

CAPITOL CORRIDOR JOINT POWERS AUTHORITY
REQUEST FOR STATEMENT OF QUALIFICATIONS (RFSOQ)

TO PROVIDE

**PLANNING STUDIES, COMPLETE ENVIRONMENTAL DOCUMENTATION AND
FINAL DESIGN FOR**

THE OAKLAND TO SAN JOSE PHASE 2A PROJECT

RFSOQ NO.201819-01

The Capitol Corridor Joint Powers Authority (“CCJPA” or the “Capitol Corridor”) intends to enter into an agreement (“Agreement”) with a consultant team (“CONSULTANT”) comprised of a professional transportation planning firm, an environmental documentation firm, and a railroad and highway engineering design consulting firm to provide initial planning studies, complete environmental documentation process, and final engineering design for the Oakland to San Jose Phase 2A Project (“Project”). Accordingly, CCJPA is issuing this Request for Statement of Qualifications (“RFSOQ”) to prospective CONSULTANTS (“Proposers”) as specified herein.

A. Project Description

The selected CONSULTANT shall provide professional planning, environmental documentation, and final design services for the planned Oakland the San Jose Phase 2A Project, which is located along the existing tracks and on property owned by the Union Pacific Railroad Company (UPRR) on their Niles and Coast Subdivisions as well as some areas in the Cities of Fremont and Newark at the intersection of UPRR Coast Subdivision and California State Route 84. The professional services to be provided by the CONSULTANT are set forth in Attachment A, Scope of Services, and Attachment F, Scope of Services Supplement.

B. Funding Sources

The Agreement entered into as a result of this RFSOQ may be funded, in part or in full, under a grant from the United States Department of Transportation (“DOT”), Federal Transit Administration (“FTA”), and/or the State of California through the California Department of Transportation (“CALTRANS”). Contractual provisions required by the DOT and other agencies will be set forth in the Agreement.

C. California Public Records Act

This RFSOQ and any material submitted by the Proposer are subject to public inspection under the California Public Records Act (California Government Code Section 6250 et seq.), unless exempted by law. The exercise of such exemptions, if any, are wholly within the exclusive prerogative of the government and not the Proposer.

D. Estimated Cost and Time of Performance

The total cost for providing the initial planning studies and environmental documentation with initial design shall not exceed **Five Million Dollars (\$5,000,000)**, excluding any reserve held by CCJPA. Final design costs have not been estimated and thus have not been allocated at this time however

there are sufficient programmed state and regional funds for this project through final design. CCJPA cannot be certain of the scope of final design services at this time due to the nature of our partnership with UPRR, who may opt to pursue final design on rail-only portions, leaving final design to station, station facilities, and bus-way final design to CCJPA. However, final rail design will likely remain in CCJPA's purvey to design if recent history with UPRR on the Sacramento to Roseville Third Mainline Track Project is a guide. Funding to complete all pre-construction aspects of this project are programmed and the programmed funds will be requested for allocation in due course from the California Transportation Commission (CTC) and the overall contract will be expanded accordingly beyond the initial \$5,000,000. Said costs are anticipated to be reimbursed on a cost-plus-fixed-fee basis. The term of any Agreement entered into pursuant to this RFSOQ will be for **six (6)** years from the date of execution of the Agreement.

E. Pre-submittal Meeting

A pre-submittal Meeting will be held on Tuesday, October 16, 2018, starting at 12:00pm local time, in Room 1500, located at 300 Lakeside Drive, 15th Floor, Oakland, CA 94612. Interested firms are encouraged to make every effort to attend this scheduled pre-submittal meeting. A presentation addressing the Scope of Services and the procurement process will be made at this meeting. In addition, CCJPA's Disadvantaged Business Enterprise Program will be discussed.

F. CCJPA/BART Procedures

The CCJPA is a California joint powers authority with six member agencies. The San Francisco Bay Area Rapid Transit District ("BART", or the "District") is the managing agency of the CCJPA. The CCJPA models its administrative procedures upon those utilized by BART. Accordingly, reference may be made in this RFSOQ to certain BART administrative procedures which have been adopted as CCJPA administrative procedures.

G. CCJPA's Agreement

The CCJPA intends to make one (1) award resulting from this RFSOQ. The selected CONSULTANT will be expected to accept and comply with the terms and conditions contained in the *Example CCJPA Contract Agreement* included as Attachment B and the *Example Provisional Cost Reimbursement and Rate Agreement* ("Rate Agreement") included as Attachment C.

H. Compensation

1. Cost Reimbursement

- a. Costs shall be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with the cost principles of the Federal Acquisition Regulations as set forth in Title 48 Code of Federal Regulations, Part 31.
- b. Reimbursement for CONSULTANT and its subconsultants shall be further limited to that allowed by a separate Rate Agreement. CCJPA will enter into an Agreement with the Proposer selected for award which will be developed consistent with the terms of the Rate Agreement, based on financial information furnished by the Proposer, including but not limited to the PROVISIONAL COST REIMBURSEMENT AND RATE DATA (to be submitted by all short-listed Proposer(s)), government final audited rates for previous years, audited financial statements, and any overhead or fringe cost analyses furnished by the short-listed Proposer(s).

- 1) At a minimum, CONSULTANT shall segregate indirect costs in the following separate groupings: payroll additives, overhead and, if applicable, general/ administrative expenses.
- 2) Reimbursement for the costs of providing insurance coverages as set forth in Article 6.0, INSURANCE, of the Agreement shall be allowable only as an indirect cost.
- 3) Reimbursement for the costs of employee incentive compensation (including cash bonuses, suggestion awards, safety awards and other forms of incentive compensation) shall be allowable only as indirect costs. Furthermore, such costs shall be allowable only to the extent that they are paid or accrued:
 - (i) Under an agreement (in effect for thirty-six (36) months prior to award of the Agreement resulting from this RFSOQ) entered into in good faith between CONSULTANT and its employees, or;
 - (ii) Pursuant to an established organization-wide plan or policy followed by CONSULTANT (for thirty-six (36) months prior to award of the Agreement resulting from this RFSOQ) so consistently as to imply an agreement for such incentive compensation, as determined by the CCJPA in its sole discretion.

In no event shall distribution of any profits be allowable as a form of incentive compensation.

- 4) The following shall be allowable costs only to the extent that they are treated as indirect costs:
 - (i) All labor costs and associated costs incurred in the preparation, submission and support of any WD or modifications thereto, and change orders whether or not accepted by CCJPA;
 - (ii) All labor costs and associated costs identified with financial administration (as described in Article 1.6, FINANCIAL ADMINISTRATION, of the Agreement), including but not limited to the preparation, submission and support of requests for reimbursement.

2. Fixed Fee Basis and Objectives

- a. The CCJPA will seek to establish a fair and reasonable fixed fee for CONSULTANT in performing the Scope of Services associated with the Agreement. The CCJPA's objective in negotiating a fixed fee is not necessarily focused on CONSULTANT's profit; rather its objective is to compensate CONSULTANT for performance over and above allowable and allocable costs based on considerations described below.
- b. Consideration will be given to such factors as the complexity of the work to be performed, the risk borne by CONSULTANT, CONSULTANT's investment, the amount of subconsulting, the quality of its record of past performance, and industry and CONSULTANT's profit rates for similar work.

c. The CCJPA's fixed fee objectives are set forth in the Rate Agreement. CCJPA's objective relative to the fee for services provided under the Agreement is as follows:

1) The fixed fee applicable to services to be performed under the Agreement shall not exceed 8%. The fixed fee shall be applicable to CONSULTANT's direct labor and overhead, subject to the further restrictions as set forth below:

(i) CONSULTANT shall receive no fee on any overhead/indirect costs in excess of an equitable and audited rate as determined by CCJPA.

(ii) CONSULTANT shall also receive a 2% fixed fee on subcontract/subconsultant work performed under the Agreement.

2) CONSULTANT shall receive no fee for other direct costs.

3. Administrative Procedures

The administrative procedures for compensation and method of payment are set forth in Article 1.6, FINANCIAL ADMINISTRATION, Article 3.0, COMPENSATION AND PAYMENT, and Article 14.0, SUBCONTRACTS, of the Agreement.

I. Disadvantaged Business Enterprise Participation

The CCJPA, through BART, its managing agency, is committed to carrying out all of the Disadvantaged Business Enterprise ("DBE") requirements of Title 49, Code of Federal Regulations, Part 26, as amended from time to time. The procedures contained in BART's DBE Program, which CCJPA will be utilizing for this Agreement, will ensure that all contracts and procurements are administered without discrimination on the basis of race, color, sex, or national origin, and that DBEs have an equal opportunity to compete for and participate in the performance of all agreements, contracts and subcontracts awarded by the CCJPA.

1. CCJPA/BART Policy

It is the policy of the CCJPA to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of Federally funded contracts. It is the intention of the CCJPA to create a level playing field on which DBEs can compete fairly for agreements, contracts and subcontracts, including but not limited to construction, procurement and Invitation for Bids ("IFBs") contracts, professional and technical services agreements and purchase orders.

2. DBE Participation: No Goal

Although there is no DBE subcontracting goal for this Agreement, Proposers are encouraged to take all steps necessary to provide an equal opportunity for DBEs to participate. Proposers shall indicate in Exhibit 1 its DBE subcontracting commitment. The DBE subcontracting commitment proposed by the Proposer and accepted by the CCJPA will be incorporated into the final negotiated Agreement between selected Proposer and CCJPA. Only firms certified as DBEs by the California Unified Certification Program ("CUCP") that have been certified prior to the Proposal due date and that are listed in the Project Consultant Team Form (Exhibit 1 to this RFSOQ) will be counted as DBEs toward the DBE subcontracting commitment. DBEs will be counted only for the work for which they are certified. Only the work actually performed by DBE's own forces will be counted toward DBE participation. Certified DBEs can be found at www.californiaucp.com. DBE

prime Proposers, including DBE joint venture partners, will not be counted toward the DBE subcontracting commitment.

3. DBE Participation Requirements

In the event a Proposer includes in its Statement of Qualifications DBE firms to be utilized in the performance of work, see Attachment G, DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION to this RFSOQ for DBE participation requirements.

J. Non-Discrimination in Subcontracting

It is the policy of the CCJPA to ensure that CONSULTANTS that contract with the CCJPA do not discriminate or give a preference in the work of its subconsultants on the basis of race, national origin, color, ethnicity, or gender.

K. Statements of Qualifications (SOQ) Submittal

Firms interested in being considered for award of the Agreement must submit the following as part of their SOQ:

1. Letter of Interest not exceeding two (2) single-sided, letter-sized pages summarizing the firm's understanding of the Project requirements and why the Proposer is most qualified to perform the requested services (as supported by the SF 330 and organization chart referred to below).
2. U.S. General Services Administration Standard Form 330 ("SF 330"), "Architect-Engineer Qualifications," which is available at the following web site: <http://www.gsa.gov/forms>. The CCJPA will utilize the SF 330 to obtain and evaluate information from a Proposer (or joint venture) and subconsultants ("Project Team") about their professional qualifications and experience. The SF 330 provides general and specific instructions that should be followed to complete both Part I and Part II, unless otherwise indicated herein. Part I shall include information for the key personnel identified as team participants. Part II shall include information for the Proposer or each firm of the joint venture and subconsultants. In the event that the firm submitting a SOQ is a joint venture, the joint venture agreement must also be submitted as part of the SOQ.
3. Part I, "Contract-Specific Qualifications." Part I presents the qualifications for a specific contract. All sections of the SF 330 are to be completed as instructed in the SF 330 instructions, with the following additional instructions:
 - a. Section D - Organization Chart of Project Team. The firm or the specific branch office of the Proposer shall have an office located within Northern California. Proposer shall submit a proposed Organization Chart showing relevant Project Team members and key personnel showing the contractual and reporting relationship of each member and the firm with whom he or she is associated. Show the estimated percentage of time to be spent on the Project by each firm and individual team member identified in the Organization Chart. A minimum of five (5) Project Team members should be shown on the Organization Chart.
 - b. Section E - Resumes for Project Team for the Agreement. Resumes are to be submitted for the proposed key personnel to be utilized under the Agreement. Every person whose resume is provided shall be shown on the Organization Chart. Resumes submitted for persons who are not shown on the Organization Chart will not be considered. A total of five (5) resumes are to be submitted and are limited to two pages in length. Key personnel shall not be replaced for the duration of the Project without prior written approval from CCJPA.

- c. Section E-19 - Relevant Projects. A listing of relevant projects (not to exceed three shall be provided, in which persons listed on the organization chart had a significant role that demonstrates the persons' capability relevant to his/her proposed role relative to the Scope of Services. The listing for each project shall include a brief description (scope, size, cost, etc.) and provide the performance period (beginning date and completion date) of each project. The project description shall also include the specific role/responsibility of the individual and the duration that the individual worked on the project. In addition, provide a point of contact, telephone and fax number for each project listed, as the CCJPA may choose to contact these references.
 - d. Section F - Example Projects which Best Illustrate Proposer's Qualifications for this Agreement. Projects listed in Section F must be relevant projects, including projects performed directly for Union Pacific Railroad following their design standards, which were completed or are on-going by the Proposer. Select no more than three (3) projects that demonstrate the Proposer's experience and capability to perform work similar to that required for this Agreement. In addition, identify which projects, if any, for which Project Team members have worked together.
 - e. Section H – Additional Information. Include a narrative in this Section that discusses the Proposer's approach and any proposed innovations in performing engineering services as required by the Scope of Services. Limit the narrative to two (2) pages.
4. Part II, "General Qualifications." Part II presents the general qualifications of a firm or a specific branch office of a firm. Part II shall be submitted as instructed for the Proposer including, if a joint venture, for each firm of the joint venture and for each subconsultant.

L. Conflict of Interest

1. Depending upon the nature of the services performed, CCJPA consultants are subject to the same conflict of interest prohibitions which apply to CCJPA and BART employees. These include, but are not limited to, the applicable conflict prohibitions of the Federal government, and the requirements of California law (including Government Code Sections 1090 et seq. and 87100 et seq., and Title 2, Division 6 of the California Code of Regulations.) Notwithstanding subsection 2 below, the CCJPA reserves the right to disqualify any Proposer under this RFSOQ if the CCJPA, in its sole discretion, deems that the potential for conflicts of interest is likely to impair or restrict the Proposer's ability to furnish services contemplated within the Scope of Services.
2. Proposers should be aware that, in order to avoid any potential conflicts of interest, a successful Proposer and its affiliates may be precluded from subsequently participating as a vendor or consultant on projects for which they are providing services pursuant to this RFSOQ. Specifically, and without limitation, an awardee of this RFSOQ may be precluded from performance as a consultant or subconsultant on any other Agreement which may be awarded from a future RFP or RFSOQ and from construction management services for any projects in which awardee provided general engineering services.
3. As part of the RFSOQ process, Proposers are required to disclose all work performed by the Proposer (or any of its affiliates) within five (5) years of the date of receipt of proposals for this RFSOQ that are related to a CCJPA project. Additionally, Proposers may be required to disclose financial interests so that CCJPA may be assured that the potential for

conflicts of interest under state or federal law and regulations is not likely to impair the Proposer's ability to furnish services contemplated within the Scope of Services.

4. A conflict of interest review will be performed by the CCJPA during evaluation of the SOQs.

M. Project Consultant Team – Proposers shall provide information concerning the Consultant Project Team, by completing and executing Exhibit 1 to this RFSOQ.

N. Statement of Qualifications and Business References - Proposers (or each firm of a joint venture) shall complete and execute Exhibit 2 - Statement of Qualifications and Business References.

O. Exceptions to the Agreement

1. In order to meet the CCJPA's schedule requirements, it is critical that the Agreement be executed immediately following selection of a CONSULTANT. Proposer shall be prepared to accept the terms and conditions of the Agreement immediately (the Example CCJPA Contract Agreement is provided as Attachment B).
2. If a Proposer desires to propose any changes in the Agreement, the Proposer must clearly identify in its SOQ each and every proposed change, the reasons therefor and the specific alternative language proposed. These factors will be taken into account during the CCJPA's evaluation of SOQs and/or during negotiations of fair and reasonable compensation. The CCJPA may develop price-related factors to be applied to any exceptions taken. **SOQs that take substantial exceptions to the Agreement or proposed compensation terms may be determined by the CCJPA, in its sole discretion, to be unacceptable and no longer considered for award.**

P. SOQ Due Date and Submittal Requirements

SOQs must be received by 3:00 p.m. local time, on Friday, November 30, 2018.

1. By personal delivery, express mail, or U.S. mail:
Shirley Qian
Senior Planner
Capitol Corridor Joint Powers Authority
300 Lakeside Drive, 14th Floor
Oakland, CA 94612

Envelopes or packages containing response submittals shall be labeled on the outside packaging as follows:

"RFSOQ201819-1 Planning Studies, Complete Environmental Documentation and Final Design for the Oakland to San Jose Phase 2A Project"

2. The number of copies of the SOQs to be furnished shall be as follows:
 - a. Three (3) (hardcopy) complete copies, one of which shall be marked "ORIGINAL"
 - b. One (1) additional copy, excluding Exhibit 2, CONFIDENTIAL STATEMENT OF QUALIFICATIONS AND BUSINESS REFERENCES. This copy shall be clearly marked "PUBLIC RECORDS COPY" in conspicuous letters.
 - c. One digital version (CD, DVD, or USB medium) of the complete SOQ in Portable Document Format (PDF).

Q. Rejection of SOQs

SOQs may be rejected if they show such items as: alterations of form; additions not called for; conditional SOQs; incomplete SOQs; irregularities which make the SOQ incomplete, indefinite, or ambiguous; improper markings and identification; or a signature by other than an authorized person.

R. Evaluation Procedure

SOQs will be first evaluated as to responsiveness to the requirements of the RFSOQ and responsibility of the Proposer.

1. A SOQ will be considered responsive only if it complies in all material respects to the requirements of the RFSOQ.
2. A Proposer's organization will be considered responsible only if it has, or has indicated that it can obtain the financial resources to fulfill successfully the requirements of the awarded Agreement, and possesses the ability to perform successfully under the terms and conditions of an awarded Agreement.
3. If an SOQ is determined to be non-responsive, or a Proposer's organization is determined to be not responsible for the purposes of the RFSOQ, such SOQ or Proposer will not be considered for award.
4. Only those SOQs that satisfy the foregoing requirements will be evaluated and scored on the basis of the qualifications and experience of the proposed Key Personnel and the firm(s). A competitive range will be established and used to determine those Proposers who will be "short-listed" and proceed to the oral presentation stage.
5. After the most qualified Proposer has been identified (by the evaluation procedure described herein) the CCJPA will, for the first time, review pricing information. A detailed cost analysis will be performed and utilized in negotiations in arriving at fair and reasonable compensation.

S. Evaluation Criteria and Selection Process

The CCJPA will utilize the data submitted in the SF 330, the Organization Chart and related supporting narratives to evaluate and score the qualifications and experience of the Project Team (including subconsultants). The basis of selection will be on demonstrated competence and professional qualifications of the key personnel and submitting firms, in accordance with the provisions of California Government Code Sections 4525-4529.5. Subsequent to these evaluations, the oral presentation phase will be conducted for the short-listed firms.

Project Team Qualifications (including subconsultants) and Experience of the Firms are each weighted at 25%. The Oral Presentation will be weighted at 50%. The scoring will be as follows:

- a. Project Team Qualifications (including subconsultants). Evaluation based on written submittal with a weight of 25%. The following criteria will be evaluated. Subsections 1. and 2. below are of equal importance.
 - 1) Qualifications and relevant experience of the key personnel relative to the Scope of Services. The Project Manager shall have professional accreditation in the State of California or demonstrate extensive experience with project management and other key personnel shall also be registered in the State of California in their respective disciplines or be able to demonstrate extensive experience in their

respective disciplines. The Project Manager will ideally be familiar with railroad engineering, transit operations, and intermodal station design.

- 2) Overall strength and approach of the Project Team, including any previous working relationships amongst the team members.
- 3) The Project Team's approach and understanding of the project should be included in the SOQ. A draft design schedule for this project should also be included in the SOQ.

b. Experience of the Firms. Evaluation based on written submittal with a weight of 25%. The following criteria will be evaluated:

- 1) Demonstrated experience and capability of the firms on similar railroad engineering design projects and environmental documentation for Class I freight/passenger rail operators, including projects performed directly for Union Pacific Railroad following their design standards. Experience in intermodal transit center design including bus-ways and park and ride facilities are also elements that should be demonstrated.

The above-described scoring will be used for determining those firms with the highest scores to be short-listed and invited to an oral interview. The short-listed firms will be provided with the format of the oral interview, including a request to submit a milestone delivery schedule, and the Agreement format. The short-listed firms will also be requested to submit in a separate, sealed envelope the Provisional Cost Reimbursement and Rate Data (including direct and indirect rate information), which will not be opened until after completion of the oral interviews. This is included as Attachment D to this RFSOQ. The Provisional Cost Reimbursement and Rate Data of the firm deemed most qualified will then be opened. Said cost and rate data shall be valid for a period of one hundred eighty (180) days from the submittal date.

c. Oral Presentation (50%). The oral presentation will be weighted at 50% of the total score used by the CCJPA to rank the SOQs. The criteria to be used in scoring the oral interview will again focus on the qualifications and experience of the Project Team. In addition, the CCJPA will evaluate the Proposer's approach to the Project together with its demonstrated technical knowledge of Project requirements.

d. CONSULTANT Selection. All short-listed firms will be considered qualified. The SOQs will be ranked in relation to the cumulative total of scores from a) the written statement of the Project Team Qualifications and Experience of the Firms, and b) the oral interview, including the milestone delivery schedule submitted. The highest scoring Proposer, on the basis of the cumulative total of scores from the written SOQ and the oral interview, will be deemed to be most qualified, and that Proposer will be selected to enter into negotiations regarding Agreement terms and conditions and fair and reasonable compensation. Failure to reach agreement on terms and conditions and fair and reasonable compensation will result in the formal conclusion of negotiations and the CCJPA will then undertake negotiations with the next most qualified firm.

e. Anticipated Selection Schedule. The tentative selection process schedule is as follows:

- | | |
|--|-------------------|
| 1. Release Date | October 10, 2018 |
| 2. Pre-Submittal Meeting | October 16, 2018 |
| 3. SOQ Submission Date | November 30, 2018 |
| 4. Notification - Short-list for Oral Interviews | December 14, 2018 |
| 5. Oral Interviews | January 11, 2019 |
| 6. Firm Selected for Negotiations | January 14, 2019 |

T. Notification of Award and Debriefing

Proposers that submit an SOQ shall be notified in writing regarding the firm to be awarded the Agreement. Said notification shall be made within five business (5) days of the date the CCJPA's Managing Director authorizing Award of the Agreement.

Firms that were not awarded the Agreement and desire a debriefing must request the debriefing in writing. Said request must be received by the CCJPA within five business (5) days of the above-described notification of award.

U. Protest Procedures

Any protest or objection to this RFSOQ or other procurement procedures must be submitted in accordance with CCJPA's Protest Procedure, included herein as Attachment E.

V. Questions Regarding the RFSOQ

Questions regarding this RFSOQ or requests for additional information shall be directed in writing to the CCJPA's Contract Administrator. All inquiries shall be made to the CCJPA at least ten (10) calendar days before the SOQ submission date. Inquiries received less than ten (10) calendar days prior to such date may, at the CCJPA's sole option, not be responded to.

Shirley Qian
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Capitol Corridor Joint Powers Authority
300 Lakeside Drive, 14th Floor
Oakland, CA 94612

Phone: (510) 874-7491
Email: shirleyq@capitolcorridor.org (preferred method of contact)

This RFSOQ does not commit CCJPA to award an Agreement, to pay any costs incurred in the preparation of a submittal, or to procure or contract for any services. CCJPA reserves the right to reject any and all submittals received from this RFSOQ and reserves the right to negotiate with all qualified firms or to cancel this RFSOQ in whole or in part.

Documents Included in this RFSOQ are as follows:

Attachment A	Scope of Services
Attachment A-1	UPRR's Property Access and Safety Requirements
Attachment B	Example CCJPA Contract Agreement
Attachment C	Example Provisional Cost Reimbursement and Rate Agreement
Attachment D	Provisional Cost Reimbursement and Rate Data (to be completed by consultant(s) selected for an oral interview and presented at the oral interview)
Attachment D-1	Cost Disclosure Statement (to be completed by consultant(s) selected for an oral interview and presented at the oral interview)
Attachment E	Protest Procedure
Attachment F	Scope of Services Supplement
Attachment G	Disadvantaged Business Enterprise Participation
Exhibit 1	Project Consultant Team
Exhibit 2	Statement of Qualifications and Business References

ATTACHMENT A
SCOPE OF SERVICES
for the
PLANNING STUDIES, COMPLETE ENVIRONMENTAL DOCUMENTATION
AND FINAL DESIGN FOR
THE OAKLAND TO SAN JOSE PHASE 2A PROJECT
RFSOQ201819-01

1.0 INTRODUCTION

The Capitol Corridor Joint Powers Authority (“CCJPA” or the “Capitol Corridor”) is requesting proposals to provide initial planning studies for the development of alternatives, complete environmental documentation (CEQA and NEPA), and complete railroad engineering and busway/station, parking, and station facility design services for proposed improvements to the Union Pacific Railroad (“UPRR”) right of way between Oakland and Newark, California and for station facilities around a potentially new station location in the Ardenwood Fremont/Newark area along the Coast Subdivision and SR 84. All railroad route alternatives and track designs must be ultimately approved by the UPRR, subject to UPRR capacity modeling and using UPRR design standards or as approved by UPRR. UPRR will be providing review, comment, and approval of the final design plans. Signal design will be likely be completed by UPRR based on the approved design of this project. Other final design services will be subject to Caltrans design standards and standards of the Cities of Fremont or Newark and other partners associated with the anticipated intermodal station location and connections.

The purpose of the Oakland to San Jose (OKJ-SJC) Phase 2A project is to relocate the Capitol Corridor trains from the Niles to the Coast Subdivision (subject to UPRR capacity modeling), which will reduce travel time, eliminate service from two underperforming stations and establish service at one new, strategically located station, reduce freight and passenger rail conflicts, mitigate for freight use on the Niles and Oakland Subdivisions, provide for Capitol Corridor capacity on the Coast Subdivision, increase overall rail capacity, reduce service redundancy with the BART service, and overall, re-arrange the Capitol Corridor service between Oakland and San Jose in a manner consistent with the CCJPA Vision Implementation Plan and the 2018 California State Rail Plan. There are no anticipated service increases for Capitol Corridor service associated with this Phase 2A work – just shifting existing service to a different alignment, but this shift does prepare Capitol Corridor for future service expansions (as identified in the CCJPA Vision Implementation Plan). Other purposes of the project are to connect with a variety of public and private bus operations at the Ardenwood station area to facilitate transfers between rail, bus, and other modes to reduce single automobile VMT and associated air quality impacts. The work tasks under this RFSOQ could include:

- 100 percent design of track alignment and profile including grading and drainage;
- Supporting UPRR design of railroad signals with the design documents;
- 100 percent design of railroad bridge structures, including structure type selection, foundation and superstructure design;

- 100 percent design of a busway facility in the median of SR 84 (above the passenger rail platform) to facilitate bus/rail connections or alternatives thereof;
- 100 percent design of a parking structure (two-story anticipated with design features to allow additional stories) to support the intermodal station;
- Surveying and geotechnical investigation as needed to support all design activities;
- Coordinate with utility owners to design utility relocations, and design relocations for those utility owners that choose not to design their own relocations; and
- 100 percent design of station facilities, and station boarding platform(s) with related facilities.

These tasks are collectively termed the “Project”. The Project is all pre-construction activities, from initial planning studies for developing design alternatives, through environmental documentation, initial design, any right-of-way work (if needed) and then into final design (somewhat dictated by arrangements with UPRR and Caltrans). Environmental approvals (permits) will also be part of the scope and will likely involve FRA, FTA, and FHWA due to the project partners, scope of the project, and diversity of funding sources. It is anticipated that signal design and development will be conducted by UPRR. However, the selected Proposer will be required to coordinate the Project design plans with the identified partners working on other phases of the project. There are no express or implied or direct assurances of work on additional phases for the selected Proposer (CONSULTANT) by award of the Project.

After a series of initial planning/design studies to assist with developing alternatives, the CONSULTANT shall prepare the CEQA and NEPA equivalents for notice of preparation, draft environmental documentation, and final environmental documentation and final engineering designs for the Project. The specific professional services to be provided by the CONSULTANT under this Scope of Services are discussed in further detail in Section 3.0, below.

2.0 PROJECT DESCRIPTION

The CCJPA is seeking a consulting team to realize a project to re-align the Capitol Corridor service route from its existing Union Pacific Railroad (UPRR) Niles Subdivision line to the UPRR Coast Subdivision with adjustments to stations served with the service realignment. This new routing will create a faster link from Oakland to Fremont/Newark, Santa Clara, and San Jose by reducing estimated travel time for passenger trains by 13 minutes. This project will provide an attractive alternative to driving through the Bay Area’s 5th most congested corridor, according to the Metropolitan Transportation Commission (MTC), and the reduction of vehicle miles travelled through this congested corridor will result in increased ridership on CCJPA trains and lower GHG emissions throughout the East Bay. This project will also be a cornerstone for a new intermodal transit center at Fremont/Newark connecting existing rail with express bus and private shuttle service, enhancing the connection from Alameda County to the Peninsula across the Dumbarton Corridor. An overall funding plan is developed for CCJPA and its public partners to complete initial planning studies, the design, environmental review, and entitlements and construction of the OKJ-SJC Phase 2A project. Sufficient funding is now available for all but the construction phase of work.

As identified in the CCJPA Vision Plan and Vision Implementation Plan, the current routes used by freight and Capitol Corridor trains in the Oakland to Newark territory present capacity conflicts for both freight and passenger rail modes. Currently, UPRR freight trains running between the Port of Oakland and the San Joaquin Valley primarily use the lengthier Coast Subdivision to later get to the Niles Subdivision, whereas Capitol Corridor trains use

the lengthier Niles Subdivision to later get to the Coast subdivision. These routing conflicts reduce capacity overall and especially impact the Centerville neighborhood of Fremont, California, as both rail services cross over through the City of Fremont to ultimately reach their intended destinations. This project seeks to build the necessary infrastructure for both freight and Capitol Corridor passenger operations to be run far more efficiently, thus better serving their respective markets.

The freight component of this project includes significant improvements that will be made to the UPRR Niles and Oakland Subdivision to allow UPRR freight trains to use the Niles as their primary freight route. This will result in fewer miles travelled by freight trains and reduce congestion on the Coast route resulting in lower GHG emissions. On the passenger side, the Capitol Corridor service will now operate exclusively on the Coast Subdivision, which will similarly result in fewer miles travelled by passenger trains, resulting in faster service and a reduction in GHG emissions. Specific OKJ-SJC Phase 2A rail improvements include upgrading the Coast Subdivision from Elmhurst Mile Post (MP) 13.6 to Newark Junction MP 31.4. The work will include track and tie replacements, security fencing, signal upgrades and a new passing siding. Required rail freight mitigation measures will include a new connection between the Niles and Oakland Subdivisions at Industrial Parkway (MP24.0) and a new connection at Shinn (MP30.1), all of which comport with an extensive Alameda CTC led planning effort to improve freight and passenger rail service with targeted investments. All railroad improvement details are subject to further UPRR capacity modeling and analyses.

Under the new alignment, CCJPA will eliminate service to two existing stations at Fremont/Centerville and at Hayward (both served by BART, which is extending service into Santa Clara County beginning in 2018) and will replace them with an upgraded multi-modal (rail/bus/Park & Ride) station at the location of an existing Park & Ride facility on the city borders of Fremont and Newark, CA, providing an enhanced connection to transit service to the Peninsula. Circulation and access between modes of travel will be enhanced at the new intermodal Fremont/Newark station and travel times for public and private bus patrons will be significantly reduced. CCJPA will construct a new rail single track side platform at-grade on the Coast Subdivision at SR 84 (Dumbarton Bridge approach) adjacent to the current AC Transit Ardenwood Park & Ride facility.

With project partners, including Caltrans, District 4, AC Transit, the City of Fremont, and the City of Newark, CCJPA will seek to upgrade the existing parking accommodations at the Park & Ride facility by accommodating two stories of parking and continuing to allow for local bus and drop-off connection. However, the public and private Dumbarton bus services currently utilizing the local roadway network connecting between SR84 and the existing Ardenwood Park & Ride facility will instead be relocated to an elevated SR 84 median bus expressway (SR 84 is elevated crossing above the Coast Subdivision tracks) with direct vertical access to the new passenger rail station and upgraded Park & Ride.

The OKJ-SJC Phase 2 project is a transformational project not only for the connection between the East and South Bay in the Bay Area, but for the entire Megaregion, and in pursuit of the goals outlined in the Draft 2018 State Rail Plan. In line with the State's near-term and mid-term plans, it creates the necessary first step in the 2022 timeframe to set up for service increases in the 2027 timeframe in order to ultimately achieve the long-term megaregional and statewide rail vision the State has for 2040. For nearly 25 years, the Capitol Corridor service has successfully grown to the point that capacity constraints with Union Pacific Railroad's freight rail network have stymied successful Capitol Corridor and Altamont Commuter Express (ACE) commuter rail service expansion. Previous efforts to force capacity improvements within heavily shared rail corridors has met with extreme capital expense for the public, so much so that no successful negotiation was achieved. When the CCJPA evaluated the separation possibilities during the development of the Vision Plan process, the opportunities and efficiencies for both freight and passenger rail became apparent. Not only does this sub-project unravel the extent of present-day freight and passenger rail conflicts, it takes the first step in expanding the Oakland to San Jose

corridor by implementing infrastructure solutions to reduce freight and passenger conflicts long-term. In short, this improvement sets the stage for all future Capitol Corridor service expansions as demonstrated in CCJPA's Vision Plan. With this sub-project, not only are the conditions for megaregional and regional travel improved in the short-term but the long-term plans for Capitol Corridor service expansion are unlocked as the bulk of the freight rail service will no longer competing for capacity with the passenger rail, and vice versa.

The scope of services for this project will encompass all aspects of project delivery up to construction.

3.0 PLANNING STUDIES, COMPLETE ENVIRONMENTAL DOCUMENTATION, AND FINAL ENGINEERING DESIGNS

Work will commence based on Work Directives (also commonly termed 'task orders') that incrementally lead toward strategic implementation of all pre-construction documents and activities required to be ready for construction.

Initial planning studies focused on design features, functional and capacity needs, operations and safety will be required before alternatives can be developed for environmental documentation. These studies are anticipated as the first deliverable for this overall project.

The second anticipated deliverable will be the complete process of environmental documentation according to CEQA and NEPA requirements. This includes preparation notification, public comment, input, and engagement, and development of the draft final environmental document which is anticipated to be a CEQA EIR and NEPA EIS. In parallel, design will also need to commence.

Design shall be developed in five phases: 25%, 30%, 60%, 90%, and 100% or other demarcations depending on the project specific area and engaged partners. Design phase approval from UPRR, CCJPA, the City of Newark, Fremont, Caltrans, Amtrak and/or other stakeholders may be required depending on the design area focus.

Other considerations for the project scope include:

- Project Management. The CONSULTANT's project manager for the proposed work must possess exceptional communication as well as technical skills. The project manager must be easily accessible, responsive, and a problem-solver. The project manager should demonstrate proficiency in understanding railroad operations and engineering, highway operations, transit operations, the CEQA and NEPA environmental documentation and process, and also be proficient at explaining the project alternatives in both a public and a project team setting (i.e., CCJPA's working project team). In addition, the project manager should demonstrate strong interpersonal communication skills with the ability to balance listening skills with strategic leadership skills. The strategic leadership skills CCJPA is seeking should serve the interests of completing the environmental documentation and initial design within budget and in a timely manner. The project manager is encouraged to lead the team's presentation, if scheduled for an interview with the proposal evaluation committee.
- Engineering design of elements within the UPRR right-of-way to be included shall meet with UPRR's current design standards (unless a design standard exception is granted by UPRR) and CADD requirements for plan production. Engineering design of elements within the Caltrans right of way to be included shall meet with Caltrans current design standards (unless a design standard exception is granted by Caltrans) and CADD requirements for plan production

- Comply with the latest specified edition of all applicable codes, ordinances, and standards unless otherwise specified by CCJPA.
- Coordinate and interface with CCJPA, as well as with affected outside agencies and permitting authorities.

3.1 Administrative tasks:

CONSULTANT shall efficiently perform the tasks that are generally associated with the environmental and design engineering services provided. This is expected to include record keeping, documentation of work progress, progress reports, correspondence and conducting communications with CCJPA and other agencies as required:

The CONSULTANT team, in a non-inclusive listing, will work closely with CCJPA; the UPRR; the city jurisdictions affected, the Federal Railroad Administration (FRA); and appropriate regulatory agencies such as U.S. Army Corps of Engineers (USACE), U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game; as well as other agencies, interested organizations and individuals.

a. Communications/Meetings/Record Keeping:

- CONSULTANT shall maintain a communication tracking system, approved by CCJPA, which identifies all formal communications between CONSULTANT and CCJPA.
- CONSULTANT shall maintain a reasonable level of consulting team staff who attends meetings with the project team and with other external agencies. CCJPA expects prudent management of the CONSULTANT's sub-consultant team so that project costs are minimized and tailored for the meeting tasks at hand.
- CONSULTANT shall be required to meet with CCJPA staff and members of the project team on a schedule to be determined by CCJPA and in consultation with the project team. CONSULTANT will prepare and distribute a record of these meetings satisfactory to CCJPA within two (2) working days after the meeting.
- CONSULTANT shall conduct, participate, document and/or facilitate other meetings/presentations with affected parties as required by CCJPA. All documentation shall be shared as draft or approved/final form on a project team website accessible only to project team members. An additional website shall be maintained for publicly available documentation which describes the project, the process, and shares any CCJPA approved or required CEQA/NEPA documentation for public review.

b. Progress Reporting:

CONSULTANT shall prepare and submit to CCJPA monthly progress reports and invoices that include financial data in a format jointly developed with CCJPA. The report shall be submitted as an attachment to the invoice submittal. The report shall be submitted within ten (10) business days following the end of each month unless otherwise specified by CCJPA.

c. Scheduling/Cost Management:

CONSULTANT shall develop schedules with deliverables and milestones for each subproject or task.

d. Quality Control/Quality Assurance ("QC/QA"):

CONSULTANT shall provide to CCJPA a QC/QA program to ensure the accuracy and quality of the work products provided to CCJPA for approval. The QC/QA program should focus on effectiveness with minimum cost to the Project.

4.0 PROJECT SUBMITTALS

CONSULTANT shall progress its Scope of Services through the use of Work Directives, which shall be developed by the Consultant in consultation with CCJPA. CCJPA will review, comment and edit each Work Directive until a final Work Directive is agreed upon. Possible Project Submittals required in Work Directives shall include the topics/phases described in Section 3.0 and elsewhere in this RFSOQ.

ATTACHMENT A-1

UPRR'S PROPERTY ACCESS AND SAFETY REQUIREMENTS

The following details the requirements to access UPRR right of way:

1. Right of Entry Permit
2. Minimum Safety Requirements
3. E-RAILSAFE compliance
4. Flagman

Right of Entry

Temporary use of the UPRR right of way requires the CONSULTANT obtain a Right of Entry Permit. Refer to the UPRR website for procedures, application forms and associated fees: http://www.up.com/real_estate/tempuse/index.htm

Minimum Safety Requirements

Refer to the following site for details on the "Minimum Safety Requirements for UPRR Contractors, <http://www.up.com/suppliers/contractor-safety/index.htm>

e-RAILSAFE

Union Pacific Railroad has implemented additional procedures to better control and secure their railroad operations and facilities. To ensure the highest level of security possible the e-RAILSAFE program provides credentials (Photo ID Badge) and training to qualified contract personnel. This program is administered by e-VERIFILE, Union Pacific's contracted Background Investigation Company

To summarize the effort, Union Pacific will require:

- Railroad Contractors to register their company with the "e-RAILSAFE program." The web address is www.e-railsafe.com
- Railroad Contractors must secure Background Consent Forms (waivers) from each of their employees who, in the scope of their duties, will need to enter onto the property of Union Pacific. Any contractor employee who refuses to provide consent to a background check will not be allowed to provide services to the Union Pacific Railroad.
- Railroad Contractors will submit necessary employee information to the "e-RAILSAFE program" via the website.
- Contract employees (Contractees) will be required to provide their electronic photo to the Railroad Contractor, for their submittal to the e-RAILSAFE program. The Contract employee will then complete the on-line training for Railroad Safety and Railroad Security Awareness via "e-RAILSAFE program's" website.
- After the Contractee satisfactorily completes the training program, a background investigation is initiated.
- The "e-RAILSAFE program" will then score that investigation to validate that it meets all the criteria for the issuance of a photo identification badge.
- When a satisfactory score is rendered, the "e-RAILSAFE program" will automatically print a photo identification badge and mail the photo identification badge to the Railroad Contractor's business address for distribution to the Contractee.

- The Contractee is responsible to wear the approved badge, as well as carry another form of government issued ID on them at all times when on railroad property. Railroad Contractor employees without the identification card will not be allowed to work or on Union Pacific property. If already on our property, the contractor employee will be required to leave until the appropriate ID card is obtained. Employees leaving the employment of a Railroad Contractor must surrender the identification card to either the contractor or to Union Pacific.

Please note that Union Pacific is not telling its Railroad Contractors whom they can employ, however they are setting standards for those Railroad Contractors who will be allowed to enter their property and/or perform work on Union Pacific rights of way. Regardless of whether a Railroad Contractor employee successfully passes the e-VERIFILE process, please also note that Union Pacific reserves the right to bar any persons from UP property at our discretion.

The Railroad Contractor and their subcontractors are requested to comply with requirements detailed in this program. Audits will be conducted to inspect Railroad Contractor employees' government issued photo I. D's to ensure they match of the employees' contractor identification card. Railroad Contractor personnel unable to provide both forms of identification will be removed from UPRR property.

If you have any questions regarding the e-RAILSAFE.com services, please contact e-Verifile.com through its website at www.e-railsafe.com or at this telephone number 770-859-9899.

Flagman

Railroad Contractor agrees to notify the UPRR Representative at least ten (10) working days in advance of Railroad Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Railroad Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of UPRR's track(s) at any time, for any reason, unless and until a UPRR flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the UPRR Representative will determine and inform Railroad Contractor whether a flagman need be present and whether Railroad Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by UPRR, UPRR will bill Railroad Contractor for such expenses incurred by UPRR, unless UPRR and a federal, state or local governmental entity have agreed that UPRR is to bill such expenses to the federal, state or local governmental entity. If UPRR will be sending the bills to Railroad Contractor, Railroad Contractor shall pay such bills within thirty (30) days of Railroad Contractor's receipt of billing.

ATTACHMENT B

EXAMPLE CCJPA CONTRACT AGREEMENT

AGREEMENT

Between

CAPITOL CORRIDOR JOINT POWERS AUTHORITY

And

TO PROVIDE

**PLANNING STUDIES, COMPLETE ENVIRONMENTAL DOCUMENTATION AND
FINAL DESIGN FOR**

THE OAKLAND TO SAN JOSE PHASE 2A PROJECT

CCJPA AGREEMENT NO. _____

2019

AGREEMENT TABLE OF CONTENTS

<u>ARTICLE</u>		<u>PAGE</u>
1.0	WORK TO BE PERFORMED	5
1.1	SCOPE OF SERVICES	5
1.2	WORK DIRECTIVES	5
1.3	MANAGEMENT PLAN AND PROCEDURES.....	6
1.4	PROJECT AND ORGANIZATIONAL PROCEDURES	6
1.5	PERSONNEL	7
1.6	FINANCIAL ADMINISTRATION.....	7
2.0	TIME OF PERFORMANCE AND DELAYS.....	8
2.1	TIME OF PERFORMANCE.....	8
2.2	DELAYS	9
3.0	COMPENSATION AND PAYMENT	9
3.1	COMPENSATION	9
3.2	DISALLOWED OR OTHERWISE NOT RECOGNIZED COSTS	11
3.3	METHOD OF PAYMENT	11
3.4	WITHHOLDING OF PAYMENT	13
4.0	CHANGES AND MODIFICATIONS	13
4.1	CHANGES	14
4.2	MODIFICATIONS	14
5.0	TERMINATION.....	15
5.1	TERMINATION FOR CONVENIENCE	15
5.2	TERMINATION FOR CAUSE	15
5.3	FORCE MAJEURE	15
6.0	INSURANCE	15
7.0	INDEPENDENT CONTRACTOR.....	18
7.1	CONFLICT OF INTEREST	18
7.2	CONSULTANT PERSONNEL.....	18
8.0	INDEMNIFICATION	18
9.0	WARRANTY OF SERVICES AND MATERIAL NONCOMPLIANCE BY CONSULTANT	19
9.1	WARRANTY OF SERVICES	19
9.2	MATERIAL NONCOMPLIANCE BY CONSULTANT	19
10.0	DATA TO BE FURNISHED BY CCJPA	20
11.0	OWNERSHIP OF WORK PRODUCTS	20
11.1	DOCUMENTS	20
11.2	ASSIGNMENT OF RIGHTS.....	20
11.3	WARRANTY OF WORK PRODUCT.....	20
12.0	PATENTS.....	20
13.0	MATTERS CONFIDENTIAL AND PRIVILEGED	21
14.0	SUBCONTRACTS	21
15.0	ASSIGNMENT OF AGREEMENT.....	21
16.0	RECORDS	21
17.0	AUDIT.....	22
18.0	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA.....	22
19.0	NOTICES	23
20.0	NONDISCRIMINATION	25
21.0	DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION	25

22.0	LAWS AND REGULATIONS.....	26
23.0	ADDITIONAL FUNDING AGREEMENT REQUIREMENTS	26
24.0	CHOICE OF LAW	26
25.0	SEVERABILITY.....	26
26.0	COVENANT AGAINST CONTINGENT FEES	26
27.0	COVENANT AGAINST GRATUITIES.....	26
28.0	CAPTIONS.....	27
29.0	BENEFIT OF AGREEMENT	27
30.0	ENTIRE AGREEMENT	27

Example Attachments

This is an example contract – as such the attachment references below are for illustrative purposes only. References within this Example Contract Agreement will be modified pursuant to the final form of the contract entered into with the selected consultant.

ATTACHMENT A: SCOPE OF SERVICES

(CCJPA intends to utilize the Scope of Services included as Attachment A to this RFSOQ)

ATTACHMENT B: KEY PERSONNEL LIST

(No example provided but this would list the key personnel for the environmental, initial design, and project management work)

ATTACHMENT C: COMPENSATION LIMITS, FIXED FEE AND ALLOCATION OF FUNDS

(No example provided but this will be based off the Provisional Cost Reimbursement and Rate Data included as Attachment D and Cost Disclosure Statement D-1 of the RFSOQ)

ATTACHMENT D: PROJECT CONSULTANT TEAM

(No example provided but this would mirror the information required in Exhibit 1)

ATTACHMENT F: SCOPE OF SERVICES SUPPLEMENT

(CCJPA intends to utilize the Scope of Services Supplement included as Attachment F to this RFSOQ)

ATTACHMENT G: DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

(CCJPA intends to utilize the Disadvantaged Business Enterprise Participation included as Attachment G to this RFSOQ)

**PLANNING STUDIES, COMPLETE ENVIRONMENTAL DOCUMENTATION AND
FINAL ENGINEERING DESIGN FOR**

THE OAKLAND TO SAN JOSE PHASE 2A PROJECT

CCJPA AGREEMENT NO. _____

Between

CAPITOL CORRIDOR JOINT POWERS AUTHORITY

And

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20__, by and between CAPITOL CORRIDOR JOINT POWERS AUTHORITY, a California authority for the joint exercise of power ("CCJPA") and _____("CONSULTANT"), with offices at _____.

R E C I T A L S

This Agreement is made with reference to the following facts:

1. CCJPA proposes to obtain professional services for planning studies, environmental documentation, and final engineering designs for the Oakland to San Jose Phase 2A Project (the "Project");
2. The services required for the Project cannot be performed satisfactorily by the officers and employees of CCJPA;
3. The parties hereto now wish to enter into this Agreement pursuant to which CONSULTANT will furnish environmental consulting and engineering services in connection with the Project as hereinafter provided.

* * *

A G R E E M E N T

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1.0 WORK TO BE PERFORMED

The parties agree that the work to be performed by the CONSULTANT under this Agreement shall be as hereinafter set forth in this Article 1.0;

1.1 SCOPE OF SERVICES

CONSULTANT's services are described in Attachment A, SCOPE OF SERVICES, incorporated herein and by this reference made a part hereof. CONSULTANT shall be responsible to perform or secure the performance of all requested services in their entirety subject to the prior written approval of work plan(s) ("Work Directive(s)" or "WD(s)") by a designated representative ("Project Director"). The Project Director may designate a different representative for each WD.

1.2 WORK DIRECTIVES

CONSULTANT shall provide services to CCJPA for the tasks as described in each WD subject to prior approval in accordance with the following procedures.

A. Work Directive Proposal Request

CCJPA will initiate a WD by transmitting to the CONSULTANT a Work Directive Proposal Request ("WDPR") that describes an initial task description and implementation schedule.

B. Work Directive Proposal

CONSULTANT will then prepare a detailed Work Directive Proposal ("WDP") and transmit it to CCJPA within the time specified in the WDPR. The WDP shall specify the following:

1. Services to be performed by the CONSULTANT (see Article 1.1 above and Attachment A);
2. Management Plan that includes a list of key personnel (see Article 1.5 below);
3. Budget Plan including a detailed cost estimate and a cost-loaded schedule;
4. Work Breakdown Structure;
5. Schedule;
6. List of subconsultants, their scope of work and estimated value of work;
7. Work products (see Article 1.1 above and Attachment A); and
8. WD project specific procedures (see Article 1.4, below).

C. WDP Evaluation

CCJPA will evaluate the WDP. In its discretion, CCJPA may request CONSULTANT to revise and resubmit the WDP.

D. Acceptance of WDP

CCJPA will notify CONSULTANT in writing whether a WDP has been accepted. A WDP not accepted in writing shall be deemed rejected.

E. Rejection of WDP

If a WDP or its revision is rejected, neither party shall have any rights or obligations arising out of the WDP or WDPR.

F. Acceptance of WD

Each WD shall be placed into effect by the Project Director and by the acceptance of the CONSULTANT. In addition, at any time during the course of the WD performance, the Project Director may revise the WD by project direction, subject to acceptance by CONSULTANT.

G. Conflict of Interest

Each WD shall incorporate the provisions of this Agreement by reference. A conflict of interest review will be performed by CCJPA prior to issuing project direction under a WD.

1.3 MANAGEMENT PLAN AND PROCEDURES

A. Management Plan

In response to a WDPR from CCJPA, at a minimum, CONSULTANT shall submit with each WDP a list of key personnel assigned as defined by Article 1.5 below.

CONSULTANT agrees not to make any substitution of subconsultants without prior approval of the Project Director after a WDP has been accepted in writing by the Project Director.

B. Management Procedures

Apart from any specific WDs, CONSULTANT and those subconsultants at any tier that CCJPA at its discretion may identify, shall develop, implement and maintain procedures, all subject to approval by CCJPA's Project Director, who gives direction as to the performance of the work by CONSULTANT or subconsultant personnel, including, but not limited to, performance of WDs.

The intention of the parties is for CONSULTANT or its subconsultants, to develop, implement and maintain clear, concise, and project specific procedures to give CCJPA reasonable assurances that all charges for direct labor and other direct costs are relevant and necessary to accomplish the WD scope.

1.4 PROJECT AND ORGANIZATIONAL PROCEDURES

A. Modification of Procedures

At the direction of the Project Director, pursuant to a WD, CONSULTANT shall develop or modify previously proposed WD project specific procedures in accordance with a schedule and in a form approved by the Project Director. Such procedures as developed or modified shall be specifically related to activities performed for the WD project and basic CONSULTANT functions including, but not limited to, the process of budgeting, invoicing, and submitting reports to CCJPA hereunder. The intention of the parties is for CONSULTANT to develop, implement and maintain clear and concise WD project specific procedures.

B. Additional Modifications

In addition to any specific WD project procedures as described immediately above, and apart from any specific WDs, CCJPA may require CONSULTANT to revise its WD project procedures other than those set forth immediately above in Article 1.3 that are used throughout its organization if they conflict with the requirements of this Agreement.

1.5 PERSONNEL

A. Key Personnel

CONSULTANT and CCJPA agree that the personnel listed in Attachment B, KEY PERSONNEL LIST, incorporated herein and by this reference made a part hereof, shall be designated as key personnel. CONSULTANT shall also make every effort to insure that the key personnel maintain, at a minimum, _____ percent (___%) of their proportionate share of the estimated number of hours for a WD.

CONSULTANT shall not remove any such key personnel prior to the completion of his/her assignment under the Project without the prior written approval of the Project Director, which approval will not be unreasonably withheld. CONSULTANT shall nominate a replacement individual to CCJPA and shall not remove any individual from the Project until his/her replacement has been approved by the Project Director.

B. Notice of Temporary Assignment

CONSULTANT shall provide the Project Director with written notice of the temporary assignment of any personnel to an individual WD Project.

C. Removal of Personnel

CCJPA's Project Director reserves the right to direct removal of any CONSULTANT or subconsultant personnel assigned to the Project when in CCJPA's opinion the individual's performance is unsatisfactory.

1.6 FINANCIAL ADMINISTRATION

Apart from any specific WDs, CONSULTANT and its subconsultants at any tier shall establish and maintain records pertaining to the fiscal activities of the Project. CONSULTANT's and subconsultants' accounting systems shall conform to generally accepted accounting principles and the following requirements:

A. Cost Breakdown

All such records shall provide, at a minimum, a breakdown of total costs charged to the Project, including properly executed payrolls, time records, invoices and vouchers.

B. Labor Charging Procedures

For work performed on a basis other than fixed price, CONSULTANT and those subconsultants at any tier that CCJPA at its discretion may require, shall develop, implement and maintain labor charging (i.e. time card, or payroll) procedures that meet the following criteria:

1. All time records shall be in writing, recorded by the employee and verified by the immediate supervisor. Such records shall (i) be complete, (ii) record all employee's activities, Project and non-Project related, within a given accounting period and (iii) identify by means of cost codes what activities were being performed.
2. All charges for labor (direct/indirect or hourly as appropriate) by personnel for the Project shall be identifiable to the nearest half-hour.

C. "California Public Employees" Retirement System (CalPERS) Compliance

To ensure compliance with state laws and regulations related to membership in CalPERS, CONSULTANT shall comply with the following requirements:

1. Written verifications regarding prior service at a CalPERS agency:
 - a. Prior to assigning an additional consultant to this Agreement, CONSULTANT shall request that the individual verify in writing:
 1. Whether or not the individual has previously worked for a CalPERS employer; and
 2. Whether or not the individual is a CalPERS retired annuitant.
2. CalPERS members - Employee contribution to CalPERS:
 - a. If the individual to be assigned to the position verifies that he or she has previously worked for a CalPERS employer and is not a retired annuitant, CONSULTANT shall require the individual to acknowledge in writing that if he or she is a CalPERS member, the employee contribution to CalPERS shall be deducted from each paycheck while performing work under this Agreement.
3. Limitations on Hours:
 - a. Retired annuitant: If the individual to be assigned to this Agreement verifies that he or she has previously worked for a CalPERS employer and is a CalPERS retired annuitant, CONSULTANT shall monitor the individual's work hours to ensure that the individual does not exceed 960 hours per fiscal year. CONSULTANT shall inform the Project Director in writing as soon as the individual accrues 900 hours, in order to allow for timely replacement.

- b. No previous service at a CalPERS employer: If the individual to be assigned to perform work under this Agreement verifies that he or she has not previously worked for a CalPERS employer, CONSULTANT shall monitor the individual's work hours to ensure that the individual does not exceed 1000 hours per fiscal year. CONSULTANT shall inform the Project Director in writing as soon as an individual accrues 900 hours, in order to allow for timely replacement.

D. Cost Reimbursement Services

For those services performed on a cost reimbursable basis by CONSULTANT and those subconsultants at any tier that CCJPA at its discretion may require, the following shall apply:

- 1. For all indirect cost groupings, budgets shall be developed on an annual basis which coincide with the entity's fiscal year.
- 2. The system of accounting shall at a minimum, (i) report on a quarterly basis, a comparison between the actual indirect costs incurred to that budgeted, and (ii) reconcile all compensation for direct costs including, but not limited to, payroll, inventory and accounts payable against incurred cost, as set forth in Article 3.1, COMPENSATION.

E. Approval of Procedures

CCJPA's Project Director (i) may approve existing procedures that meet these criteria as well as waive certain specific requirements of this Article (provided that such approvals or waivers are made in writing); or (ii) may require copies of any of this accounting material, records, reports or procedures.

2.0 TIME OF PERFORMANCE AND DELAYS

2.1 TIME OF PERFORMANCE

A. Performance of Scope of Service

CONSULTANT's performance of Scope of Services as described in Attachment A shall commence upon receipt of a Notice to Proceed issued by CCJPA for each respective WD and shall be completed within the number of calendar days specified in such WD, unless terminated earlier in accordance with Article 5.0, TERMINATION, or if the limit on maximum compensation established in Article 3.1, COMPENSATION, is reached.

B. Term of Agreement

The term of this Agreement will be **six (6)** years from the date of execution of this Agreement, subject to termination as provided for in the Agreement.

2.2 DELAYS

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by unforeseen causes including acts of God, acts of the public enemy and governmental acts beyond the control and without fault or negligence of the affected party.

Each party hereto shall give notice promptly to the other of the nature and extent of any such circumstances claimed to delay, hinder or prevent performance of any obligations under this Agreement.

3.0 COMPENSATION AND PAYMENT

3.1 COMPENSATION

A. Basis

The compensation for each WD performed under this Agreement will be on a fixed price basis, an incurred cost reimbursement basis plus a fixed fee, or some combination thereof. Such compensation will be allowable only to the extent that costs incurred or cost estimates included in negotiated, or otherwise established prices, are consistent with the Federal Cost Principles (Title 48, Code of Federal Regulations, Chapter 1, Part 31).

B. Requirements

Such compensation shall be further subject to the following requirements:

1. Conform with:
 - a. the work to be performed pursuant to an accepted WD;
 - b. any compensation limits or sublimits set forth in such WD(s), and this Agreement; and
 - c. all other terms of this Agreement.
2. Be necessary in order to accomplish the work.
3. Be reasonable for the services to be performed or goods to be purchased in connection with the performance of services hereunder.
4. Be actual net costs or prices to the CONSULTANT or its subconsultants at any tier, (e.g. the cost or price less any refunds, rebates, or other items of value received by CONSULTANT or its subconsultants at any tier, that have the effect of reducing the cost or price actually incurred).

As used herein, the term "costs" shall include the following:

- a. Those costs recorded by CONSULTANT that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the work.
- b. When CONSULTANT is not delinquent in payment of costs of agreement performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
 - (1) Direct labor;
 - (2) Other direct costs that are not subcontracted;
 - (3) Indirect costs.

- c. The amount of reimbursement that has been paid by CONSULTANT for subcontracted services under similar cost standards.
5. Be for direct costs or prices incurred for work performed after the effective date of this Agreement, and presented for payment within one hundred eighty days (180) days of the incurrence.

C. Rate Agreement

In addition to these requirements, the parties will negotiate in good faith and enter into a Provisional Cost Reimbursement and Rate Agreement ("Rate Agreement") on an annual or multi-year basis for the work to be performed for each CONSULTANT fiscal year(s). At the end of the annual or multi-year period, either party may request a rate adjustment subject to negotiation between the parties and modification to the Rate Agreement. Should the parties fail to negotiate a new Rate Agreement, CONSULTANT agrees to accept the provisions of the previous Rate Agreement until such time as a new Rate Agreement is executed. If neither party requests a rate adjustment, the rates contained therein shall remain in effect until completion of Agreement No. ____ - ____.

D. Notification

The CONSULTANT shall inform the Project Director when total expenditures for all approved WDs exceed ____ percent (___%) of the maximum compensation for this Agreement.

E. CONSULTANT Costs

All CONSULTANT costs associated with providing services that are identified in this Agreement as being apart and separate from any individual WD, are considered to be either indirect costs or a portion of the CONSULTANT fee, as the case may be.

F. Compensation Limits

Subject only to changes made in conformance with Article 4.0, CHANGES AND MODIFICATIONS, below, it is expressly understood and agreed that:

1. In no event shall CONSULTANT be compensated in an amount greater than the amount in an individual WD, for services performed under such WD; and
2. In no event will the total compensation and reimbursement for expenses to be paid CONSULTANT for services described in Article 1.1, SCOPE OF SERVICES, above and services described in Attachment A hereto, exceed **Five Million Dollars (\$5,000,000)**.

3.2 DISALLOWED OR OTHERWISE UNRECOGNIZED COSTS

CONSULTANT understands and agrees to the following:

A. Waiver

Any compensation or reimbursement received under this Agreement does not constitute a final decision by the CCJPA as to the allowability of such compensation or reimbursement and does not constitute a waiver of any violation by CONSULTANT

of the terms of this Agreement (including, but not limited to, requirements of the Agreement to be included in CONSULTANT's subcontracts).

B. Final Determination

Unless approved otherwise by the Project Director, the CCJPA will not make final determination about the allowability of compensation or reimbursement of cost received under this Agreement until an audit of this work performed under this Agreement has been completed.

C. Notification

If the CCJPA determines that CONSULTANT or its subconsultant(s) is not entitled to either the compensation or reimbursement requested or received, the CCJPA will notify CONSULTANT stating the reasons therefor.

D. Return of Funds

Completion of the work under this Agreement will not alter CONSULTANT's or its subconsultant(s)' obligation to return any funds due the CCJPA as a result of later refunds, corrections, or other transactions, nor alter the CCJPA's right to disallow or otherwise not recognize costs on the basis of a later audit or other review.

3.3 METHOD OF PAYMENT

A. Monthly Invoices/Subconsultant Payment

Unless approved otherwise by the Project Director, CONSULTANT's services shall be invoiced on a monthly basis and payment will be made within thirty (30) days of receipt of an acceptable invoice with satisfactory backup documentation, approved by the Project Director, provided a completed form W-9 is on file with CCJPA. As used herein, the term "invoice" shall include the CONSULTANT's bill or written request for payment under this Agreement for services performed. All invoices shall be made in writing and submitted with two duplicates at a minimum.

CONSULTANT shall promptly pay any and all subconsultants by an instrument that guarantees availability of funds immediately upon deposit of said instrument. The CONSULTANT shall include in its monthly invoice submission to CCJPA, amounts to pay for all subconsultants' acceptable invoices, no later than thirty (30) days after receipt of such invoices. Unless otherwise approved in writing by the Project Director, CONSULTANT shall, within ten (10) calendar days after receipt of the payment made by CCJPA, pay to each of its immediate subconsultants (or their respective assignees), for satisfactory performance of its contract, the amounts to which each is entitled, after deducting any prior payments and any amounts due and payable to CONSULTANT by those subconsultants. Any delay or postponement of payment among the parties may take place only for good cause and with the CCJPA's prior written approval. If the CONSULTANT determines the work of the subconsultant to be unsatisfactory, the CONSULTANT must immediately notify in writing the Project Director and state the reasons therefor. Failure by CONSULTANT to comply with this requirement will be construed to be a breach of contract and may result in sanctions as specified in this Agreement.

In addition, the CONSULTANT must promptly return any retentions withheld to a subconsultant within thirty (30) days after the subconsultant's work is satisfactorily completed.

B. Invoice Procedures

CONSULTANT shall invoice for the then current WD in conformance with procedures approved by the Project Director and the then current Rate Agreement.

1. Such invoices shall segregate current costs from other costs. Current costs are those costs which have been paid within the last sixty (60) calendar days and not previously submitted to CCJPA for reimbursement. Other costs shall include, but not be limited to, the following:
 - a. Costs for which the CCJPA has requested additional justification for allowance;
 - b. Costs which have been recorded by CONSULTANT in the current accounting period and not incurred as an obligation within the last ninety (90) calendar days.
2. Costs for individual labor shall be identified by activity and product in a manner consistent with that of the detailed cost estimate submitted with CONSULTANT's WDP.
3. Notwithstanding the above, in no case shall CONSULTANT invoice for costs which CCJPA has disallowed or otherwise indicated that it will not recognize.

C. Invoice Requirements

Such invoices shall be, at a minimum, (i) mechanically accurate, (ii) substantially vouchered and properly supported and (iii) in compliance with the specific requirements of Article 1.6, FINANCIAL ADMINISTRATION above.

D. Certification

CONSULTANT shall also certify, for each invoice, that (i) the hourly rates for direct labor, whether for CONSULTANT or its subconsultant(s), to be reimbursed under this Agreement are not in excess of the actual hourly rates in effect for CONSULTANT or subconsultant employees engaged in the performance of services under this Agreement at that time, and (ii) that such hourly rates are in conformance with the then current Rate Agreement.

E. Fixed Fee

The fixed fee for CONSULTANT or any of its subconsultants shall be billed monthly on a percent complete basis as approved by the Project Director.

CCJPA in its sole discretion may make any of the remaining fixed fee payments due CONSULTANT, or any of its subconsultants, in full; or may withhold any amount up to one hundred percent (100%) thereof as CCJPA may find appropriate, based on the progress of CONSULTANT and/or any of its subconsultants.

F. Invoice Submittal Address

All invoices, indicating this Agreement name and number, shall be made in writing and delivered or mailed to CCJPA as follows:

By US mail:

Capitol Corridor Joint Powers Authority
Attention: Shirley Qian
300 Lakeside Drive
14th Floor East
Oakland, CA 94612

By Email:

shirleyq@capitolcorridor.org

G. Taxpayer Identification Number

CONSULTANT represents that CONSULTANT's taxpayer identification number (TIN) is evidenced by a completed Federal Form W-9 on file with CCJPA on the date of execution of this Agreement. CONSULTANT agrees to file such tax forms as may be reasonably requested by CCJPA to implement Internal Revenue Code Section 3406 and to accept as a part of any compensation due, any payments made by CCJPA to the Internal Revenue Service pursuant to that Section.

3.4 WITHHOLDING OF PAYMENT

CCJPA reserves the right to withhold payment(s) otherwise due CONSULTANT in the event of CONSULTANT's material non-compliance with any of the provisions of this Agreement, including, but not limited to, the requirements imposed upon CONSULTANT in Article 6.0, INSURANCE; Article 8.0, INDEMNIFICATION; and Article 9.1, WARRANTY OF SERVICES, below. CCJPA shall provide notice of withholding, and may continue the withholding until CONSULTANT has provided evidence of compliance which is acceptable to CCJPA.

4.0 CHANGES AND MODIFICATIONS

CCJPA reserves the right to order changes to this Agreement, and modifications to WDs, to be performed pursuant to this Agreement, as set forth below.

4.1 CHANGES

A. Services

CCJPA reserves the right to order changes to this Agreement including but not limited to, the services to be performed by CONSULTANT. All such changes shall be incorporated in written change orders duly executed by CCJPA and CONSULTANT, which shall specify the changes ordered and the adjustment of compensation and completion time required therefor.

B. Execution

Any such services added to the scope of this Agreement by a change order shall be executed under all applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed change order.

4.2 MODIFICATIONS

A. Work Directive Modifications

CCJPA reserves the right to order modifications to WDs, including but not limited to, the services to be performed by CONSULTANT pursuant to an accepted WD. All such modifications to a WD shall be incorporated in written WDMs, executed by the Project Director and the CONSULTANT, which shall specify the modifications ordered and the adjustment of compensation and completion time required therefor.

B. Additional Compensation

Any such services added to the scope of this Agreement by a Work Directive Modification ("WDM") shall be executed under all applicable conditions of this Agreement. No claim for additional compensation or extension of time with respect to a WD shall be recognized unless contained in a duly executed WDM. The parties also understand and agree that CONSULTANT will not be reimbursed for costs incurred prior to the effective date of a duly executed WDM.

5.0 TERMINATION

5.1 TERMINATION FOR CONVENIENCE

CCJPA may, at any time prior to completion of the work under any WD or the work under this Agreement, terminate any such WD, or this Agreement whenever CCJPA determines that such termination is in its best interest, by written notice to CONSULTANT. CCJPA's written notice to CONSULTANT shall state in detail the extent of such termination with respect to WD, or this Agreement. Effective on receipt of such notice of termination from CCJPA, no new work or obligation with respect to such WDs, or this Agreement will be undertaken by CONSULTANT unless so directed by CCJPA in writing. Upon such termination, CONSULTANT shall submit an invoice or invoices to CCJPA in amounts which represent the compensation specified herein for services actually performed to the date of such termination and for which CONSULTANT has not been previously compensated. Upon payment of the amount due, CCJPA shall be under no further obligation to CONSULTANT, financial or otherwise, with respect to terminated WDs, or this Agreement if it is terminated.

5.2 TERMINATION FOR CAUSE

If CONSULTANT should be in default and fails to remedy this default within five days after receipt from CCJPA of notice of such default, CCJPA may in its discretion terminate this Agreement or such portion thereof as CCJPA determines is most directly affected by the default.

The term "default" for purposes of this provision includes, but is not limited to, the performance of work in violation of the terms of this Agreement; abandonment, assignment or subletting of the Agreement without approval of CCJPA; bankruptcy or appointment of a receiver for CONSULTANT's property; failure of CONSULTANT to perform the services or other required acts within the time specified for this Agreement or any extension thereof; refusal or failure to provide proper workmanship; failure to take effective steps to end a prolonged labor dispute; and the performance of this Agreement in bad faith.

Upon CCJPA's termination of this Agreement or any portion thereof for default by CONSULTANT, CCJPA reserves the right to complete the work by whatever means it deems expedient and the expense of completing such work as well as any and all damages proximately caused by the default shall be charged to CONSULTANT.

5.3 FORCE MAJEURE

The performance of work under this Agreement may be terminated by CCJPA, in its discretion, upon application therefor by CONSULTANT for unforeseen causes beyond the control and without the fault or negligence of CONSULTANT, including acts of God, acts of the public enemy, governmental acts, fires and epidemics if such causes irrevocably disrupt or render impossible CONSULTANT's performance hereunder. An "act of God" shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of CONSULTANT to foresee or make preparation in defense against.

6.0 INSURANCE

At all times during the life of this Agreement to acceptance of the work covered by this Agreement, or as may be further required by this Agreement, CONSULTANT at its own cost and expense shall provide the insurance specified by this Article.

A. Evidence Required

At or before execution of this Agreement and at such other times as Capital Corridor Joint Powers Authority (CCJPA) may request, CONSULTANT shall provide CCJPA with a Certificate of Insurance executed by an authorized representative of the insurer(s) evidencing that CONSULTANT'S insurance complies with this Article. The certificate shall reference CCJPA's Agreement Number and Title to which the certificate relates. In addition, a copy of all required endorsements shall be attached to and form a part of CONSULTANT'S Certificate of Insurance.

B. Notice of Cancellation, Renewal, Reduction or Material Change in Coverage

All policies shall provide thirty (30) calendar days prior written notice to the CONSULTANT of any cancellation, reduction, or material change in coverage. CONSULTANT shall forward notice of cancellation, reduction or material change in coverage to CCJPA Capital Corridor Joint Powers Authority, 300 Lakeside Drive, 14th Floor East, Oakland, California, 94612. In addition, the CONSULTANT shall annually submit to the CCJPA, renewal certifications confirming that the insurance required has been renewed and continues in place.

C. Qualifying Insurers

Policies shall be issued by companies authorized to do business in State of California that hold a current policyholders alphabetic and financial size category rating of not less than A:VIII according to Best's Insurance Reports.

D. Insurance Required

1. Commercial General Liability Insurance for bodily injury (including death and mental anguish) and property damage which provides limits of not less than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) annual aggregate, as respects products/completed operations.

a. Coverages included shall be:

- (1) Premises and Operations;
 - (2) Products/Completed Operations;
 - (3) Broad Form Property Damage;
 - (4) Contractual Liability;
 - (5) Personal Injury Liability;
 - (6) Severability of Interest; and
 - (7) Independent Contractors Liability.
 - b. Coverage shall be endorsed to include the following, copies of which shall be provided to the CCJPA:
 - (1) Inclusion of the CCJPA, BART, as CCJPA's managing agency and Union Pacific Railroad (UPRR) and their directors, officers, representatives, agents and employees as additional insureds as respect CONSULTANT's ongoing and completed services or operations performed under this Agreement; and
 - (2) Stipulation that the insurance is primary insurance and that no insurance or self-insurance of CCJPA, BART, as CCJPA's managing agency or UPRR will be called upon to contribute to a loss.
 - (3) Waiver of subrogation in favor of CCJPA, BART, as CCJPA's managing agency and UPRR and their directors, officers, representatives, agents and employees
2. Automobile Liability Insurance for bodily injury (including death) and property damage which provides coverage limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.
 - a. Coverage shall be endorsed to include the following, copies of which shall be provided to the CCJPA:
 - (1) Inclusion of the CCJPA, BART, as CCJPA's managing agency and UPRR and their directors, officers, representatives, agents and employees as additional insureds
 - (2) Waiver of subrogation in favor of CCJPA, BART, as CCJPA's managing agency and UPRR and their directors, officers, representatives, agents and employees
3. Statutory Workers' Compensation and Employers' Liability Insurance for the limit of the applicable statutory benefit for Workers Compensation and not less than One Million Dollars (\$1,000,000) per accident or disease applicable to Employers' Liability coverage for all employees engaged in services or operations under this Agreement. The policy shall include broad form all-states/other states coverage. Coverage shall be specifically endorsed to include the insurer's waiver of subrogation in favor of the CCJPA, BART, as CCJPA's managing entity, and UPRR and their directors, officers, representatives, agents and employees, a copy of which shall be provided to CCJPA. Should any such work be subcontracted, CONSULTANT shall require

each subcontractor of any tier similarly to comply with this Article, all in strict compliance with federal and state laws.

4. Professional Liability Insurance for damages arising out of CONSULTANT's acts, errors or omissions. The policy shall provide a coverage limit of not less than Five Million Dollars (\$5,000,000) per claim/aggregate as respects CONSULTANT's services under this Agreement. Such insurance shall be evidenced for a period of not less than two (2) years following statute of repose.
 - a. Such coverage shall include and Owner-Vicarious Liability endorsement; copies of which shall be provided to the CCJPA:

E. Special Provisions

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONSULTANT, and any approval of said insurance by the CCJPA or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The CCJPA acknowledges that some insurance requirements contained in this Article may be fulfilled by a funded self-insurance program of CONSULTANT. However, this shall not in any way limit liabilities assumed by CONSULTANT under this Agreement. Any self-insurance program must be approved in writing by the CCJPA.
3. Should any of the work under this Agreement be subcontracted, CONSULTANT shall require each of its subcontractors of any tier to provide the aforementioned coverages, or CONSULTANT may insure subcontractor(s) under its own policy(ies).
4. The CCJPA reserves the right to withhold payments to CONSULTANT in the event of material noncompliance with the insurance requirements of this Article 6.0.
5. The CCJPA reserves the right to terminate this Agreement in the event of material noncompliance with the insurance requirements of this Article 6.0.

7.0 INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor and not an employee or agent of CCJPA and has no authority to contract or enter into any other agreement in the name of CCJPA. CONSULTANT has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by CONSULTANT who are assisting in the performance of services under this Agreement. CONSULTANT shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. CONSULTANT shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

In its capacity as an independent contractor, CONSULTANT shall comply with any and all CCJPA operations rules and procedures which relate to the performance of its services on CCJPA property.

7.1 CONFLICT OF INTEREST

CONSULTANT, its subconsultants and suppliers shall perform all work under this Agreement in conformance with all applicable statutes and regulations pertaining to conflicts of interest, including but not limited to, the financial reporting requirements and the conflict prohibitions of federal law (see, e.g., Federal Transit Administration Circular 4220.1F, Third Party Contracting Requirements) and California law (see, e.g., Government Code Section 1090 et seq., Government Code Section 87100 et seq. and Title 2, Division 6 of the California Code of Regulations).

When, in the judgment of CCJPA, it is necessary in order to avoid any potential conflicts of interest, CONSULTANT, its subconsultants and suppliers may be precluded from subsequently participating as a vendor or contractor on projects for which they are providing services under this Agreement.

7.2 CONSULTANT PERSONNEL

CONSULTANT shall ensure that any person employed by CONSULTANT, whose duties include work on matters involving CCJPA, is made aware that he or she is required to disclose immediately to CONSULTANT any offer of employment from any person or entity currently doing business with CCJPA or proposing to do business with CCJPA. CONSULTANT shall immediately so notify the Project Director, and ensure that unless, and until the offer of employment is unequivocally rejected by CONSULTANT's employee in writing and a copy of this rejection is transmitted to the Project Director, CONSULTANT shall remove such employee from any projects or services relating to CCJPA. Failure of CONSULTANT to comply with the provisions of this section may result in termination of this Agreement by CCJPA for default upon written notice to CONSULTANT.

8.0 INDEMNIFICATION

CONSULTANT, to the extent permitted by law, shall defend, indemnify and hold harmless CCJPA, BART, as CCJPA's managing agency and UPRR and their directors, officers, agents and employees from all claims, demands, suits, loss, damages, injury and liability, direct or indirect (including reasonable attorney's fees, and any and all costs and expenses in connection therewith), incurred by reason of any act, or failure to act, of CONSULTANT, its officers, agents, employees and subconsultants or any of them, under or in connection with this Agreement; and CONSULTANT agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against CCJPA, BART, as CCJPA's managing agency and UPRR and their directors, officers, agents and employees, or any of them, arising out of CONSULTANT's services, and to pay and satisfy any resulting judgments.

Such indemnification includes without limitation any violation of proprietary rights, copyrights and rights of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Agreement.

9.0 WARRANTY OF SERVICES AND MATERIAL NONCOMPLIANCE BY CONSULTANT

9.1 WARRANTY OF SERVICES

A. Warranty

CONSULTANT warrants that its consulting services will be performed in accordance with the standards imposed by law upon professional engineering service firms performing engineering services of a similar nature at the time such services are rendered. In addition, CONSULTANT shall provide such specific warranties as may be set forth in individual WDs as agreed upon by the parties.

B. Re-performance

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

1. The right to have CONSULTANT re-perform such services at CONSULTANT's own expense, or
2. The right to have such services done by others and the costs thereof charged to and collected from CONSULTANT if, within thirty (30) days after written notice to CONSULTANT requiring such reperformance, CONSULTANT fails to give evidence satisfactory to CCJPA that it has undertaken such reperformance.

C. Re-performed Services

If CONSULTANT is required to correct or re-perform any services as provided in Article 9.1 B.1. (immediately above), any services corrected or re-performed by CONSULTANT shall be subject to this Article 9.1 to the same extent as work initially performed.

9.2 MATERIAL NONCOMPLIANCE BY CONSULTANT

CCJPA reserves the right to withhold payments to CONSULTANT in the event of CONSULTANT's material noncompliance with Articles 8.0, INDEMNIFICATION and 9.0, WARRANTY OF SERVICES AND MATERIAL NONCOMPLIANCE BY CONSULTANT, above.

10.0 DATA TO BE FURNISHED BY CCJPA

All data, reports, surveys, studies, drawings, and any other documents and materials made available to CONSULTANT by CCJPA for use by CONSULTANT in the performance of its services under this Agreement shall be made available for information only and shall be returned to CCJPA at the completion or termination of this Agreement.

11.0 OWNERSHIP OF WORK PRODUCTS

11.1 DOCUMENTS

All drawings, designs, specifications, manuals, reports, studies, surveys, models, software (including source code), and any other documents, materials, data and products ("Work Products") prepared or assembled by CONSULTANT or obtained from others ("Subcontractors") by CONSULTANT in connection with the services under this Agreement shall be the property of CCJPA; and copies shall be delivered to CCJPA promptly upon the completion of the work or upon an earlier termination of this Agreement. CONSULTANT shall be responsible for the preservation of any and all Work Products prior to transmittal to CCJPA;

and CONSULTANT shall replace any such Work Products as are lost, destroyed or damaged while in its possession without additional cost to CCJPA.

11.2 ASSIGNMENT OF RIGHTS

CONSULTANT hereby assigns to CCJPA all right, title and interest including, but not limited to, copyright, patent, trademark and trade dress rights, in and to the Work Products. CONSULTANT acknowledges CCJPA's exclusive rights to reproduce, publish, display, create derivative works from, sell, transfer or otherwise exploit ("Use"), and permit others to Use all or any part of the Work Products, and to obtain and hold in its own name patents, copyright and/or trademark registrations for the Work Products. CONSULTANT shall provide all documentation, information and assistance reasonably required by CCJPA to obtain such registrations or patents, or with respect to claims that third parties have infringed the Work Products.

11.3 WARRANTY OF WORK PRODUCT

CONSULTANT warrants and represents that the Work Products are original to CONSULTANT or its Subcontractors and shall not infringe the copyright, trademark, trade secret, privacy, publicity, patent or other intellectual property or proprietary rights of any third party; CONSULTANT will not attempt to license or transfer to any person or entity any interest in the Work Products; and CONSULTANT shall obtain from all Subcontractors written assignment of all rights, title and interest, including copyright and other intellectual property rights, in their contributions to the Work Products.

12.0 PATENTS

CONSULTANT agrees to communicate promptly to CCJPA full particulars with respect to any and all improvements and inventions (whether or not patentable) conceived by it in connection with work performed by it hereunder. Subject to rights due to the United States Government under a grant of the FTA, if any, assisting the financing under this Agreement, such improvements and inventions shall become the property of CCJPA and CONSULTANT agrees to assign to CCJPA, upon CCJPA's request, all of its right, title and interest in and to ideas and inventions and in and to any and all patents and applications for patents based thereon, including both United States and foreign patents and applications for patents. CONSULTANT further agrees, upon CCJPA's request and at CCJPA's expense, to execute such proper instruments and to perform such proper acts as may be deemed by CCJPA necessary to evidence CCJPA's title to said improvements and inventions, and to enable CCJPA to obtain such patents and any continuations, reissues or extensions thereof.

13.0 MATTERS CONFIDENTIAL AND PRIVILEGED

All of the drawings, designs, specifications, manuals, reports, studies, surveys, models, or other data and products prepared or assembled by CONSULTANT, obtained from others by CONSULTANT or made available to CONSULTANT by CCJPA in connection with the services under this Agreement, shall be treated as confidential by CONSULTANT. At no time shall CONSULTANT use or disclose or make available, other than in the performance of CONSULTANT's services for CCJPA, confidential information gained in the course of or by reason of CONSULTANT's retention by CCJPA and/or performance of services for CCJPA, nor shall CONSULTANT permit such use or disclosure, without prior written approval by CCJPA. It is the intention of CCJPA to preserve and make use of all applicable legal privileges, and CONSULTANT shall make all reasonable efforts to cooperate with CCJPA in this regard.

14.0 SUBCONTRACTS

A. Approved Subcontracts

CONSULTANT shall use approved subconsultants as shown in Attachment D hereto and as listed in each WD. CONSULTANT shall not further subcontract all or any portion of its services under this Agreement or a WD without the prior written approval of the Project Director and any attempt to do so shall be void and unenforceable. Written approval by the Project Director of use of a subconsultant for specified services in connection with one WD or project shall not constitute approval for any other purpose. In the event that CONSULTANT enters into one or more subcontracts pursuant to this Article, it is understood and agreed that the participating subconsultants shall be solely and directly responsible to CONSULTANT, and CCJPA shall have no obligation to them.

B. Subcontract Provisions

CONSULTANT agrees that the requirements in: Articles 1.3 B, 1.4, 1.5, 1.6, 3.1A, 3.1B, 3.2 and 4.0 through 31.0, inclusive, of this Agreement, will be included in every subcontract entered into relating to services under this Agreement. Upon request, the CONSULTANT shall provide CCJPA with copies of all such subcontracts, with changes and amendments thereto.

15.0 ASSIGNMENT OF AGREEMENT

CONSULTANT shall not assign this Agreement, or any part thereof, without the prior express written consent of the Project Director, and any attempt to do so shall be void and unenforceable.

16.0 RECORDS

CONSULTANT shall maintain full and adequate records to show the actual time devoted and the cost incurred by CONSULTANT with respect to the performance of services under this Agreement.

CONSULTANT and its subconsultants shall establish and maintain records pertaining to the fiscal activities of the Project. CONSULTANT's and subconsultants' accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged to the Project, including properly executed payrolls, time records, invoices and vouchers.

17.0 AUDIT

CONSULTANT and its subconsultants shall permit CCJPA and its authorized representatives to inspect, examine, make excerpts from, transcribe, and copy CONSULTANT's and subconsultant's books, work, documents, papers, materials, payrolls, records, accounts, and any and all data relevant to this Agreement at any reasonable time for the purpose of auditing and verifying statements, invoices or bills submitted by CONSULTANT pursuant to this Agreement, and shall provide such assistance as may be reasonably required in the course of such inspection including, but not limited to, the following:

A. Audit Interviews

CONSULTANT shall arrange audit entrance and exit interviews in which CONSULTANT and/or its subconsultants and CCJPA and/or its authorized representatives will participate.

B. Accessing Documents

CONSULTANT's and its subconsultants' accounting divisions shall provide instruction to CCJPA on accessing documents.

C. Letter of Representation

CONSULTANT's management, or the management of a subconsultant, as well as the management of their appropriate units, will provide at CCJPA's request a letter of representation concerning such matters as CCJPA determines appropriate.

CCJPA further reserves the right, for itself and its authorized representatives, to examine and re-examine said books, work, documents, papers, materials, payrolls, records, accounts and data during the three-year period following the final payment under this Agreement and until all pending matters are closed; and CONSULTANT and its subconsultants shall in no event dispose of, destroy, alter or mutilate said books, work, documents, papers, materials, payrolls, records, accounts and any and all data in any manner whatsoever for three (3) years after the final payment under this Agreement, or until all pending matters are closed, whichever is later.

Pursuant to California Government Code Section 8546.7, the parties to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of CCJPA or as part of any audit of CCJPA by the State Auditor, for a period of three (3) years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the cost of administering this Agreement.

18.0 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

If any price, including profit or fee, negotiated in connection with, or any reimbursement of cost including profit or fee, under this Agreement, any WD, modifications thereto, Rate Agreement or change order to this Agreement was increased because CONSULTANT furnished cost or pricing data that were not complete, accurate, and current at such time as the price was determined, the price or cost shall be reduced accordingly and the Agreement, WD(s), Rate Agreement(s), or change order(s) and any applicable invoice(s) shall be modified to reflect the reduction.

20.0 NONDISCRIMINATION

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. Department of Transportation-assisted contracts. 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 CCJPA deems appropriate.

In connection with the performance of services under this Agreement, CONSULTANT shall not, on the grounds of race, religious creed, color, national origin, ancestry, handicap, medical condition, marital status, sex, sexual orientation or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal, State or local laws.

For purposes of this Article "sexual orientation" shall mean a preference for heterosexuality, homosexuality or bisexuality; or having a history of, or being identified with, any such preference.

21.0 DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

The CCJPA, through BART, its managing agency, is committed to carrying out all of the Disadvantaged Business Enterprise ("DBE") requirements of Title 49, Code of Federal Regulations, Part 26, as amended from time to time. The procedures contained in BART's DBE Program, which CCJPA will be utilizing for this Agreement, will ensure that all contracts and procurements are administered without discrimination on the basis of race, color, sex, or national origin, and that DBEs have an equal opportunity to compete for and participate in the performance of all agreements, contracts and subcontracts awarded by the CCJPA.

1. CCJPA/BART Policy

It is the policy of the CCJPA to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of Federally funded contracts. It is the intention of the CCJPA to create a level playing field on which DBEs can compete fairly for agreements, contracts and subcontracts, including but not limited to construction, procurement and Invitation for Bids ("IFBs") contracts, professional and technical services agreements and purchase orders.

2. DBE Participation: No Goal

Although there is no DBE subcontracting goal for this Agreement, Proposers are encouraged to take all steps necessary to provide an equal opportunity for DBEs to participate. Proposers shall indicate in Exhibit 1, its DBE subcontracting commitment. The DBE subcontracting commitment proposed by the Proposer and accepted by the CCJPA, will be incorporated into the Agreement. Only firms certified as DBEs by the California Unified Certification Program ("CUCP") that have been certified prior to the Proposal due date and that are listed in the Project Consultant Team Form (Exhibit 1 to this RFSOQ) will be counted as DBEs toward the DBE subcontracting commitment. DBEs will be counted only for the work for which they are certified. Only the work actually performed by DBE's own forces will be counted toward DBE participation. Certified DBEs can be found at www.californiaucp.com. DBE prime Proposers, including DBE joint venture partners, will not be counted toward the DBE subcontracting commitment.

3. DBE Participation Requirements

In the event a Proposer includes in its Statement of Qualifications DBE firms to be utilized in the performance of work, see Attachment G, DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION to this RFSOQ for DBE participation requirements.

22.0 LAWS AND REGULATIONS

CONSULTANT shall comply with any and all laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state or local government, and of any agency of such government, including CCJPA, which relate to or in any manner affect the performance of this Agreement. This Agreement and any documents supplied hereunder are subject to public inspection of the California Public Records Act, California Government Code Section 6250 et seq., unless exempted by law.

23.0 ADDITIONAL FUNDING AGREEMENT REQUIREMENTS

This Agreement is subject to any additional restrictions, limitations or conditions that may be required by any local, State or Federal funding agreements applicable to this Agreement.

24.0 CHOICE OF LAW

All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State, without reference to conflicts of law principles.

25.0 SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

26.0 COVENANT AGAINST CONTINGENT FEES

CONSULTANT warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, CCJPA will have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

27.0 COVENANT AGAINST GRATUITIES

CONSULTANT warrants that it will not and has not offered or given gratuities in the form of entertainment, gifts or otherwise, to any director, officer or employee of CCJPA to secure favorable treatment in the awarding, amending or evaluating performance of the Agreement.

28.0 CAPTIONS

The captions of the Articles and paragraphs in this Agreement are for purposes of reference only and shall not be construed to affect the meaning of any provision hereof.

29.0 BENEFIT OF AGREEMENT

This Agreement shall bind and benefit the parties hereto and their successors and permitted assigns.

30.0 ENTIRE AGREEMENT

This Agreement is the entire agreement of the parties, and supersedes and replaces all prior communications, written and oral, regarding the subject matter hereof. CONSULTANT represents that in entering into this Agreement, it has not relied on any previous representations, inducements, or understandings, written or oral, of any kind or nature.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

CAPITOL CORRIDOR JOINT POWERS AUTHORITY

(NAME OF CONSULTANT)

By Executive Director
(or designee)

By (Signature)

Name
and
Title _____
Print or Type

Name
and
Title _____
Print or Type

ATTACHMENT C

EXAMPLE PROVISIONAL COST REIMBURSEMENT AND RATE AGREEMENT

PROVISIONAL COST REIMBURSEMENT AND RATE AGREEMENT

[through (Month) (Day), (Year)]

Pursuant to Agreement No. ____-____ between the parties and the Cost Principles contained in Title 48 Code of Federal Regulations Part 31 , _____ ("CONSULTANT") and the CAPITOL CORRIDOR JOINT POWERS AUTHORITY ("CCJPA") agree as follows:

I. BASIS FOR REIMBURSEMENT OF CONSULTANT DIRECT LABOR COSTS:

A. Hourly Salary Ranges

The individual direct labor cost rates, exclusive of any burden or markups, shall be within the salary ranges as set forth in Attachment A hereto, "Hourly Salary Ranges." (*NOTE: the Attachment A would be provided by the selected consultant and does not refer to Attachment A of the RFSOQ*)

B. Salary Administration

The individual direct labor cost rates are subject to Salary Administration by CONSULTANT (Ref. 48 CFR 31.205-6), but in no case are they to be adjusted more than 3% annually without the prior approval of the CCJPA Project Director. Hourly salary ranges may, with the prior approval of the Project Director, be increased annually in accordance with CONSULTANT'S normal salary administration procedures.

C. Individual Direct Labor Rate

Notwithstanding the above, at no time will any individual direct labor rate exceed \$115.00 per hour.

D. Unallowable Direct Labor Costs

The following direct labor costs are not allowable unless authorized in an accepted Work Directive or by prior written approval of CCJPA's Project Director:

1. Principal or Partner costs;
2. Project Management and Administrative costs;
3. Premium costs incurred as a result of working overtime or holidays.

II. BASIS FOR REIMBURSEMENT OF CONSULTANT INDIRECT COSTS:

A. CONSULTANT'S Indirect Costs Rates

The reimbursement rates for CONSULTANT's indirect costs are based primarily on CONSULTANT's submission dated [*month/day/year*], together with supporting information, submitted by CONSULTANT and reviewed by CCJPA. The following provisional rates will

apply: (as applicable in accordance with CONSULTANT's established accounting procedures):

1. Fringe Rate - The provisional rate for CONSULTANT fringe benefits expense applied to CONSULTANT project direct labor is _____%.
2. Home Office Overhead Rate - The provisional home office cost rate for CONSULTANT overhead expense applied to CONSULTANT project direct labor performed in CONSULTANT facilities is _____%.
3. Field Office Overhead Rate - The provisional field office rate for overhead expense as applied to CONSULTANT's project direct labor performed by seconded or other personnel assigned to CCJPA facilities is _____%.
4. General and Administrative Rate – The provisional general and administrative expense as applied in accordance with CONSULTANT accounting procedures is _____%.

B. CONSULTANT's Treatment of Indirect Costs

The indirect costs rates are based on the consistent treatment by CONSULTANT and its subconsultants at any tier, of the following types of items as direct costs throughout the CONSULTANT's company and subconsultant's company (or subconsultant companies):

1. The cost of materials purchased directly for the performance of this Provisional Cost Reimbursement and Rate Agreement ("Rate Agreement").
2. Subcontract cost in direct support of performance.
3. Expenditures for salaries and wages of direct labor employees involved in the performance of the agreement work.
4. Travel costs incurred directly for performance of Agreement No. ____ - ____ work.

C. CONSULTANT's Allowable and Unallowable Indirect Costs

The indirect cost rates are also based on the treatment of certain costs as fully allowable, allowable subject to limit, or unallowable for purposes of this Rate Agreement, by CONSULTANT and its subconsultants at any tier, as follows:

1. No provision has been made for reimbursement of Facilities Capital Cost of Money (as provided for in 48 CFR 31.205-10) and such costs shall be unallowable.
2. Reimbursement for all costs associated with indirect labor are allowable only to the extent that they do not exceed 40% of the direct labor for the same organizational entity. Individual indirect labor cost rates are subject to Salary Administration by CONSULTANT in accordance with 48 CFR 31.205-6.

D. Fringe, Overhead and General and Administrative Costs

The indirect cost rates are also based on the treatment of certain costs as a part of the fringe benefit, overhead or general and administrative expense cost groupings, or any combination thereof, (as set forth in Article II.A. above) by CONSULTANT and its subconsultants at any tier, as follows:

1. All costs incurred in preparing, submitting and supporting any Work Directive Proposal (“WDP”), whether or not accepted by CCJPA;
2. All costs incurred in preparing, submitting and supporting any Work Directive Modification or change order to Agreement No. ____ - ____ or this Rate Agreement, whether or not accepted by CCJPA;
3. All costs of financial administration (including but not limited to establishing final rates, invoicing, reporting, budgeting, and auditing);
4. All costs incurred in complying with Article 1.4 of Agreement No. ____ - ____ concerning organizational procedures;
5. All costs associated with direct labor fringe, including but not limited to employee compensated personal absence, payroll taxes and payroll additives.
6. All costs associated with the costs of employee incentive compensation (including cash bonuses, suggestion awards, safety awards and other forms of incentive compensation) shall be allowable only as indirect costs. Furthermore, such costs shall be allowable only to the extent that they are paid or accrued:
 - a. Under an agreement (in effect for twelve months prior to award of this Rate Agreement) entered into in good faith between CONSULTANT and the employees, or;
 - b. Pursuant to an established organization wide plan or policy followed by the CONSULTANT (for twelve months prior to award of this Rate Agreement) so consistently as to imply, in effect, an agreement for such incentive compensation.

In no event shall distribution of any profits be allowable as a form of incentive compensation.
7. All costs associated with providing insurance coverage’s as set forth in Article 6.0, INSURANCE, of Agreement No. ____ - ____ other than those provided by the CCJPA.

E. Other Direct Costs

There shall be no provisional rate applied to Other Direct Costs (“ODCs”) for either the CONSULTANT or any of its subconsultants at any tier.

F. Subcontractor Indirect Costs

The following applies only to the extent CONSULTANT or its subconsultant(s) identify a separate indirect cost grouping that is applied to subcontracted costs:

- All indirect costs associated with providing subcontracted services are allowable only to the extent that such costs do not exceed 5% of the associated subcontracted costs.

III. BASIS FOR REIMBURSEMENT OF SUBCONTRACTOR COSTS:

CCJPA requires that CONSULTANT perform a cost or price analysis of subconsultant data acceptable to CCJPA which will be incorporated into WDPs submitted to CCJPA.

A. Reimbursement on a Cost Reimbursable Basis

The parties intend that CONSULTANT obtain subcontracted services primarily on a cost reimbursable basis. For subconsultants performing services on a cost reimbursable basis:

1. CONSULTANT will be reimbursed for subcontracted or subconsultant direct labor costs at any tier in accordance with the requirements of Article I.B. through D. above.
2. Reimbursement for subconsultant indirect costs at any tier shall be in conformance with the provisional rates for subconsultant fringe benefits, overhead or general and administrative expense, or any combination thereof, in accordance with the requirements of Article II.B. through II.F. above and Article VI below.
3. Unless approved otherwise by CCJPA's Project Director, the aggregate product (i.e. "multiplier") of the rates referred to in the immediately preceding sentence shall not exceed 150%.
4. Reimbursement for subcontracted other direct costs at any tier, other than subconsultant costs (i.e. subconsultant furnished materials and supplies) shall be in conformance with the requirements of Article IV below.
5. Subconsultant fixed fee, at any tier, shall be in conformance with the requirements of Article V below.

B. Reimbursement on a Time and Materials Basis

Subject to approval by CCJPA's Project Director, subconsultant(s) may perform, or be obligated to perform, services on a "time and material" basis when the following conditions have been met:

1. CONSULTANT has identified at least three subconsultants for any specific services to be performed on this basis or if this is not possible, then CONSULTANT has furnished a written justification acceptable to CCJPA, as to why the recommended subconsultant represents the most advantageous offer to the CCJPA, considering qualifications, cost or price factors as may be appropriate.
2. Total compensation for subconsultant labor will not, in aggregate, exceed \$100,000 per CONSULTANT fiscal year.
3. Total reimbursement per individual, per day does not exceed eight hours or eight times the approved rate and forty hours in one week.
4. For services performed on a time and material basis, the following costs shall be allowable only to the extent that they are a part of the overhead portion of the subconsultant's labor rate:
 - a. All subconsultant costs including, but not limited to subconsultant labor, associated with automobile travel within a 100-mile radius of the CCJPA's Administrative Offices at 300 Lakeside Drive, in Oakland, California;
 - b. All subconsultant costs associated with providing insurance as set forth in Agreement No. ____ - ____ other than CCJPA-furnished coverages, if any.

As used herein the term "time and material" is defined as a subcontract that provides for acquiring supplies or services on the basis of (i) direct labor hours at specified fixed hourly

rates that include wages, overhead, general and administrative expenses, and profit and (ii) materials or supplies at direct cost only with no overhead, profit or fee allowed.

C. Reimbursement on a Fixed Price Basis

Notwithstanding subarticles III.A. and B. above, and subject to approval by CCJPA's Project Director, subconsultants may perform services on a basis other than a cost reimbursable or time and material basis, when one of the following conditions exists:

1. The subconsultant's priced offer is based upon evidence of adequate price competition. As used herein the term "adequate price competition" is deemed to exist if (i) offers are solicited by CONSULTANT in writing subject to CCJPA's prior approval, (ii) at least three or more responsible offerors that can satisfy CCJPA's requirements submit written, priced offers, responsive to the solicitation's expressed requirements and (iii) the responsive offers compete independently on the basis of price and responsibility.
2. The subconsultant's priced offer is based upon evidence of established catalog prices or established market prices of commercial items sold in substantial quantities to the general public. As used in the foregoing sentence, terms are defined or described as set forth below.
 - a. "Established catalog prices" must be recorded in a form regularly maintained by the manufacturer or vendor. This form may be a catalog, price list, schedule, or other verifiable and established record. The record must be published or otherwise available for customer inspection and state current or last sales price to a significant number of buyers constituting the general public.
 - b. "Established market prices" are current prices that are established in the course of ordinary and usual trade between buyers and sellers free to bargain and can be substantiated by data from sources independent of the contractor or vendor.
 - c. "Commercial items" are supplies or services regularly used for other than CCJPA purposes and sold or traded to the general public in the course of normal business operations.
 - d. An item is "sold in substantial quantities" only when the quantities regularly sold are sufficient to constitute a real commercial market. Nominal quantities, such as models, samples, prototypes, or experimental units, do not meet this requirement. For services to be sold in substantial quantities, they must be customarily provided by the offeror, using personnel regularly employed and equipment (if any is necessary) regularly maintained solely or principally to provide the services.
 - e. The "general public" is a significant number of buyers other than the CCJPA or affiliates of the offeror.
 - f. A price is "based upon" a catalog or market price only if the item being purchased is sufficiently similar to the catalog- or market-priced commercial item to ensure that any difference in prices can be identified.

D. Approved Subconsultant's Services

In the event the CCJPA Project Director gives approval for specific subconsultant services pursuant to the above subarticles III.B. and C. above, CONSULTANT shall thereafter obtain such subconsultant services accordingly.

E. Subconsultant's Obligation

A subconsultant currently performing, or obligated to perform, services pursuant to the above subarticle III.A. shall not be eligible to perform services pursuant to the above subarticle III.B or C. until the services to be performed pursuant to the above subarticle III.A. have been completed. Once a subconsultant undertakes to perform services pursuant to the above subarticle III.B or C., such subconsultant shall thereafter be ineligible to perform any services pursuant to the above subarticle III.A., unless otherwise approved by CCJPA's Project Director.

F. Subconsultant's Services on a Basis Other Than Cost Reimbursement

In the event one of the conditions set forth in subarticles III.B. or III.C. exists and CCJPA's Project Director approves subconsultant services on a basis other than cost reimbursement, the cost reimbursable provisions of this Rate Agreement shall be deemed inapplicable to such services.

IV. BASIS FOR REIMBURSEMENT OF OTHER DIRECT COSTS:

A. Restriction on Reimbursement for Other Direct Costs ("ODCs")

CONSULTANT will be reimbursed for ODCs for either the CONSULTANT or any of its subconsultants at any tier, on the following basis: Unless otherwise authorized by CCJPA's Project Director, such reimbursement will be restricted to those ODC costs whose individual costs are in excess of \$25.

B. Reimbursement of CONSULTANT's Other Direct Costs

Reimbursement for CONSULTANT ODCs is based upon the CONSULTANT's consistent treatment of these types of costs over CONSULTANT'S company as a whole.

C. Treatment of CONSULTANT's Other Direct Costs As Unallowable

The following ODCs are not allowable without the prior written approval of CCJPA's Project Director:

1. Relocation, travel and/or subsistence related to travel into or out of the CCJPA area where the work under this Rate Agreement is to be performed.
 - When travel is approved, Federal Acquisition Regulation ("FAR") Part 31.205-46, sections (1) and (2), and Federal Travel Regulations (41 CFR 301-304) for the county in which the majority of the work is performed shall apply.]
2. Tuition for training, seminars, technical associations meetings, or other similar events.
3. Cost of any equipment, tools, or vehicles hired, leased or purchased for the performance of services, provided further, that the depreciated value of such items purchased by CONSULTANT shall be credited to CCJPA at the completion of the work hereunder.

4. Meal costs.

D. Standard Costs

ODCs may be charged at standard costs only to the extent that such costs are properly adjusted for applicable variances according to procedures developed by CONSULTANT and approved by CCJPA's Project Director. (As used herein, the term "standard costs" shall include any cost computed with the use of pre-established measures. The term "variance" shall include any difference between a pre-established measure and an actual measure.)

V. FIXED FEE

A. CONSULTANT's Fixed Fee

CONSULTANT's fixed fee will be proposed and negotiated as a percentage of the estimated direct labor cost, associated direct labor indirect costs and subcontracted costs; thereafter the negotiated fee shall be fixed. On this basis, CONSULTANT's fixed fee shall be as follows:

1. For CONSULTANT direct labor costs and indirect costs as applied to CONSULTANT direct labor costs, a fixed fee not to exceed 8%., subject to the further restrictions as set forth below:
 - a. CONSULTANT's fixed fee shall not exceed 5% of direct labor and overhead associated with services provided on a seconded basis. For the purposes of this Agreement, the term "seconded personnel" shall mean any CONSULTANT or subconsultants' employee physically located at the site of the work under the Rate Agreement working under the direction of CCJPA personnel and whose work products shall be the responsibility of CCJPA.
 - b. CONSULTANT shall receive no fee on any overhead/indirect costs in excess of 150%.
2. For CONSULTANT subcontracted costs, a fixed fee, not to exceed 2%.
3. For CONSULTANT ODCs, no fee shall be allowed.

B. Subconsultant's Fixed Fee

For subconsultant services performed on a cost reimbursable basis, subconsultant's fixed fee will be proposed and negotiated by CONSULTANT as a percentage of subconsultant's estimated direct labor cost and associated indirect cost for any Work Directive in accordance with the percentages set forth for CONSULTANT in Article V.A. above. There shall be no fee allowed for subconsultant subcontracted costs or ODCs.

C. Fixed Fee Revision

There shall be no revision, either upward or downward, to the established fee for CONSULTANT or subconsultants at any tier due to the establishment of a final rate for indirect cost reimbursement for any given fiscal year.

D. Extraordinary Fee

The parties may mutually agree to an extraordinary fee as a part of an individual Work Directive.

VI. APPLICABILITY

A. Time of Performance

This Rate Agreement shall apply to provisional cost reimbursement and direct and indirect rates, and shall cover the period from Notice to Proceed until [month/day/year]. In the future, the parties anticipate entering into a similar agreement with respect to costs and rates for the period [month/day/year] through [month/day/year].

B. CCJPA's Rights and Obligations

Nothing herein shall be construed to prejudice, waive, or in any other way affect any rights of the CCJPA under the provisions of Agreement No. ____-____, nor respecting limitation of the CCJPA's obligations thereunder.

C. Applicability of Provisional Rates Pending Final Determination

The provisional rates set forth in this Rate Agreement are applicable to all affected Work Directives issued by the CCJPA for Agreement No.____-____, pending final determination of such rates for CONSULTANT by a cognizant Federal agency, subject to approval by CCJPA's Project Director. In the event CONSULTANT does not have final audited rates determined by a cognizant Federal agency, then such rates will be established by an independent, third party audit entity which shall be approved by CCJPA's Project Director.

D. Final Determination of Rates

Any reimbursements under this Rate Agreement submitted prior to said final determination of such rates will be recalculated if these provisional rates differ from the audited rates, unless CCJPA and CONSULTANT mutually agree that recalculation will not be required, in which case the provisional rates will be considered as the audited rates.

E. Payment

CONSULTANT agrees to accept payment of these audited rates as its total compensation for all overhead, general and administrative costs for performing all services.

F. CONSULTANT's Final Rates

The final approved audited rates for indirect expenses for CONSULTANT shall be limited each fiscal year to a rate no more than that set forth below in this subarticle F. Such limitation shall not apply to any increases due solely to additional costs imposed by local, State or Federal regulations, subject to the approval of CCJPA's Project Director.

- In the event CONSULTANT has multiple indirect cost groupings (i.e. fringe benefits, overhead, general & administrative), the final approved rate shall be consolidated into a single multiplier rate. A rate of no more than three (3) percentage points greater than CONSULTANT's rates based on Article II.A. above will be allowed.

G. Subconsultant's Final Rates

The final approved audited rate for indirect expenses for subconsultants at any tier, shall be limited each fiscal year to a rate no more than that set forth in this subarticle G. Such

limitation shall not apply to any increases due solely to additional costs imposed by local, State or Federal regulations, subject to the approval of CCJPA's Project Director.

- In the event a subconsultant has multiple indirect cost groupings (i.e. fringe benefits, overhead, general & administrative), the final approved rate shall be consolidated into a single multiplier rate. A rate of no more than three (3) percentage points greater than subconsultants' rates as set forth in Article III.A. above will be allowed.

VII. OTHER

A. Terms and Conditions

The terms and conditions of Agreement No. ____ - ____ between the parties are incorporated in this Rate Agreement by this reference. All terms used but not defined herein shall have the meaning set forth in Agreement No. ____ - ____.

B. Modifications

All modifications to this Rate Agreement shall be in writing.

The parties have executed this Rate Agreement as of _____, 20__

CAPITOL CORRIDOR JOINT POWERS AUTHORITY

[Name of CONSULTANT]

Signature of the Project Director

Signature

Name
and Title _____

Name
and Title _____

ATTACHMENT D

PROVISIONAL COST REIMBURSEMENT AND RATE DATA

(This document, included as Attachment D and D-1, must be completed by all Proposer(s) who are selected for the oral interview and will be the basis for the contract (see Example Contract Agreement, Attachment B, and the reference therein as Attachment C) between CCJPA and the Consultant)

PROVISIONAL COST REIMBURSEMENT AND RATE DATA

This data sheet is to be completed and submitted by each Proposer and each of its first tier subconsultants valued at \$250,000 or more in response to this RFSOQ:

1. PROVISIONAL INDIRECT COST RATES

- a. The provisional cost rate for direct labor fringe benefits as set forth in CONSULTANT's or subcontractor's submission is _____ %.
- b. The provisional cost rate for overhead expense for services performed in CONSULTANT's offices as applied to (identify bases) _____ is _____ %.
- c. The provisional cost rate for overhead expense for services performed in CCJPA facilities as applied to (identify bases) _____ is _____ %.
- d. The provisional cost rate for general and administrative expense as applied to direct labor for services performed in CONSULTANT's offices is _____ %.
- e. The provisional cost rate for general and administrative expense as applied to direct labor for services performed in CCJPA facilities is _____ %.

2. FIXED FEE

- a. CONSULTANT's fixed fee will consist of the three components set forth in subarticle V.A. of Exhibit 2 (Rate Agreement).
 - (1) The direct labor fee component in accordance with Exhibit 2, subarticle V.A.1., will be _____ % of the estimated direct labor cost and associated indirect costs approved by CCJPA for any Work Directive. There shall be no fee for ODCs or any ODC-associated indirect costs.
 - (2) The direct labor fee component for seconded personnel in accordance with Exhibit 2, subarticle V.A.1., will be _____ % of the estimated direct labor cost and associated indirect costs approved by CCJPA for any Work Directive. There shall be no fee for ODCs or any ODC-associated indirect costs.
 - (3) For providing subcontracted services consistent with the requirements of Article 14.0, SUBCONTRACTS, of Exhibit 1, CONSULTANT's fixed fee component shall be as set forth in subarticle V.A.2. of Exhibit 2 (Rate Agreement);
- b. Subconsultant's fixed fee for providing services shall be as set forth in subarticle V.B. of Exhibit 2 (Rate Agreement).

3. BASIS FOR DIRECT LABOR COST REIMBURSEMENT

Proposers shall submit on a separate sheet direct labor cost rates, exclusive of any burden or markups, for its consulting, technical, administrative and clerical personnel. Use the following headings for rate listings:

CONSULTANT SALARY RANGES

TITLE

GRADE

MINIMUM

MAXIMUM

ATTACHMENT D-1

COST DISCLOSURE STATEMENT (CDS)

[Included here for information only. The CDS is not required for submittal with the SOQ but will be required for Proposer(s) selected for the oral interview.]

CAPITOL CORRIDOR JOINT POWERS AUTHORITY

COST DISCLOSURE STATEMENT (CDS)

A. COMPANY BACKGROUND

1. Company Name: _____
Street Address: _____
City, State, Zip: _____

2. Official Company Contact for Cost and Audit Matters:

Name: _____
Title: _____
Telephone No. _____ Facsimile No. _____

3. List the address of your firm's home office and all other offices and indicate by an * the location(s) that will perform on the CCJPA agreement; also, identify the responsible manager for each office.

Home Office: Manager: _____
Other Offices: Manager: _____
Manager: _____

4. On a separate sheet, list all principals/partners of the Firm, or alternatively, identify those individuals that reside at the local/regional offices of the Firm.

5. Firm's Fiscal Year Ending Date: _____

6. List on a separate sheet, all prior and current agreements that your company has with CCJPA, either as a part of a joint venture or under a prime or subcontract. If work was performed as a subconsultant, list the prime contractor and the CCJPA prime contract number. Also note whether the contract was performed on a cost reimbursable, or fixed price basis as well as any details as to what fees were paid (i.e. fixed fee, incentive fees, percentage fees, etc.). For each contract list the value of the contract as well as the fee terms.

B. COST PRINCIPLES

1. In addition to specific agreement requirements, the CCJPA will use the following for determining the allowability of certain costs for reimbursement.
 - Federal Acquisition Regulations (herein called "FAR"), 48 CFR Part 31
 - Cost Accounting Standards (herein called "CAS"), 48 CFR Part 30

Does your firm have a working knowledge of these materials? _____
Do your employees have copies of these materials? _____

2. In order to evaluate your firm's compliance with the above principles, please answer the following questions, complete the schedules and attach all requested information.

- a. Does your firm have federal government contracts? _____
- b. Was your proposed indirect cost rate audited during the past year by a federal agency (sometimes referred to as "cognizant agency"), any other governmental entity, or a CPA firm? _____ If yes, provide a copy of the audit report(s) and the resulting rate agreements, if any. Also, complete the following: (Identify all reports)

Audit Organization _____
Period of Audit _____ Report Date _____
Scope of Audit _____

Audit Organization _____
Period of Audit _____ Report Date _____
Scope of Audit _____

C. DESCRIPTION OF COST ACCUMULATION AND BILLING PROCEDURES

1. On what basis does your firm maintain its accounting records? Accrual _____ Cash _____

If on a cash basis, are steps taken to properly allocate expenditures that benefit more than one fiscal year? _____ Is any allocation procedure contained in a written procedure? _____ If written, please attach a copy.

2. Briefly describe your firm's system for accumulating and billing project costs by answering all of the following questions. (Provide separate attachments as necessary or required)

a. **DIRECT LABOR**

The CONSULTANT and each subconsultant will be compensated for the services of its personnel on the basis of reasonable, actual paid Direct Labor Costs (herein called "DLC") exclusive of any fringe benefits or overheads.

DLC must also exclude principal or owner time dedicated to the general operation of the business. DLC must also exclude time associated which CCJPA has identified as being allowable only to the extent that they are (i) specific classifications of DLC identified in the Agreement or Work Directive Plan as may be the case or, (ii) are not associated with specific activities that CCJPA has identified as being reimbursable on a basis other than as a direct cost. (See generally Articles I and IV of the Agreement)

The hourly rates of temporary or contract personnel which are classified as non-employees cannot be calculated as part of DLC but must be treated as an Other Direct Cost (herein called "ODC"; see generally Article III of the Agreement).

Similarly, the hourly rates of subconsultants cannot be calculated as part of DLC but must be treated as a Subcontracted Direct Cost (herein called "SDC"; see generally Article II of the Agreement).

Therefore, with respect to direct labor charges by your firm:

- 1) Your firm must fully document all time spent by Principals and employees and charged to CCJPA projects. CCJPA requires that all labor charges be identifiable to the nearest half-hour and specify what activity or task is being performed. (See generally Article 1.0 of the Rate Agreement.)
 - a) Does your firm have a time sheet signed by the employee and verified in writing by the immediate supervisor? _____
 - b) Does the time sheet record all time both direct and indirect? _____
 - c) Are controls in existence to ensure that DLC are relevant to the project scope? _____ Are any such controls formalized in written procedures? _____
- 2) How many hours in your firm's normal workday? _____ hours
- 3) CCJPA normally does not participate in overtime premium for direct labor personnel. Has your firm made provisions to exclude overtime premium and unpaid overtime from CCJPA billings? _____
- 4) Does your firm have a compensation policy for the classifications of labor proposed for these services? _____ If so, please attach a copy.
 - a) Does your firm have guidelines for Salary Administration, i.e. the range of annual reviews, or salary adjustments? _____ If so, please attach a copy and indicate the average adjustment for the last three years.
 - b) Does your firm have any individual incentive compensation plans including, but not limited to bonuses, commissions or profit sharing plans? If so please attach a copy of each.
- 5) CCJPA does not allow payment for uncompensated labor costs. Does your firm have procedures to ensure that uncompensated labor is not billed to CCJPA projects? _____
- 6) If your firm is a partnership/sole proprietorship, does your accounting system use a drawing account to record all compensation to the owner(s)? _____
- 7) Does your firm hire professionals on a temporary basis to work on specific projects, rather than on a continuous employment relationship? _____
 - a) How many are currently working for your firm? _____
 - b) Who are they and what projects are they working on?

 - c) What was the total cost to your company of professionals hired on a temporary basis during the last completed fiscal year? 20__, \$_____.

Were these amounts in your direct labor base for that year? _____

b. **OTHER DIRECT COSTS**

Other Direct Costs (herein called "ODCs") are direct costs other than direct labor and direct materials that are identified specifically with a contract based on a beneficial or causal relationship.

The Federal Acquisition Regulations (48 CFR Part 31) provide that no contract will have a cost allocated to it as a direct cost if other costs incurred for the same purpose, in like circumstances, are treated as an indirect cost of that or any other contract.

Costs identified specifically with a contract are the direct cost of that contract. **All costs identified with other contracts are direct costs of those contracts whether reimbursed or not.**

- 1) a) Does your firm have an approval process for ODCs? _____
If so, are they in writing? _____
- b) Does your firm have procedures in place to ensure that ODC budgets are not exceeded? _____
If so are these procedures in writing? _____

- 2) For each of the following cost categories estimate the amounts charged as direct and indirect costs by your firm during the last completed fiscal year. FY 20_____

	Direct	Indirect
Travel	\$ _____	\$ _____
Reproduction	_____	_____
Graphics	_____	_____
Office Supplies	_____	_____
Equipment	_____	_____
Relocation Costs	_____	_____
Computer Expenses	_____	_____
Laboratory Testing	_____	_____
Contract Labor	_____	_____
Other Cost (specify)	_____	_____
	_____	_____

- 3) If any costs listed in 2 above are charged as both a direct and indirect costs, identify them and explain how these and other costs directly identifiable with specific contracts are excluded from the indirect cost pool, to prevent duplication.

- 4) ODCs also include Subconsultants, does your firm lease office space to other consultants, or otherwise provide support services? _____ If so, describe the relationship.

c. **INDIRECT COSTS**

Indirect costs may consist of one or more pools of expenses which are grouped on the basis of the benefits accruing to the cost objectives represented by the distribution base or bases to which they are allocated. Since accounting practices vary, the use of particular groupings is not required. However, CCJPA contract requirements specify **direct labor costs** as the basis for allocating indirect costs. Furthermore, CCJPA requires that direct labor exclude: 1) fringe benefits, which must be classified as indirect costs; 2) Subconsultant, contract employees and other non-employee costs which must be classified as ODCs; and 3) principal, or owner labor cost dedicated to the general operation of the firm.

Indirect cost rates must be supported. A provisional rate for indirect costs will be established. Your firm's final rate must represent your firm's actual cost experience for a completed fiscal year and must comply with all FAR and specific CCJPA agreement requirements.

Provisional rates must represent your firm's best estimate of the rates to be experienced during that particular year. If your provisional rate does not use your last completed fiscal year, the estimated cost must be based on historical data and all known future changes. The computation should provide for the future changes that will occur in both your direct labor base and indirect expense pools. A proposed rate must comply with all FAR and CCJPA agreement requirements. CCJPA will consider provisional rates audited and approved by a cognizant federal agency (i.e., EPA, DCAA), or other government entity, if the rate is further adjusted to comply with CCJPA agreement requirements.

Each firm must be able to support its direct labor base and other labor cost components used to calculate the indirect cost rate by submission of data for the last three years. **For this purpose complete the SCHEDULE OF SUMMARY COST AND SALARY DATA (page 9) for the last two completed fiscal years and the new fiscal year.**

Complete the INDIRECT COST SCHEDULES (Schedules A, B and C, pages 10 through 12) for your firm's last two completed fiscal years and the new fiscal year. The schedules may be modified as appropriate and will be reviewed by CCJPA as part of negotiating a provisional reimbursement agreement.

List each indirect cost account, the amount, and a description of each adjustment. Specifically how adjustments for: 1) FAR unallowable costs, and 2) the exclusion of those categories of cost which will be paid directly by CCJPA as an ODC or will be provided directly by CCJPA or another firm. Also exclude comparable pool costs incurred in the performance of other contracts. For example, if travel is charged directly, then only general purpose travel should be included in the pool. Nonreimbursable direct travel should be excluded from the pool.

The following is a list of some of the more common costs unallowable per FARs. The list is not meant to be all inclusive, and accordingly, the CONSULTANT must refer to the FARs when preparing the INDIRECT COST SCHEDULE.

- | | |
|---------------|--------------------------------|
| Advertising | Fines/Penalties |
| Bad Debts | Idle Facilities |
| Contingencies | Interest/Other Financial Costs |
| Contributions | Losses on Other Contracts |
| Entertainment | Organizational Costs |

- 1) Does your firm routinely evaluate pool costs to identify and remove unallowable costs? _____ If so, at what interval? _____ If there is a written procedure for this removal, please attach a copy.
- 2) Does this CDS exclude any cost centers used by your firm? _____ If yes, identify these cost centers: _____

- 3) a. Does your firm own or have a financial interest in the facilities it leases or rents? _____
If yes, identify: _____

- b. Does your firm own or have a financial interest in equipment it leases or rents? _____
If so, please identify those interests: _____

- 4) a. Does our firm share any facilities with other affiliates, subsidiaries, personal interests, etc.? _____
If yes, describe each sharing arrangement: _____

- b. Does your firm share any equipment with other affiliates, subsidiaries, personal interests, etc.? _____
If yes, describe each sharing arrangement: _____

- 5) CCJPA will not allow Facilities Cost of Capital unless specifically proposed, reviewed, approved and audited. Does your proposed indirect cost rate include facilities cost of capital? _____
If yes, attach appropriate computation. _____

SCHEDULE OF SUMMARY COST AND SALARY DATA

For Fiscal Years Ending:	_____ 20__	_____ 20__	_____ 20__
	Actual	Actual	Proposed
Total Company Sales	\$ _____	\$ _____	\$ _____
Total Direct Labor	\$ _____	\$ _____	\$ _____
Total Direct Labor Hours	\$ _____	\$ _____	\$ _____
Total All Salaries	\$ _____	\$ _____	\$ _____
Total All Bonuses	\$ _____	\$ _____	\$ _____
Total Number of Principals/Owners (P/O)	\$ _____	\$ _____	\$ _____
Total Salaries	\$ _____	\$ _____	\$ _____
Total Bonuses	\$ _____	\$ _____	\$ _____
Total Number of Professional Employees *	\$ _____	\$ _____	\$ _____
Total Salaries	\$ _____	\$ _____	\$ _____
Total Bonuses	\$ _____	\$ _____	\$ _____
Total Number of All Other Employees *	\$ _____	\$ _____	\$ _____
Total Salaries	\$ _____	\$ _____	\$ _____
Total Bonuses	\$ _____	\$ _____	\$ _____

* To be considered an employee, an individual should be subject to withholding tax and be issued a Wage and Tax Statement (W-2) at year end and receive administrative support and supervision.

CERTIFICATION

I certify that to the best of my knowledge and belief that this Statement and the documents attached thereto are a complete and accurate disclosure of the information requested by this form.

Signature of Submitting Official (CEO or CFO)

Title

Date

Schedule A - General & Administrative Expenses (G&A)

Fiscal Year Ending: _____, 20__

Schedule of Actual Expenses, Unallowable Costs, and Adjusted Costs

<u>Account No.</u>	<u>Description of Costs Removed</u>	<u>Expenses Per General Ledger</u>	<u>Unallowable Costs</u>	<u>Notes</u>	<u>Adjusted Costs</u>
_____	Salaries & Wages	_____	_____	_____	_____
_____	Legal Fees	_____	_____	_____	_____
_____	Audit Fees	_____	_____	_____	_____
_____	Other Fees	_____	_____	_____	_____
_____	Travel	_____	_____	_____	_____
_____	Entertainment	_____	_____	(1)	_____
_____	Advertising & Promotion	_____	_____	(2)	_____
_____	Bad Debts	_____	_____	(1)	_____
_____	Technical Publication	_____	_____	_____	_____
_____	Periodicals	_____	_____	_____	_____
_____	Conventions & Seminars	_____	_____	_____	_____
_____	Interest Expense	_____	_____	_____	_____
_____	Holiday	_____	_____	_____	_____
_____	Vacation	_____	_____	_____	_____
_____	Sick Leave	_____	_____	_____	_____
_____	Personal Absence	_____	_____	_____	_____
_____	Employee FICA	_____	_____	_____	_____
_____	FUI	_____	_____	_____	_____
_____	SUI	_____	_____	_____	_____
_____	Workmans' Compensation	_____	_____	_____	_____
_____	Health Insurance	_____	_____	_____	_____
_____	Life Insurance	_____	_____	_____	_____
_____	Pension Plan	_____	_____	(3)	_____
_____	Tuition Assistance	_____	_____	_____	_____
_____	Miscellaneous	_____	_____	_____	_____
_____	Subtotal	_____	_____	_____	_____
_____	B&P/IR&D	_____	_____	(4)	_____
_____	Total	=====	=====	=====	=====

Notes:

- (1) Unallowable cost per Government procurement regulation FAR 31.2.
- (2) Some advertising expenses allowable e.g. help-wanted employment advertising.
- (3) Employer contributions to pension plan may be in excess of that allowable under FAR.
- (4) See Schedule I for computation of allowable IR&D/B&P costs.

(Use this format for each Fiscal Year and Cost Center)

Schedule B - Overhead Expenses
Fiscal Year Ending: _____, 20

Schedule of Actual Expenses, Unallowable Costs, and Adjusted Costs

<u>Account No.</u>	<u>Unallowable Description of Costs Removed</u>	<u>General Ledger</u>	<u>Adjusted Costs</u>	<u>Notes</u>	<u>Expenses Per Costs</u>
	Salaries & Wages				
	Postage & Handling				
	Office Supplies				
	Small Equipment				
	Temp. Clerical Help				
	Other Outside Services				
	Relocation			(1)	
	Business Meals				
	Telephone Expense - Local				
	Telephone - Long Distance				
	Telecopies				
	Real Estate Rent				
	Equipment Rent				
	Recruitment				
	Dues/Memberships			(2)	
	Insurance				
	Property Taxes				
	Permits & Licenses				
	Depreciation/Amortization				
	Repairs & Maintenance				
	Holiday				
	Vacation				
	Sick Leave				
	Severance Pay			(3)	
	Employer FICA				
	FUI				
	SUI				
	Workmans' Compensation				
	Health Insurance				
	Life Insurance				
	Pension Plan			(4)	
	Miscellaneous				
	Total				

Notes:

- (1) Moving charges are limited by FAR.
- (2) Nature and amount limited by FAR.
- (3) Severance pay is limited.
- (4) Employer contributions to pension plan may be limited.

(Use this format for each Fiscal Year and Cost Center)

Schedule C - Schedule of Bases Used to Allocate Indirect Expenses
Fiscal Year Ending: _____, 20

Pool - General and Administrative Expenses - Schedule A:

Base - Direct Labor Cost input (excluding fringe benefit expenses)

Pool - Fringe Benefit Expenses - Schedule B:

Base - Straight time direct labor dollars of all contracts and projects including labor costs of Bid and Proposals.

ATTACHMENT E

PROTEST PROCEDURE

PROTEST PROCEDURE

A. Submittal of Protests

All protests must be in writing, stating the name and address of the protestor, a contact person, the RFSOQ Number and Title and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows, to the District Secretary of the San Francisco Bay Area Rapid Transit District ("BART") who also serves as the CCJPA Board Secretary:

<u>For Special Delivery or Hand Delivery:</u>	or	<u>By U.S. Mail:</u>
CCJPA c/o District Secretary		CCJPA c/o District Secretary
San Francisco Bay Area Rapid Transit District		San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 23rd Floor		P.O. Box 12688
Oakland, CA 94612		Oakland, CA 94604-2688

Protests not properly addressed to the District Secretary may not be considered by the CCJPA.

Copies of the District's Protest Procedures which are equally applicable to the CCJPA may be obtained from the District's Division of Contract Administration, P. O. Box 12688, Oakland, California 94604-2688, Telephone (510) 464-6543. SOQs will be opened and a Notice of Award will be issued by the CCJPA only in accordance with the Protest Procedures.

B. Pre-submittal Protests

Pre-submittal protests are protests based upon the content of the solicitation documents. Five (5) copies of pre-submittal protests must be received by the District Secretary no later than ten (10) calendar days prior to SOQ opening. A written decision specifying the grounds for sustaining all or part of, or denying, the protest will be transmitted to the protestor in a manner that will provide verification of receipt, prior to the submission of SOQs. If the protest is sustained, the SOQ submission date may be postponed and an addendum issued to the RFSOQ document or, at the sole discretion of the CCJPA, the advertisement may be canceled. If the protest is denied, SOQs will be received on the scheduled date.

C. Protests on the Recommended Award

All Proposers will be notified of the recommended award, if any. This notice will be transmitted to the Proposer at the address contained in its SOQ in a manner that provides verification of receipt. Any Proposer whose SOQ has not lapsed may protest the recommended award on any ground not specified in subsection B. above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest must be received by the District Secretary at the appropriate address set forth in subsection A. above no later than seven (7) calendar days following receipt of such notification. A written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and the Proposer recommended for award in a manner that provides verification of receipt, prior to execution of the Agreement. Such decision shall be final.

ATTACHMENT F

SCOPE OF SERVICES SUPPLEMENT for the FINAL ENGINEERING DESIGN AFFECTING UNION PACIFIC RAILROAD'S RIGHT-OF-WAY AND FACILITIES

FOR THE OAKLAND TO SAN JOSE PHASE 2A PROJECT

Section 1 Description

1.1 Key Elements

The scope of services in this Attachment F supplement those provided in Attachment A and pertain to performing the engineering design on existing right-of-way and facilities owned by Union Pacific Railroad on the railroad's Coast and Niles Subdivisions in the project area.

Section 2 Investigate and Assess Site Conditions

Collect and/or obtain pertinent data necessary to resolve and/or verify project construction parameters and constraints. Work includes site survey data, boundary survey data, zoning and land use regulations, availability of local utility services, easements and topography, state/county highways and secondary road access, geotechnical investigation, structure design, civil/track design, and preparation of construction contract documents. Site survey data shall establish horizontal and vertical ground control for existing and proposed site features. Work shall also include necessary soil borings and geotechnical reports, storm water and sanitary discharge requirements and means of egress and traffic patterns. Geotechnical report shall include recommendations for subgrade preparation and construction design for surface features (pavements, track and structures foundations, etc.).

2.1 Topographic Survey

See Documents: Scope of Services for Traditional Ground Surveys, Scope of Services for Aerial Photogrammetry Surveys with Supplemental Ground Topography.

2.2 Geotechnical Investigation

The consultant shall conduct geotechnical exploration, using AREMA guidelines where applicable, for soils testing and analysis and provide recommendations addressing general railroad design issues that include but are not limited to:

- Existing soil and groundwater conditions to be encountered within cut and fill areas
- Depth of stripping required prior to excavation and filling operations
- Sub excavation required to remove unstable subgrade conditions
- Benching of new fill into existing slopes
- Sub excavation and stabilization recommendations at culvert locations
- Select placement of borrow materials located on the project, if required
- Compaction recommendations on the project
- Minimal railroad ditch depths as measured between the proposed railroad ditch flow line level and nearest finished shoulder point elevation
- Minimum gradients to facilitate drainage within railroad ditches
- Subballast thickness recommendations. (AREMA method)
- Recommended safe embankment foreslopes and excavation backslopes, based on stability analysis results.

- Local materials specified in the local given State's "Standard Specifications for Highway Construction" handbook
- Series of borings are to generally be performed at quarter mile intervals. Test pits may be utilized to supplement borings as necessary. The location of each series of borings need not be performed at the specific quarter- mile post marker locations but should be selected so as to represent either the prevalent cut or fill scenario within that quarter mile of the project. Each series of borings should have a boring performed atop the existing track grade between the edge of ballast and nearest existing shoulder point, a boring performed at the midslope, and a boring performed within the existing railroad ditch line just off the existing toe of slope. The Geotechnical Consultant is to advance borings to the depth required to obtain stable track and embankment subgrade/foundation conditions.
- At those locations where a series of borings is performed in a cut section, a boring needs to be made from a location atop the cut slope --- possibly just inside the ROW/property line. The purpose of each of these borings is to determine the types of materials that will be encountered during the performance of the grading operations and be available for use as borrow for embankment construction on the project. The minimum depth of exploration at these boring locations should equal the height of the cut as measured from the top of the cut section to a level 5 feet below the proposed railroad ditch flowline elevation. Disturbed soil samples of the predominant borrow materials that will be encountered at these cut locations should be obtained for classification and performance of moisture-density relationship determinations (per ASTM D-1557).
- Borings should be performed at the end of each culvert that will require an extension. Recommendations should be provided for sub excavation and subgrade stabilization required at these locations to limit differential settlement of the culvert structures to an acceptable magnitude.
- Soil borings as required for proposed bridge construction
- Borings should be performed at unique proposed structures such as retaining walls and provide associated geotechnical design recommendations.
- A knowledgeable soils engineer, not a drilling coordinator, helper or head driller, should visit the site and assess where geotechnical exploratory borings are required to be responsive to the projects needs. Consultant should provide recommendations for additional borings, soils testing and analysis believed to be necessary, based on findings of field reconnaissance, to provide stable track foundation conditions throughout the project.
- Geotechnical report, including site map, boring location plan, laboratory test results, moisture-density relationship(s), results of stability analysis, and recommendations for the design topics discussed above is to be provided to the project design engineer in pdf format. UP will decide how many bound and unbound copies of the geotechnical report need to be provided, not to exceed four (4) copies.
- For locations where an adjacent track is being placed next to a short span structure, the attached geotechnical form is to be included in the general geotechnical report for each specific location that this occurs.

2.3 Utilities

The Consultant will be responsible for locating all utilities, both public and private, within the project limits, identifying conflicts, and managing relocations. The Consultant will:

- Identify any utilities marked in the field by locating services at the time of survey.
- Perform a subsurface utility engineering (SUE) investigation per American Society of Civil Engineers' (ASCE) *Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data* Quality Levels A, B, C, and D. Deliverables to be stamped by a California Professional Engineer.

- Provide a utility matrix and layout sheets, including horizontal and vertical information, and identifying potential utility conflicts.
- Manage relocation of utilities to clear conflicts, including coordination with utility company, preparing relocation plans if required by the utility company, and coordination with UP Real Estate to amend agreements.
- Show all utility locations on the final plans.

Section 3 Design/Development Plans

3.1 Develop project construction materials and methods

Identify and develop tentative construction materials and methods necessary to meet the standards and performance criteria provided. All work shall conform to federal, state and local codes and ordinances. All track work and related items shall conform to UP's Standards and Technical Specifications and the most current American Railway Engineering and Maintenance-of-Way Association (AREMA) Manuals. All other elements of the project shall conform to UP's design criteria.

Reproduction of all non Computer Aided Design and Drafting (CADD) and older CADD exhibits, details, standard drawings, site plans, and any plans UP doesn't have shall be created in Microstation and the InRoads format, as needed and or requested by UP.

3.2 Construction Plans

Prepare all necessary construction drawings and details required to produce a comprehensive (100% level) set of construction plans. Drawings shall be assembled in a construction format suitable for bidding the project in a Design/Bid/Build delivery method of construction.

3.2.1 Site Location Plans

Prepare site location plans as required for the construction of roadway access, construction access crossings, track construction, electrical service, access road pavements and crossings, and storm water drainage structures. Site plan shall include existing tracks, road crossings, structures and utility services.

3.2.2 Demolition Plans

Prepare plans and details that may be necessary for the demolition and/or removal of existing roads, structures, tracks, pavements, power and signal poles and cables, water lines, water wells and any other site features prior to the construction of new improvements and facilities.

3.2.3 Grading Plans and Profiles

Prepare necessary grading plans, cross-sections and profiles for the construction of roadways, track work, pavements, drainage, and structures. Consultant is to make every reasonable effort to balance the cut and fill to eliminate requirement to haul soil off site or import into site.

3.2.4 Roadway and Pavement Plans

Prepare plans and details necessary to establish extent and layout of all roadways and pavement areas.

The consultant will prepare a traffic study that includes proposed existing and forecasted facility generated traffic information for use in coordination with state and local entities.

Plans and sections identifying limits of various pavement materials (concrete and/or asphalt) will be prepared. Pavement design shall be based on geotechnical analysis and shall identify most economical sections (sub-grade, sub-base and pavement) required to meet project parameters.

3.2.5 Storm Water Plans and Profiles

The Consultant will prepare a hydrologic and hydraulic analysis according to local agency regulations and permitting requirements. The Consultant will prepare all necessary studies, plans, and details to obtain approvals. In addition, the Consultant will coordinate with UP Engineering to compare local requirements to the site specific criteria of containing the 100 year runoff event within the underground system with gravity conveyance to the outlet point. The hydraulic grade line for the 100 year event should be below the top of subgrade. Larger events must be conveyed to the outlet point with limited damage and acceptable ponding/flow depths. Local peak rate and volume requirements must be met by the storm water design. Plans and profiles shall include necessary information to establish geometry and control, including, but not limited to slopes, inverts, and rim elevations.

3.2.6 Track Plans and Profiles

Prepare track plans and profiles necessary to establish track geometry and control including turnouts and curve data. Plans shall identify contractor track construction and UP track construction. Particular attention shall be paid to walkway requirements around switches and locations where required. Design will also include modifications to adjacent tracks affected by the project. Track plan and profile sheets shall be submitted with aerial photo backgrounds. The below requirements are to be followed as necessary:

- Siding extensions/Second main will be constructed at 20' track centers on wood/concrete ties with access road, either adjacent or opposite side.
- Sidings should be extended to a clear distance of 10,000'. This means 10,000' clear between signals and public road crossings, including set-back.
- Setout tracks will be constructed at 30' Track Centers with the siding, per typical attached.
- Dependent on site conditions and right-of-way, the access road may need to be constructed on the opposite side of the proposed track from what is shown on the conceptual plans. If not practical, at a minimum access to control points are required.
- Track construction will be by contractor where possible.

3.2.7 Road Crossing Plans

Design plans for road crossings will be done according to specifications of appropriate governing agency. For purpose of this proposal, consultant will be required to prepare 30%, 60%, 90%, and final plans including detour and roadway approach details for inclusion in bid documents. The Consultant, in coordination with the UP Manager Industry/Public Projects, will take the lead with the local and/or state agencies in determining the appropriate work at each crossing or impacted roadway and develop associated plans. Design shall take into consideration roadway widening, roadway profile, pedestrian considerations, drainage considerations, queue analysis, improvements to adjacent intersections, maintenance of traffic, and governing specifications. If adjacent intersection traffic signal has pre-emption, revised pre-emption calculations shall be performed by the Consultant. Consultant will also be responsible for developing plans for alternate access at road crossing closures. This may be a parallel road, relocating an existing road crossing or developing an alternate access plan using existing roads. Agency approved traffic controls plans for public crossings within the project limits will be the responsibility of the Consultant.

3.2.8 Erosion Control Plans

Prepare plans for temporary and permanent erosion protection for all construction and staging areas. This is done in conjunction with permitting to ensure compliance with applicable laws and regulations.

3.2.9 Utility Plans

Prepare plans and details as required for the construction of electrical services (power distribution and lighting) for construction of project. Prepare plans and details as required for

adjustment of air distribution systems, domestic water, fire water, sanitary and industrial sewer systems, natural gas, communication services (data/telephone distribution), and other services necessary for construction of the project. All shall be per the provided UP standards as listed in the attachments.

3.2.10 Buildings, Structures, Foundations and Special Site Features Plans

Prepare the necessary plans and details for buildings, structures, foundations and special site features as per the provided UP standards as listed in the attachments.

3.2.11 Electrical/Lighting Plans

Prepare the necessary plans and details for lighting and power supply according to the UP Electrical Design Manual.

3.2.12 Phasing Plans

Detailed construction phasing plans must be developed in coordination with UP Engineering to allow continuous use of the facility throughout all phases of construction. Interim or phased improvements may be required to minimize impacts to facility operations, utilities, drainage, and storm water containment.

3.2.13 Track Design Standards

- Computer Aided Design and Drafting (CADD) standards provided upon request or to the selected consultant.
- Track and civil construction standard specifications will be provided upon request or to the selected consultant for preparation of bid documents.
- Track Standard Drawings
In order to acquire a current copy of the UP Track Standards, the Consultant will be required to contact Alex Nigro, UP account manager with Staples Print Solutions, and request Publication PB-22003.

Contact information for Alex:
Phone - 402-898-6435
Email – alex.nigro@staples.com

3.3 H&H/Structures Design

The UP Structures Design project manager will review consultant's recommendations and provide the consultant with an approved structure recommendation for each location. UP Structures Design project manager will determine if the existing main track structure will be replaced or if it will remain in place. All designs are to be based on the provided UP standards as listed in the attachments: H&H Guidelines and Structures Guidelines

3.4 Cost Estimates

Cost estimates shall be provided with each of the project submittals. Consultant shall provide a unit price for each item with an appropriate level of contingency for each submittal applied to the overall project cost.

3.5 Prepare Construction Specifications

Prepare all necessary written specifications and documentation required to produce a coordinated, comprehensive 100% level set of Technical Construction Specifications to describe construction methods and material requirements as intended and illustrated on the drawings and details. Specifications shall include UP's current "General Conditions and Specifications" document and project-specific "Special Conditions" that will be developed by coordinating with construction and operating groups.

3.6 Deliverables

Drawings shall be in Microstation (.dgn) CADD format conforming to the UP's "Project Design CADD Standards" (copy will be furnished to successful bidder).

Final drawings, specifications and support documents shall be signed, dated and sealed by a registered California Professional Engineer.

Design Submittals:

Provide one (1) electronic version of the construction drawings (Microstation and PDF) and specifications (Microsoft Word).

- 25% Submittal
 - 25% level plans for field review
 - All existing topographic and utility data shown and noted
 - Final horizontal track design
 - Road crossings
 - Cross sections with standard section
 - Required property acquisition and/or permanent easements shown
 - Cost estimate
- 30% Submittal (After approval of this set, signal design and ROW acquisition begins)
 - Plans
 - Revised to address comments from 25% field review
 - Project design checklist
 - Index of special conditions
 - Cost estimate
- 60% Submittal
 - Refine Plan Set
 - Revise sections according to drainage and ROW requirements
 - Project design checklist
 - Draft special conditions
 - Cost estimate
- 90% Submittal
 - Plans complete
 - Project design checklist
 - Special conditions
 - Cost estimate
 - Bid items
- Final Submittal
 - Plans bid set
 - Final project design checklist
 - Special conditions
 - Cost estimate
 - Bid items
 - Bid document index
 - Microstation and InRoads design files
 - Permit applications, wetland delineation reports, correspondence with agencies, etc. all showing expiration dates
- **Each submittal shall be reviewed by an appointed QA/QC person internal to the consultant. Upon submittal to UP, the appointed QA/QC person shall provide signature, via copied on submittal or other approved format, verifying that this review has occurred.**
- **A Project Design Checklist will be completed with each submittal.**

Section 4 UP Provided Services and Information

4.1 RFSOQ Attachments

Below is a listing of documents that are provided with this RFSOQ.

- Project Design Checklist
- Survey Guidelines
- Aerial Survey Guidelines
- UP Structures Geotech Report Form
- Structures Guidelines
- H&H Guidelines
- Structures List
- Electrical Design Manual

4.2 Post RFSOQ Documents

In addition to the attachments noted above, UP will provide the following information to the successful bidder:

- UP CADD standards.
- Valuation maps.
- UP Bridge and Culvert Standards
- UP General Conditions and Specifications. **Consultant shall modify or add to these depending on site conditions to clarify construction requirements for the project in the Special Conditions.**

ATTACHMENT G

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

A. Definitions

1. Disadvantaged Business Enterprise

A Disadvantaged Business Enterprise (DBE) is a for-profit, small business concern: 1) that is at least fifty-one percent (51%) owned by one or more individuals who are socially and economically disadvantaged or, in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and 2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2. Small Business Concern

A small business concern is an existing small business as defined by Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121), whose average annual gross receipts for the previous three years does not exceed \$23.98 million (or as adjusted for inflation by the Secretary of DOT) pursuant to 49 CFR Section 26.65(b).

3. Socially and Economically Disadvantaged Individuals

There is an assumption that an individual is both socially and economically disadvantaged if he or she is a citizen or lawfully admitted permanent resident of the United States and is:

- Black American (including persons having origins in any of the Black racial groups of Africa);
- Hispanic American (including persons of Central or South American, Cuban, Dominican, Mexican, Puerto Rican, or other Spanish or Portuguese culture or origin, regardless of race);
- Native American; (including persons who are Aleuts, American Indians, Eskimos, or Native Hawaiians);
- Asian-Pacific American (including persons whose origins are from Brunei, Burma (Myanmar), Cambodia (Kampuchea), China, the Commonwealth of the Northern Marianas Islands, the Federated States of Micronesia, Fiji, Guam, Hong Kong, Indonesia, Japan, Juvalu, Kiribati, Korea, Laos, Macao, Malaysia, Nauru, the Philippines, Samoa, Taiwan, Thailand, Tonga, the U.S. Trust Territories of the Pacific Islands (Republic of Palau) or Vietnam);
- Subcontinent Asian American (including persons whose origins are from Bangladesh, Bhutan, India, the Maldives Islands, Nepal, Pakistan, or Sri Lanka);
- A Woman; or
- A member of any additional group that is designated as socially and economically disadvantaged by the Small Business Administration.

4. Resolution of Conflict Between Definitions

If there is a conflict between the above three definitions and the definitions of the California Unified Certification Program (CUCP) certification documents, the definitions in Section A.1 above shall prevail. A number of the firms listed in the CUCP DBE Database have been certified under prior DBE regulations. CONSULTANT may need to verify any such firm's continued eligibility under the current DBE regulations, 49 CFR Part 26.

B. DBE Participation: No Goal. Although there is no DBE participation goal for this Agreement, CONSULTANT is encouraged to take all steps necessary to provide an equal opportunity for DBEs to participate.

C. DBE Participation Requirements. The following provisions shall apply in the event the CONSULTANT utilizes DBE firms in the performance of work under this Agreement.

1. DBE Participation. DBE participation includes Agreements (other than employee contracts) between DBEs and the CONSULTANT for any goods or services specifically required for the completion of the work under the Agreement. Only the work actually performed by a DBE's own forces will be counted toward DBE participation. The cost of supplies and materials obtained by the DBE or equipment leased (except from the CONSULTANT or its affiliate) may also be counted. A DBE may participate as a subconsultant (any tier), a subconsultant (any tier) vendor of material or supplies incorporated or expended in the work, or a supplier of other services such as shipping, transportation, testing, equipment rental, insurance services and other support services necessary to fulfill the requirements of this Agreement. A DBE may be a subconsultant on more than one Agreement. Work that a DBE subcontracts to a non-DBE firm, does not count toward DBE participation.

DBEs who are a prime CONSULTANT, including joint venture partners, will not be counted towards the DBE subcontracting commitment.

2. Function. A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work or services and must carry out its responsibility by actually performing, managing and supervising the work or services involved.

3. Methodology for Determining Level of DBE Participation. Only those DBEs that have been certified prior to Proposal submission and which are listed in the Project Consultant Team Form (Exhibit 1 to this RFSOQ) will be counted toward DBE participation. DBE participation will be counted as follows:

a. DBEs who are a prime CONSULTANT, including joint venture partners, will not be counted towards the DBE subcontracting commitment.

b. The dollar value of all DBE subcontracts for work or services under the Agreement.

c. DBE participation will not be counted until the DBE firms have been paid.

d. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE participation only if the DBE's subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE participation.

D. DBE Information

CONSULTANT shall maintain records to verify DBE participation as set forth in this Agreement and as modified in any way during the course of the Agreement. Such records shall show the name and business address of each DBE participating in the Agreement and the total dollar amount actually paid each DBE and the date of payment. A report based on these records and certified to be correct by CONSULTANT shall be submitted to the Agreement Manager with the monthly payment invoice. CONSULTANT shall include with the monthly report any other efforts made which are relevant to meeting the DBE participation, as applicable. CONSULTANT shall submit with the first monthly report copies of all DBE subcontracts and purchase orders that have been entered into or issued in connection with the Agreement and shall submit with subsequent monthly reports copies of any such additional subcontracts or purchase orders. The monthly report shall include copies of all invoices submitted by each DBE during the reporting period. The District will verify with each DBE the amount actually paid to the DBE. No invoice will be approved for payment unless the current report and all required attachments have been furnished. DBE participation will not be counted toward CONSULTANT's DBE achievement until the DBE has been paid. Upon completion of the Agreement, a summary of these records shall be prepared and certified to be correct by CONSULTANT or its authorized representative and shall be furnished to the District.

E. Change Orders

CONSULTANT is encouraged to make good faith efforts to obtain DBE participation in the performance of the services under any Change Orders that may be issued under this Agreement. As used in this Section, "good faith efforts" to be undertaken by a CONSULTANT in connection with Change Orders are those that, given all relevant circumstances, a CONSULTANT actively and aggressively seeking to obtain DBE participation would make.

F. Substitution of DBE Subconsultants or Suppliers

Should substitution of any DBE subconsultant or supplier become necessary, CONSULTANT shall, in cooperation with the Office of Civil Rights and subject to the approval of the District, replace the affected DBE with another DBE or show that it made good faith efforts to do so. As used in this Section, "good faith efforts" undertaken by a CONSULTANT in connection with this Agreement period activities requires the CONSULTANT to follow the good faith efforts criteria specified in Section G below. CONSULTANT shall provide completed DBE certification documents for each new DBE.

G. Good Faith Efforts Regarding Substitution of DBE Subconsultants and Suppliers

Good faith efforts regarding substitution of DBE subconsultants and suppliers are those that, given all relevant circumstances, a CONSULTANT would make to ensure that DBEs have an equal opportunity to compete for and participate in the performance of this Agreement. The CONSULTANT must show it took all necessary and reasonable steps to maintain DBE participation which by their scope, intensity and appropriateness to the objective, could reasonably be expected to engage a certified DBE to substitute for a DBE that has to be replaced. Only those efforts made prior to the District's determination of a failure to comply with the DBE participation requirements will be considered for evaluation of good faith efforts. The CONSULTANT assumes responsibility for being informed and complying with this Agreement's DBE requirements.

In determining whether good faith efforts have been made, the District will consider the quality, quantity, and intensity of the different kinds of efforts that the CONSULTANT has made. The efforts employed by the CONSULTANT should be those that one could reasonably expect a CONSULTANT to take if the CONSULTANT were actively and aggressively trying to engage a certified DBE firm to substitute for a DBE firm that has to be replaced. Specifically, and without limitation, the District will consider, on the basis of documentation timely submitted by

the CONSULTANT, whether the actions listed below have been taken. The District considers each of the listed steps particularly significant in evaluating a CONSULTANT's good faith efforts.

1. Advertisements. The CONSULTANT shall have in place advertisements soliciting proposals from DBEs for substitution of DBE subconsultants. Advertisements shall be in place for a reasonable period of time to allow DBEs to respond. Such advertisements shall refer only to proposals for the District's Agreement and shall specify the categories of work for which subcontracting opportunities exist. The advertisements shall be placed in three or more paid daily or weekly minority focus publications or media. The advertisements shall be in publications or media that can be reasonably expected to reach both women and minority DBE firms that are likely to submit a proposal to the CONSULTANT.
2. Selecting Portions of the Work for Subcontracting. The CONSULTANT is encouraged to identify portions of the work it is willing to have performed by subconsultants in order to facilitate DBE participation and increase the likelihood that if a substitution is necessary, replacement DBE firms will be engaged. This includes, where appropriate, breaking out work items under this Agreement into economically feasible units, even when the CONSULTANT might otherwise prefer to perform these work items with its own forces.
3. Letters.
 - a. A CONSULTANT shall solicit proposals for additional work needed for substitution of DBE subconsultants by mailing registered or certified letters to DBE firms qualified to perform those categories of work which are needed. Solicitation letters shall be mailed with sufficient time to allow DBEs to respond. A sufficient number of letters shall be mailed to appropriate certified DBE firms for each category of work sought to be subcontracted based on the DBEs listed in the CUCP database for the category sought. As used herein, "appropriate" refers to those firms performing work related to the scope of work of this Agreement.
 - b. The letters to certified DBE firms shall:
 - (1) Clearly identify portions of the work which the CONSULTANT is willing to have performed by subconsultants.
 - (2) Offer assistance with regard to insurance requirements, where applicable, and/or financing (e.g. lines of credit), specifying the type of assistance that the CONSULTANT is offering. Assistance may include, but is not limited to:
 - (a) Contacting insurance companies on behalf of DBEs
 - (b) Paying for the cost of the insurance
 - (c) Waiving insurance requirements
 - (d) Referring DBEs to Business Development Centers or other resource agencies, which may assist DBEs in obtaining insurance, or lines of credit.
 - (3) Offer to make plans and specifications available to DBEs at reasonable hours for viewing, copying, or borrowing.

3. The date each response was received by the CONSULTANT.
- I. Negotiating in Good Faith with Interested DBEs.
 1. Negotiating in good faith with interested DBEs. The CONSULTANT is encouraged to make a portion of the work available to DBEs and to select those portions of the work consistent with the available DBEs so as to facilitate DBE participation.
 2. Use of good business judgment. A CONSULTANT using good business judgment shall consider a number of factors in negotiating with DBEs and should take a firm's price and capabilities into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a CONSULTANT's failure to substitute a DBE firm with another certified DBE firm, as long as such costs are reasonable. Also, the ability or desire of the CONSULTANT to perform the work of an Agreement with its own organization does not relieve the CONSULTANT of the responsibility to make good faith efforts. The CONSULTANT is not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
 - J. Not Unreasonably Rejecting DBEs as Unqualified. It is the CONSULTANT's responsibility not to reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The DBE's standing with the industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the CONSULTANT's efforts to substitute DBE firms with certified DBE firms.
 - K. CONSULTANT's Evaluation of Interested DBEs. The CONSULTANT shall submit documentation of its evaluation of proposals received from DBEs. For each DBE that responded to the CONSULTANT's solicitation, the CONSULTANT shall document the following:
 1. A summary of all communications and negotiations, if any, between the CONSULTANT and the DBE.
 2. A description of the information provided regarding the plans and specifications and other Agreement requirements.
 3. A description of specific assistance agreed to be provided by the CONSULTANT to the DBE with regard to obtaining lines of credit, insurance, and obtaining services.
 4. If the proposal was rejected, the reasons for rejection. The District may deem that a CONSULTANT has not made good faith efforts if DBE proposals have been rejected without adequate reason. Price alone will not be considered to be an adequate reason for rejection unless each of the following factors has been met on the basis of documentation submitted.
 - a. The CONSULTANT contacted the DBE firm and ascertained that the DBE fully understood the scope of the work and did not include work beyond the scope and/or overhead items already covered by the District, e.g. insurance for general liability and workers' compensation if the Agreement is covered under the District's Owner-Controlled Insurance Program.
 - b. In view of all relevant circumstances, the DBE rejected for price alone was significantly higher than other proposals received for the work.

5. If the DBE's proposal was rejected for any reason, a copy of the DBE's proposal along with copies of all proposals received by non-DBE firms for the same or similar scope of work.
 6. If a DBE was rejected as unqualified, a description of the investigation conducted by the CONSULTANT prior to reaching the conclusion that the DBE was unqualified.
 7. If applicable, evidence as to why additional agreements could not be reached for DBEs to perform the work.
- L. Other Efforts. The CONSULTANT shall include in any report regarding substitution of DBE firms submitted to the District any other efforts made to meet the DBE requirements that are not listed above.
- M. Prompt Payment
- CONSULTANT shall promptly pay any and all subconsultants in accordance with Article 3.3, METHOD OF PAYMENT, of the Agreement.
- N. Noncompliance
- Failure to comply with the above requirements or failure to maintain the level of DBE participation offered in the RFP and incorporated into this Agreement, shall be grounds, at the discretion of the District, for termination of this Agreement in whole or in part, or, for withholding payments due the CONSULTANT during the period of noncompliance.
- O. DBE Participation Enforcement Procedures
1. Within five (5) working days of CONSULTANT receiving a notice from the District that it has failed to meet the DBE requirements, and has failed to demonstrate sufficient good faith efforts to do so, CONSULTANT may request a hearing on reconsideration of the District's recommendation. Such hearing will be held at the convenience of the District but no later than ten (10) business days after receipt of the request and in accordance with the Office of Civil Rights Hearing Procedures, copies of which are available upon request. At such hearing, the CONSULTANT shall bear the burden of demonstrating:
 - a. Compliance with the DBE participation requirements and reporting obligations; or
 - b. Compliance with applicable good faith effort requirements listed herein regarding substitution of DBE subconsultants made prior to the District's determination of deficiency that, given all relevant circumstances, could have been expected to result in meeting the DBE participation requirements; or
 - c. Compliance with the applicable good faith requirements related to Change Orders made prior to the District's determination of a deficiency, that given all relevant circumstances, could have been expected to result in meeting the DBE requirements.

EXHIBIT 1

PROJECT CONSULTANT TEAM

(To Be Completed By Proposer Only)

Name, Address and Phone Nos. of All Firms Participating on the Project (Including Prime) and Subcontractors	Indicate if DBE	Nature of Participation
Name: _____ Address: _____ _____ _____ Phone Number: _____ Age of Firm: _____ Annual Gross Receipts as of last Tax Year: \$ _____		
Name: _____ Address: _____ _____ _____ Phone Number: _____ Age of Firm: _____ Annual Gross Receipts as of last Tax Year: \$ _____		

<p>Name: _____</p> <p>Address: _____ _____</p> <p>Phone Number: _____</p> <p>Age of Firm: _____</p> <p>Annual Gross Receipts as of last Tax Year: \$ _____</p>		
<p>Name: _____</p> <p>Address: _____ _____</p> <p>Phone Number: _____</p> <p>Age of Firm: _____</p> <p>Annual Gross Receipts as of last Tax Year: \$ _____</p>		
<p>Name: _____</p> <p>Address: _____ _____</p> <p>Phone Number: _____</p> <p>Age of Firm: _____</p> <p>Annual Gross Receipts as of last Tax Year: \$ _____</p>		

Name: _____ Address: _____ _____ _____ Phone Number: _____ Age of Firm: _____ Annual Gross Receipts as of last Tax Year: \$ _____		
Name: _____ Address: _____ _____ _____ Phone Number: _____ Age of Firm: _____ Annual Gross Receipts as of last Tax Year: \$ _____		

The DBE Subcontracting Commitment offered by the Proposer is _____% of the anticipated value of the Agreement.

Name – Authorized Officer of Proposer Firm (Print or Type)

Signature – Authorized Officer of Proposer Firm

Date

EXHIBIT 2

CONFIDENTIAL

STATEMENT OF QUALIFICATIONS AND BUSINESS REFERENCES

Proposer shall complete the Statement of Qualifications and Business references below. In addition, Proposer submitting a SOQ as a joint venture must have an executed Joint Venture Agreement as of the SOQ due date and a copy of the Joint Venture Agreement shall be attached to this Exhibit 2. Proposers are free to attach additional material. Such material is to be attached to this Exhibit.

The information on this Proposer Sheet will be a factor in evaluating the awards.

1. Business Name of Proposer:

a. Address: _____

b. Telephone No.: _____

c. Contact Person: _____

2. Form of Proposer Organization:

a. Is Proposer a sole proprietorship? Yes ____ No ____

Name and address of Owner: _____

b. Is Proposer a partnership? Yes ____ No ____

Name and address of Partners: _____

c. Is Proposer a limited partnership? Yes ____ No ____

Name and address of General Partner: _____

d. Is Proposer a corporation? Yes ____ No ____

State of Incorporation: _____

Name of Officers: _____

Corporation Number: _____

Federal Taxpayer ID Number _____

e. Is Proposer a joint venture? Yes ____ No ____ (***See Note Below**)

Name of joint ventures: _____

***Note:** If Proposer is a joint venture, a copy of the Joint Venture Agreement shall be attached to this statement and submitted with your SOQ.

3. Business License (documented) _____
Taxpayer ID Number (Federal) _____

4. How many years has your organization been in business under your present business name?

5. How many years of experience has your organization had? _____

6. How many years of experience has your organization had in the type of work similar to the work you are proposing (List separately for Environmental and Track Design)? _____

7. List similar types of projects your firm has successfully concluded for both Environmental document preparation and Track Design. Include names of individuals and telephone numbers, the CCJPA may contact including public bodies for these projects.

<u>Year</u>	<u>Price</u>	<u>Contract Project Description</u>	<u>Names of Owner and Address</u>	<u>Contact Person</u>

Provide information on SF 330

8. Name the key personnel who are to work on the project for which you are proposing and next to each person's name the project title of similar work to that upon which you are bidding which they have successfully participated. Attach resumes of these key people to this document. Indicate who will be the Project Manager and lead contact with CCJPA for execution and coordination of the work.

Provide information on SF 330

9. How many years have the key people worked in your firm?

10. How many years of experience have the key people had working in areas similar to these projects (List separately for Environmental and Track Design)?

11. Where is the location of offsite work to be done?

Telephone No. _____

12. Have you or your organization failed to complete a contract? If so, give details:

13. Reference is hereby made to the following bank or banks as to financial responsibility of the Proposer:

Name of bank _____
Street address _____
City and state _____
Telephone No. _____
Officer familiar with Proposer's account _____

Name of bank _____
Street address _____
City and state _____
Telephone No. _____
Officer familiar with Proposer's account _____

Name of bank _____
Street address _____
City and state _____
Telephone No. _____
Officer familiar with Proposer's account _____

14. Reference is hereby made to the following surety company or companies as to the financial responsibility and general reliability of Proposer:

Name of surety company _____
Name of local agent (if different) _____
Local address: _____
City and State _____
Telephone No. _____
Person familiar with Proposer's Account _____

15. Provide as a part of this Exhibit, complete and audited financial statements (including all notes thereto) for your firm for the past three years. This should also include specific data that will allow BART to evaluate the indirect cost rate provided in the estimated cost for scope of services.

16. In what other line of business are you financially interested? _____

17. Is any litigation pending against your organization? If so, give details. _____

I declare under penalty of perjury that the foregoing is true and correct:

Executed on _____ day of _____, 20____, at

_____, _____
City State

Name of Proposer: _____

By: _____
Signature of Proposer or
Authorized Representative

Print Name and Title of
Person Signing

Name of Proposer: _____

By: _____