/or refine, implement, and maintain systems for budget and invoice tracking for work directives, including maintaining existing work directives and creating requisitions for new work directives in PeopleSoft.
- G. Assist in the continued refinement and management of project control systems, including the development and maintenance of project controls deliverables such as cash flow analysis, cost control reports, and time-phased budgets with integrated project costs and schedules; the development and tracking of key project performance indicators, including setting up and managing project work breakdown structures, project baseline budgets and schedules, project trends, and forecasting estimate-at-completion cost; analysis of project earned value performance data; and the development of project schedule recovery plans. The system(s) shall enable the monitoring of all costs associated with the AGENCY'S capital programs. This includes but not limited to AGENCY'S staff costs, engineering support costs, Consultant engineering support costs, construction capital costs, right of way capital costs, and program indirect costs. The system shall enable analyzing and reporting of program and project cost and schedule performance, forecasting of total costs to assist with resource planning and estimating, capital cost control, cash flow projections, analysis, and reporting. Periodic reporting shall include monthly reports to internal management, and quarterly reports to the AGENCY'S board of directors.

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- H. The AGENCY current project controls system operates based on cost and scheduling data from PeopleSoft and Primavera, respectively. Any proposed system/program used for the same purpose must be able to perform at equal or better standards. Alternatives must interface with, and accept, downloads from PeopleSoft and Primavera, and must be approved by the AGENCY before contract awards and use.
  - I. Assist in the continued refinement and management of document control systems for programs and projects.
  - J. Provide assistance with the development of capital projects by producing formal studies and developing project-specific estimates of project cost and schedule. Also assist in the development and maintenance of program and project schedules using Primavera Project Planner, or other agency-adopted scheduling software, including the ability to incorporate engineering Consultant and contractor schedules into a master program schedule.
  - K. Provide as-needed program and project management support/training to AGENCY'S staff.

A. **Anticipated Staffing Needs**

Given current projects and past requirements, the AGENCY anticipates the need for the following positions:

- Program Manager – one
- Project Managers – up to six
- Estimator – one
- Scheduler – one
- Project Controls – up to three
- Document Control – up to two
- Contract Administrator – one
- Administrator Assistant - up to two

PROPOSERS, however, should note that actual services contracted for may be less than or greater those noted above.

B. **Deliverables**

In addition to specific deliverables identified in each Work Directive, CONSULTANT(s) shall submit a monthly report to the AGENCY's Contract Administrator named in the Agreement, no later than 7 business days after the end of each CONSULTANT'(s) billing period. The report will cover activities performed on all open Work Directives 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

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CONSULTANT(s) 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
- Compare the percent billing to percent work complete

The AGENCY and CONSULTANT(s) shall meet quarterly to review CONSULTANT'(s) performance.

From time to time, the AGENCY may require that Consultant Support staff be provided by the CONSULTANT(s). The purpose is to temporarily augment the AGENCY'S staff and is understood to be the provision of CONSULTANT's (or sub-consultant's) personnel who will provide specific skills and will work at the AGENCY'S facilities. CONSULTANT may be entitled to one-time charges incurred to set up such a WD or negotiated fees for administrative oversight. Consultant support performed in less than 120 consecutive calendar days may be billed at the home Office overhead rate.

In addition, the AGENCY may require the services of an individual, or firm, to provide services which are not known at the time of this solicitation but are consistent with that in this RFP. The AGENCY refers to this as a Pass-through and considers the CONSULTANT(s) to be minimally responsible for the review of the work product of these individuals or firms. CONSULTANT(s) may be entitled to one-time charges incurred to set up such a WD or negotiated fees for administrative oversight. Additional scope, including required deliverables, will be identified in individual Work Directives.



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**EXHIBIT B: CONSULTANT'S PROPOSAL AND LABOR RATES**

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## **EXHIBIT C: WORK DIRECTIVES**

Work Directives (WDs) will be issued pursuant to a qualification-based competitive selection process amongst the on-call consultants at any time during the Contract period of performance. Award of WDs required by the Agency will be based on the technical superiority of a Consultant's proposal in response to a WD Proposal Request. Award will be competed amongst the bench of Consultants, unless a conflict of interest or other valid business reason precludes one or more firms from competing on a specific project. Professional Services are to be provided on an on-call and as-needed basis throughout the term of the Contract and must be completed by the end of the Contract term.

The Services to be furnished by the Consultant may vary according to the Agency's needs. The actual services to be provided shall be described in specific WDs. Each WD will contain a period of performance specific to the WD. The Agency expressly reserves the right to contract for performance of services with other consultant(s). There is no guaranteed minimum level of effort to be expended or compensation to be paid under this RFP.

Organizational conflicts of interest, if any, will be assessed at the WD level. Consultant shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under WDs. It is the Consultant's responsibility to assure that no organizational conflicts of interest exist. If the Consultant has a conflict of interest, real or apparent; it will not be allowed to provide services for those projects.

### A. Issuance:

As needs arise, the Agency will issue a 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 the Agency establishes a DBE goal for a WD, it will include in the WD Proposal Request detailed information and instructions on the DBE goal requirements, related forms, and good faith efforts evaluation. If a DBE goal has been assigned to a WD Proposal Request, Consultant must meet the DBE goal or document that it has made sufficient good faith efforts to meet the goal in its proposal as required by the WD Proposal Request. WD proposals that do not meet the DBE goal, demonstrate good faith efforts to meet the DBE goal, or otherwise do not comply with the DBE requirements set forth in the WD Proposal Request, will be rejected as non-responsive. The Agency will evaluate the Consultant's documentation related to DBE goal achievement or good faith efforts to meet the DBE goal in the WD proposal before a WD is authorized. Good faith efforts will be evaluated on a Work Directive specific basis and in accordance with applicable regulations, but in general, good faith efforts to meet a Work Directive DBE goal may include the following:

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- 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 the Agency determines a Consultant failed to meet a DBE goal and also failed to demonstrate that it made good faith efforts to meet the goal, the Consultant's WD proposal will be rejected as non-responsive and the Consultant shall be afforded a reconsideration hearing, as further specified in the WD Proposal Request.

## B. Evaluation Process

In the event that contracts are awarded to a pool of qualified on-call consultants, during the term of the Agreements, project work shall be administered **pursuant to a qualification-based competitive selection process** amongst the on-call consultants. The WDs will be negotiated with the first-ranked firm from each individual WD competition. Cost proposals submitted shall be sealed and will not be included as a criterion for ranking of consultants. After ranking, cost negotiations will begin with the most qualified consultant, and only then will the cost proposal be opened.

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 Requests. Work will be authorized by the Contract Officer through the issuance of a WD. Work performed by the CONSULTANT prior to issuance of a WD is understood to be at-risk and is not subject to reimbursement to the CONSULTANT.

The following process further describes the WD evaluation process that will be followed in the event that contracts are awarded to a pool of qualified on-call consultants:

### 1) WD Evaluation Committee

An Evaluation Committee (Committee), which will include a minimum of three (3) members of the Agency's staff and possibly one or more outside experts, will review the technical proposals submitted and rank them according to the weighted criteria of each category as set forth in the process below. The Agency reserves the right to request additional information and clarifications during the evaluation and selection process from any or all Consultant regarding their proposals.

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2) WD Evaluation Process

The Consultant's technical WD proposal will be evaluated utilizing the criteria identified in the WD proposal request. In ranking proposals, the Agency will consider the proposal material submitted, oral interviews (if any are held), and any other relevant information about a given Consultant (i.e. references). The Agency will not assume that a Consultant possesses any capability unless such a capability is established by the submitted proposal. Technical Proposals will be evaluated using unique Evaluation Criteria specific to each WD, as determined by the Project Manager, on a case-by-case basis. Evaluation criteria may include but are not limited to, criteria described in Part 1, Section 3, Sub-Section B of this RFP.

3) WD Interviews

Following the initial review and screening of technical WD proposals, one or more Consultants may be invited to participate in the next step of the WD selection process. This step may include the submission of additional information, as described below, and/or participation in an oral interview. If the Agency conducts interviews, it will do so with those Consultants found to be within the "competitive range" in each project category. Attendees at an interview should be restricted to those individuals who will have direct involvement with provision of the WD requirements. The Agency expects that at a minimum the proposed Project Manager will attend the oral interview; other Key Personnel may also attend. The Agency, however, may award a WD without conducting interviews.

4) Revised WD Proposals and Negotiations

The Agency reserves the right to negotiate with the highest-ranked firm, request revised proposals, or request best and final offers if it is in the best interest of the Agency to do so. Upon completion of this step in the WD selection process, the Committee will re-rank the firms remaining in the "competitive range", in accordance with the evaluation criteria set forth above. The Agency will open the cost proposal from the top-ranked firm only, and the Agency will terminate the negotiations with that firm and may open negotiations with the next-highest firm. If negotiations with this firm are also not successful, the Agency may repeat the negotiations process with the next highest ranked firm, or, at its sole discretion, the Agency may reject all remaining proposals. Proposals will be reviewed by and negotiated with the Agency.

C. WD 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.

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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 Work Directive Proposal Request 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 9 Appendices, Appendix B, Section 5** "Compensation" of this RFP.

D. 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.

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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 3<sup>rd</sup> 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.

E. 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.

F. 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.

G. 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**

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## **EXHIBIT D: SBE REQUIREMENTS**

The Agency, a recipient of federal financial assistance from the U. S. Department of Transportation (U.S. DOT), is committed to and has adopted a DBE Program in accordance with federal regulations 49 CFR Part 26, issued by U.S. DOT.

No contract-specific DBE participation goal has been established for this Agreement, but DBE goals may be established for specific WDs. Consultant must cooperate with the AGENCY in meeting its commitments and objectives with regard to ensuring non-discrimination 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. DBE ELIGIBILITY**

As used in this document, a DBE is a small business concern that currently meets the criteria for a DBE as established by the California Unified Certification Program (CUCP) or U.S. DOT and is certified as a DBE by the CUCP or U.S. DOT at the time that proposals are due for this solicitation.

For information on DBE criteria and how to become certified as a DBE with the CUCP, please visit: <https://caltrans.dbesystem.com>.

### **4. 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:

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“The Consultant or Subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted Contracts. Failure by the Consultant or sub-consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Agency deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the Consultant from future bidding as non-responsible.”

By entering into the Agreement, the Consultant is deemed to have made the foregoing assurance and to be bound by its terms.

## **5. 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 CUCP or any other state Unified Certification Program. A state-wide 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 (SB) certification performed by the California Department of General Services (DGS) for the following industries only: (a) Construction (NAICS 230000); (b) Manufacturing (NAICS 310000-330000); (c) Wholesaling (NAICS 420000); and (d) Trucking (NAICS 484000).
- D. All Microbusiness (MB) certifications by the 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.

## **6. SBE ELIGIBILITY**

To participate as an eligible small business, a firm must meet both of the following requirements:

- A. A firm (including affiliates) must be an existing small business as defined by Small Business Administration 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



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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>.

## **7. COUNTING SBE PARTICIPATION**

SBE participation shall be counted and enforced similar to DBE participation 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

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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.

**8. CONTRACT COMPLIANCE**

A. Substitution of Subconsultants

The Consultant shall not terminate an SBE Subconsultant at any tier without prior

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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

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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/DBE Outreach Efforts for WD Proposals

The Consultant agrees to make its best efforts to encourage SBE and DBE participation on each WD issued pursuant to this Contract. Unless otherwise specified in the WD Proposal Request, 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 Designation of Subconsultants Form (Form 5); and
- 2) If Subconsultants are used, provide a narrative summary of the outreach efforts the Consultant performed to encourage SBE and DBE, participation on the WD, and information regarding the Consultant's communications and negotiations with SBE and DBE firms, if applicable, by submitting an updated Description of the Selection Process of Subcontractors/Subconsultants Form (Form 9).

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- 3) Note that additional or different requirements may apply to WDs subject to a DBE goal.

**9. 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**

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## **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.**

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**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

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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



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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.

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- 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

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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.

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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

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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)

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Voluntarily excluded from participation in any federally assisted Award; or (f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Agency. If it is later determined by the Agency that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C, as supplemented by 2 C.F.R. Part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

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

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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:

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- 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



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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

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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 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.

(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

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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 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 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

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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

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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.

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- 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.

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- 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.

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- 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



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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

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“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.

# EXHIBIT F: PMO SERVICES MATRIX

REQUEST FOR PROPOSALS FOR PROVISION OF ON-CALL PROGRAM MANAGEMENT OVERSIGHT SERVICES 24-J-P-002												PENINSULA CORRIDOR JOINT POWERS BOARD ON-CALL PMO SERVICES MATRIX PAGE 1 OF 1			
ON-CALL PMO SERVICES MATRIX															
Professional Positions															
No.	Firm	Prime	Sub	Program Manager (one)	Project Manager (up to six)	Estimator (one)	Scheduler (one)	Project Controls (up to three)	Document Control (up to two)	Contract Administrator (one)	Administrator Assistant (up to two)				
~ PROPOSED ~								~ PROPOSED ~							
1	Conzor PMCM, Inc.	x		x	x		x	x	x	x	x				
2	AECOM Technical Services, Inc.		x		x										
3	Conzor North America, Inc.		x		x	x									
4	M Lee Corporation		x												
5	PGH Wong Engineering, Inc.		x		x			x	x						
6	RSE Corporation		x								x				
7	Saylor Consulting Group		x												
8	SSC		x												
9	Substrate, Inc.		x		x										
10															
11															
12															
13															
18															

**Instructions/Notes:**  
 1. Place an "x" next to each professional positions your firm is proposing on. Add other positions as needed. Information provided to determine organizational conflict of interest.  
 NOTE: PROPOSER(S) must provide evidence of key personnel's qualifications for each professional position selected.

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**AGREEMENT BETWEEN THE**  
**Peninsula Corridor Joint Powers Board (AGENCY)**  
**AND**  
**Angotti & Reilly, Inc. (CONTRACTOR)**

**AGREEMENT SUMMARY**<sup>2</sup>

**Board of Directors' Date of Award:**       **January 04, 2024**

**Resolution Number:**                       **2024-xxx**

**Effective Date of Agreement:**           **February 01, 2024**

**Services to be Performed (Section 1):**   **Mini High Platform**

**Term of Agreement (Section 2):**         **365 days from the Limited Notice to Proceed.**

**Contractor's Key Representative**

**Name:** James P. Reilly

**Title:** President

**Email Address:** jimreilly@angotti-reilly.com

**Phone:** (415) 575-3700

**Mailing Address:** 2200 Jerrold Ave, Suite E, San Francisco, CA 94124

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<sup>2</sup> This summary is provided for convenience only and it qualified by the specific terms and conditions of the Agreement, which will control in the event of any conflict between this summary and the terms of the Agreement.

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## **AGREEMENT**

This Agreement is made and entered into by and between, **Angotti & Reilly, Inc.** hereinafter called "CONTRACTOR" and the **Peninsula Corridor Joint Powers Board**, hereinafter called "AGENCY" and collectively referred to as "PARTIES."

The PARTIES agree as follows:

### **1. SCOPE OF WORK**

The CONTRACTOR shall perform all work necessary to complete the contract for the Mini High Platform project in a satisfactory manner. The CONTRACTOR shall furnish and install all materials, equipment, tools, labor, and incidentals necessary to complete the work. In accordance with the component parts of this Agreement, this public works project, Mini High Platform, consists of the following:

1. Install Mini-High Platforms and all associated work at 8 stations (Bay Shore, Burlingame, Hayward Park, Belmont, California Ave., San Antonio, Lawrence Expressway, and Tamien) [base bid]
2. Install concrete wheel stops and all associated work at Hillsdale Station Parking Lot [base bid]
3. Install Mini-High Platforms and all associated work at 5 stations (Capital, Blossom Hill, Morgan Hill, San Martin, and Gilroy) [option #1]

The work is more fully described in the Technical Specifications and Plans contained in the Contract Documents, which are attached and incorporated to this Agreement by reference.

### **2. TIME OF COMPLETION**

After Contract execution, the CONTRACTOR shall begin work as of the effective date of the Limited Notice to Proceed, and shall diligently prosecute all of the work under this Contract in all parts and requirements as defined in SECTION 01001 CONTRACT TIME AND ORDER OF WORK of the Contract Documents.

### **3. CONTRACT PRICE**

The CONTRACTOR shall faithfully perform all of the work hereunder for the not-to-exceed Grand Total Bid Price of Three Million Five Hundred Twenty-Four Thousand Three Hundred Eighty-Two Dollars (\$3,524,382), plus a 10 percent contingency amount or up to \$250,000, which may be used at the AGENCY's discretion if necessary for unforeseen work only, in accordance with the Contract Documents. The AGENCY will pay the CONTRACTOR at the time and in the manner provided in the Contract Documents.

### **4. COMPONENT PARTS**

This Agreement hereby incorporates all components of the following, collectively referred to as "Contract Documents," including the Notice Inviting Bids, bid specifications, technical specifications, plans, drawings, bid guaranty, performance bond, payment bond and all addenda, attached hereto and incorporated by reference:

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- 1 Contract Change Orders
  - 2 This Agreement
  - 3 Addendum, if any
  - 4 The General Requirements (Division 01)
  - 5 The Procurement and Contracting Requirements (Division 00)
  - 6 Technical Specifications (Divisions 02 through 20 as applicable)
  - 7 Contract Drawings
  - 8 Bid Forms, as accepted by the AGENCY, Bid security, performance bond, and payment bond
  - 9 Supplemental General Conditions

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.

## **5. SERVICE OF NOTICE**

Any notice required or permitted to be given under this Contract shall be deemed given when personally delivered to recipient thereof or mailed by registered or certified mail, return receipt requested, postage pre-paid, to the appropriate address specified in the CONTRACTOR's bid, and in the case of the AGENCY, at 1250 San Carlos Ave., San Carlos, CA 94070, or at any other address which either party may subsequently designate in writing to the other party.

### **Insurance Certificates, an original, shall be sent to:**

**Peninsula Corridor Joint Powers Board**  
c/o Insurance Tracking Services, Inc. (ITS)  
P.O. Box 198  
Long Beach, CA 90801  
[smt.certificates@instracking.com](mailto:smt.certificates@instracking.com)

### **Preliminary Notices and Stop Payment Notices shall be sent to:**

**Peninsula Corridor Joint Powers Board**  
Attn: Andy Kleiber  
1250 San Carlos Avenue  
San Carlos, CA 94070  
[KleiberA@caltrain.com](mailto:KleiberA@caltrain.com)



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## 6. GOVERNING LAW

This Contract shall be governed and construed in accordance with the laws of the State of California. Any action relating to this Contract shall be instituted and prosecuted in a court of competent jurisdiction in the State of California. Each party hereby appoints the party listed opposite its name to act as its initial agent for service of process relating to any such action:

**AGENCY:** **Peninsula Corridor Joint Powers Board**  
Secretary  
1250 San Carlos Avenue  
San Carlos, CA 94070  
(650) 508-6270

**CONTRACTOR:** **Angotti & Reilly, Inc.**

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(Name)  
2200 Jerrold Ave, Suite E

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(Street Address)  
San Francisco, CA 94124

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(City, State, Zip)  

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(415) 575-3700  
(Telephone)

Each such agent is hereby authorized and directed to accept service of process in any such action on behalf of his principal until such time as his successor shall have been appointed by his principal and notice thereof has been delivered to the other party in the manner provided herein for the giving of notice.

## 7. WAIVER

Any waiver of any breach or covenant of this Contract must be in writing, executed by a duly authorized representative of the Party waiving the breach. A waiver by any of the Parties of a breach or covenant of this Contract will not be construed to be a waiver of any succeeding breach or any other covenant, unless specifically and explicitly stated in such waiver.

## 8. BINDING ON SUCCESSORS

All of the terms, provisions, and conditions of this Contract are binding upon and inure to the benefit of the Parties and their respective successors, assigns, and legal representatives.

## 9. ENTIRE AGREEMENT/MODIFICATION

This Contract, including all Exhibits, constitute the complete Contract between the Parties and supersedes any prior written or oral communications. This Contract may be modified or amended only by written instrument signed by both the CONTRACTOR and the AGENCY.

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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**

**Angotti & Reilly, Inc.<sup>3</sup>**

Print name: Michelle Bouchard

Print name: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST By: \_\_\_\_\_

Dora Seamans  
Agency Secretary

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

Signature: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Attorney for the Agency

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<sup>3</sup> If bidder is a corporation, two signatures are required as follows: (1) the Chairman, President, or Vice-President and (2) the Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer. In the alternative, this Agreement 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 (example, 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: Board of Directors  
Through: Michelle Bouchard, Executive Director  
From: Marian Lee, Diridon Station Project Director  
Subject: **Diridon Station Business Case Update**



Finance Committee  
Recommendation



Technology, Operations, Planning,  
and Safety Committee  
Recommendation



Advocacy and Major Projects  
Committee Recommendation

**Purpose and Recommended Action**

This report includes an informational update that requires no action by the Board of Directors (“Board”) of the Peninsula Corridor Joint Powers Board (JPB or Caltrain). At the September 25, 2023 Caltrain Advocacy and Major Projects (AMP) Committee meeting, staff presented an update on the Diridon Station Business Case work, including the vision statement, goals, and evaluation criteria, and governance assessment. The purpose of this informational report and accompanying presentation is to share progress on the Business Case since the September update.

This information was shared with the Joint Policy Advisory Board (JPAB) staffed by the Santa Clara Valley Transportation Authority (VTA) on November 15, 2023. JPAB provides policy advice on Diridon Station area matters.

**Background**

Caltrain, VTA, City of San José, Metropolitan Transportation Commission, and the California High-Speed Rail Authority (Partner Agencies) are working together on the Diridon Station Business Case to plan for the transformation of San Jose’s downtown transit hub.

Diridon Station, which is owned by Caltrain, is integral to California’s transportation network. It currently serves Caltrain, Capitol Corridor, Altamont Corridor Express (ACE), and Amtrak passenger rail, as well as VTA light rail and bus services. It is also a key part of planned and expanded services in the region, including new California High-Speed Rail and Bay Area Rapid Transit (BART) service, as well as the service expansion of Caltrain, Capitol Corridor, and ACE. To effectively accommodate such planned activity and future service needs, the station must be reconfigured, expanded and upgraded to provide adequate capacity, functionality, and interconnectivity for passengers.

In 2020, the Diridon Integrated Station Concept (DISC) process produced the original Concept Layout, which is a spatial vision for future Diridon station redevelopment. Building on this concept, the Partner Agencies are developing station design alternatives that can be funded and built. The work also includes identifying station area program governance options to prepare for project delivery.

## **Discussion**

### *Station Design Alternatives*

Since the previous update at the September AMP meeting, the project team has identified key station components that present additional challenges and opportunities for station design. These components include the historic station, Caltrain's Centralized Equipment Maintenance and Operations Facility (CEMOF), the adjacent PG&E substation, and connections to light rail, BART, and the Airport Connector. The information included here focuses on evaluating the opportunities and constraints specific to the historic station. The next AMP report will focus on the remaining components.

### *Historic Station*

The Diridon historic station is an important community asset owned by Caltrain and bound by federal, state, and local historic resource designations. There are two options for the historic station in the context of station redevelopment: relocation and adaptive reuse.

The original Concept Layout suggested the historic station be relocated due to a conflict with expanded rail infrastructure and the need for the station to accommodate future passenger volumes. However, relocation to an off-site location is not preferred by the community and has many challenges including the lack of a suitable receiving site. The team has evaluated how the main station hall can be preserved and modified to accommodate future transit services and passenger flows. The analysis will be presented at the meeting and further information will be provided via PowerPoint presentation.

The Partner Agencies recently shared their approach to adaptive reuse with the Diridon Historic Station Community Partners Group. This approach was well received, and the major takeaway is to preserve as much of the building as possible, prioritizing the main hall and building shell.

### *Governance Update*

There is consensus among the Partner Agencies on moving forward on a parallel path for setting up (1) an integrated project team to advance the station project planning and environmental, and (2) a long-term governance structure for station area program delivery. The integrated project team proposal will be provided in Spring 2023 and discussion of potential governance structures in Summer 2023.

## **Budget Impact**

There is no direct budget impact associated with this informational update.

Prepared By:	Gwen Buckley	Principal Planner	650-722-6827
	Melissa Reggiardo	Manager, Caltrain Planning	650-868-9925

**Peninsula Corridor Joint Powers Board  
Staff Report**

To: Board of Directors  
Through: Michelle Bouchard, Executive Director  
From: Lawrence Leung, Manager, Rail Contracts & Budget  
Zouheir Farah, Director, Caltrain Engineering  
Carlos Ortega, Deputy Director, Caltrain Systems Engineering  
Subject: **Accept On-Call Communication and Signal Services Update**

Finance Committee Recommendation       Technology, Operations, Planning, and Safety Committee Recommendation       Advocacy and Major Projects Committee Recommendation

**Purpose and Recommended Action**

This report is for information only. No Board action is required.

**Discussion**

This informational item is presented quarterly to the Board and reports on the following:

- Total amount of work directives (WDs) issued to each firm since contract inception
- List of WDs and amendments issued since the last reporting period with the WD number, title, description, JPB project manager, vendor, issuance date, start date, end date, and value

The tables below provide an update of contract activities from September 8<sup>th</sup>, 2023 thru December 8<sup>th</sup>, 2023. Table 1 summarizes the contract capacity status. Table 2 updates the percentage of capacity used against the percent time elapsed. Table 3 shows the Board approved dates and amounts. Table 4 aggregates the WD amounts issued to each of the vendors. Table 5 describes each of the WDs issued since the last reporting period.

**Budget Impact**

There is no impact on the budget.

**Background**

Pursuant to Resolution No. 2022-37, the Board of Directors (Board) awarded contracts to RSE Corporation, STV Incorporated, WSP USA, Inc., and Xorail, Inc., consisting of a five-year base term for an aggregate not-to-exceed amount of \$18,000,000.

Prepared By:	Lawrence Leung	Manager, Rail Contracts & Budget	650-508-6328
	Zouheir Farah	Director, Caltrain Engineering	650-622-7819
	Carlos Ortega	Deputy Director, Caltrain Systems Engineering	650-551-6191

**Table 1**

<b>Contract Summary</b>	<b>Years</b>	<b>Amount</b>
Total Capacity:	5.0	\$18,000,000
Work Directives Issued:		\$9,236,403
Remaining Exercised Capacity:		\$8,763,597

**Table 2**

<b>Contract Days</b>	<b>Days Elapsed</b>	<b>% Time Elapsed</b>	<b>Capacity Used</b>
1825	491	27%	51%

**Table 3**

<b>Contract Information</b>	<b>Start</b>	<b>End</b>	<b>Years</b>	<b>Capacity</b>	<b>Resolution/ Authorized</b>
Base	8/4/2022	8/3/2027	5.0	\$18,000,000	2022-37
Amendment			0.0		
<b>Total:</b>			<b>5.0</b>	<b>\$18,000,000</b>	

**Table 4**

<b>Vendor</b>	<b>RSE</b>	<b>STV</b>	<b>WSP</b>	<b>Xorail</b>
<b>Contract #</b>	22-J-P-024A	22-J-P-024B	22-J-P-024C	22-J-P-024D
<b>Total WDs Issued</b>	\$8,535,909	\$700,495	\$0	\$0
<b>Previous Reporting Period</b>	\$7,947,843	\$700,495	\$0	\$0
<b>Current Reporting Period</b>	\$588,066	\$0	\$0	\$0

**Table 5**

WD#	Title	Description (Updates in Bold)	Vendor	Updated	Start	(Revised) End	Current Value
10924	Fiber Optic Network CADD & File Management Support	Support to provide CADD and file management support services for Caltrain’s Fiber Optic Network System.	RSE	11/30/2023	11/30/2023	6/30/2024	\$237,891
10859	Crossing Optimization	Support to acquire dedicated signal system engineering support services for Caltrain’s Crossing Optimization Project and PCEP Signal, 2 speed check implementation. A1 added \$405k for additional support. <b>A2 added \$88k for additional support.</b>	RSE	11/14/2023	10/1/2022	6/30/2024	<b>\$1,437,124</b>
10856	Churchill Grade Crossing Improvement Design	Support for design services during construction for the grade crossing improvements at the Churchill grade crossing in Palo Alto. The consultant shall answer any Request For Information and review submittals from the contractor.	RSE	11/3/2023	10/1/2022	12/31/2024	\$39,553
10858	San Mateo Grade Crossing Improvements	Support for design services during construction for the grade crossing improvements at the San Mateo 4th and 5th Ave grade crossings. The consultant shall answer any Request For Information and review submittals from the contractor.	RSE	11/3/2023	10/1/2022	12/31/2024	\$39,553
24091 11000	PCEP Utility Coordinator and Field Support Services FY24	To provide utility coordinator and utility field support services for the Peninsula Corridor Electrification Project (PCEP) under the guidance/direction of JPB staff. <b>A1 added \$183k for additional support.</b>	RSE	10/27/2023	7/1/2023	6/30/2024	<b>\$439,135</b>



**Peninsula Corridor Joint Powers Board  
Staff Report**

To: Board of Directors  
Through: Michelle Bouchard, Executive Director  
From: Lawrence Leung, Manager, Rail Contracts and Budget  
Melissa Reggiardo, Manager, Caltrain Planning  
Subject: **Accept On-Call Transportation Planning and Consultant Support Services Update**



Finance Committee  
Recommendation



Technology, Operations, Planning,  
and Safety Committee  
Recommendation



Advocacy and Major Projects  
Committee Recommendation

**Purpose and Recommended Action**

This report is for information only. No Board action is required.

**Discussion**

This informational item is presented quarterly to the Board and reports on the following:

- Total amount of work directives (WDs) issued to each firm since contract inception
- List of WDs and amendments issued since the last reporting period with the WD number, title, description, JPB project manager, vendor, issuance date, start date, end date, and value

The tables below provide an update of contract activities from September 8<sup>th</sup>, 2023 thru December 8<sup>th</sup>, 2023. Table 1 summarizes the contract capacity status. Table 2 updates the percentage of capacity used against the percent time elapsed. Table 3 shows the Board approved dates and amounts. Table 4 aggregates the WD amounts issued to each of the vendors. Table 5 describes each of the WDs issued since the last reporting period.

**Budget Impact**

There is no impact on the budget.

**Background**

Pursuant to Resolution No. 2020-18, the Board of Directors (Board) awarded contracts to Fehr & Peers, HNTB Corporation, Kimley-Horn & Associates, Inc., Arup North America Ltd., Mott MacDonald Group Inc., and WSP USA, Inc., consisting of a five-year base term for an aggregate

not-to-exceed amount of \$25,000,000 with two additional, one-year option terms in an aggregate not-to-exceed amount of \$5,000,000 for each option year.

Pursuant to Resolution No. 2023-26, the Board authorized amendments to the contracts with the Consultants to increase the contract amount by \$10,000,000, from \$25,000,000 to \$35,000,000, to be shared in the aggregate amongst the six firms.

Prepared By:	Lawrence Leung	Manager, Rail Contracts & Budget	650-508-6328
	Melissa Reggiardo	Manager, Caltrain Planning	650-868-9925

**Table 1**

<b>Contract Summary</b>	<b>Years</b>	<b>Amount</b>
Total Capacity:	7.0	\$45,000,000
Exercised:	5.0	\$35,000,000
Work Directives Issued:		\$32,948,280
Remaining Exercised Capacity:		\$2,051,720

**Table 2**

<b>Contract Days</b>	<b>Days Elapsed</b>	<b>% Time Elapsed</b>	<b>Capacity Used</b>
1825	1255	69%	94%

**Table 3**

<b>Contract Information</b>	<b>Start</b>	<b>End</b>	<b>Years</b>	<b>Capacity</b>	<b>Resolution/ Authorized</b>
Base	7/1/2020	6/30/2025	5.0	\$25,000,000	2020-18
Option #1	7/1/2025	6/30/2026	1.0	\$5,000,000	
Option #2	7/1/2026	6/30/2027	1.0	\$5,000,000	
Amendment			0.0	\$10,000,000	2023-26
<b>Total:</b>			<b>7.0</b>	<b>\$45,000,000</b>	

**Table 4**

<b>Vendor</b>	<b>Fehr &amp; Peers</b>	<b>HNTB</b>	<b>Kimley-Horn</b>	<b>ARUP</b>	<b>Mott</b>	<b>WSP</b>
<b>Contract #</b>	20-J-P-006A	20-J-P-006B	20-J-P-006C	20-J-P-006D	20-J-P-006E	20-J-P-006F
<b>Total WDs Issued</b>	\$4,661,789	\$6,609,574	\$10,499,811	\$1,569,358	\$6,253,126	\$1,651,846
<b>Previous Reporting Period</b>	\$4,113,387	\$4,420,823	\$9,985,082	\$1,318,696	\$6,253,126	\$1,651,846
<b>Current Reporting Period</b>	\$548,402	\$2,188,751	\$514,729	\$250,662	\$0	

**Table 5**

WD#	Title	Description (Updates in Bold)	Vendor	Updated	Start	(Revised) End	Current Value
10345	Caltrain Rail Planning Support	Consultant support for Caltrain Planning- Consultant to serve as seconded staff providing 32 hours a week support while Deputy Director of Policy Development is out on leave through May 31, 2024.	ARUP	12/6/2023	11/6/2023	5/31/2024	\$175,517
10878	Caltrain Electrified Service Planning	Support for Caltrain Electrified Service Planning. A1 added \$412k and extended from 12/31/23 to 2/28/24. The following tasks were added: 3. Market Analysis, 4. Service Goals and Metrics, 5. Service Framework and Concepts, 6. Thresholds to Change Service, 7. Service Plans/Conceptual Schedules, 8. Simulation, and 9. Engagement. <b>A2 added \$322k and extended from 2/28/24 to 6/30/24. The following updates were added to tasks: 7. Revised Service Plans, 8. Revised simulation and Final service plans, 10. Stakeholder engagement wrap-up, 11. Costing of 6 trains per Hour per Direction (tphpd) service.</b>	Fehr & Peers	12/5/2023	1/19/2023	<b>6/30/2024</b>	<b>\$757,681</b>
11290	Capital Planning Support	Caltrain Office Headquarters Advisory Services- consultant to assist Caltrain in evaluating options for a new headquarters office.	ARUP	12/6/2023	11/7/2023	6/30/2024	\$50,000
10344	Caltrain Access Policy Update	Consultant support for Caltrain Station Access Policy Update. <b>A1 extended from 11/30/23 to 12/14/23.</b>	ARUP	11/17/2023	9/19/2023	12/14/2023	\$25,145
11115	Capital Planning Support	Support for potential capital planning initiatives, including potential capital projects that are currently being managed by the Planning Department and potential planning activities related to the lifecycle of rail capital projects including the implementation of processes to track and monitor stages of development of capital planning initiatives. Such projects require ongoing yet intermittent planning management and tracking, coordination with internal and external partners and stakeholders, development of agreements, technical reviews, etc. <b>A1 added \$216k for additional support.</b>	Kimley-Horn	11/7/2023	7/1/2023	6/30/2024	<b>\$357,371</b>
10880	PCEP Traffic Mitigation Implementation Strategy	Consultant services to identify an implementation strategy for the PCEP EIR's traffic and transportation mitigations.	Fehr & Peers	10/30/2023	10/30/2023	3/31/2024	\$168,742
10702	San Francisco DTX Agreement Development Services	The work directive includes continued support for the Downtown Rail Extension (DTX) project, specifically to support the development of the 4th and King Yard (4KY) Preparation Agreement, the Master Cooperative Agreement (MCA), and to review major DTX project deliverables. This work is defined in the Interim Agreement (dated September 1, 2023) between the Transbay Joint Powers Authority (TJPA) and Caltrain and is reimbursed by TJPA.  As outlined in the Interim Agreement, the work includes the development of a 4KY Agreement to define the delivery of work needed at the 4th and King site to construct the DTX tunnel and its connection to the Caltrain mainline tracks. It also includes the development of the MCA. The key elements of the MCA include project definition, asset disposition, rail activation planning, operations and maintenance responsibilities and funding, and revenue allocation. The consultant team will also review TJPA-prepared deliverables, including those for the FTA, as needed.	HNTB	10/16/2023	9/1/2023	9/30/2024	\$2,148,486
10877	Caltrain Go Pass Program Management Support	Consultant program management support for Caltrain's Go Pass Program. A1 extended from 1/31/23 to 4/30/23 and added \$8k for additional support. A2 added \$114k for additional support and extended from 4/30/23 to 6/30/23. A3 added \$30k for additional support and extended from 6/30/23 to 12/31/23. <b>A4 added \$57k for additional support and extended from 12/31/23 to 6/30/24.</b>	Fehr & Peers	10/11/2023	10/10/2022	<b>6/30/2024</b>	<b>\$275,662</b>

WD#	Title	Description (Updates in Bold)	Vendor	Updated	Start	(Revised) End	Current Value
10446	Redwood City Station Area Planning	The main objective of the station area planning work is to provide inputs into Redwood City's Transit District planning process in the spring 2021 timeframe with consideration for the proposed redevelopment of Sequoia Station, the Whipple Avenue Grade Separation Study, Reimagine SamTrans and potential options related to the Dumbarton Rail Corridor Project. The scope of work will potentially produce street networks and a station area footprint to aid near-term land use development. It does not include public outreach, detailed design or cost estimates. A1 added \$59k for additional support and extended from 6/30/21 to 12/31/21. A2 added \$16k for additional support and extended from 12/31/21 to 12/31/22. A3 extended from 12/31/22 to 7/31/23. <b>A4 extended from 7/31/23 to 12/31/24.</b>	Mott	10/6/2023	3/11/2021	<b>12/31/2024</b>	\$345,991
10700	San Francisco DTX Agreement Development Services	Support on Agreement Development services for Caltrain as part of the development of the San Francisco Downtown Extension (DTX) project. A1 added \$1.1M for additional support to develop term sheets and a final Master Cooperative Agreement with the Transbay Joint Powers Authority (TJPA). A2 added a subcontractor. A3 extended from 6/30/23 to 12/31/23. <b>A4 added \$41k for additional support.</b>	HNTB	9/26/2023	2/8/2022	12/31/2023	<b>\$1,511,177</b>
10472	Diridon Business Case Strategic Advisory Services	Support for project management and strategic advisory services to facilitate the planning process for the Diridon Station Business Case. More specifically, Caltrain is looking for support in managing the Business Case technical work as well as associated strategic communications and outreach with Business Case Partner Agencies (including the City of San Jose, Santa Clara Valley Transportation Authority, California High Speed Rail Authority and Metropolitan Transportation Commission) and electeds. A1 extended from 6/30/23 to 8/31/23. <b>A2 extended from 8/31/23 to 10/31/23. A3 added \$298k for additional support and extended from 10/31/23 to 12/31/23.</b>	Kimley-Horn	9/19/2023	3/1/2023	<b>12/31/2023</b>	<b>\$546,004</b>

**Peninsula Corridor Joint Powers Board  
Staff Report**

To: Board of Directors  
Through: Michelle Bouchard, Executive Director  
From: Dahlia Chazan, Deputy Chief, Caltrain Planning  
Subject: **Fare Media Based Ridership Estimation Model Overview**



Finance Committee  
Recommendation



Technology, Operations, Planning,  
and Safety Committee  
Recommendation



Advocacy and Major Projects  
Committee Recommendation

**Purpose and Recommended Action**

Staff recommends the Technology, Operations, Planning, and Safety Committee receive the attached item on the new Fare Media Sales-Based Ridership Estimation Model. This new ridership model is used to generate estimates which are included in the Executive Director's Monthly Report.

This item is informational only.

**Discussion**

Without fare gates or Automated Passenger Counters (APCs), Caltrain must estimate monthly ridership from available fare media sales data. Upon completion of the Electrification Project and launch of electrified revenue service, Caltrain will have access to more accurate ridership data from APCs on the Electric Multiple Units for the electrified portion of the corridor. Fare media sales include purchases of any ticket type on any of the available platforms, including Clipper, Ticket Vending Machines (TVMs), and Caltrain Mobile. Ridership figures generated from these data are estimates, rather than complete counts, because data is not collected on each individual trip taken with Caltrain's multi-ride fare products. Day Passes are valid for unlimited trips during a given service day after being purchased from TVMs or Caltrain Mobile. Monthly Passes must be activated on Clipper at the beginning of each month but do not require passholders to tag on/off for individual trips. While Go Passes are provided on Clipper by some employers, many still use physical stickers which do not report any trip data. Fare media sales-based ridership estimates are reported to the Board on a monthly basis and are distinct from the estimates reported to the National Transit Database, which use randomly sampled on-board passenger counts that are only statistically significant at the annual level.

In April 2020, Caltrain implemented a temporary ridership estimation methodology to account for pandemic-induced changes in travel behavior. This methodology combined conductor counts from fourteen high-ridership stations and Clipper usage data to estimate daily ridership at a system-wide level.

To address the data collection challenges of performing daily conductor counts and provide more precise and granular ridership estimates, Caltrain staff developed a new estimation model that relies solely on fare media sales data. This new model automatically taps into the available data sources and applies simple, data-informed assumptions to estimate unknown variables. Having an automated estimation model has virtually eliminated opportunities for data entry errors and has resulted in a significant reduction in workload for conductors and Caltrain staff. Furthermore, ridership estimate data is now available for specific origin stations, fare media platforms, fare types, and fare products. The new Fare Media Sales-Based Ridership Estimation Model went into effect in November 2023 but was not retroactively applied to prior months that used the prior, temporary estimation methodology.

Staff will present an overview of the Fare Media Sales-Based Ridership Estimation Model and its underlying methodology at the December 2023 meeting of the Caltrain Citizens Advisory Committee. Additionally, staff are currently developing dashboards that summarize the outputs of the new estimation model to be posted on the Caltrain ridership website.

Staff also continue to work toward establishing a process for transmitting APC data from the EMUs to create an additional source of reliable ridership information. Counts from APCs will offer in-depth perspective of station and train-specific ridership and can be used for reporting, planning, and financial analysis purposes. Even after APC ridership data from the EMUs can be reported, the Fare Media Sales-Based Ridership Estimation Model will continue to provide valuable information on the percentage of trips taken with different fare media platforms, fare types, and fare products. Additional information on EMU APC capabilities will be presented to the JPB Board through future Rail Activation updates.

**Budget Impact**

There are no anticipated budget impacts from transitioning to the new Fare Media Sales-Based Ridership Estimation Model.

Prepared By:	Ted Burgwyn	Director, Rail Network and Operations Planning	(650) 207-7979
	Nick Atchison	Senior Planner, Rail Operations Planning	(650) 647-3039

**Peninsula Corridor Joint Powers Board  
Staff Report**

To: Board of Directors  
Through: Michelle Bouchard, Executive Director  
From: Casey Fromson, Chief Communications Officer  
Subject: **State and Federal Legislative Update**



Finance Committee  
Recommendation



Technology, Operations, Planning,  
and Safety Committee  
Recommendation



Advocacy and Major Projects  
Committee Recommendation

**Purpose and Recommended Action**

Staff is providing the accompanying State and Federal Legislative Updates as an informational item only.

**Discussion**

The 2023 Legislative Program establishes the principles that will guide the legislative and regulatory advocacy efforts. Based on those principles, staff coordinates closely with our Federal and State advocates on a wide variety of issues that are considered in Congress and the State legislature. The attached reports highlight the recent issues and actions that are relevant to the Board.

**Budget Impact**

None.

Prepared By: Devon Ryan

Government and Community  
Affairs Officer

650.730.6172



**Caltrain  
Federal Report  
November and December 2023**

Appropriations Update

- On November 16, President Biden signed a continuing resolution (CR) to avoid a government shutdown that would have begun at midnight on November 17. The new CR established two key deadlines for two groups of the 12 appropriations bills. The first group of appropriations bills include the Agriculture, Energy and Water, Military Construction-VA, and Transportation-HUD bills, and Congress must pass these bills or another CR before January 19, 2024, deadline. The remaining eight bills are in the second tranche of appropriations bills and must be passed by February 2, 2024.
- In a recent shift, House Freedom Caucus Chair Rep. Scott Perry (R-PA) has signaled that the caucus is open to accepting the spending levels outlined in the Fiscal Responsibility Act (debt limit deal) enacted earlier this year. This represents a significant change from their previous position on fiscal year (FY) 2024 spending. However, Rep. Perry cited the Senate's history of forcing the House into accepting their proposal if the House is unable to pass their own spending bills.
- Recently, House Speaker Mike Johnson (R-LA) has proposed passing a short-term CR that would cover the remainder of the fiscal year, ending on September 30, 2024, if FY 2024 spending negotiations fail to reach an agreement in the coming months. However, the exact duration of such a stopgap measure remains uncertain, with some speculations that it could extend until January 2025. This would set up a government funding deadline just before the presidential election.

House Postpones Action on Transportation-Housing (THUD) Appropriations Bill

- The House postponed a final vote on its FY 2024 THUD Appropriations bill on November 7th, minutes before it was scheduled to be considered on the House floor, a sign that it did not have the votes to pass. The bill cuts Amtrak funding by about \$1.5 billion and drew objections from Republicans who represent districts in or near Amtrak's busy Northeast Corridor.
- The pending House THUD bill contains \$22.9 billion less than the Senate-passed bill and cuts public transit investment by \$2.3 billion from current levels. Before heading to the House floor, several conservative amendments were added to the bill. Rep. Scott Perry (R-PA) included an amendment prohibiting funding transit-oriented development and the

electric or low-emission ferry program. However, Rep. Perry failed to include amendments that eliminated funding for Capital Investment Grants (CIG) and transit infrastructure grants.

- This is the second time that the bill has been postponed. A new date has not yet been officially announced. The House will need to eventually act on the THUD bill by January 19th or pass an additional CR to avoid a partial government shutdown.

### *Administration Update*

#### FRA Announces \$8.2 Billion in Funding for Intercity Passenger Rail Projects

- On December 8, through the Federal State Partnership for Intercity Passenger Rail Program (Fed-State Program) and the Corridor Identification and Development Program (Corridor ID Program), the FRA awarded \$8.2 billion in funding to 10 major passenger rail projects located outside of the Northeast Corridor.
- California High-Speed Rail Authority (CHSRA) received \$3.07 billion for the Central Valley segment, including: final design and right-of-way acquisition for the Merced extension (Madera, CA to Merced, CA) and Bakersfield extension (from Poplar Avenue in Shafter, CA to Bakersfield, CA); civil, track and systems construction for the 13-mile Bakersfield Interim extension; design and construction of Fresno Station; and, design and procurement of trainsets, as well as design and construction of trainset facilities.
- CHSRA also received a Corridor ID Program planning grant that defined the corridor between San Francisco and LA/Anaheim, which includes the Caltrain Corridor.
- Caltrain's application with San Jose DOT and VTA for the business case and environmental review of San Jose Diridon Station was not selected.
- There is a [press release](#) with more information. The full list of selected projects for the Fed-State Program can be [found here](#) and a full list of projects chosen for the Corridor ID program can be [found here](#).

#### DOT Announces \$1.5 Billion Available Through the RAISE Program

- On November 30, the Department of Transportation (DOT) announced its \$1.5 billion FY 2024 funding opportunity for the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant Program. This program provides funding to localities to carry out projects of significant local or regional impact. DOT must announce grant awards by June 27, 2024.
- The new NOFO has the following changes from the previous FY 2023 NOFO:
  - Simplified the NOFO with plain language and tables to organize the information.
  - The merit criteria rating rubric is refined. For example, this NOFO provides more examples of project elements that align with a "High" rating under the Safety, Environmental Sustainability, and Innovation metrics.

- Clarifies what applicants should provide in the Project Budget document for the Financial Completeness Review.
  - Updates data used to determine Urban, Rural, and Areas of Persistent Poverty designations, and uses the White House Council on Environmental Quality (CEQ) Climate & Economic Justice Screening Tool (CEJST) to identify Historically Disadvantaged Communities.
- In the 2023 funding round, DOT awarded 162 projects across all 50 states. DOT continues to encourage applicants to consider factors related to climate, workforce, and addressing barriers to economic opportunity. All applications are due by February 28, 2024. For more information, please refer to the Funding Opportunity Announcement via [Grants.gov](https://www.grants.gov).

#### DOT Announces \$120 Million Available Through the ATTAIN Program

- On November 21, DOT announced that \$120 million would become available for the FY 2023-FY 2024 Advanced Transportation Technology and Innovation (ATTAIN) Program. Formerly known as the Advanced Transportation and Congestion Management Technologies Deployment (ATCMTD) Program, the Bipartisan Infrastructure Law (BIL) renamed the program but continued its core mission of funding advanced transportation projects.
- While BIL only provided \$60 million per year for ATTAIN, the current NOFO combines funding for FY 2023 and 2024 to a total of \$120 million. DOT has emphasized the importance of using funding to advance innovative transportation projects while reducing traffic-related fatalities, congestion, and emissions.
- Examples of transportation technologies that can be pursued under ATTAIN include traveler information systems that provide real-time, predicted, and individualized information about travel choices based on data and technologies that assist transportation system operators in managing and controlling the performance of their systems.
- Officials plan to make between 10 to 20 awards through this ATTAIN grant round with a performance period between two and four years. Applications are due on February 2, 2024. Interested parties may view the NOFO via [grants.gov](https://www.grants.gov).

#### FTA Publishes Request for Information (RFI) on Improving Access to Transit Facilities for Persons with Disabilities

- On November 9, the Federal Transit Administration (FTA) issued an RFI to seek public comments on recommendations for improving accessibility of public transportation for people with disabilities. The public comments will be used to aid the FTA in considering whether to amend accessibility requirements for transportation facilities as included in the Americans with Disabilities Act of 1990 (ADA).
- FTA is specifically requesting feedback on areas including but not limited to vertical access, communications, and wayfinding. All public comments are due by January 5, 2024. The RFI can be accessed via the Federal Register [here](#).

## FTA Releases the All Stations Accessibility Program NOFO

- On November 30, FTA released the 2024 All Stations Accessibility Program (ASAP) [NOFO](#). This new grant program was created in the BIL. The FTA will award \$343 million in awards. Eligible projects include:
  - (1) inaccessible pre-ADA—or “legacy” — rail fixed guideway public transportation systems and corresponding legacy stations/facilities for capital projects to repair, improve, modify, retrofit, or relocate infrastructure of stations or facilities for passenger use, including load-bearing members that are an essential part of the structural frame; or
  - (2) for planning projects to develop or modify a plan for pursuing public transportation accessibility projects, assessments of accessibility, or assessments of planned modifications to stations or facilities for passenger use projects; or programs of projects in an eligible area.
- All applications are due on January 30, 2024. Additionally, interested parties can join a [webinar](#) on December 19 on the program.

### ***Round-Up of Open Grant Opportunities***

- [Rail Vehicle Replacement Grant Program](#). \$196 million available. All applications due by December 18, 2023.
- [All Stations Accessibility Program](#). \$343 million available. All applications due by January 30, 2024.
- [ATTAIN Program](#). \$120 million available. All applications due by February 2, 2024.
- [Innovative Coordinated Access and Mobility Pilot Program](#). \$4.7 million available. All applications due by February 13, 2024.
- [RAISE](#). \$1.5 billion available. All applications due by February 28, 2024.

December 8, 2023

TO: Board of Directors, Peninsula Corridor Joint Powers Board (Caltrain)

FM: Matt Robinson and Michael Pimentel, Shaw Yoder Antwih Schmelzer & Lange  
Mike Robson, Edelstein Gilbert Robson & Smith LLC

RE: **STATE LEGISLATIVE UPDATE – January 2024**

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### **General Update**

The Legislature remains on interim study recess and will return to Sacramento on January 3 to convene the second year of the 2023-24 Legislative Session. Immediately upon their return, the Legislature will begin working to hear and move bills introduced in 2023 that did not move out of their first house, known as two-year bills. Two-year bills still in their first policy committee will have to move by January 22, with all two-year bills needing to pass the first house by January 31. Shortly after the Legislature reconvenes in January, Governor Newsom will release his proposed Fiscal Year 2024-25 State Budget on January 10. When the Legislature returns, their actions will be subject to the 2024 Legislative Calendar, which is now available [here](#).

### **Speaker Rivas Appoints Key Committee Chairs**

On November 21, 2023, Assembly Speaker Robert Rivas (D-Salinas) announced his much-anticipated changes to policy and fiscal committee chairs in the Assembly. While the change for the Appropriations Committee Chair won't take effect until January 22, the others are effective immediately. Some key changes we would like to note are:

- Assembly Transportation Committee Chair Lori Wilson (D-Fairfield)
- Assembly Appropriations Committee Chair Buffy Wicks (D-Oakland)
- Assembly Budget Subcommittee #4 (Climate Crisis, Resources, Energy, and Transportation) Chair Steve Bennett (D-Ventura) [this appointment reflects a broader jurisdiction for the subcommittee]
- Assembly Budget Committee Chair Jesse Gabriel (D-Encino)
- Assembly Utilities and Energy Committee Chair Cottie Petrie-Norris (D-Irvine)
- Assembly Natural Resources Committee Chair Isaac Bryan (D-Los Angeles)
- Assembly Housing Committee Chair Chris Ward (D-San Diego)

In the months ahead, we expect the Speaker, after conferring with the new committee chairs, to announce the complete roster of all committees. In addition to the changes to the various chairs, Speaker Rivas announced a change to his leadership team, appointing Assembly Member Cecilia Aguiar-Curry (D-Winters) as Assembly Majority Leader (she is currently the Speaker pro Tempore) and Assembly Member Jim Wood (D-Santa Rosa) as Speaker pro Tempore.

### **Transition for Senate Pro Tem Announced**

On December 4, 2023, it was announced that incoming Pro Tem Mike McGuire (D-Healdsburg) would take the gavel from current Pro Tem Toni Atkins (D-San Diego) on February 5, 2024. We're not sure the timing for other Senate leadership and/or Senate committee chair changes, but it's safe to assume that we could begin to see new posts announced shortly after Senator McGuire is confirmed as Senate leader.

### **Transit Recovery Task Force**

[SB 125 \(Committee on Budget and Fiscal Review\)](#), which was part of the FY 2023-24 Budget Act establishes the Transit Recovery Task Force (Task Force) and requires, by January 1, 2024, CalSTA to convene the Task Force. The Task Force is required to include transit operators (small and large/urban and rural), local governments, MPOs/RTPAs, advocacy organizations, legislative committee staff, and Caltrans. The Task Force will focus on developing policy recommendations that will increase transit ridership and improve transit for users. CalSTA is required to prepare a recommendations report based on the task force's efforts to the Legislature by October 31, 2025. The report is required to cover numerous elements. On November 14, CalSTA opened an application process for interested participants, closing it on November 29.

Members of the task force were released on December 8, 2023. Caltrain applied but was not selected to participate nor was any commuter rail or FRA regulated passenger rail agency. A full list of participants can be found [here](#).



DATE: JANUARY 4, 2024

TO: PENINSULA CORRIDOR JOINT POWERS BOARD OF DIRECTORS

FROM: KATE JORDAN STEINER  
CHIEF FINANCIAL OFFICER

SUBJECT: CONTRACTS AND PROCUREMENT QUARTERLY REPORTS

Contracts and Procurement submits the following report to the Board of Directors (Board) on a quarterly basis:

- Pursuant to Resolution 2023-41: Contracts and Amendments for Information Technology Licenses, Maintenance Services and Technology- related Products and Services through Cooperative Purchasing Programs greater than \$250,000.

The report for the last quarter (October 2023-December 2023) is attached.

**FY24 JPB POs for Cooperatives, Sole Source & Recurring IT Procurements >\$250K**

**JPB**

The purchases listed below are for Information Technology Licenses, License Renewals, Maintenance Service, and Professional Services

<b>Board Approved Authority</b>	
<b>Resolution #2023-41</b>	<b>\$3,000,000</b>
<b>\$3,000,000</b>	

**July 1 - September 30, 2023**

**1st Quarter**

PO Date	PO#	Vendor	PO Description	PO Amount	Remaining Authority
				\$ -	
				\$ -	\$ 3,000,000.00

**October 1 - December 31, 2023**

**2nd Quarter**

PO Date	PO#	Vendor	PO Description	PO Amount	Remaining Authority
				\$ -	\$ 3,000,000.00

**January 1 - March 31, 2024**

**3rd Quarter**

PO Date	PO#	Vendor	PO Description	PO Amount	Remaining Authority
				\$ -	\$ 3,000,000.00

**April 1 - June 30, 2024**

**4th Quarter**

PO Date	PO#	Vendor	PO Description	PO Amount	Remaining Authority
			<b>TOTAL PO AMT TO DATE</b>	<b>\$ -</b>	<b>\$ 3,000,000.00</b>