

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

TO PROVIDE

**WI-FI ON TRAIN OVERSIGHT AND MANAGEMENT SUPPORT SERVICES FOR
INTERCITY AND COMMUTER PASSENGER TRAIN OPERATIONS IN CALIFORNIA**

RFSOQ201920-01

The Capitol Corridor Joint Powers Authority (“CCJPA” or the “Capitol Corridor”) intends to enter into an agreement (“Agreement”) with a technical consulting firm (“Consultant”) to provide day-to-day program oversight and management of a third-party provided on-train passenger Wi-Fi system and supporting operations. The services to be provided by the Consultant under this agreement may also be provided to any commuter or intercity passenger rail agency within the State of California with which CCJPA has a memorandum of understanding or agreement to provide such services. Accordingly, CCJPA is issuing this Request for Statement of Qualifications (“RFSOQ”) to prospective Consultants (“Proposers”) as specified herein.

A. Service Description

The selected Consultant shall provide professional staffing support, program and day-to-day oversight and management of third-party provided on-train Wi-Fi solutions to the CCJPA and any other commuter or intercity passenger rail agency in the State of California with which the CCJPA has a memorandum of understanding or agreement to provide such services. The role of the Consultant is to act as a specialist extension of staff to oversee the third-party vendor supplying on-train Wi-Fi. The range and method of providing the professional services expected from the CONSULTANT is set forth in Attachment A, Scope of Work.

B. Funding Sources

The funding sources for this work are supplied by CCJPA and participating commuter and intercity passenger rail agencies for each Work Directive (“WD”) as described in Attachment A, Scope of Work. In general, CCJPA will be using California state provided operating funds supplied annually to CCJPA to support this work. Other rail agency partners are also expected to utilize annual operational funds to support these services.

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.

D. Service Duration and Amounts

CCJPA intends to make one (1) award resulting from this RFSOQ, however, the Consultant may, at their discretion, acquire and obtain subconsultant expertise as part of this RFSOQ award.

The term of the Agreement entered into pursuant to this RFSOQ will be for **five (5)** initial years from the date of execution of the Agreement with five (5) additional years as option. Additional

option years beyond the initial and first option years may be pursued at the discretion of CCJPA considering the input from any partner agencies. CCJPA will be the lead agency for administering this Agreement.

E. Pre-submittal Meeting

There will be no pre-submittal meeting for this procurement. However, CCJPA will welcome questions up until five (5) days before RFSOQ submittals are due and post responses in a timely manner on the CCJPA 'Opportunities' web page, where the electronic version of this RFSOQ is located (<https://www.capitolcorridor.org/opportunities/>). This web page location will be the main platform for CCJPA communications to prospective RFSOQ respondents. All questions posed will be shared for all prospective RFSOQ respondents.

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 selected Consultant will be expected to accept and comply with the terms and conditions contained in the *Example CCJPA Agreement* included as Attachment C and the *Example Provisional Cost Reimbursement and Rate Agreement* ("Rate Agreement") included as Attachment D.

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. As described in Attachment A, Scope of Work, each WD will focus on a single activity and costs will be time and materials based. However, the nature of the activity will be either monthly rates for general ongoing support OR will be based on identifying a discrete one-time task(s) for a particular agency for which the Consultant shall provide a time and materials based quote for performance of the discrete task(s). For the monthly rates, the WD's will be based on monthly set rates for general ongoing support, as scaled by the overall participating partner agencies and based on calculations using hourly rates, overhead, insurance (see Attachment A), etc., and profit. Labor rates for Consultant and subconsultant time should be inclusive of the base hourly labor rates, overhead rates, profit percentages, etc. Material charges shall include travel, print production, and other hard goods or services that become non-labor unique costs that may be incurred by the project through the course of its development. Material costs are not to be input in the reimbursement rate agreement details – they should be pass-through costs. For performance of discrete tasks, the rate calculations are the same except there is not expected to be an economy of scale factor since the WD for that discrete task does not generally accrue to participating agencies but rather one agency seeking services for a one-time WD discrete task.

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 that will be consistent with the terms of the Rate Agreement and 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) Consultant is requested to segregate indirect costs in the following separate groupings: payroll additives, overhead and, if applicable, general/ administrative expenses. If there is a reason to deviate from this, the Consultant shall make notation of that fact.
- 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) If there is Consultant cost role for 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 Work 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 based on their hourly time spent in service of specific work directive tasks organized for fixed fee objectives, such as on-going monthly services.

- 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% above allowable and allocable costs. 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 an additional 2% fixed fee above allowable and allocable costs on subcontractor/subconsultant work performed under the Agreement.
 - 2) Consultant shall receive no fee for other direct costs, such as material 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. 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 their subconsultants on the basis of race, national origin, color, ethnicity, or gender.

J. Statements of Qualifications 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) pages summarizing the firm's understanding of the service 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. While Architect- Engineer Qualification formats are not ideal for a technology services contract, they have been judged to be a suitable format basis for presenting information to the evaluators of this RFSOQ. It is important to note that this is not an Architectural and Engineering contract. This Agreement is being procured as a professional service and is therefore governed by the appropriate guidelines and regulations of the State of California for professional service procurements.

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 services described for this award are expected to require coordination across niche services related to the oversight of passenger train Wi-Fi systems and operations and also require knowledge of key project management and technical delivery systems, including reporting and monitoring. The Proposer should provide an organizational chart showing the known Key Personnel team members, including those in the firm or outside the firm who would have specific oversight over key modular and/or thematic categories as described in Attachment A, Scope of Work.

Proposer shall submit a 'current' proposed Organization Chart reflecting their present understanding of how relevant team members and Key Personnel will work together across the various categories of service support. On the chart, the contractual and reporting relationship of each member and the firm with whom he or she is associated should be identified, and if there are roles that remain as of yet unfulfilled, the conceptual expertise category for that role should be identified.

b. Section E - Resumes for Project Team for the Agreement. Two-page resumes are to be submitted for up to five (5) of the proposed Key Personnel to be utilized under the Agreement. Those selected should be those who will play a key oversight or leadership role as a partner to CCJPA and prospective other partner agencies. Key Personnel shall not be replaced for the duration of the Project without prior written approval from CCJPA. Key Personnel need not be the most valuable for service delivered but they could play a key role in accounting, communications, or back office, all of which could be important, in the Consultant's organizing to fulfill the services identified.

- c. Section E-19 - Relevant Projects or Programs. For the five (5) Key Personnel from the project team, provide up to three (3) listings of organizationally relevant projects or programs that, in the prospective Consultant's viewpoint, best illustrates how each of the Key Personnel were involved in relevant projects or programs, either directly in passenger rail Wi-Fi delivery or in related fields supportive of technology-based service delivery and/or oversight. 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. Narrative should highlight the role of development and/or project management or delivery by that key person. In addition, provide a point of contact, telephone number, and email address for each project listed, as the CCJPA may choose to contact these references.
 - d. Section F - Example Projects or Programs Which Best Illustrate Proposer's Qualifications for this Agreement. Direct or indirectly relevant projects or programs listed in Section F must be selected and demonstrated which were completed or are on-going by the Proposer. Select no more than three (3) projects or programs per consultant firm (prime and subcontractor) 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 for performing professional services as required by Attachment A, Scope of Work. 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.

K. 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 Work.
2. A conflict of interest review will be performed by the CCJPA during evaluation of the SOQs.

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

M. 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.

N. Exceptions to the Agreement

1. In order to meet the CCJPA's procurement 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 (a Sample Agreement for Consulting Services is provided as Attachment C).
2. If a Proposer desires to propose any changes in the Agreement, refer to Attachment E, PROTEST PROCEDURES. 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.**

O. SOQ Due Date and Submittal Requirements

SOQs must be received by 3:00 pm local time (PST), on July 12, 2019.

1. Proposer's SOQ and all required attachments and forms shall be submitted to either of the following address:

Jim Allison, Manager of Planning
Capitol Corridor Joint Powers Authority
300 Lakeside Drive, 14th Floor East
Oakland, CA 94612

Envelopes or boxes containing SOQs shall be labeled on the outside packaging as follows:

"CCJPA RFSOQ201920-01, Wi-Fi On Train Oversight and Management Support Services"

2. The number of copies of the SOQs to be furnished shall be as follows:
 - a. One (1) (hardcopy) complete copy, 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 of the complete SOQ in Portable Document Format (PDF), to be provided in a USB or CD.
 - d. An email to JimA@capitolcorridor.org with the digital version of the complete SOQ in PDF as attachment or downloaded from an external file-sharing service (e.g., Dropbox, OneDrive, etc.).

P. 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.

Q. 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 a 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 and/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.

R. 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, experience, and approach of the proposed Consultant Team (including subconsultants). The basis of selection will be on demonstrated competence and professional qualifications of the Key Personnel (see Exhibit 2. Confidential Statement of Qualifications and Business References, Section 7) 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.

Consultant Team qualifications (including subconsultants) are weighted at 25%, experience of the firm(s) is weighted at 30%, and approach to the various complex relationships involved in Wi-Fi service oversight and management is weighted at 20%. The oral presentation, at CCJPA's discretion, may be conducted as a webinar in lieu of an in-person interview, will be weighted at 20% and comprise an evaluation of oral communication skills combined with how qualifications, experience, and approach to Wi-Fi oversight/management services are conveyed. The final 5%, which will only be applied to those who are interviewed, will be rate costs. The SOQ evaluation criteria 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 Work, including how that experience can be applied to managing diverse passenger rail fleets and their onboard Wi-Fi systems.
 - 2) Qualifications and relevant experience of the Key Personnel reporting technical data for public passenger rail agencies, acting on data trends, and managing third-party vendors for their technical performance.
- b. Experience. Evaluation based on written submittal with a weight of 30%. The following criteria will be evaluated:
- 1) Demonstrated experience and knowledge of on-train passenger Wi-Fi systems, how they are installed, developed, monitored, and where the key functional system elements sit in delivering a system, procurement process, use of APIs for data reporting, business and market development trends in the on-train Wi-Fi, cellular, and trackside-based radio systems, use of data standards in data system management, risk management, data organization, among other subjects listed in the Scope of Work.
- c. Approach (20%). Approach will be evaluated blending the Project Team's experience, qualifications, and experience pursuant to fulfilling the Attachment A, Scope of Work, in a thoughtful, extensive, and systematic manner that is responsive to passenger rail operators and agencies that operate commuter and intercity passenger services.
- The above-described scoring for Consultant Team Qualifications, Experience, and Approach will be used for the purpose of 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. 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.
- d. Oral Presentation (20%). If selected for interview, the oral presentation will be weighted at 20% 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 Consultant Team as well as the Proposer's approach to the services together with its demonstrated technical knowledge of service requirements. As mentioned, this phase may be conducted as a webinar or an in-person presentation subject to CCJPA's guidance and direction. Published dates may be modified as need arises but with notice enough to adjust to travel requirements if an in-person interview is deemed necessary.
- e. Provisional Cost Reimbursement and Rate Data (5%). For those that are interviewed, proposed compensation rate sheets will be required for the key proposed consultants and/or their key subconsultants as conveyed in the written and oral presentations. These cost rate sheets (this is the term that will be used for this in the document unless noted) for key personnel will be combined with the evaluating team's scoring of the written and orally presented qualifications/experience/approach to determine the best value for contract advancement. Best value is a subjective impression that will form for the evaluating team members based on their individual assessment of value from all they have seen written and seen and heard when it was presented. Cost rates will only be required from prospective CONSULTANTS if requested for an Oral Presentation. Said cost and rate data shall be valid for a period of one hundred eighty (180) days from the submittal date.

f. 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, Experience, and Approach, and b) the oral interview and cost rate review. The highest scoring Proposer, on the basis of the cumulative total of scores from the written SOQ and the oral interview and cost rate sheet, 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.

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

1. RFSOQ Release Date	June 10, 2019
2. SOQ Submission Deadline	July 12, 2019
3. Notification: Short-list for Oral Interviews	July 19, 2019
4. Oral Interviews	August 12, 2019
5. Firm Selected for Negotiations	August 12, 2019 or after

The dates above are subject to change. Please check CCJPA's Opportunities page (<https://www.capitolcorridor.org/opportunities/>) for updates to this RFSOQ.

S. Notification of Award and Debriefing

Proposers that submit a SOQ shall be notified in writing regarding the firm to be awarded the Agreement. Said notification shall be made within five (5) days of the date the CCJPA's Managing Director authorizes 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 (5) days of the above-described notification of award.

T. 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.

U. Questions Regarding the RFSOQ

Questions regarding this RFSOQ or requests for additional information shall be directed in writing to the CCJPA's Contract Administrator. Official responses will be posted to the CCJPA Opportunities website and updated as necessary so please do check versions.

No inquiries should be made about this RFSOQ to any other rail operator other than the identified CCJPA staff. Doing so, if discovered would be grounds for dismissing a RFSOQ response and or contract.

All inquiries shall be made to the CCJPA at least five (5) calendar days before the SOQ submission date. Inquiries received less than five (5) calendar days prior to such date may, at the CCJPA's sole option, not be responded to.

Jim Allison, Manager of Planning
Capitol Corridor Joint Powers Authority
300 Lakeside Drive, 14th Floor East
Oakland, CA 94612

(510) 464-6994
jima@capitolcorridor.org

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 Work
Attachment B	Example Agreement for Consulting Services
Attachment D	Example Provisional Cost Reimbursement and Rate Agreement
Attachment D	Provisional Cost Reimbursement and Rate Data (to be completed by all consultant(s) only if selected for an oral interview)
Attachment E	Protest Procedure
Exhibit 1	Consultant Team
Exhibit 2	Confidential Statement of Qualifications and Business References

ATTACHMENT A

Scope of Work

Approach

CCJPA is seeking a third-party vendor with expertise, experience and qualifications to provide oversight and management services of a Wi-Fi Service Delivery vendor (Nomad Digital) on the Capitol Corridor and San Joaquin intercity passenger rail fleet. This oversight and management service may also be expanded to include other commuter and intercity passenger rail services within the State of California or other passenger rail agencies at the direction and agreement of the CCJPA. The oversight and management contract is anticipated to be a long-term contract period of five (5) + five (5) years option, with options to extend services in future years. To differentiate from the similar Wi-Fi Service Delivery Contract held with Nomad Digital, for the purposes of this Scope of Work (SOW) we will refer to this as the Wi-Fi Oversight and Management Services contract. While this SOW will definitely cover the fleet used by the Capitol Corridor and San Joaquin service, this Wi-Fi Management Services contract may also be extended to partner agencies who have or desire to have Wi-Fi systems on their passenger rail fleets and for those passenger rail operators who may require project/program management expertise to oversee the Wi-Fi system on their trains. In fulfilling the SOW under this Agreement, the selected third-party vendor (hereafter, "selected vendor") would act as the "eyes and ears" on behalf of the CCJPA and designated partner agencies, responsible for monitoring and overseeing the performance of a Wi-Fi Service Delivery vendor who already has or will provide an on-train Wi-Fi service for passengers and/or for use in rail operations. As well, the selected vendor would occasionally perform one-time project or program support duties of a finite duration or outcome. Both the monthly ongoing and one-time performance of these vendor functions will be under a Master Services Agreement (MSA) contract to collectively provide Wi-Fi Management Services, as further described below in this document.

Under the MSA contract, each partner agency would work with the selected vendor to develop and execute specific work directives that specify the expected duties unique to the passenger rail fleet involved. At present, the CCJPA functions in a role of managing a Wi-Fi Service Delivery MSA with Nomad Digital with similar contract duration timing as with this Wi-Fi Management Services MSA-based contract. Therefore, looking forward, it would be Nomad Digital as the Wi-Fi Service Delivery vendor that the selected vendor that would be overseeing and managing on behalf of CCJPA and/or its partner agencies. However, this MSA is not exclusive to overseeing just Nomad Digital. If another passenger rail operator is bringing along their own Wi-Fi Service Delivery vendor who is not Nomad Digital, then, subject to applicable cost and scale adjustments noted below separating costs from the Nomad Digital based Wi-Fi system, this MSA can be used to perform the same/similar Wi-Fi Management Services.

Key Responsibilities

The expected service obligations under this MSA include:

- Monthly Wi-Fi Support Services
 - Wi-Fi Service Program Management
 - System Monitoring of all cars in service during revenue service hours
 - Incident Triage and Root Cause Analysis (RCA)
 - Wi-Fi Vendor Engagement and coordination of Field Service Engineer (FSE) deployment
 - Cellular data use reporting, if applicable
 - Trackside infrastructure* install oversight and/or performance, if applicable
 - Facilitation of system reporting, monitoring, and project management reviews on a defined time interval (e.g., weekly)
 - Wi-Fi Service Platform reporting
 - Assistance in pursuing penalties or other remedies against the Wi-Fi services vendor who does not meet service SLA expectations
- Project/Program Support Services
 - Cellular Subscription purchase assistance, if applicable
 - Associated Wi-Fi system project management planning and implementation assistance (including reporting)
 - State of Good Repair (SOGR) planning
 - Web portal management and/or oversight
 - Entertainment service delivery oversight via Wi-Fi
 - Procurement assistance
 - Installation oversight

*this task would only be applicable to suitable passenger rail partners who own trackside infrastructure

Tasks

Discovery

Prior to initiating work on any executed work directive, select vendor personnel will meet with the CCJPA or appropriate partner agency and the Wi-Fi Service Delivery vendor to begin a period of discovery to assemble a complete set of documentation related to the current Wi-Fi service and its constituent parts. This discovery phase will mainly apply to ongoing monthly oversight and management service but there are elements that could apply to specific one-time project delivery efforts. As such, this task includes, but is not limited to:

- Review of applicable system service agreements between the Wi-Fi vendor and the operator;
- Review of current system monitoring and incident escalation processes;
- Review of data collection and reporting processes, included report formats and templates;

- Review asset management records including all installed equipment, ID tags, serial numbers, and allocated spares;
- Benchmark current Wi-Fi system performance and availability over service routes;
- Benchmark functionality of Wi-Fi system assets in each car;
- Catalog, and support resolution of, legacy open issues and present status report to the applicable agency
- Development of any initial installation or subsequent work directives based on received parameters

While such processes may be common due to the specific Wi-Fi Service Delivery vendor, each partner agency should be expected to have unique requirements that need to be addressed. This is also an opportunity to identify areas for improvement and processes that need to be newly implemented.

Program Management Framework

Based on the discovery phase, the selected vendor will author a written report detailing a recommended Program Management Framework for the specified passenger rail fleet. This document will establish monitoring parameters, reporting format and status call schedule; incident recording, escalation and remediation processes; management of services provided by participating partners; and an advanced method to provide the passenger rail operators with an online 'dashboard' of system performance metrics and trends based off of API links to the Wi-Fi Service Delivery vendor and other relevant sources. This dashboard should be provided in a reasonable timeframe based on the completion of the discovery period and updated periodically to suit the partner agency(s) involved.

Cellular Data Backhaul and Trackage Network Support

It is anticipated that most passenger rail services will use commercial cellular networks for Internet connectivity, unless there is an initiative to supply trackside backhaul. The supply of suitable cellular carrier SIMS is expected to be the responsibility of the partner agency, but, as mentioned above, the selected vendor may be expected to assist the partner agency in the procurement and establishment of SIMS for the Wi-Fi solution on their passenger rail service. After installation and during regular operation, the selected vendor will track individual SIM performance. Arrangements for cellular carrier billing, bill paying, and other cellular SIM management can be customized between the partner agency and the selected vendor with arrangements captured in the work directive.

For partner agencies who have, could have, or are considering a trackside network, the selected vendor will be expected to interact in a similar manner to the cellular assets used to deliver the backhaul of the network. The selected vendor can be expected to support, document, report on, and monitor the trackside network infrastructure. In some cases, the selected vendor can be expected to be directly involved in design and procurement assistance, testing, and adherence to a trackside network in whatever stage of development or function it may have. The details of such a trackside system oversight

would need to be documented in the work directive(s) that a partner agency may undertake or have in place.

Handoff Preparation

In the event that any legacy system of Wi-Fi management support is in place, the selected vendor will need to identify critical system handoff preparatory materials and actions with the partner agency to support a smooth transition. The details of a such a handoff should be explored in the discovery period and appropriate elements should be captured in applicable a future work directive(s).

Program Team

Personnel staffing and supporting Wi-Fi service program management shall consistently be identified in not only the response to this RFSOQ but in any work directives. Roles and expertise should be documented and be consistent with the MSA personnel, as updated to reflect turnover that may happen over the duration of the MSA.

Work Categorization and Costs

All costs provided in each category of fee structure will be allowed to scale upwards according to economic indicators, such as CPI, due to the length of the contract. Within three months of either side of the beginning of the calendar year (October 1 – March 31), the selected vendor shall present their new fee structure that is escalated pursuant to agreed to economic parameters in the MSA (due to scale issues – see below) for consideration and negotiations with CCJPA. If no new fee structure is presented between October 1 and March 31, then the previous fee structure will be maintained subject to participating partner passenger rail agencies and their timing of inclusion or leaving the MSA for these services.

Fee Structure

Pursuant to the MSA, there shall be two categories of costs eligible under a work directive. These shall differ based on the nature of the work directive as explained below:

I. Monthly Wi-Fi Support Services

Based on the scope and scale of overall ongoing services under the MSA, the selected vendor shall document monthly costs separately for professional services, service desk support and program management. “Collective” or “Active”, used below, refers to the partner agencies that can or might be covered under this MSA and could therefore be receiving monthly Wi-Fi support services.

Under the category of service desk support the selected vendor shall provide only Tier 1 technical support out of the hierarchy of industry-standard multi-tiered technical support categories. In order to support Tier 1 technical support services under this Scope of Work, support service personnel must deliver minimal call-

pickup time, account for average call duration, and then be able to scale to serve the collective fleet size. Fleet size is itself a proxy for the extent of Wi-Fi equipment in a particular fleet and the anticipated rate of service failure support that a Tier 1 Support Center may encounter on a daily basis.

The selected vendor is not expected to handle train service customer calls (i.e., passengers on the train having Wi-Fi support issues). The Tier 1 technical support is procedurally expected to be provided to only CCJPA or partner agency staff, the service operating center(s), and/or train conductors. The policies and procedure to follow in managing a technical support center across multiple services may vary by partner agency. It would be suitable for the selected vendor to recommend following a best-practices method to the partner agency's staff who may utilize the Tier 1 support services, but each partner agency can opt for their own procedure(s). If the CCJPA or a particular partner agency is causing a disproportional share of Tier 1 technical support issues because of their policies and procedures, the selected vendor should notify all active partner agencies with how this is affecting scaled costs. If the partner agency is unable or unwilling to modify their policies or procedures to reduce the level of effort necessary to support the Tier 1 technical support, the expected outcome may be that particular partner agency is billed more appropriately to reflect their more costly policies and procedures related to the Tier 1 technical support.

A common scope for providing Tier 1 support to identified and approved CCJPA and partner agency staff shall be developed by the selected vendor and shared for approval with the CCJPA and each applicable partner agency. Scopes may differ between partner agencies, but CCJPA, as the administrator of the MSA, will encourage a common script be utilized by all active partner agencies. As with policies and procedures, if one of the partner agencies has a significant deviation from the CCJPA common scope, costs may be proportionately billed to that particular partner agency.

For ongoing professional services and overall program management, the selected vendor shall incrementally realize economies of scale for professional services and program management across the CCJPA and partner agencies as additional work directives are executed to expand the professional service/service desk/program management-oriented work under this MSA. As partner agencies begin to execute additional work directives for professional services and overall program management services to support their Wi-Fi systems, costs should be adjusted accordingly across all applicable fleets so that any scaled costs savings accrue as soon as possible after fully commissioned Wi-Fi systems are in operations (i.e., when there is active Wi-Fi system monitoring/management oversight and not, for instance, when involved in project/program specific services such as initial installation).

The selected vendor shall maintain a cost spreadsheet that is updated regularly to reflect how costs are broken down among MSA-active partner agencies requesting Wi-Fi support services. This spreadsheet shall be maintained via a permanent weblink or online document storage system suitable for sharing with CCJPA and all partner agencies requiring the services under the MSA. The selected vendor shall host a conference call-/webinar-based online meeting for the CCJPA and active partner agencies when spreadsheet adjustments are planned/executed. The figures on the spreadsheets shall correspond to each active work directive and partner agency and their unique monthly invoicing covered under monthly Wi-Fi support services.

The selected vendor shall provide to the CCJPA and all partner agencies receiving professional service/service desk/program management services a scaled cost adjustment reflective of:

1. CCJPA's and the partner agency percentage share among the total number of Wi-Fi "brain cars" in operation under this MSA, but as adjusted by;
 - i. any unique or specialized cost drivers, such as trackside support vs. cellular support or differences in Wi-Fi system vendors or age of Wi-Fi system and viability of underlying monitoring and reporting structure, and
 - ii. any non-standard professional service/service desk/program management services that are uniquely tailored to a particular partner agency.

If there are changes to the fleet of the CCJPA or any partner agency – such as addition of new cars, or transfer of cars to other regions – the selected vendor may revise the monthly service fee, and/or agree with the CCJPA or partner agency of a one-time fee for coordinating the changes.

If a partner agency determines it wants to cease participating in this MSA for whatever reason during the course of a year, the selected vendor shall be able to demonstrate to all remaining participating agencies (including the CCJPA) the scaled cost differences by the loss of that participating agency. The timing and nature of that MSA exit by a partner agency shall be determined outside of the terms of this Agreement but clarity as to the cost drivers and cost differences with and without participating agencies shall be maintained as a universally shared cost sharing spreadsheet available in a secured online system as supported by this selected vendor. The selected vendor shall support the exiting and remaining participating agencies in their fiscal negotiations providing analysis and meeting participating support. The additional costs for this support in the event of an MSA exit by a participating agency shall be captured and subject to direct billing to the exiting agency by the selected vendor.

Under the monthly Wi-Fi support services cost category, the selected vendor may not charge for travel and expense(s) (T&E) costs unless the vendor identifies a unique travel/expense circumstance and obtains the required CCJPA or partner agency written concurrence for incurring and invoicing for T&E costs.

Finally, if opted in by a partner agency, ongoing support for simulated passenger experience measuring hardware or passenger self-sharing performance evaluations (e.g., a widget on the landing page to share performance data) is also desired but not required. If desired in a work directive, the cost for these added services shall be included in the monthly costs as applicable to the CCJPA and each partner agency. CCJPA and the selected vendor are responsible for presenting these options, or any other similar options for measuring services to any partner agency who may become involved under this MSA.

II. Project/Program Specific Services

Project or program specific services are intended as one-time work directive-based actions or an ordered sequence of subsequent and related work directives required for supporting the CCJPA or a partner agency in implementing some aspect of Wi-Fi services. These specific services can be related, but separate, work directives or ordered to unfold in phases under one larger work directive. Work directives for project-/program-specific services can include anything from procurement support, installation support, research, analysis, cellular surveys, provisioning/installing a simulated passenger-level "client" connection experience tool (and incorporating the support for that under the monthly Wi-Fi support services), or other applicable related system services that would be involved in Wi-Fi management assistance. The selected vendor shall provide a specific work directive cost to the CCJPA and the appropriate partner agency for any project/program specific services for review and approval.

T&E costs that relate to project/program specific services will require written authorization for projected T&E costs from the CCJPA or specific partner agency involved before they are incurred and as the need for such expense(s) arise.

Attachment B

EXAMPLE AGREEMENT

Between

CAPITOL CORRIDOR JOINT POWERS AUTHORITY

And

[TBD]

TO PROVIDE

**WI-FI OVERSIGHT AND MANAGEMENT SERVICES FOR INTERCITY AND
COMMUTER PASSENGER TRAIN OPERATIONS IN CALIFORNIA**

CCJPA AGREEMENT NO. CC0519-315PSP.00

2019

AGREEMENT TABLE OF CONTENTS

<u>ARTICLE</u>		<u>PAGE</u>
1.0	WORK TO BE PERFORMED	5
1.1	SCOPE OF WORK	5
1.2	AGILE AND ADAPATIVE PROJECT MANAGEMENT	5
1.3	TRACKING AND DOCUMENTING INTERATION.....	6
1.4	ADDITIONAL SUBCONTRACTOR PROCUREMENT AND ENGAGEMENT	8
1.5	PROJECT AND ORGANIZATIONAL PROCEDURES	8
1.6	COMPLETION OF CONSULTANT STATUS EVALUATION FORM.....	9
1.7	CONSULTANT PERSONNEL.....	9
1.8	SUBCONTRACTED PERSONNEL.....	9
1.9	FINANCIAL ADMINISTRATION.....	10
2.0	TIME OF PERFORMANCE AND DELAYS.....	11
2.1	TIME OF PERFORMANCE.....	11
2.2	DELAYS	11
3.0	COMPENSATION AND PAYMENT	11
3.1	COMPENSATION	11
3.2	DISALLOWED OR OTHERWISE NOT RECOGNIZED COSTS	13
3.3	METHOD OF PAYMENT	14
3.4	WITHHOLDING OF PAYMENT	15
4.0	CHANGES AND MODIFICATIONS	15
4.1	CHANGES	16
4.2	MODIFICATIONS	16
5.0	TERMINATION.....	16
5.1	TERMINATION FOR CONVENIENCE	16
5.2	TERMINATION FOR CAUSE	17
5.3	FORCE MAJEURE	17
6.0	INSURANCE	17
7.0	INDEPENDENT CONTRACTOR.....	20
7.1	CONFLICT OF INTEREST	20
7.2	CONSULTANT PERSONNEL.....	20
8.0	INDEMNIFICATION	20
9.0	WARRANTY OF SERVICES AND MATERIAL NONCOMPLIANCE BY CONSULTANT	21
9.1	WARRANTY OF SERVICES	21
9.2	MATERIAL NONCOMPLIANCE BY CONSULTANT	21
10.0	DATA TO BE FURNISHED BY CCJPA	22
11.0	OWNERSHIP OF WORK PRODUCTS	22
11.1	DOCUMENTS	22
11.2	ASSIGNMENT OF RIGHTS.....	22
11.3	WARRANTY OF WORK PRODUCT.....	22
12.0	PATENTS.....	22
13.0	MATTERS CONFIDENTIAL AND PRIVILEGED	23
14.0	SUBCONTRACTS	23
15.0	ASSIGNMENT OF AGREEMENT.....	23
16.0	RECORDS	23
17.0	AUDIT.....	24
18.0	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA.....	24
19.0	NOTICES	25
20.0	NONDISCRIMINATION	26

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

ATTACHMENT A: SCOPE OF WORK

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

ATTACHEMENT B: KEY PERSONNEL AND ORGANIZATIONAL CHART

(This is the Organizational Chart provided by SELECTED VENDOR., and demonstrated for the RFSOQ for SUBMITTAL)

ATTACHMENT C: RATE AGREEMENT

(Attachment provided by SELECTED VENDOR and approved by CCJPA, subject to allowed cost escalations)

ATTACHMENT D: CONSULTANT STATUS EVALUATION FORM AND PROCEDURES AND INSTRUCTION (this is related to assurance of SELECTED VENDOR personnel are or are not eligible for retirement benefits provided via CCJPA/BART)

(Attachment provided by CCJPA, for completion by SELECTED VENDOR)

TO PROVIDE
WI-FI OVERSIGHT AND MANAGEMENT SUPPORT SERVICES

CCJPA AGREEMENT NO. TBD

Between

CAPITOL CORRIDOR JOINT POWERS AUTHORITY

And

SELECTED VENDOR TBD

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2019, by and between CAPITOL CORRIDOR JOINT POWERS AUTHORITY, a California joint exercise of powers authority organized under the provisions of Government Code Sections 6500 et seq. ("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 desires to obtain professional services for the provision of management, leadership and oversight of various on-train passenger rail Wi-Fi systems;
2. The Wi-Fi system oversight services sought in this Agreement 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 Wi-Fi system management, leadership, and oversight services for the one or more passenger rail Wi-Fi systems for which CCJPA is responsible.
4. The San Francisco Bay Area Rapid Transit District ("BART") is the managing agency of the CCJPA and BART processes, procedures, and key personnel are utilized and identified in this Agreement due to this relationship with CCJPA.
5. Peer passenger rail agencies may opt to form a partnership agreement or MOU with CCJPA for this Agreement to serve as a Master Services Agreement for these peer passenger rail agencies to also be supported under the terms of this Agreement.

* * *

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 WORK

CONSULTANT's range of anticipated services are described in Attachment A, SCOPE OF WORK, incorporated herein and by this reference made a part hereof. CONSULTANT shall be responsible for fulfilling the requirements of Wi-Fi oversight and management services expressed in Attachment A, SCOPE OF WORK. For purposes of this Agreement, for the CCJPA and for the CONSULTANT, the following persons are identified as the individuals responsible for their respective roles identified in this Agreement:

A. CCJPA Project Director

The CCJPA Project Director, unless notified in writing to the CONSULTANT Project Manager is Jim Allison, Manager of Planning. If a successor contracting authority to CCJPA is assigned this Agreement, that contracting authority will appoint a named (in writing) Project Director.

B. CONSULTANT Project Manager

The CONSULTANT Project Manager, unless notified in writing to the CCJPA Project Director is _____, CONSULTANT [TITLE].

1.2 TRACKING AND DOCUMENTING WORK DIRECTIVE(S)

CONSULTANT shall maintain secure permissions-based online tools that both track and document work directives utilized under this MSA, including segregated by work directive elements, the costs by month.

A. Online Work Directives

Work directives identified for development in consultation and at the direction of the CCJPA shall incorporate the services to be performed by the CONSULTANT inclusive of the following:

1. A list of CONSULTANT and subcontractor personnel anticipated to perform the work directive, and modified if additional personnel are later added, considering the aspects of Section 1.2.A;
2. An anticipated budget plan including a detailed cost estimate and a cost-loaded schedule with value of anticipated work by personnel and any needed materials or travel. The intention under the budget plan is for CONSULTANT and/or its subcontractors 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 work directive;

3. Work directive phase or task breakdown structure;
4. A work directive phased/task identified schedule;
5. Work directive products;
6. Use of ordered work directive naming conventions that can group and also segregate work directives based on a relationship to the applicable passenger rail agency, if they are being implemented beyond the CCJPA's direct involvement; and,
7. Online posting of the work directive materials developed with an online approval mechanism for CCJPA or the applicable passenger rail agency associated with the work directive.

B. Work Directive Evaluation and Approval

CCJPA and/or the applicable passenger rail agency will evaluate the work directive, and the work directive may only proceed if the work directive is approved by the CCJPA Project Director as well as any applicable passenger rail agency partners. In its discretion, CCJPA may request CONSULTANT to revise and resubmit the work directive for approval.

C. Actions after Approval of a Work Directive

The CONSULTANT shall complete the work directive as approved and maintain progress notes for project delivery, The CONSULTANT must maintain records of work products, meeting/discussion notes, and other project materials as necessary, using online tools and record keeping that will be made available to CCJPA and/or partner passenger rail agencies. The intention is that the sum collective of all work directives, organization of work directives, joint or individual meeting minutes, reports, analysis, key decisions, key emails, etc., will be maintained as a record of all work directives implemented and chronologically documented. At the conclusion of contract or termination of the project with the CONSULTANT, CCJPA may elect to transfer and maintain the project's online tools at its sole cost, or request from CONSULTANT an export of all data in one or more formats made available by those tools.

D. CCJPA Approval of Online Tools

Within no greater than 21 days after execution of this Agreement, the CONSULTANT shall seek CCJPA approval of the online tools and their use. After presentation by the CONSULTANT and review, CONSULTANT shall make adjustments to the online tool utilization based on feedback from the CCJPA or migrate to another more suitable online tool to support the objectives of this Agreement. As needed, the CONSULTANT or CCJPA, or through successive interaction with partner passenger rail agencies can suggest modifications to the use of the selected online tool to improve work flow.

E. Use of Work Directive Identified CONSULTANT and Subcontractor Personnel

CONSULTANT agrees not to make any substitution of potential subcontractors after a particular work directive has been approved without prior approval of the CCJPA Project Director.

1.4 PROJECT AND ORGANIZATIONAL PROCEDURES

A. Modification of Procedures

At the direction of the Project Director, but with input from prospective partner passenger rail agencies, the CONSULTANT and its subcontractors, the project management process outlined in this Agreement may be modified as long as it is documented and identified as a clear improvement of the processes developed for this Agreement. Such changes should not be materially departing from the overall management of all applicable ongoing work directives unless clearly documented change and approval of CCJPA and partner passenger rail agencies results in such change to the active work directives. The intent of this section is to preserve business process flexibility while maintaining best practices to monitor work directive development.

1.4 COMPLETION OF CONSULTANT STATUS EVALUATION FORM

CONSULTANT PERSONNEL referenced in Section 1.5 and Subcontracted Personnel referenced in Section 1.6 shall each complete and submit to the CCJPA Project Director the Consultant Status Evaluation Form Blank according to the Consultant Status Evaluation Procedures and Instructions included in Attachment D. The form and instructions are worded from the perspective of CCJPA's managing agency BART but by relationship of CCJPA to BART are incorporated as required forms for all personnel working in the employ or under the direction of the CONSULTANT.

1.5 CONSULTANT PERSONNEL

A. Key Personnel

CONSULTANT and CCJPA agree that the personnel listed in Attachment B, ORGANIZATION CHART with 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 ensure that the Key Personnel maintain their roles associated with work directives and notify CCJPA if there are suggested or required changes.

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 work directives.

C. Removal of Personnel

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

1.6 SUBCONTRACTED PERSONNEL

A. Subcontracted Personnel

CONSULTANT and CCJPA agree that the subcontracting personnel listed in Attachment B, or additional subcontracting personnel working under the CONSULTANT through the

approval process in SECTION 1.4 are incorporated herein and by this reference made a part hereof, shall be designated as subcontractors. CONSULTANT shall also make every effort to ensure that the subcontractors maintain their roles associated with work directives and notify CCJPA if there are suggested or required changes.

CONSULTANT shall not remove any such subcontractors 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 subcontractor replacement individual, if necessary, based on the process in Section 1.3 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 subcontractor personnel to work directive.

C. Removal of Personnel

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

1.9 FINANCIAL ADMINISTRATION

The CONSULTANT and its subcontractors at any tier shall establish and maintain records pertaining to the fiscal activities of the Project. CONSULTANT's and subcontractors' 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 subcontractors 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 or securely and electronically maintained, 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. 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. As part of the online system, an accounting tool that maintains accurate invoices and payments shall be maintained for the CONSULTANT and CCJPA to examine. Invoices shall be accurate within the system as to the date in which they are submitted for reimbursement (typically no more than 30 days old). Budgeted work directives underway shall also be maintained and shown against the available overall past charges and budgeted work directives shown in the online accounting tool.
2. The system of accounting shall at a minimum 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.
3. The function of this feature shall be shown to CCJPA for review and approval and modified by the CONSULTANT until it meets with CCJPA approval as described in the above functional requirements. When functional and approved, it shall be the accounting system of record to compare to for budgetary analysis for the Project Director and CONSULTANT Project Manager.

2.0 TIME OF PERFORMANCE AND DELAYS

2.1 TIME OF PERFORMANCE

A. Performance of Scope of Service

CONSULTANT's performance of work directives as described in Section 1.2 shall commence upon contract execution and approved, as noted in Section 1.3 for each work directive and shall be completed within 15% of the timeline schedule approved by CCJPA unless otherwise authorized by the CCJPA Project Director, including if the work directive is modified for its delivery date unless the work directive is terminated earlier in accordance with Section 1.3 or for greater cause according to 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 five (5) years from the date of execution of this Agreement, with an option for an additional five (5) year contract extension, and thereafter, occurring annually, future term adjustments to this Agreement as may be carried forth by CCJPA, but always 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 work directives performed under this Agreement will be based on two different approaches unique to the nature of the work directive. For one-time project/program services, time and materials basis and incurred cost reimbursement basis will be the basis of payment. Such time and materials 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).

The other cost basis will be for a fixed price for monthly ongoing management services as calculated as further described in the SOW (Attachment A). This basis will fluctuate based on scale of participating passenger rail agencies but on the understanding that a team of vendor personnel will be required to support minimum functionality and the hourly rates for those personnel and their overheads, etc., should be shown to be the basis for calculating minimum viable Wi-Fi system management functionality as described in the SOW. As this core team of personnel can provide or automate key features at scale, until more personal may be needed, there is an expectation that as more passenger rail operators participate under the MSA for monthly ongoing management needs, that costs to passenger rail providers will be reduced accordingly. The basis for per rail operator monthly billing due to these scaling factors should be tracked and shared online by the selected vendor for clarity when interacting with CCJPA and other potential rail operating partners.

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 work directive;
 - b. any compensation limits or sub-limits set forth in such work directives, 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 basis for the work to be performed for each CONSULTANT fiscal year. At the end of the annual period, either party may request a rate adjustment subject to negotiation between the parties and modification to the Rate Agreement such as anticipated labor cost increases of 3% or under, or indirect cost escalations, or fee or profit margin adjustments. Such increases shall be requested in writing and include a rationale and analysis to permit CCJPA to audit the changes anticipated. 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 this Agreement.

D. Notification

The CONSULTANT shall use the online accounting tool to schedule alerts to the CCJPA Project Director to examine the cost reimbursements and other budget expenditures on at least a quarterly basis but preferably on the monthly basis.

E. CONSULTANT Costs

All CONSULTANT costs associated with providing services that are identified in this Agreement as being apart and separate from any individual work directive 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 identified in the work directive or work directive as adjusted under the approval of the CCJPA Project Director, for services performed under such work directives; 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 WORK, above and services described in Attachment A hereto, exceed Thirty Million Dollars (\$30,000,000) over the maximum time of contract performance, unless adjusted in an updated contract by CCJPA.

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 subcontractor(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 subcontractor(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/Subcontractor 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) calendar 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 subcontractors' 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 subcontractors (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 subcontractor 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 subcontractor's work is satisfactorily completed.

B. Invoice Procedures

CONSULTANT shall invoice for performance only on active work directives 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 in writing 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 work directive breakdowns that are provided online.
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 subcontractor(s), to be reimbursed under this Agreement are not in excess of the actual hourly rates in effect for CONSULTANT or subcontractors 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. Invoice Submittal Address

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

By email (preferred): ap_supplier@bart.gov

By US mail: Capitol Corridor Joint Powers Authority
Attention: James R. Allison

300 Lakeside Drive
14th Floor East
Oakland, CA 94612

Invoice instructions to participating partner passenger rail agencies will be identified as needed during the process of WD development and scope of work negotiations.

F. 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 work directives as outlined in Section 1.2 and in Attachment A, SOW, 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 the online work directive documentation and approval tool requested in Section 1.2 and 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 modified work directive 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 work directive adjustment.

4.2 MODIFICATIONS

A. Work directive Modifications

CCJPA reserves the right to order modifications to work directives, including but not limited to, the services to be performed by CONSULTANT pursuant to an accepted work directive. All such modifications to a work shall be incorporated in written online documentation related to each modified work directive, executed online 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 shall be executed under all applicable conditions of this Agreement. No claim for additional compensation or extension of time with respect to a work directive shall be recognized unless contained in a duly executed work directive. The parties also understand and agree that CONSULTANT will not be reimbursed for costs incurred prior to the effective date of a duly executed work directive from CCJPA.

5.0 TERMINATION

5.1 TERMINATION FOR CONVENIENCE

CCJPA may, at any time prior to completion of the work under any work directive or the work under this Agreement, terminate any such work directive(s), 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 effective work directives, or this Agreement. Effective on receipt of such notice of termination from CCJPA, no new work or obligation with respect to such work directives, or this Agreement will be undertaken by CONSULTANT unless so directed by CCJPA in writing via the online repository and record keeping system. 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 work directives, 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 (5) calendar 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.

5.2 WORK DIRECTIVE TERMINATION BY A PARTNER RAIL AGENCY

Due to the nature of this Agreement, and the issuance of Work Directives by CCJPA or by partner rail agencies, there may be a termination of a Work Directive that can affect pricing and/or service delivery for the remaining participating passenger rail agencies. The CONSULTANT shall at all times maintain documented cost sharing information for their services based on participation of all but also each partner agency delivering monthly services covered under this Agreement. This information shall be accessible and supported by the CONSULTANT in the event there is a termination of services via a Work Directive that can affect costs for participating passenger rail agencies.

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 the Agreement, or as may be further required by the Agreement, CONSULTANT, at its own cost and expense, shall provide the insurance specified in this Article 6.0, unless otherwise approved in advance and in writing by the Project Director.

A. Evidence Required

At or before execution of this Agreement and at such other times as the CCJPA may request, CONSULTANT shall provide the CCJPA with Certificate(s) of Insurance executed by an authorized representative of the insurer(s) evidencing the CONSULTANT's compliance with the insurance requirements in this Article 6.0. The Certificate(s) shall reference the CCJPA's Agreement Number and Title to which the Certificate relates. In addition, a copy of all required endorsements shall be included with and attached to the Certificate(s) of Insurance.

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

All policies shall be endorsed to provide the CCJPA with thirty (30) calendar days prior written notice of any cancellation, reduction, or material change in coverage. Notices, including evidence of insurance, shall be forwarded to:

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

CONSULTANT shall submit certifications confirming that the insurance has been renewed and continues in place, if required.

C. Qualifying Insurers

Policies shall be issued by California admitted companies which hold a current policyholders alphabetic and financial size category rating of not less than A VIII according to Best's Insurance Reports.

D. Insurance Provided by CONSULTANT

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate as respects products/completed operations if applicable.

a. Coverage shall include:

- (1) Premises and Operations;
- (2) Broad Form Property Damage;
- (3) Products and Completed Operations;
- (4) Contractual Liability;
- (5) Personal Injury & Advertising Liability;
- (6) Independent Contractor's Liability;
- (7) Cross Liability and Severability of Interest.

b. Such insurance shall include the following endorsements, copies of which shall be provided to the CCJPA:

- (1) Inclusion of the CCJPA and BART as managing agency and their directors, officers, representatives, agents and employees as additional insured as respects to CONSULTANT's services or operations under this Agreement; and
- (2) Stipulation that the insurance is primary insurance and that no insurance or self-insurance of the CCJPA and/or BART will be called upon to contribute to a loss.

2. Automobile Liability Insurance for bodily injury (including death) and property damage which provides limits of liability of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence applicable for all owned, non-owned and hired vehicles.

a. Coverage shall be endorsed to include the following, a copy of which shall be provided to CCJPA:

- (1) Inclusion of the San Francisco Bay Area Rapid Transit District (BART) as Additional Insured as respects services or operations in connection with this Agreement.

3. Statutory Workers' Compensation and Employers' Liability Insurance for not less than One Million Dollars (\$1,000,000) per accident 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 and BART as managing agency and their directors, officers, representatives, agents and employees, a copy of which shall be provided to the CCJPA. Should any such work be subcontracted, CONSULTANT shall require each subconsultant of any tier to similarly comply with this Article 6.0, all in strict compliance with Federal and State law.
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 One Million Dollars (\$1,000,000) per claim/aggregate as respects CONSULTANT's services under this Agreement. Such insurance shall be maintained for a period of not less than two (2) years following completion of services.
 - a. Vicarious Liability Endorsement in favor of 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 is 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 BART's Department Manager, Risk Management.
3. Should any of the work under this Agreement be subcontracted, CONSULTANT shall require each of its subconsultant(s) of any tier to provide the aforementioned coverage's, or CONSULTANT may insure subconsultants(s) under its own policies.
4. 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. 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 and its personnel shall assist the CCJPA in evaluating the documenting the correct classification of CONSULTANT's personnel as independent contractors, which assistance may include, but is not limited to, reviewing and signing a Work Status Evaluation form for each individual proposed to perform work under the Agreement. Neither CONSULTANT, nor any of CONSULTANT's officers, employees or agents, will obtain any rights to retirement, health care or any other benefits which might accrue to CCJPA employees. CONSULTANT expressly waives any claim to any such rights or benefits. 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. Prior to commencing services, the CCJPA Project Director may loan CONSULTANT a copy of BART's Operations Rules and Procedures which shall be returned upon the completion or termination of CONSULTANT's services hereunder.

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 and BART as managing agency 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 subcontractors 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 and BART as managing agency 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.

CONSULTANT is not an employee and will defend, indemnify and hold CCJPA harmless for any injuries or claims suffered by CONSULTANT and/or its officers, agents, employees and subcontractors that would otherwise but subject to the Worker's Compensation Act. Further, CONSULTANT will defend, indemnify CCJPA and hold it harmless for tax, wages, employees benefits, pension benefits, or other liability if CONSULTANT or its employee, agent, subcontractor or other person providing services pursuant to this Agreement is found to be a common law employee of CCJPA or BART by the IRS, CalPERS, another government agency or a court or administrative law judge

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 by suitably qualified persons using competent professional knowledge and judgment and shall conform to Good Industry Practices. In addition, CONSULTANT shall provide such specific warranties as may be set forth in individual work directives 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 subcontractors 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) calendar 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, 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 subcontractors as shown in Attachment 2 (Project Consultant Team or modified via online documentation that is current to the list of subcontractors involved) hereto and as listed in each work directive. CONSULTANT shall not further subcontract all or any portion of its services under this Agreement or a work directive without the prior written approval of the Project Director (via the online work directive approval process documented in Section 1.3) and any attempt to do so shall be void and unenforceable. Written approval by the Project Director of use of a subcontractor for specified services in connection with one work directive 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 subcontractors shall be solely and directly responsible to CONSULTANT, and CCJPA shall have no obligation to them.

B. Subcontract Provisions

CONSULTANT agrees that the requirements of this Agreement, will be included as an attachment or exhibit 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 subcontractors 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 subcontractors shall permit CCJPA and its authorized representatives to inspect, examine, make excerpts from, transcribe, and copy CONSULTANT's and subcontractor'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 subcontractors and CCJPA and/or its authorized representatives will participate.

B. Accessing Documents

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

C. Letter of Representation

CONSULTANT's management, or the management of a subcontractor, 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 subcontractors 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 work directive, 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, work directive(s),

Rate Agreement(s), or work directive(s) modifications and any applicable invoice(s) shall be modified to reflect the reduction.

If CCJPA determines that a price or cost reduction should be made, CONSULTANT agrees not to raise the following matters as a defense:

A. Bargaining Position

CONSULTANT was the sole source supplier or otherwise was in a superior bargaining position and thus the price would not have been modified even if accurate, complete and current costs or pricing data had been submitted;

B. Cost and Pricing Data

CCJPA should have known that the cost or pricing data in issue were defective even though CONSULTANT took no affirmative action to bring the character of the data to the attention of CCJPA;

C. Item Cost

The price was based on an agreement about the total cost of the work and there was no agreement about the cost of each item procured under the Agreement.

19.0 NOTICES

Except for invoices submitted by CONSULTANT pursuant to Article 3.0, COMPENSATION AND PAYMENT, above, and insurance notices submitted pursuant to Article 6.0 B., Notice of Cancellation, Reduction or Material Change in Coverage, above, all notices required hereunder or other communications to either party by the other may be given by personal delivery, U.S. Mail, courier service (such as Federal Express) or email transmission. Notices shall be effective upon receipt at the following addresses:

To CCJPA by US Mail: District Secretary
San Francisco Bay Area Rapid Transit District
P.O. Box 12688
Oakland, California 94604-2688

Attention: CCJPA Contract Administrator

To CCJPA by Personal Delivery or Courier District Secretary
San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 23rd Floor
Oakland, CA 94612

Attention: CCJPA Contract Administrator

To CONSULTANT: TBD
TBD
TBD

Attention: TBD
[TITLE]

To CONSULTANT: Email only to TBD

Either party may change its address for notices by giving written notice of the new address as provided above.

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 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.

22.0 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.

23.0 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.

24.0 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.

25.0 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.

26.0 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.

27.0 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.

28.0 BENEFIT OF AGREEMENT

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

29.0 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

TBD

By Executive Director
(or designee)

By (Signature)

Name _____
and _____
Title _____
Print or Type

Name: TBD
and
Title: TBD

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 B 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 \$100.00 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 as 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. _____ Email: _____

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 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.

EXHIBIT 1

PROJECT CONSULTANT TEAM

Name, Address and Telephone Numbers of All Firms Participating on the Project (including Proposer) and Subconsultants	Work Description	Total Dollar Amount
Proposer's Name Address Phone Number		
Name Address Phone Number		
Name Address Phone Number		
Name Address Phone Number		
Name Address Phone Number		
Name Address Phone Number		

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 CCJPA to evaluate the indirect cost rate provided in the estimated cost for scope of work.

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