

RESOLUTION NO. 24-31

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into A First Amendment To The Contract With Zephyr Rail To Extend The Contract Expiration Date To June 30, 2025 And To Increase The Total Compensation Amount By \$249,472.59 For A Total Not To Exceed Amount Of \$1,146,859.84 For Bid Support, Pre-Construction Assistance, Construction Management, And Testing Services For The Quiet Zone Safety Engineering Measures Project, (CIP No. 19475008)

WHEREAS, the Capital Improvement Program adopted by the City Council in June 2019 includes a project titled, 'Quiet Zone Safety Engineering Measures' (the "Project"), CIP No. 19475008; and

WHEREAS, on May 18, 2021, the Emeryville City Council approved the Project's scope of work and authorized public bidding of the project once the plans and specifications were approved by the City Engineer (Resolution No. 21-44); and

WHEREAS, On September 13, 2021, the City Council approved a Professional Services Contract with Zephyr Rail in the amount of \$897,387.25 (Resolution No. 21-94), for bid support, pre-construction assistance, construction management, and testing services for the TCEP – Quiet Zone Safety Engineering Measures, Project No. EPW-18103 (CIP No. 19475008); and

WHEREAS, on February 15, 2022, the City Council authorized the construction of the TCEP – Quiet Zone Safety Engineering Measures, Project No. EPW-18103 (CIP No. 19475008) by awarding a \$2,269,819.11 Construction Contract to Bay Cities Paving and Grading, Inc.; and

WHEREAS, the Project broke ground in June 2022, but has faced significant challenges beyond the control of the City of Emeryville, primarily due to persistent delays in collaboration with Union Pacific Railroad ("UPRR"); and

WHEREAS, construction of the Project is now expected to be completed in Spring 2024, but still requires more coordination and scheduling of work to be performed by BCPG and UPRR through March 2024; and

WHEREAS, the delays require an amendment to the contract with Zephyr Rail to provide continued support through full project completion; and

WHEREAS, Staff recommends approving the 1st Amendment Contract which would add \$249,472.59 for a total contract amount not to exceed amount of \$1,146,859.84 for continued support work on Construction Management & Testing, Post-Construction Services, and Quiet Zone Implementation through June 30, 2025; and

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Zephyr 1st Amendment Contract - Quiet Zone Project
City Council Meeting | March 19, 2024
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WHEREAS, there is adequate funding encumbered into the Project to fully fund the 1st Amendment Contract and the construction of the TCEP – Quiet Zone Safety Engineering Measures Project (CIP No. 19475008); now, therefore, be it

RESOLVED, by the City Council of the City of Emeryville that the City Manager is authorized to enter into a First Amendment to the contract with Zephyr Rail to extend the contract expiration date to June 30, 2025 and to increase the total compensation in the amount of \$249,472.59 for a total not to exceed amount of \$1,146,859.84 for Bid Support, Pre-Construction Assistance, Construction Management, and Testing Services for the Quiet Zone Safety Engineering Measures Project, (CIP No. 19475008).

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, March 19, 2024, by the following vote:

AYES:	<u>5</u>	Mayor Welch, Vice Mayor Mourra and Council Members Bauters, Kaur and Priforce
NOES:	<u>0</u>	_____
ABSTAIN:	<u>0</u>	_____
ABSENT:	<u>0</u>	_____

DocuSigned by:

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 MAYOR

ATTEST:

DocuSigned by:

 3C8843D6DE3D48D

 DEPUTY CITY CLERK

APPROVED AS TO FORM:

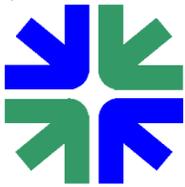
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 SPECIAL COUNSEL

ATTACHMENTS

- Professional Services Contract – 1st Amendment (Zephyr Rail)



City of Emeryville

CALIFORNIA

PROFESSIONAL SERVICES CONTRACT

FIRST AMENDMENT

THIS FIRST AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT (“Amendment”) is effective as of _____ (the “Effective Date”),, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, (“City”) and **ZEPHYR RAIL** (“Contractor”), individually referred to as a “Party” and collectively as the “Parties”.

WITNESSETH THAT

WHEREAS, the City and Contractor entered into a Professional Services Contract dated September 16, 2021 (“Contract”) for the purpose of retaining the services of Contractor to provide Bid Support, Pre-Construction Assistance, Construction Management, And Testing Services For The Quiet Zone Safety Engineering Measures Project (CIP No. 19475008); and

WHEREAS, the City and Contractor desire to amend the Contract; and

WHEREAS, the public interest will be served by this Amendment.

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

1. AMENDMENT

The Parties agree to amend the Contract as checked below:

1.1 Exhibit A

Exhibit A of the Contract is hereby amended in its entirety and replaced with **Exhibit A-*Revision Number***;

OR

Exhibit A of the Contract is hereby amended to include the provisions of **Exhibit A-1**, attached hereto and incorporated herein by this reference.

1.2 Termination Date

The Parties desire to extend the termination date. Section 1.3 of the Contract is hereby amended to extend the termination date to **JUNE 30, 2025**.

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Contract No.		CIP No.	
Resolution No.		Project No.	

1.3 Total Compensation Amount

- The Parties desire to increase the Total Compensation Amount as set forth in Section 3.2 of the Contract by **TWO HUNDRED FORTY NINE THOUSAND, FOUR HUNDRED SEVENTY TWO DOLLARS AND FIFTY NINE CENTS (\$249,472.59)**. The total amount paid under the Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **ONE MILLION, ONE HUNDRED FORTY SIX THOUSAND, EIGHT HUNDRED FIFTY NINE DOLLARS AND EIGHTY FOUR CENTS (\$1,146,859.84)**.

2. CONTINUING EFFECT OF CONTRACT

Except as amended by this Amendment, all other provisions of the Contract remain in full force and effect and shall govern the actions of the Parties under this Amendment. From and after the date of this Amendment, whenever the term “Contract” appears in the Contract, it shall mean the Contract as amended by this Amendment.

3. ADEQUATE CONSIDERATION

The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

4. SEVERABILITY

If any portion of this Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

5. WAIVER

The City’s failure to enforce any provision of this Amendment or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

SIGNATURES ON FOLLOWING PAGE

City of Emeryville | Professional Services Contract Amendment
REV02/2024

**6. SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT
FIRST AMENDMENT**

IN WITNESS WHEREOF the City and the Contractor have executed this Contract,
which shall become effective as of the date first written above.

Approved As To Form:

DocuSigned by:
John Kennedy
City Attorney

Dated: **CITY OF EMERYVILLE**

Paul Buddenhagen, City Manager

Dated: **ZEPHYR RAIL**

02/29/2024

Marc Canas, Vice President (Signature)

<i>Attach: W-9 Form</i>	<i>Attach: Business License Certificate</i>	<i>Attach: Insurance Certificate and Endorsements</i>
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EXHIBIT A-1

SCOPE OF WORK



February 20, 2024

Ryan O'Connell P.E.
Senior Civil Engineer
City of Emeryville Public Works
510.596.4346
roconnell@emeryville.org

RE: Amendment 1 City of Emeryville TCEP Quiet Zone Safety Engineering Measures

The TCEP project to enhance safety and quality of life for Emeryville residents through Quiet Zone Safety Measures at 65th, 66th, and 67th Streets, aimed at mitigating conflicts between railroad operations and pedestrian/vehicular movements and reducing train horn noise. The project was advanced when the City of Emeryville awarded the TCEP project to the Zephyr Rail Team (ZRT) in late 2021. Since then a contractor was selected to perform the construction work and UPRR was engaged to perform their improvements in support of the project.

Considering the substantial impacts caused by COVID-19 and uncertainties related to emergency shelter-in-place directives, the City applied for a Time Extension granting twenty (20) months as allowed in the revised SB 1 – TCEP Guidelines. The Contractor began construction in June 2022 and is anticipated to complete construction in Late Winter/Spring 2024. There have been delays with their work due to UPRR not being able to schedule their crews to complete the railroad portion of the work. UPRR has only recently completed their improvements in January 2024, when they were originally slated to finish in early 2023.

Due to these delays, the ZRT team must also extend our services covering the following scopes:

Construction Management & Testing

ZRT takes charge of the construction phase with a keen focus on efficiency, safety, and quality assurance. By overseeing the contractor's mobilization, ZRT ensures that the project's execution aligns with its ambitious goals. Regular progress meetings facilitate transparent communication among stakeholders, while rigorous review of progress payments and detailed reporting keep the project on track financially and temporally. A steadfast commitment to schedule and cost control, coupled with stringent quality assurance measures, underscores ZRT's dedication to delivering a project that meets the highest standards of excellence.

Post-Construction Services

Upon completing construction, ZRT transitions to providing post-construction services, a phase critical to the project's long-term success. Final inspections and acceptance testing verify that all work complies with project specifications and safety standards. Moreover, ZRT's assistance with the documentation required for Transportation Capital Expenditure Plan (TCEP) funding evidences its comprehensive approach to project management, ensuring fiscal accountability and regulatory compliance.

Quiet Zone Implementation

The culmination of these efforts is the implementation of Quiet Zones, a transformative measure that promises to significantly mitigate rail noise and enhance safety at rail crossings. The successful establishment of Quiet Zones not only represents a technical achievement but also a significant enhancement to the community's living environment, showcasing the project's broader impact on urban quality of life.

CPUC/FRA/QZ Implementation Support: the following activities will be executed in support of the quiet zone implementation:

- Conduct a new diagnostic meeting, or if FRA agrees we propose to send them the plans and specifications for their review and comments.
- Prepare new calculation for review by the city.
- Prepare Notice of Intent (NOI) that will include latest plans, CPUC GO 88 B approval Letters, FRA calculation form, a cover letter signed by the City Manager (60 days to respond) and send them to stakeholders via e-mail and Registered mail with return receipt.
- Respond to comments for NOI.
- Prior to establishing Quiet Zone all construction shall be completed, all Quiet Zone signs shall be installed and covered. A final diagnostic meeting shall be conducted by the city with CPUC, and UPRR to sign off on the Form G.
- Prior to completion of construction (about 60 days) send notice of Establishments (NOE) date per city's desired date and notify all stake holders of the date of Quiet Zone establishment

Please feel free to reach out to me if you have any questions. I can be reached via email at marc.canas@zurail.com or 714.420.7238.

Sincerely,



Marc A. Cañas
Vice President
Zephyr Rail



City of Emeryville

CALIFORNIA

PROFESSIONAL SERVICES CONTRACT

ARTICLE I INTRODUCTION

This AGREEMENT is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the "CONSULTANT" is as follows:

Zephyr Rail

Incorporated in the State of California

The Project Manager for the "CONSULTANT" will be **Marc Cañas**

The name of the "LOCAL AGENCY" is as follows:

City of Emeryville

The Contract Administrator for LOCAL AGENCY will be **Ryan O'Connell**

- A. CONSULTANT is aware that this AGREEMENT is subject to different grant requirements. By executing this AGREEMENT, CONSULTANT acknowledges receipt of the following grant agreements and agrees to comply with the terms and conditions of the following grant agreements:
1. California Transportation Commission - SB1 TCEP Project Baseline Agreement (October 25, 2018), Resolution TCEP-P-1819-05B (October 17, 2018), and revised per Waiver 19-33 (June 26, 2019)
 2. Caltrans Division of Rail and Mass Transportation - Master Agreement No. 75SR004 (July 1, 2018)
 3. Alameda County Transportation Commission - Alameda CTC Agreement No. A19-0003 for Project No. 1493000 (October 25, 2018)
- B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and the approved CONSULTANT's Cost Proposal dated **08/10/2021**. The approved CONSULTANT's Cost Proposal is attached hereto **Exhibit A – Scope of Work and Proposal** and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. To the fullest extent permitted by law, CONSULTANT shall indemnify, defend, and hold harmless LOCAL AGENCY and Alameda County Transportation Commission ("ACTC") and their respective members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of CONSULTANT or subcontractors as well as any claim by any employee, agent, CONSULTANT or independent contractor hired or employed by CONSULTANT that such persons or individuals are entitled to any benefit otherwise provided to employees of the

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Contract No.	21029E-0000-PW01	CIP No.	19475008
Resolution No.	21-94	Project No.	N/A

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LOCAL AGENCY, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert contractors or expert witnesses incurred in connection therewith and the costs of investigation, arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of CONSULTANT, any subcontractor, anyone directly or indirectly employed by them or anyone that they control. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for CONSULTANT. This obligation to indemnify and defend the LOCAL AGENCY, ACTC, and their members, officers, agents, employees and volunteers shall survive termination of this AGREEMENT.

If CONSULTANT's obligation to defend, indemnify, and/or hold harmless arises out of CONSULTANT's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, CONSULTANT's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT, and, upon CONSULTANT obtaining a final adjudication by a court of competent jurisdiction, CONSULTANT's liability for such claim, including the cost to defend, shall not exceed the CONSULTANT's proportionate percentage of fault.

- D. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of LOCAL AGENCY.
- E. LOCAL AGENCY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.
- F. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against LOCAL AGENCY based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.
- G. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the LOCAL AGENCY. However, claims for money due or which become due to CONSULTANT from LOCAL AGENCY under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.

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- H. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- I. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- J. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II CONSULTANT'S REPORTS OR MEETINGS

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the LOCAL AGENCY's Contract Administrator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the AGREEMENT.

ARTICLE III STATEMENT OF WORK

- A. CONSULTANT Services
See Exhibit A – Scope of Work and Proposal.
- B. Right of Way
Intentionally omitted.
- C. Surveys
See Exhibit A – Scope of Work and Proposal.
- D. Subsurface Investigations
See Exhibit A – Scope of Work and Proposal.
- E. Local Agency Obligations
See Exhibit A – Scope of Work and Proposal
- F. Conferences, Site Visits, Inspection of Work
See Exhibit A – Scope of Work and Proposal
- G. Checking Shop Drawings
See Exhibit A – Scope of Work and Proposal.
- H. CONSULTANT Services During Construction
See Exhibit A – Scope of Work and Proposal.

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- I. Documentation and Schedules
See Exhibit A – Scope of Work and Proposal.
- J. Deliverables and Number of Copies
See Exhibit A – Scope of Work and Proposal.

ARTICLE IV PERFORMANCE PERIOD

- A. This AGREEMENT shall go into effect upon the date that the LOCAL AGENCY executes the AGREEMENT and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on **May 1, 2024**, unless extended by AGREEMENT amendment.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

- A. The method of payment for this AGREEMENT will be based on actual cost plus a fixed fee. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY'S approved overhead rate set forth in the Cost Proposal. In the event, that LOCAL AGENCY determines that a change to the work from that specified in the Cost Proposal and AGREEMENT is required, the AGREEMENT time or actual costs reimbursable by LOCAL AGENCY shall be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I" of this Article shall not be exceeded, unless authorized by AGREEMENT amendment.
- B. The indirect cost rate established for this AGREEMENT is extended through the duration of this specific AGREEMENT. CONSULTANT'S agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or AGREEMENT award.
- C. In addition to the allowable incurred costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of **TWENTY-SIX THOUSAND, FIVE HUNDRED, NINETY-FOUR DOLLARS AND EIGHT CENTS (\$26,594.08)**. The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work and such adjustment is made by AGREEMENT amendment.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT'S fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable

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items according to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT.

- F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.
- G. CONSULTANT will be reimbursed promptly according to California Regulations upon receipt by LOCAL AGENCY's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

Ryan O'Connell, Senior Civil Engineer
1333 Park Avenue
Emeryville, California 94608
Phone No: 510-596-4346
E-Mail: roconnell@emeryville.org
- H. The total amount payable by LOCAL AGENCY including the fixed fee shall not exceed **EIGHT HUNDRED NINETY-SEVEN THOUSAND, THREE HUNDRED EIGHTY-SEVEN DOLLARS AND TWENTY-FIVE CENTS (\$897,387.25)**.
- I. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

ARTICLE VI TERMINATION

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than five (5) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by LOCAL AGENCY by virtue of any breach of this AGREEMENT by CONSULTANT, and LOCAL AGENCY may withhold any

City of Emeryville | Professional Services Contract

payments due to CONSULTANT until such time as the exact amount of damages, if any, due LOCAL AGENCY from CONSULTANT is determined.

- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.

ARTICLE VIII RETENTION OF RECORD/AUDITS

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. LOCAL AGENCY or State Auditor shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

ARTICLE IX AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Finance Director.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Finance Director of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.

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- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
- b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.

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- c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the LOCAL AGENCY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.

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E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.

F. Prompt Progress Payment

CONSULTANT or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

G. Prompt Payment of Withheld Funds to Subconsultants

The LOCAL AGENCY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. No retainage will be held by the LOCAL AGENCY from progress payments due to CONSULTANT. CONSULTANTS and subconsultants are prohibited from holding retainage from subconsultants. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

A. Prior authorization in writing by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.

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ARTICLE XII STATE PREVAILING WAGE RATES

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- D. Payroll Records
 - 1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.
 - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
 - 2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.

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- b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
 3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
 5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.
- F. Penalty
 1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.

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2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
 - a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
 - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
 - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain

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sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII CONFLICT OF INTEREST

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.

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- C. The CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.

- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING

- A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:
 - 1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
 - 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed

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one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose.

ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

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- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
 - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - 3. Does not have a proposed debarment pending; and
 - 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

Intentionally omitted.

ARTICLE XIX INSURANCE

CONSULTANT shall not commence work under this AGREEMENT until it has provided evidence satisfactory to the LOCAL AGENCY that it has secured all insurance required under **Exhibit B**, attached hereto and incorporated herein by this reference. In addition, CONSULTANT shall not allow any subconsultant to commence work on any subagreement until it has provided evidence satisfactory to the LOCAL AGENCY that the subconsultant has secured all insurance required under **Exhibit B**. Failure to provide and maintain all required insurance shall be grounds for the LOCAL AGENCY to terminate this AGREEMENT for cause.

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ARTICLE XX FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI CHANGE IN TERMS

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY's Contract Administrator.

ARTICLE XXII CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT 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, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII DISPUTES

Intentionally omitted.

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ARTICLE XXIV INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY and the State to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXV SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

ARTICLE XXVI OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of LOCAL AGENCY, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, LOCAL AGENCY shall be entitled to, and CONSULTANT shall deliver to LOCAL AGENCY, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to LOCAL AGENCY which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by LOCAL AGENCY.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of LOCAL AGENCY without restriction or limitation upon its use or dissemination by LOCAL AGENCY.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by LOCAL AGENCY for another project or project location shall be at LOCAL AGENCY's sole risk.

ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from

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CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.
- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXVIII CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.
- E. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

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ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXX EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

ARTICLE XXXI PROMPT PAYMENT FROM THE LOCAL AGENCY TO CONSULTANT

The LOCAL AGENCY shall make any progress payment within 45 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. Upon receipt of a payment request, the LOCAL AGENCY shall act in accordance with both of the following:

- (1) Each payment request shall be reviewed by the LOCAL AGENCY as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

ARTICLE XXXII COVENANTS OF CONSULTANT

A. Assignment of AGREEMENT

The CONSULTANT covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this AGREEMENT, without the prior express written consent of LOCAL AGENCY. As to any approved subconsultants, the CONSULTANT shall be solely responsible for reimbursing them and LOCAL AGENCY shall have no obligation to them.

B. Licenses, Certifications and Permits

The CONSULTANT covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the CONSULTANT by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Article III Statement of Work contracted for under this AGREEMENT. All work performed by CONSULTANT under this AGREEMENT shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

City of Emeryville | Professional Services Contract

C. Authority to Contract

The CONSULTANT covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind CONSULTANT to the terms of this AGREEMENT, if applicable.

D. LOCAL AGENCY Labor Requirements

1. Compliance

At the Effective Date, compliance with the LOCAL AGENCY's living wage ordinance is **required** / **not required** for this AGREEMENT. If this AGREEMENT provides for compensation to CONSULTANT of \$25,000 or more within a single fiscal year for providing services to the LOCAL AGENCY, then CONSULTANT shall comply with the requirements of the LOCAL AGENCY's Living Wage Ordinance set forth in [Chapter 31 of Title 5 of the Emeryville Municipal Code](#), unless (i) CONSULTANT is a governmental entity, (ii) this Contract is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this AGREEMENT is subject to federal or state laws or regulations that would preclude the application of the LOCAL AGENCY's laws.

2. Applicability

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the AGREEMENT for all employees of CONSULTANT who perform at least twenty-five percent (25%) of the work arising from this AGREEMENT, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to [Section 5-31.08 of the Emeryville Municipal Code](#). CONSULTANT shall promptly provide to LOCAL AGENCY documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from LOCAL AGENCY.

3. Non-Compliance

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against CONSULTANT for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, LOCAL AGENCY may terminate the AGREEMENT and pursue any other remedies available to LOCAL AGENCY, including debarment, for violations of the Living Wage Ordinance.

4. Living Wage

CONSULTANT shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this AGREEMENT. "Living Wage" means no less than **\$16.97 PER HOUR** (which is [subject to increase annually on July 1st](#) to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to LOCAL AGENCY the hourly value of such benefits in order to receive credit for such payments to covered employees.

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5. Minimum Wage and Paid Sick Leave

In addition to the Living Wage Ordinance, CONSULTANT may be required to comply with the LOCAL AGENCY's [Minimum Wage, Paid Sick Leave, and Other Employment Standards Ordinance](#), as set forth in [Chapter 37 of Title 5 of the Emeryville Municipal Code](#), to the extent it is applicable.

ARTICLE XXXIII ENTIRE AGREEMENT

This AGREEMENT constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this AGREEMENT. No other agreement, statement or promise relating to the subject matter of this AGREEMENT not contained in this AGREEMENT shall be valid or binding. This AGREEMENT may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

ARTICLE XXXIV SUCCESSORS AND ASSIGNS

Subject to the provisions of this AGREEMENT regarding assignment, this AGREEMENT shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

ARTICLE XXXV APPLICABLE LAW AND ATTORNEY'S FEES; VENUE

If any action at law or in equity is brought to enforce or interpret the provisions of this AGREEMENT, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this AGREEMENT shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

ARTICLE XXXVI SEVERABILITY

The caption or headnote on articles or sections of this AGREEMENT are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this AGREEMENT nor in any way affect this AGREEMENT. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall remain in full force and effect to the extent possible.

ARTICLE XXXVII BUSINESS TAX CERTIFICATE

Prior to commencement of the Article III Statement of Work to be provided hereunder, CONSULTANT shall apply to the City of Emeryville Finance Department for a business tax certificate, pay the applicable business tax and maintain said business tax certificate during the term of this AGREEMENT, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

City of Emeryville | Professional Services Contract

ARTICLE XXXVIII NOTICES

A. Communications Relating to Daily Activities

All communications relating to the day-to-day activities of the work and invoices shall be exchanged between **Ryan O’Connell** for LOCAL AGENCY and **Marc Cañas** for the CONSULTANT:

LOCAL AGENCY	CONSULTANT
Ryan O’Connell, Senior Civil Engineer Phone No: 510-596-4346 E-Mail : roconnell@emeryville.org	Marc Cañas, Vice President Phone No: 714-835-6355 E-Mail : marc.canas@ZUIRAIL.COM

B. Official Notices

All other notices, writings or correspondence as required by this AGREEMENT shall be directed to the LOCAL AGENCY and CONSULTANT, respectively, as follows:

LOCAL AGENCY	CONSULTANT
Christine Daniel, City Manager 1333 Park Avenue Emeryville, California 94608 Phone No: 510-596-4371 E-Mail : cdaniel@emeryville.org <i>with a copy to:</i> Ryan O’Connell, Senior Civil Engineer 1333 Park Avenue Emeryville, California 94608 Phone No: 510-596-4346 E-Mail : roconnell@emeryville.org	Jacqueline Patterson, Vice President 725 W Town and Country Rd, Suite 550 Orange, CA 92868 Phone No: 714-835-6355 E-Mail : jacqueline.patterson@ZUIRAIL.com

ARTICLE XXXIX COUNTERPARTS

This AGREEMENT may be signed in counterparts, each of which shall constitute an original. It is expressly agreed that each Party to this AGREEMENT shall be bound by its own telecopied, scanned, electronic or digital signature and shall accept the telecopied, scanned, electronic or digital signature of the other Party to this AGREEMENT.

ARTICLE XXXX NO THIRD-PARTY BENEFICIARIES

Except to the extent expressly provided for herein, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

ARTICLE XXXXI NON-EXCLUSIVITY

LOCAL AGENCY reserves right to employ other consultants in connection with the services covered under this AGREEMENT.

City of Emeryville | Professional Services Contract

ARTICLE XXXII ASSIGNMENT OR TRANSFER

CONSULTANT shall not assign, hypothecate or transfer, either directly or by operation of law, this AGREEMENT or any interest herein without the prior written consent of the LOCAL AGENCY. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

ARTICLE XXXIII WAIVER

LOCAL AGENCY's failure to enforce any provision of this AGREEMENT or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

SIGNATURES ON FOLLOWING PAGE

City of Emeryville | Professional Services Contract

SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT

IN WITNESS WHEREOF the LOCAL AGENCY and the CONSULTANT have executed this AGREEMENT, which shall become effective as of the date executed by the LOCAL AGENCY.

Approved As To Form:

DocuSigned by:
Andrea Visveshwara
302805805773454
Interim City Attorney

Dated:

09/16/2021

CITY OF EMERYVILLE

DocuSigned by:
Christine Daniel
80235A190D284E2
Christine Daniel, City Manager

Dated:

08/26/2021

ZEPHYR RAIL

DocuSigned by:
Jacqueline L. Patterson (Signature)
AF614E71288D48C
Jacqueline Patterson, Vice President

<p><i>Attach: W-9 Form</i></p>	<p><i>Attach: Business License Certificate</i></p>
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EXHIBIT "A"

A. Project Understanding

Safety and quality of life for Emeryville residents are at the heart of this project's motivation. Wherever railroad and pedestrian/vehicular operations conflict, there is potential for injury. Additionally, the City has received numerous complaints from the growing residential community about excessive noise from train horns at these crossings. With the projected growth of the Port of Oakland's throughput and increased rail operations through this network, it is essential for the population's safety and quality of life that Quiet Zone Safety Measures are implemented at 65th, 66th, and 67th Streets in northwest Emeryville.

To make this happen, the Zephyr Rail Team (ZRT) understands that the City of Emeryville applied for and received \$4.2 Million of TCEP funding for the Quiet Zone in early 2018. A local match for this grant was secured with ACTC Measure BB funds and additional funds from ACTC and City local funds to complete the project budget of \$8.2 Million.

ZRT not only understands the technical aspects of the project, but we also understand that the work will be performed on an active railroad corridor. This fact brings an extra level of safety measures that must be observed by the contractor and the construction manager. We are happy to report that 100% of the staff assigned to the project are or will be safety trained on UPRR RWP safety rules and e-Rail Safe certified...we are the team with the expertise and attention to safety!

B. Experience with Caltrans LAPM and Trade Corridor Enhancement Program

Members of ZRT have successfully delivered numerous public works projects involving federal funding, which requires the project to be designed and administrated per Chapters 10 through 15 of the Caltrans Local Assistance Procedure Manual (LAPM). We understand the importance of having detailed and accurate contract administration for the City to receive 100% reimbursement of the federal funding allocated to the project. Some of the projects were already described in Section 2 of this Proposal.

In particular, one of our team members, MNS Engineers, serves on the Technical Transportation Advisory Committee (TTAC) and has successfully delivered numerous Caltrans oversight projects. Their firm has expert-level knowledge of Caltrans LAPM and Caltrans Construction Manual as well as Caltrans staff coordination. MNS has a firm understanding of Caltrans expectations from providing on-call construction management and inspection support services to Caltrans District and Structures Divisions; their team is also well-trained in Caltrans procedures and has worked with Caltrans staff in the surrounding area.

C. Work Plan Activities by Tasks and Role of Each Team Member

Once selected, ZRT's objective is to format the bid package, so that the City can advertise and go out to the industry to request contractor's bids. The following tasks are expected from this RFP.

C.1 Task/Qualification #1 – Bid Support

ZRT has extensive experience working on design/bid/build projects as owner's authorized representatives and has the insight and knowledge to validate every phase of the project. We believe that the finalization of the design and the pre-construction period is a critical time when professionals can add significant value by being engaged in the review, constructability analysis,

Bid Support, Pre-Construction and Construction Management Services for TCEP Quiet Zone

logistic/phasing, scheduling, and cost review to guide the project in the right direction in terms of cost, schedule, and quality.

The anticipated work and approach during this period includes the following activities:

- a) Provide a complete review of the current design and fill any gaps to ensure the project is ready for construction. While the design was substantially completed in the previous contract, there are some minor modifications and enhancements and still unfinished coordination with two adjacent projects that will inevitably be needed to officially finalize the PS&E phase of the project.

- i. Coordination with Nearby Projects: As stated above, the team will coordinate with the following adjacent projects, “former Nady Site Private Development” and “I-80 Ashby Interchange Improvements.” The team will organize and participate in two meetings between all parties to discuss scope/limits of each project, assure grades/elevations/utilities are matching.

Task 1a.i Deliverables: Meeting Minutes

- ii. Coordination with AC Transit: AC Transit has a bus route that uses 65th Street crossing and the work under this Contract will affect that route. Therefore, a coordination meeting with them will be organized to communicate the upcoming changes.

Task 1a.ii Deliverables: Meeting Minutes

- iii. Study any changes to traffic signal phasing or signal timing to make sure there is broad understanding of the impacts to traffic operations and to prepare and addendum to the traffic study (optional task to be prepared if required)
- iv. Study any changes to signal phasing or timing with respect to the preemption sequence and Advance Preemption Time needed, making adjustments to the preemption time calculations if required and allowing CPUC and UPRR to re-review the preemption sequence if needed (for example, if expected queues change or if turn protection across the RR tracks is revisited at 67th due to Nady Site). It is assumed that the 67th / Hollis signal design will remain as designed by a separate team and will be folded into this team’s bid package.

Task 1a.iii: Deliverables: Updated Traffic Signal Plans, Cost Estimates and Specifications

- b) Develop the overall project schedule with the focus on identification of milestones for each phase of the project and ensure any funding sunset is not missed.

Task 1b Deliverables: Project Schedule with monthly updates

- c) Identify necessary permits and approvals, and assist in the permitting analysis, especially with UPRR and the CPUC General Order compliance as well as any other state and local requirements. GO88b approvals are already in hand for the project, and ZRT will ensure that a Form G is properly filed for closure of 66th Street. We will submit PG&E applications, arrange for fees to be paid, and get PG&E design underway as fast as possible, and provide a best engineer’s opinion as to location of service point.

Task 1c Deliverables: PG&E Applications

- d) Evaluate long-lead items and advise the City of Emeryville to track status of all critical materials. A recent observation in the construction industry is the effect that COVID-19

pandemic has had on availability of otherwise accessible materials. For example, we are experiencing delays of up to 12 weeks when ordering fiberoptic or other specialty cables and conduits and longer for items like traffic signal cabinets and steel poles. ZRT must guard the City of Emeryville against this potential issue by ordering long lead material as soon as possible. This is especially critical when working with UPRR as they use specialized material for train control and crossing warning devices.

- e) Coordination with Stakeholders: The stakeholder engagement plan will be the foundation for achieving buy-in for the project. Our approach to stakeholder's coordination will be targeted and efficient. We plan to utilize the extensive knowledge of the previous phase and capitalize on those early and current relationships with the major stakeholders. We have classified the public and private stakeholders into the following categories:
- i. Stakeholders we need to keep satisfied:
 - City of Emeryville
 - Union Pacific Railroad
 - CPUC
 - ii. Stakeholders we need to manage closely:
 - AC Transit
 - iii. Stakeholders we need to keep informed:
 - Nady Site Private Development
 - Caltrans-I-80 Ashby Interchange Improvements
 - iv. Stakeholders we need to monitor:
 - Utility Owners

Therefore, our team will conduct and attend meetings with the City, the Railroad, stakeholders, the design team and other regulatory agency to make sure approvals are obtained.

Task 1e Deliverables: Meeting Minutes and Language in the Contract Specifications regarding Coordination with Stakeholders and Adjacent Projects from the Contractor.

- f) TCEP Funding Agreement/Program Compliance: We understand how important it is to keep accurate records for the life of the Project for the city to be reimbursed for all incurred costs. As soon as Notice to Proceed is received by our Team, we plan to review the TCEP funding agreement and guidelines to assure the city is following all necessary steps for the project. We also propose to meet with the city and Caltrans to start the communication and assure compliance. In addition, ZRT will include in the Contract Specifications language detailing the need for the Contractor to comply with TCEP Funding Requirements.

Task 1f Deliverables: Meeting Minutes and Contract Specification Section for the Construction Contract.

- g) Review and provide comments that address constructability, coordination, time of performance, construction phasing, systems installation and testing, potential public/neighborhood impacts, compliance with the required scope of services and compliance with City comments.

Task 1g Deliverables: QA/QC Memo(s) for Task 1

- h) How communication/decision making will be handled on behalf of the City: The chart below is the primary stakeholder analysis tool. It contains the power of the stakeholder on the y-axis, which is the ability of the stakeholder to stop and/or change the project, and the interest level of the stakeholder on the x-axis, which is the amount of overlap the stakeholder’s interests have with the project. This defines the stakeholder’s “stake” in the project.



On the left we have the stakeholders such as regulatory agencies that can withhold their approval and stop the project immediately, such as City of Emeryville, UPRR. The success of the project is heavily dependent on keeping them informed on an ongoing basis.

On the right, we have the entities that we need to keep informed and manage closely to make sure their voices and concerns are heard and understood such as the community at large.

- i) The following team members will have key role in the bid support phase and their level of participation is shown in Part F in this section:

- Zephyr Rail
- MNS Engineers, Inc
- Fehr & Peers
- BSK Associates



A solid review of the plans before they are sent out for bid is very important. Many issues can be avoided by having experienced personnel review the plans from a constructability point of view. It is the last chance to make changes without causing delays and change orders.

C.2 Task/Qualification #2 – Pre-Construction Assistance

- a) **Pre-Construction Surveys:** Once the contract is out to bid, it will be necessary to perform a pre-construction survey to document the existing conditions of the job site. Many claims and change orders can be avoided by properly documenting the site before any construction operation gets underway. A proper pre-construction survey should include photographs and/or videos that document the existing features of the job site. ZRT proposes to use Zephyr's UAV services to document the current conditions of the crossings. The UAV will capture the existing site to a high level of precision and accuracy serving as a base line for existing conditions against which we can measure contractor progress.

Task 2a Deliverables: Drone Photography of Existing Conditions

- b) **Stakeholder Coordination:** During this phase, we propose to hold bi-weekly meetings with main stakeholders, such as City of Emeryville, CPUC, UPRR to keep everyone abreast of schedule and any modifications that required their input. In addition, we will communicate with Former Nady Private Development, Caltrans and AC Transit on a monthly basis to keep them informed of our progress and address any concerns they may have.

Task 2b Deliverables: Meeting Minutes from Stakeholders Coordination.

- c) ZRT will reach out to potential bidders and inform them of the upcoming project and confirm if they intend to bid. We will develop a contact list for all interested contractors and invite them for a pre-bid meeting and site visit. ZRT will lead the meeting in conjunction with City Representatives. The field visit will be conducted from the public right-of-way to make sure the group does not encroach into the active railroad right-of-way. After the meeting is conducted, our team will answer any questions the bidders may have in order to generate a responsive bid. If the questions generate the need for a Contract Addendum, ZRT will prepare it and distribute it to the list of Potential Bidders.

Task 2c Deliverables: Pre-Bid Meeting Minutes; Q&A Document and Addendum, if necessary.

- d) ZRT will be available to assist the City of Emeryville with the evaluation of the bids to ensure the bids are responsive and credible.
- e) We will monitor PG&E engineering progress and make the needed modifications to comply with PG&E design requirements.
- f) ZRT will either assist the City or conduct a pre-construction meeting with the selected bidder after receipt of the required signed contract documents and prior to issuing Notice to Proceed. The purpose of this meeting is to introduce City's representatives and the Team to establish lines of communication and authority and explain the decision-making structure. We will provide operating guidelines for the contractor, which include guidelines for submittal processing, safety/security program, QC program, changes, claims, disputes, third party involvement, and workplace items such as traffic maintenance, permits, haul routes, community relations, housekeeping, noise

abatement, progress payment schedules, insurance certificates for record, and labor relations.

Task 2f Deliverables: Pre-Construction Meeting Minutes.

- g) **Communication/Coordination Protocol:** Today's complex construction projects and programs are extraordinarily information intensive. Effective project controls require accurate and complete communications and documentation. ZRT proposes to conduct most of the project communication electronically. We have found that the effective utilization of cloud-base software such as ProCore, Oracle Unifier, or BOX enhances the exchange of information and creates the proper back-up documentation for the project. The resulting database, communications, and reporting system is built on the philosophy that complete project information must be available from any location, on any computer, at any time of the day or night, and must be based on a single source of real-time information. This is accomplished by focusing first on the Internet as an information delivery and communications vehicle, while also emphasizing the value added of the underlying relational database. Maintaining a comprehensive database is an approach far superior to simply storing hard copy files. Included in this task is the coordination with Stakeholders.

C.3 Task/Qualification #3 – Construction Management and Testing Services



- a) **Mobilization and Early Submittal Reviews:** Once construction activities begin, ZRT will locate the Construction Manager at the job site. During contractor mobilization, the CM and support staff will review and update the existing project bar chart or CPM Schedule; develop a submittal list from contract documents; review the contractor's QC plan, safety plan, traffic plan, and security plan; and review and approve contractor lump sum/unit cost schedule of values. During the mobilization period, the contractor is required to

submit for approval a detailed construction schedule and a submittal plan indicating priority material needed for construction start. The CM and support staff, along with the City's designer of record and other concerned participants will review and approve these submittals. During the mobilization period, the CM will also arrange for survey assistance to verify right-of-way, utilities and survey control points.

Task 3a Deliverables: Comments Matrices on Submittals

- b) **Meetings:** During construction progress the CM will conduct weekly job coordination meetings, monthly project status meetings, and monthly safety meetings. The Construction Manager will attend periodic utility coordination meetings, periodic contractor coordination meetings in which more than one contractor is on-site, make requests for adequate flagging protection, and conduct a monthly contractor construction schedule meeting update. The CM will provide timely detailed minutes of all meetings conducted. Following the monthly

scheduling meeting, the CM will provide schedule analysis to be included in the progress report, which defines problems, corrective actions, and work-around plans to maintain schedule and budgets.

Task 3b Deliverables: Meeting Minutes

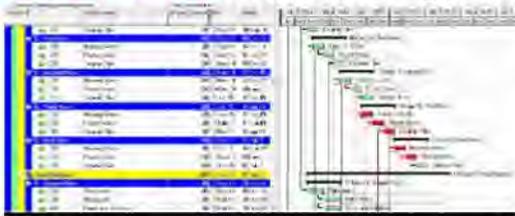
c) Progress Payments and Quantity Reviews: Progress payments will be determined by an agreement between the CM and the contractor prior to invoice submittal, subject to checking quantities against the inspector's reports.

Task 3c Deliverables: Monthly Pay Applications Review and Approvals

d) Reports: During construction, the CM will provide the Project Manager with several reports. These will include the weekly and monthly construction status, daily inspection reports, and non-compliance and deficiency reports. The Project Manager will then formalize the reporting data and will submit the required project reports to the City of Emeryville. These reports will include project manager monthly status report including cost and schedule status; monthly CM contract cost report, and weekly report. During construction the CM will provide a testing plan and review contractor test results. The CM/Inspectors will witness qualification and production tests, process control performance tests, and acceptance tests as required. The CM will maintain testing records. The CM will identify all permits required by the project and track these permits on a "permit matrix" for maintaining project cost and schedule.

The CM will monitor the updating of as-built drawings. Our inspectors will verify changes for the drawings of record. The CM/Inspectors will assemble the contractor's construction progress photographs. These will be included in the project manager's monthly status report. Additional progress photographs will be taken frequently by the CM/Inspectors to document progress and assist in claim mitigation. The CM will monitor conflicts with third parties including local government agencies, utilities, and other third parties. In addition, the CM will coordinate special events with the City Project Manager, and the City Public Affairs office, if necessary.

- Schedule Control:** Since the crossings must under construction by the end of 2021, adherence to schedule will be critical. We propose to use the project master schedule as the controlling document providing the basic tool for measuring performance against plan. It will integrate all essential events – current and projected – and identify tasks, responsibilities, milestones, and phases of major actions for each project participant.


- Cost Control.** Zephyr Rail will keep costs in check with sound estimating and budgeting, a realistic decision-making process, tight financial controls, and an effective management information system for project monitoring. It is easiest to control costs resulting from design changes early in the project.

- **Quality Assurance.** ZRT's inspection staff will provide the City of Emeryville with quality assurance to make sure the construction is carried out in accordance with City Standards. Our team will approach inspection by serving as an extension of the City to ensure the contractor provides a quality product meeting the plans and specifications. The Inspector's responsibilities include:
 - **Quality Assurance.** Inspect all work to ensure it meets the requirements and quality of work outlined in the contract documents. Any deficient work will be rejected.
 - **Daily Inspection Diaries/Documentation.** Provide an accurate description of the work, labor and equipment, safety issues, quantities, and weather conditions. Inspector will collect labor compliance reviews, material verifications, and prepare quantity calculation sheets.
 - **Coordination.** Coordinate utility work, materials testing, and construction survey.
 - **Permit/SWPPP Compliance.** Monitor work for compliance with project permits and SWPPP.
 - **Traffic Control.** Review traffic control for compliance per MUTCD and is performed in a safe manner. Ensure access for bicycle, pedestrian, and vehicles for each construction stage.
 - **ADA/Temporary Pedestrian Access.** Ensure contractor provides and maintains temporary pedestrian access, ADA compliance for curb ramps, sidewalks, and driveway approaches.
 - **Photo Record Maintenance.** Document pre-construction conditions and regularly photograph construction activity/progress.
 - **Verification of Material.** Verify materials conform to project specifications and approved submittals.
 - **As-Built Drawings.** Ensure as-built drawings will be maintained and reviewed for accuracy.

Throughout these efforts, our team will work with the City of Emeryville to develop claims-resistant documents and to resolve disputes in the field in order to avoid potential claims.

Reporting. Our reporting system will be cost effective. Our cost reports compare actual expenditures against budget and identify potential overruns or under-runs in each construction element or bid item. Our progress and narrative reports will identify problems and solutions; they will include schedule and cost status, the preceding month's developments, plans for the current month, future plans, requests, recommendations and general comments. We will establish each report's format and distribution with the City of Emeryville early in the project.

With respect to compliance with the LAPM, our team will make sure that our reporting incorporates requirements from **Chapter 15-17: Advertise and Award Project, Administer Construction Contracts, and Project Completion** in order for the City of Emeryville to be reimbursed for the Project Costs.

Prior to submitting the first invoice for the construction phase, and within 60 days of contract award, ZRT will assist the City of Emeryville with the following package:

- Exhibit 15-B: Resident Engineer's Construction Contract Administration Checklist
- Exhibit 15-G: Construction Contract DBE Commitment
- Exhibit 15-L: Local Agency Contract Award Checklist
- Exhibit 15-M: Detail Estimate (based on award)

ZRT recognizes the need for excellence in project organization including the file systems for the project records which must support the adequacy of the field supervision, inspection and testing; conformance to contract specifications; and payments to the contractor. An organized project record/file will minimize any negative assumptions and will facilitate the processes reviews to make sure the City is reimbursed in accordance with the Agreement. Additionally, ZRT will assist the City of Emeryville with the forms required by Chapter 16 and 17 which include, but are not limited to the following:

- Exhibit 16-A: Weekly Statement of Working Days
- Exhibit 16-C: Resident and Assistant Engineer Daily Record
- Exhibit 16-Y: Monthly Progress Payment Item Quantity Calculation Sheet
- Exhibit 17-A: Cover Letter and Federal Report of Expenditures Checklist
- Exhibit 17-C: Final Inspection Form
- Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise and First-Tier Subcontractors
- Exhibit 17-G: Materials Certificate
- Exhibit 17-M: Final Project Expenditure Report

Task 3d: Deliverables: Daily Inspection Reports, Monthly Reports detailing: Cost, QA/QC Memo, and Schedule, Safety matrices (hours worked and incident reports if any), and LAPM Filled Exhibits in Accordance with Chapters 15 to 17 of the LAPM

e)_ Coordination with Ongoing Operations. Project activities must often be coordinated with UPRR's ongoing operations. Under no circumstances can the railroad operations be affected. We know how important on-time performance is to their customers. When such an instance is anticipated, we will develop a written operations coordination plan that describes the scope of work to be accomplished and the precautionary measures that will be taken to safeguard existing occupants, protect equipment and utilities, and maintain operations and security.

Task 3e – Coordination with UPRR Meeting Minutes

f) Coordination with Manufacturer's Representatives. We propose to work with the controller manufacturer, RR Preemption Panel manufacturer, and UPRR's consultants to prepare signal timing plans, and bench-test them, in their proposed cabinets, prior to the controller being delivered to the field. The traffic signals include overlaps and preemption settings, and UPRR has a standard testing sequence. This process should begin approximately one month before operational testing is planned in the field.

Task 3f Deliverables: Traffic Signal Timing Sheets, Bench Test Requirement Coordination, Attendance at Field Turn-On

Dispute Avoidance and Resolution. During construction, management of disputes and claims is critical. Our team will make disputes less likely by rigorously implementing practices born of our extensive experience in construction management and claims resolution. These include timely responses to the contractor, proper project controls, accurate documentation, and fair and reasonable field administration. Our control systems will provide exception reports to assist in identifying and preventing potential problems.

Safety Monitoring. To keep a project safe, contractors must follow a well-written safety program and have good housekeeping rules requiring that violations, however minor, are immediately identified and rectified. Our team will review the contractor's safety program to ensure it is appropriate for working under rail traffic.



C.4 Task/Qualification #4 – Post Construction Services

- a) **Closeout:** Once the work is completed by the contractor, accepted, and approved by the CM and the City of Emeryville, the project will be considered closed, and the closeout procedure will start. Prior to completion of construction work, the inspector will prepare a detailed punch list working with the contractor to complete all portions of the project to the CM's satisfaction. Acceptance forms will be prepared by the CM for the Project Manager and City of Emeryville approval. Prior to acceptance, the CM will ensure that the contractor has provided all contractual documents, including guarantees, warranties, final as-builts, submittals, samples and sample materials, lien releases and claims, final payment records, project office records, all correspondence, agreements, test results, calculations, estimates, and schedules. With the close-out data provided by the CM and support staff, the Project Manager will assemble a complete set of records for the contract and provide these records in accordance with the City of Emeryville's documentation indices. Summarizing, the closeout items include the following:
- **Record Drawings.** ZRT will maintain a field set of as-built drawings to ensure the contractor's copy is complete. Upon completion, the final set of record drawings will be reviewed by the CM and submitted through the City's Project Manager for final record keeping.
 - **Final Inspection and Punch List.** The Inspector will develop a punch list for the work performed, notify the contractor, and re-inspect the completed work. A final walk through of the project will be scheduled with the City, and any other party the City may wish to attend.
 - **Acceptance and Final Report.** The CM will evaluate the contractor's completion of work and make a final acceptance recommendation to the City. The proposed final estimate will be prepared and submitted to the contractor for review and acceptance. The CM will submit the Notice of Completion, project files, and the Final Reports and Material Certifications in accordance with the City's requirements.

- **QA/QC Memo.** The CM will work with the Contractor to close any non-conformance reports related to quality issues on the Project.

Task 4a Deliverables: Record Drawings, Final Inspections with Resolved Punch List Items; Final Acceptance Report and Final QA/QC Memo.

b) Closeout Report for TCEP Funding Requirement:

EXHIBIT 17.4C: Final Project Expenditure Report
(For States Only - Forward Projects)

Date: _____

Project Name: _____
 Department of Transportation
 District/Division: _____
 Address: (Street) _____

FINAL EXPENDITURE REPORT

Description/Location of Work: _____
 Project Completion Date: _____
 Adv. Project ID (or prior EA): _____
 Project Number: _____
 Administering Agency/State Agreement No.: _____
 Program Supplement No.: _____
 State Funds Allocated: _____
 Expenditures Incurred: _____

A	Payment to Contractor (attach final pay estimate)	
B	Other Project Costs:	
	Preliminary Engineering	
	Construction Engineering	
	Any Additional Construction	
	Right of Way (Capital and Support)	
C	Unpaid Invoices	
D	Outstanding Contractor Claims	
E	Others (specify)	
	TOTAL EXPENDITURES	\$ (0.00)

Source and Amount of Additional Funds Used: _____
 State Funds Allocated but Not Used: _____

CERTIFICATION

In the best of my knowledge and belief, the information in this report is a true and accurate account of project costs. This work was performed in accordance with the CTC approved scope and state funding for the project.

Local Agency's Person in Responsible Charge & Title: _____

PROJECT VERIFICATION: This verification of construction also constitutes approval to pay costs shown in the Final Invoice included in the Report of Expenditures. I have reviewed the job site and found the project completed in accordance with the scope and description of the project authorization document.

District/Local Assistance Engineer: _____ Date: _____

ZRT will assist the City of Emeryville with the final report documents that constitute the Final Report of Expenditures in accordance with Chapter 17 of the LAPM. This report provides key information required to initiate timely project closure and payment. ZRT understands the Report of Expenditures must be submitted within six months of project completion.

Task 4b Deliverables: LAPM Chapter 17 Documents

c) CPUC/FRA/QZ Implementation Support:

ZRT is aware that some of the individuals that attended prior field diagnostic meeting may no longer be involved with the project. Therefore, we propose the following activities in support of the quiet zone implementation:

- Conduct a new diagnostic meeting, or if FRA agrees we propose to send them the plans and specifications for their review and comments.
- Prepare new calculation for review by the city.
- Prepare Notice of Intent (NOI) that will include latest plans, CPUC GO 88 B approval Letters, FRA calculation form, a cover letter signed by the City Manager (60 days to respond) and send them to stakeholders via e-mail and Registered mail with return receipt.
- Respond to comments for NOI.
- Prior to establishing Quiet Zone all construction shall be completed, all Quiet Zone signs shall be installed and covered. A final diagnostic meeting shall be conducted by the city with CPUC, and UPRR to sign off on the Form G.

Bid Support, Pre-Construction and Construction Management Services for TCEP Quiet Zone

- Prior to completion of construction (about 60 days) send notice of Establishments (NOE) date per city's desired date and notify all stake holders of the date of Quiet Zone establishment

Task 4c Deliverables: Quiet Zone Implementation Memo

As a team of professional Construction Managers, ZRT will organize every element of the construction project and make sure each element is carried out smoothly. Because no project is trouble-free or formula built, ZRT will anticipate the unusual and adverse; ZRT will develop and assess alternatives to head off problems and help the City of Emeryville choose solutions. With our services, innovative approaches, and expertise, we will help you complete your project successfully.

Summary of Deliverables Table

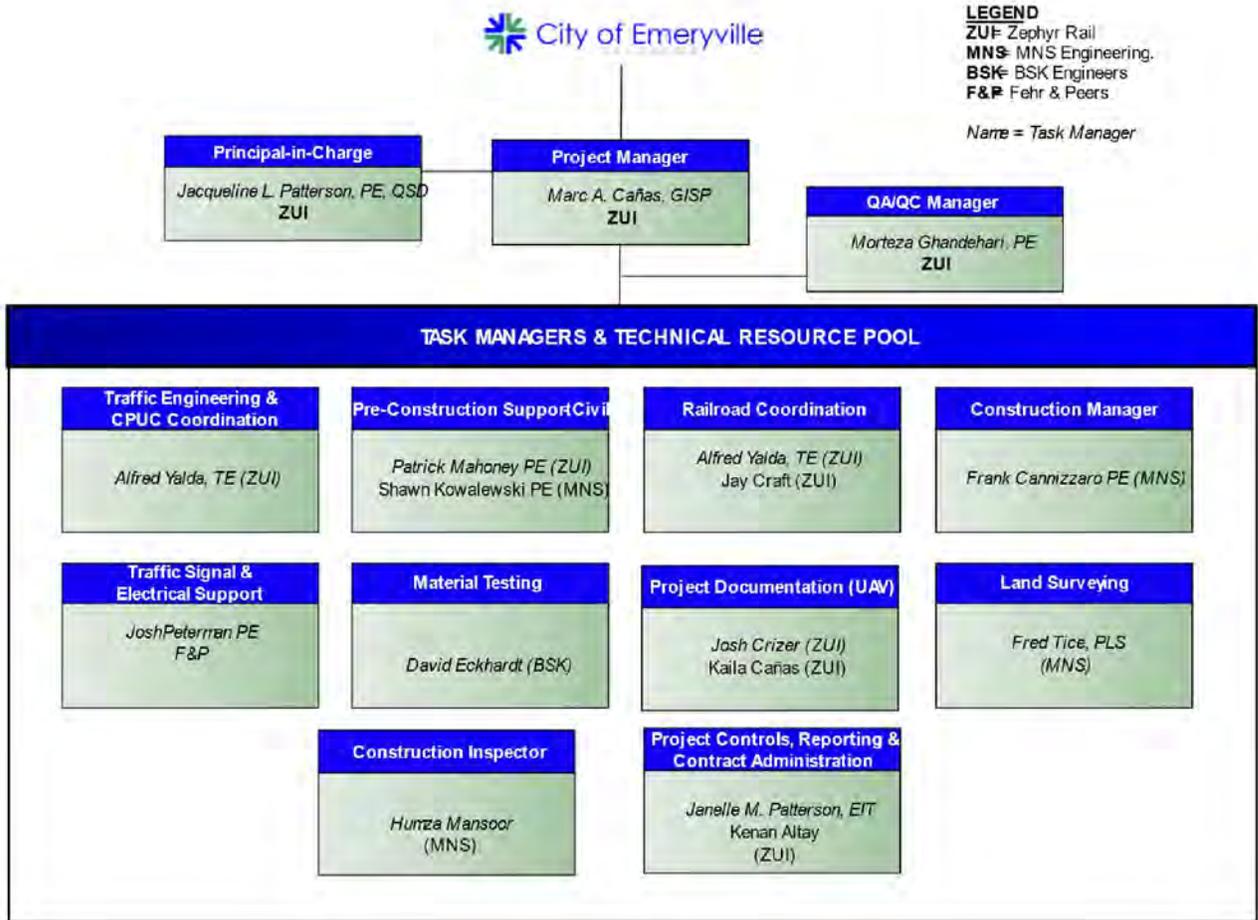
Phase	Task No.	Deliverables
Bid Support	Task 1a.i	Meeting Minutes with Adjacent Projects
Bid Support	Task 1a.ii	Meeting Minutes with AC Transit
Bid Support	Task 1a.iii	Updated Traffic Signal Plans, Cost Estimates and Specifications
Bid Support	Task 1b	Project Schedule with monthly updates
Bid Support	Task 1c	PG&E Applications
Bid Support	Task 1e	Meeting Minutes and Language in the Contract Specifications regarding Coordination with Stakeholders and Adjacent Projects from the Contractor.
Bid Support	Task 1f	Meeting Minutes and Contract Specification Section for the Construction Contract.
Bid Support	Task 1g	QA/QC Memo(s) for Task 1
Pre-Construction	Task 2a	Drone Photography of Existing Conditions
Pre-Construction	Task 2b	Meeting Minutes from Stakeholders Coordination
Pre-Construction	Task 2c	Pre-Bid Meeting Minutes; Q&A Document and Addendum, if necessary.
Pre-Construction	Task 2f	Pre-Construction Meeting Minutes.
Construction	3a	Comments Matrices on Submittals
Construction	3b	Meeting Minutes

Bid Support, Pre-Construction and Construction Management Services for TCEP Quiet Zone

Construction	3c	Monthly Pay Applications Review and Approvals
Construction	3d	Daily Inspection Reports, Monthly Reports detailing: Cost, QA/QC Memo, and Schedule, Safety matrices (hours worked and incident reports if any), and LAPM Filled Exhibits in Accordance with Chapters 15 to 17 of the LAPM
Construction	3e	Coordination with UPRR Meeting Minutes
Construction	3f	Traffic Signal Timing Sheets, Bench Test Requirement Coordination, Attendance at Field Turn-On
Post Construction	4a	Record Drawings, Final Inspections with Resolved Punch List Items; Final Acceptance Report and Final QA/QC Memo.
Post Construction	4b	LAPM Chapter 17 Documents
Post Construction	4c	Quiet Zone Implementation Memo

D. Team Members Roles and Responsibilities

The following Organization Chart depicts the roles and responsibilities of our team as well as their reporting relationships.



E. Coordination with UPRR, CPUC, FRA and Caltrans

Coordination with stakeholders like UPRR, CPUC and FRA is pivotal during the construction phase. ZRT must ensure that the contractor is building all elements within the design plans and meeting the contract requirements especially in the interface points with the work that the UPRR will self-perform.

ZRT must also ensure that the contractors work while outside of the railroad right of way yet within the potential to foul the main tracks is coordinated effectively with the railroad flagman.

Once the General Orders for all three crossings are approved, the Contractor can build the improvements adhering to the requirements of the permit. CPUC may elect to check on the work from time to time and we will make sure they are welcome into the site and observe the work.

F. Schedule/Hours for each Team Member

The proposed schedule is shown at the end of this Section. The corresponding hours for each team member are as follows:

--See Page 17--

G. QA/QC Plan and Strategy

Safety is paramount for the Contractor, the City of Emeryville, the Stakeholders, and the traveling public. ZRT must be a partner in overseeing and enforcing Safety requirements and protecting the City of Emeryville interests, and the public at large. Zephyr Rail employs rigorous safety protocols on every project to create a Safety culture and partnership from day one.

Additionally, ensuring Quality is only second to Safety. *ZRT considers the definition of Quality as the degree to which a project and its components meet the owner's expectations, objectives, standards, intended purpose and contract requirements.* Quality in our organization is determined by measuring conformity of the project to the plans, specifications, standards, and other applicable contract documents. The objective of our quality plan is to organize, implement, monitor, and document a system of policies and procedures that assign, coordinate and direct relevant project resources and activities in a manner that will achieve the City of Emeryville objectives and performance requirements for the Project.

In a Design/Bid/Build contract, the responsibility of attaining the quality on the project is the Contractor's with our CM performing the review and approval of the program as well as the monitoring all work in the field. Our CM will also promote the resolution of quality-related problems in a manner that achieves compliance with the specification's requirements.

Therefore, ZRT will protect the City of Emeryville interest by inspecting, coordinating, or performing assurance and acceptance testing and ensuring the Contractor resolves non-conforming work in a timely manner. Key components of our Quality Plan include:

- **Construction Inspection:** The Inspector's responsibilities include:
 - **Quality Assurance.** Inspect all work to ensure it meets the requirements and quality of work outlined in the contract documents. Any deficient work will be rejected.
 - **Daily Inspection Diaries/Documentation.** Provide an accurate description of the work, labor and equipment, safety issues, quantities, and weather conditions. Inspector will collect labor compliance reviews, material verifications, and prepare quantity calculation sheets.
 - **Coordination.** Coordinate utility work, materials testing, and construction survey.
 - **Permit/SWPPP Compliance.** Monitor work for compliance with project permits and SWPPP.

- **Traffic Control.** Review traffic control for compliance per MUTCD and is performed in a safe manner. Ensure access for bicycle, pedestrian, and vehicles for each construction stage.
- **ADA/Temporary Pedestrian Access.** Ensure contractor provides and maintains temporary pedestrian access, ADA compliance for curb ramps, sidewalks, and driveway approaches.
- **Photo Record Maintenance.** Document pre-construction conditions and regularly photograph construction activity/progress.
- **Verification of Material.** Verify materials conform to project specifications and approved submittals.
- **As-Built Drawings.** Ensure as-built drawings will be maintained and reviewed for accuracy.
- **Material Testing:** Our CM will be responsible for coordinating with the material testing laboratory to schedule all required quality assurance testing. We have included BKS in our team to perform material testing to meet the requirements of the City's Quality Assurance Program (QAP).
- **Construction Surveying:** Our CM will coordinate with the City's on-call survey firm to ensure timely and complete construction staking/quality assurance surveys. We will meet with the surveyors prior to construction to review protocols and assure they have all the information needed to perform their tasks. At the pre-construction conference, the contractor will be informed of the requirements and responsibilities regarding construction staking.

Mr. Morteza Ghandehari, PE is our Quality Manager. He has decades of experience in the field of quality control/quality assurance, especially on at-grade crossing improvements and quiet zone implementation.

EXHIBIT 10-H1 COST PROPOSAL Page 1 of 3**ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS**

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

 Prime Consultant Subconsultant 2nd Tier SubconsultantConsultant Zephyr RailProject No. Construction Management for TCEP QZ

Contract No. _____

Date 6/25/2021**DIRECT LABOR**

Classification/Title	Name	Hours	Actual Hourly Rate	Total
				\$0.00
Project Manager	Marc A Canas	316	\$125.00	\$39,500.00
Civil/Rail Design Manager	Patrick Mahoney	272	\$125.00	\$34,000.00
QA/QC Manager	Morteza Ghandehari	144	\$125.00	\$18,000.00
CPUC Coordinator	Alfred Yalda	240	\$86.00	\$20,640.00
Office Engineer	Janelle Patterson	310	\$60.00	\$18,600.00
				\$0.00
				\$0.00
				\$0.00
				\$0.00
				\$0.00
				\$0.00
				\$0.00
				\$0.00

LABOR COSTS

a) Subtotal Direct Labor Costs

\$130,740.00

b) Anticipated Salary Increases (see page 2 for calculation)

\$1,568.88

c) **TOTAL DIRECT LABOR COSTS [(a) + (b)]**

\$132,308.88

INDIRECT COSTS

d) Fringe Benefits

(Rate 33.00%)

e) Total Fringe Benefits [(c) x (d)]

\$43,661.93

f) Overhead

(Rate: 68.00%)

g) Overhead [(c) x (f)]

\$89,970.04

h) General and Administrative

(Rate: _____)

i) Gen & Admin [(c) x (h)]

\$0.00

j) **TOTAL INDIRECT COSTS [(e) + (g) + (i)]**

\$133,631.97

FIXED FEEk) **TOTAL FIXED FEE [(c) + (j)] x fixed fee 10%]**

\$26,594.08

l) CONSULTANT'S OTHER DIRECT COSTS (ODC) - ITEMIZE (Add additional pages if necessary)

Description of Item	Quantity	Unit(s)	Unit Cost	Total
Travel	1	ALLOW	\$5,000.00	\$5,000.00
Testing	1	ALLOW	\$25,000.00	\$25,000.00
				\$0.00

l) **TOTAL OTHER DIRECT COSTS**

\$30,000.00

m) SUBCONSULTANT'S COSTS (Add additional pages if necessary)

Subconsultant 1:	MNS Engineers	\$504,973.68
Subconsultant 2:	Fehr & Peers	\$47,325.72
Subconsultant 3:	BSK	\$23,168.72
Subconsultant 4:		
Subconsultant 5:		
Subconsultant 6:		
Subconsultant 7:		

m) **TOTAL SUBCONSULTANT'S COSTS**

\$575,468.12

n) **TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l) + (m)]**

\$605,468.12

TOTAL COST [(c) + (j) + (k) + (n)]

\$898,003.05

NOTES:

1. Key personnel must be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.

2. The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.

3. Anticipated salary increases calculation (page 2) must accompany.

EXHIBIT 10-H1 COST PROPOSAL Page 2 of 3
ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS
 (CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

Direct Labor Subtotal per Cost Proposal \$130,740.00	Total Hours per Cost Proposal 1282	=	Avg Hourly Rate \$101.98	5 Year Contract Duration Year 1 Avg Hourly Rate
--	--	---	--------------------------------	---

2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$101.98	+	3.0%	=	\$105.04	Year 2 Avg Hourly Rate
Year 2	\$105.04	+	3.0%	=	\$108.19	Year 3 Avg Hourly Rate
Year 3	\$108.19	+	3.0%	=	\$111.44	Year 4 Avg Hourly Rate
Year 4	\$111.44	+	3.0%	=	\$114.78	Year 5 Avg Hourly Rate

3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	60.00%	*	1282.0	=	769.2	Estimated Hours Year 1
Year 2	40.00%	*	1282.0	=	512.8	Estimated Hours Year 2
Year 3	0.00%	*	1282.0	=	0.0	Estimated Hours Year 3
Year 4	0.00%	*	1282.0	=	0.0	Estimated Hours Year 4
Year 5	0.00%	*	1282.0	=	0.0	Estimated Hours Year 5
Total	100%		Total	=	1282.0	

4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$101.98	*	769	=	\$78,444.00	Estimated Hours Year 1
Year 2	\$105.04	*	513	=	\$53,864.88	Estimated Hours Year 2
Year 3	\$108.19	*	0	=	\$0.00	Estimated Hours Year 3
Year 4	\$111.44	*	0	=	\$0.00	Estimated Hours Year 4
Year 5	\$114.78	*	0	=	\$0.00	Estimated Hours Year 5
	Total Direct Labor Cost with Escalation			=	\$132,308.88	
	Direct Labor Subtotal before Escalation			=	\$130,740.00	
	Estimated total of Direct Labor Salary			=	\$1,568.88	Transfer to Page 1

NOTES:

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3

Certification of Direct Costs

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. Title 23 United States Code Section 112 - Letting of Contracts
4. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
5. 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Service
6. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name: Marc A. Cañas Title *: Vice President

Signature: *Marc A. Cañas* Date of Certification (mm/dd/yyyy): 5/25/2021; Revised 7/23/2021

Email: marc.canas@zuirail.com Phone Number: 714.835.6355

Address: 725 W Town & Country Rd Suite 550 Orange CA 92868

*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Project Management, QA/QC, CPUC & Railroad Coordination, Construction Management

EXHIBIT 10-H COST PROPOSAL- CITY OF EMERYVILLE: TCEP Quiet Zone Safety Engineering Measures
ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS
 (DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Consultant MNS ENGINEERS INC.

Contract No. _____

Date 7/23/2021

DIRECT LABOR

Classification/Title	Name	hours	Actual Hourly Rate	Total
MNS Construction Manager	Frank Cannizzaro	830	\$98.56	\$81,804.80
MNS Construction Inspector*	Humza Mansoor	1240	\$70.80	\$87,792.00
MNS Civil Design Lead	Shawn Kowalewski	154	\$97.50	\$15,015.00
		0		\$0.00
		0		\$0.00
				\$0.00
				\$0.00
				\$0.00

LABOR COSTS

a) Subtotal Direct Labor Costs

\$184,611.80

b) Anticipated Salary Increases (see page 2 for sample)

\$3,876.85

c) **TOTAL DIRECT LABOR COSTS [(a) + (b)]**

\$188,488.65

FRINGE BENEFITS

d) Fringe Benefits

(Rate: 59.23%)

e) **Total Fringe Benefits**

[(c) x (d)] \$111,641.83

INDIRECT COSTS

f) Overhead

(Rate: 81.91%)

g) Overhead [(c) x (f)]

\$154,391.05

h) General and Administrative

(Rate: 0.00%)

i) Gen & Admin [(c) x (h)]

\$0.00

j) **Total Indirect Costs [(e) + (g) + (i)]**

\$266,032.88

FEE (Profit)

q) (Rate: 10.00%)

k) **TOTAL FIXED PROFIT [(c) + (j)] x (q)]**

\$45,452.15

OTHER DIRECT COSTS (ODC)**Description****Unit(s)****Unit Cost****Total**

l) Travel/Mileage Costs

\$0.00

m) Equipment Rental and Supplies

1

\$5,000.00

\$5,000.00

n) Permit Fees

\$0.00

o) Subconsultant Costs (attach detailed cost proposal in same format as prime consultant estimate for each subconsultant)

1

\$0.00

p) **Total Other Direct Costs [(l) + (m) + (n) + (o)]**

\$5,000.00

TOTAL COST [(c) + (j) + (k) + (p)]

\$504,973.68

NOTES:

- Employees subject to prevailing wage requirements to be marked with an *.
- ODC items should be based on actual costs and supported by historical data and other documentation.
- ODC items that would be considered "tools of the trade" are not reimbursable.
- ODC items should be consistently billed directly to all clients, not just when client will pay for them as a direct cost.
- ODC items when incurred for the same purpose, in like circumstances, should not be included in any indirect cost pool or in overhead rate.

EXHIBIT 10-H COST PROPOSAL (EXAMPLE #1) PAGE 2 OF 3
ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS
 (SAMPLE CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

Consultant MNS ENGINEERS INC. Contract No. _____ Date 23-Jul

1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	=	Avg Hourly Rate	5 Year Contract Duration
\$184,611.80	2224	=	\$83.01	Year 1 Avg Hourly Rate

2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation	=		
Year 1	\$83.01	+	0%	=	\$83.01	Year 2 Avg Hourly Rate
Year 2	\$83.01	+	3%	=	\$85.50	Year 3 Avg Hourly Rate
Year 3	\$85.50	+	3%	=	\$88.06	Year 4 Avg Hourly Rate
Year 4	\$88.06	+	3%	=	\$90.71	Year 5 Avg Hourly Rate
Year 5	\$90.71	+	3%	=	\$93.43	Year 5 Avg Hourly Rate

3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year	*	Total Hours per Cost Proposal	=	Total Hours per Year	
Year 1	30.00%	*	2224.0	=	667.2	Estimated Hours Year 1
Year 2	70.00%	*	2224.0	=	1556.8	Estimated Hours Year 2
Year 3	0.00%	*	2224.0	=	0.0	Estimated Hours Year 3
Year 4	0.00%	*	2224.0	=	0.0	Estimated Hours Year 4
Year 5	0.00%	*	2224.0	=	0.0	Estimated Hours Year 5
Total	100%		Total	=	2224.0	

4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

\$188,488.65

	Avg Hourly Rate (calculated above)	*	Estimated hours (calculated above)	=	Cost per Year	
Year 1	\$83.01	*	667	=	\$55,383.54	Estimated Hours Year 1
Year 2	\$85.50	*	1557	=	\$133,105.11	Estimated Hours Year 2
Year 3	\$88.06	*	0	=	\$0.00	Estimated Hours Year 3
Year 4	\$90.71	*	0	=	\$0.00	Estimated Hours Year 4
Year 5	\$93.43	*	0	=	\$0.00	Estimated Hours Year 5
	Total Direct Labor Cost with Escalation			=	\$188,488.65	
	Direct Labor Subtotal before Escalation			=	\$184,611.80	
	Estimated total of Direct Labor Salary Increase			=	\$3,876.85	Transfer to Page 1

NOTES:

- This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
- An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement. Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name: Greg Chelini Title *: Vice President
 Signature :  Date of Certification (mm/dd/yyyy): 07/23/2021
 Email: gchelini@mnsengineers.com Phone Number: 805-896-9474
 Address: 201 N. Calle Cesar Chavez, Suite 300 Santa Barbara, CA 93103

*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Bid Support, pre-construction and construction management services

EXHIBIT 10-H1 COST PROPOSAL Page 1 of 3

ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

 Prime Consultant Subconsultant 2nd Tier SubconsultantConsultant Fehr & PeersProject No. _____ Contract No. _____ Date 23-Jul-21**DIRECT LABOR**

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Principal	Robert Rees	20	\$120.19	\$2,403.80
Principal	Josh Peterman	62	\$88.46	\$5,484.52
Sr. Engineer	Nate Levine	92	\$59.62	\$5,485.04
Project Support	Erica Hin	23	\$27.16	\$624.68

a) Subtotal Direct Labor Costs	\$13,998.04
b) Anticipated Salary Increases (see page 2 for sample)	\$209.97
c) TOTAL DIRECT LABOR COSTS [(a) + (b)]	\$14,208.01

INDIRECT COSTS

d) Fringe Benefits (Rate: <u>77.35%</u>)	Total Fringe Benefits [(c) x (d)]	\$10,989.90
f) Overhead (Rate: <u>58.52%</u>)	g) Overhead [(c) x (f)]	\$8,314.53
h) General and Administrative (Rate: <u>53.44%</u>)	i) Gen & Admin [(c) x (h)]	\$7,592.76
j) TOTAL INDIRECT COSTS [(e) + (g) + (i)]		\$26,897.18

FIXED FEE	k) TOTAL FIXED FEE [(c) + (j)] x fixed fee	10%	\$4,110.52
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l) CONSULTANT'S OTHER DIRECT COSTS (ODC) - ITEMIZE (Add additional pages if necessary)

Description of Item	Quantity	Unit(s)	Unit Cost	Total
Mileage Costs	200	Mi	0.55	110
Communication & Reproduction Costs	1	LS	\$2,000.00	2000
Permit Fees				0
Plan Sheets				0
Test				0

l) TOTAL OTHER DIRECT COSTS \$2,110.00**m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)**

Subconsultant 1:	_____
Subconsultant 2:	_____
Subconsultant 3:	_____
Subconsultant 4:	_____

m) TOTAL SUBCONSULTANTS' COSTS \$0.00**n) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)]** \$2,110.00**TOTAL COST [(c) + (j) + (k) + (n)]** \$47,325.72

NOTES:

- Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
- Anticipated salary increases calculation (page 2) must accompany.

EXHIBIT 10-H1 COST PROPOSAL Page 2 of 3**ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS**

(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal		Avg Hourly Rate	5 Year Contract Duration
\$13,998.04	197	=	\$71.06	Year 1 Avg Hourly Rate

2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$71.06	+	3%	=	\$73.19	Year 2 Avg Hourly Rate
Year 2	\$73.19	+	3%	=	\$75.38	Year 3 Avg Hourly Rate
Year 3	\$75.38	+	3%	=	\$77.64	Year 4 Avg Hourly Rate
Year 4	\$77.64	+	3%	=	\$79.97	Year 5 Avg Hourly Rate

3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year	*	Total Hours per Cost Proposal	=	Total Hours per Year	
Year 1	50.00%	*	197.0	=	98.5	Estimated Hours Year 1
Year 2	50.00%	*	197.0	=	98.5	Estimated Hours Year 2
Year 3	0.00%	*	197.0	=	0.0	Estimated Hours Year 3
Year 4	0.00%	*	197.0	=	0.0	Estimated Hours Year 4
Year 5	0.00%	*	197.0	=	0.0	Estimated Hours Year 5
Total	100%		Total	=	197.0	

4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)	*	Estimated hours (calculated above)	=	Cost per Year	
Year 1	\$71.06	*	99	=	\$6,999.02	Estimated Hours Year 1
Year 2	\$73.19	*	99	=	\$7,208.99	Estimated Hours Year 2
Year 3	\$75.38	*	0	=	\$0.00	Estimated Hours Year 3
Year 4	\$77.64	*	0	=	\$0.00	Estimated Hours Year 4
Year 5	\$79.97	*	0	=	\$0.00	Estimated Hours Year 5
	Total Direct Labor Cost with Direct Labor Subtotal before Escalation			=	\$14,208.01	
	Estimated total of Direct Labor Salary Increase			=	\$13,998.04	
				=	\$209.97	Transfer to Page 1

NOTES:

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904](#) - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name: Lysa Wollard Title *: Chief Financial Officer
Signature: *Lysa Wollard* Date of Certification (mm/dd/yyyy): 23-Jul-21
Email: l.wollard@fehrandpeers.com Phone Number: 925-977-3216
Address: 100 Pringle Avenue, Suite 600, Walnut Creek, CA 94596

*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Traffic signal design, operations analysis, implementation support
--

EXHIBIT 10-H COST PROPOSAL (Construction of the Rail Maintenance Facility (RMF) Expansion - Base Bid)
SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ON ENGINEERING AND INSPECTION CONTRACTS)

Consultant or Subconsultant BSK Associates Contract No. 180356 Date 6/23/21

SCHEDULE OF OTHER DIRECT COSTS ITEMS			
DESCRIPTION OF ITEMS	UNIT	UNIT COST	TOTAL
Nuclear Density Gauge Equipment Fee	20	\$61.00	\$1,220.00
Compaction Curves - Base Rock (6" Mold)	2	\$272.00	\$544.00
Compaction Curves - Site Soils (4" Mold)	2	\$256.00	\$512.00
HMA Theoretical Max Density Rice Method	2	\$272.00	\$544.00
HMA Content-Ignition Oven	2	\$244.00	\$488.00
HMA Ignition Oven Correction Factor	1	\$312.00	\$312.00
Sieve Analysis - HMA Aggregates	2	\$134.00	\$268.00
Sand Equivalent - HMA Aggregates	2	\$137.00	\$274.00
Durability Index - HMA Aggregates	2	\$272.00	\$544.00
Concrete Compressive Strength Test (Set of 4)	3	\$134.00	\$402.00
Materials Testing Certification Letter	1	\$500.00	\$500.00
Certified Payroll	3	\$150.00	\$450.00
		PRIME TOTAL ODC'S =	\$6,058.00

IMPORTANT NOTES:

1. List direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentations.
2. Proposed items should be consistently billed directly to all clients (Commercial entities, Federal Govt., State Govt., and Local Govt. Agency), and just when the client will pay for them as a direct cost
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency.
7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is their standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement. Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name: Tim Rodriguez Title *: Nort hernRegional Manager
 Signature : _____ Date of Certification (mm/dd/yyyy): 06/23/2021
 Email: t odriguez@bskas sociat es.com Phone Number: 925.315.3151 ext 101
 Address: 399 lind bergh Avenue, Livermore , CA 94551

*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Mat erial sTest ing Services

EXHIBIT 10-H2 COST PROPOSAL
SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
 (CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed
 Consultant or Subconsultant

BSK Associates

Prime Consultant

Subconsultant

2nd Tier Subconsultant

Project: _____ Contract: _____ Participation Amount _____ Date 6/8/21

For Combined Rate	Fringe Benefit 40.44%	+	General Administration % 145.21%	=	Combined Indirect Cost Rate (ICR) % 185.65%
OR					
For Home Office Rate	Fringe Benefit 40.44%	+	General Administration % 145.21%	=	Combined Indirect Cost Rate (ICR) % 185.65%
For Field Office Rate	Fringe Benefit 40.44%	+	General Administration % 145.21%	=	Combined Indirect Cost Rate (ICR) % 185.65%
					FEE % = 10.0%

BILLING INFORMATION

CALCULATION INFORMATION

Name/Job Title/Classification ¹	Hourly Billing Rates ²			Effective date of hourly rate		Actual or Avg. hourly rate ⁴	% or \$ increase	Hourly range - for classifications only	
	Straight ³	OT(1.5x)	OT(2x)	From	To				
Principal Exempt	\$217.15	N/A	N/A	7/1/21	6/30/22	\$69.11	0.00%	\$ 62.50	\$ 75.72
	\$224.75	N/A	N/A	7/1/22	6/30/23	\$71.53	3.50%	\$ 64.69	\$ 78.37
	\$232.62	N/A	N/A	7/1/23	6/30/24	\$74.03	3.50%	\$ 66.95	\$ 81.11
	\$240.76	N/A	N/A	7/1/24	6/30/25	\$76.62	3.50%	\$ 69.29	\$ 83.95
	\$249.19	N/A	N/A	7/1/25	7/31/26	\$79.31	3.50%	\$ 71.72	\$ 86.89
Senior Professional Exempt	\$187.87	N/A	N/A	7/1/21	6/30/22	\$59.79	0.00%	\$ 47.46	\$ 72.12
	\$194.44	N/A	N/A	7/1/22	6/30/23	\$61.88	3.50%	\$ 49.12	\$ 74.64
	\$201.25	N/A	N/A	7/1/23	6/30/24	\$64.05	3.50%	\$ 50.84	\$ 77.26
	\$208.29	N/A	N/A	7/1/24	6/30/25	\$66.29	3.50%	\$ 52.62	\$ 79.96
	\$215.58	N/A	N/A	7/1/25	7/31/26	\$68.61	3.50%	\$ 54.46	\$ 82.76
Project Professional II Exempt	\$173.73	N/A	N/A	7/1/21	6/30/22	\$55.29	0.00%	\$ 51.44	\$ 59.14
	\$179.81	N/A	N/A	7/1/22	6/30/23	\$57.23	3.50%	\$ 53.24	\$ 61.21
	\$186.10	N/A	N/A	7/1/23	6/30/24	\$59.23	3.50%	\$ 55.10	\$ 63.35
	\$192.62	N/A	N/A	7/1/24	6/30/25	\$61.30	3.50%	\$ 57.03	\$ 65.57
	\$199.36	N/A	N/A	7/1/25	7/31/26	\$63.45	3.50%	\$ 59.03	\$ 67.86
Project Professional I Non-Exempt	\$128.83	\$151.38	\$173.93	7/1/21	6/30/22	\$41.00	0.00%	\$ 37.00	\$ 45.00
	\$133.34	\$156.68	\$180.02	7/1/22	6/30/23	\$42.44	3.50%	\$ 38.30	\$ 46.58
	\$138.00	\$162.16	\$186.32	7/1/23	6/30/24	\$43.92	3.50%	\$ 39.64	\$ 48.21
	\$142.83	\$167.84	\$192.84	7/1/24	6/30/25	\$45.46	3.50%	\$ 41.02	\$ 49.89
	\$147.83	\$173.71	\$199.59	7/1/25	7/31/26	\$47.05	3.50%	\$ 42.46	\$ 51.64
Staff Professional II Non-Exempt	\$94.26	\$110.76	\$127.26	7/1/21	6/30/22	\$30.00	0.00%	\$ 27.00	\$ 33.00
	\$97.56	\$114.64	\$131.72	7/1/22	6/30/23	\$31.05	3.50%	\$ 27.95	\$ 34.16
	\$100.98	\$118.65	\$136.33	7/1/23	6/30/24	\$32.14	3.50%	\$ 28.92	\$ 35.35
	\$104.51	\$122.81	\$141.10	7/1/24	6/30/25	\$33.26	3.50%	\$ 29.94	\$ 36.59
	\$108.17	\$127.10	\$146.04	7/1/25	7/31/26	\$34.43	3.50%	\$ 30.98	\$ 37.87
Staff Professional I Non-Exempt	\$75.95	\$89.24	\$102.53	7/1/21	6/30/22	\$24.17	0.00%	\$ 20.00	\$ 28.34
	\$78.60	\$92.36	\$106.12	7/1/22	6/30/23	\$25.02	3.50%	\$ 20.70	\$ 29.33
	\$81.36	\$95.60	\$109.84	7/1/23	6/30/24	\$25.89	3.50%	\$ 21.42	\$ 30.36
	\$84.20	\$98.94	\$113.68	7/1/24	6/30/25	\$26.80	3.50%	\$ 22.17	\$ 31.42
	\$87.15	\$102.40	\$117.66	7/1/25	7/31/26	\$27.74	3.50%	\$ 22.95	\$ 32.52
Administrative Assistant Non-Exempt	\$72.79	\$85.53	\$98.27	7/1/21	6/30/22	\$23.17	0.00%	\$ 17.00	\$ 29.33
	\$75.34	\$88.52	\$101.71	7/1/22	6/30/23	\$23.98	3.50%	\$ 17.60	\$ 30.36
	\$77.97	\$91.62	\$105.27	7/1/23	6/30/24	\$24.81	3.50%	\$ 18.21	\$ 31.42
	\$80.70	\$94.83	\$108.95	7/1/24	6/30/25	\$25.68	3.50%	\$ 18.85	\$ 32.52
	\$83.53	\$98.15	\$112.77	7/1/25	7/31/26	\$26.58	3.50%	\$ 19.51	\$ 33.66
Laboratory Technician Non-Exempt	\$68.33	\$80.29	\$92.25	7/1/21	6/30/22	\$21.75	0.00%	\$ 15.00	\$ 28.49
	\$70.72	\$83.10	\$95.47	7/1/22	6/30/23	\$22.51	3.50%	\$ 15.53	\$ 29.49
	\$73.19	\$86.00	\$98.82	7/1/23	6/30/24	\$23.29	3.50%	\$ 16.07	\$ 30.52
	\$75.75	\$89.01	\$102.27	7/1/24	6/30/25	\$24.11	3.50%	\$ 16.63	\$ 31.59
	\$78.41	\$92.13	\$105.85	7/1/25	7/31/26	\$24.95	3.50%	\$ 17.21	\$ 32.69
Sample Courier Non-Exempt	\$70.70	\$83.07	\$95.45	7/1/21	6/30/22	\$22.50	0.00%	\$ 15.00	\$ 30.00
	\$73.17	\$85.98	\$98.79	7/1/22	6/30/23	\$23.29	3.50%	\$ 15.53	\$ 31.05
	\$75.73	\$88.99	\$102.25	7/1/23	6/30/24	\$24.10	3.50%	\$ 16.07	\$ 32.14
	\$78.38	\$92.10	\$105.83	7/1/24	6/30/25	\$24.95	3.50%	\$ 16.63	\$ 33.26
	\$81.13	\$95.33	\$109.53	7/1/25	7/31/26	\$25.82	3.50%	\$ 17.21	\$ 34.43

NOTES:

- Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended.
- Billing rate = actual hourly rate * (1 + ICR) * (1 + Fee). Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.
- For named employees and key personnel enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

EXHIBIT 10-H2 COST PROPOSAL
SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
 (CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed

Consultant or Subconsultant **BSK Associates** Prime Consultant Subconsultant 2nd Tier Subconsultant

Project: _____ Contract: _____ Participation Amount _____ Date 6/8/21

For Combined Rate	Fringe Benefit 40.44%	+	General Administration % 145.21%	=	Combined Indirect Cost Rate (ICR) % 185.65%
OR					
For Home Office Rate	Fringe Benefit 40.44%	+	General Administration % 145.21%	=	Combined Indirect Cost Rate (ICR) % 185.65%
For Field Office Rate	Fringe Benefit 40.44%	+	General Administration % 145.21%	=	Combined Indirect Cost Rate (ICR) % 185.65%

FEE % = 10.0%

BILLING INFORMATION

CALCULATION INFORMATION

Name/Job Title/Classification ¹	Hourly Billing Rates ²			Effective date of hourly rate		Actual or Avg. hourly rate ⁴	% or \$ increase	Hourly range - for classifications only
	Straight ³	OT(1.5x)	OT(2x)	From	To			
Group 1 Special Inspector**	\$163.55	\$192.18	\$220.80	7/1/21	6/30/22	\$52.05	0.00%	\$52.05
Standard Shift	\$169.27	\$198.90	\$228.53	7/1/22	6/30/23	\$53.87	3.50%	\$53.87
Non-Exempt	\$175.20	\$205.86	\$236.53	7/1/23	6/30/24	\$55.76	3.50%	\$55.76
	\$181.33	\$213.07	\$244.81	7/1/24	6/30/25	\$57.71	3.50%	\$57.71
	\$187.68	\$220.53	\$253.38	7/1/25	7/31/26	\$59.73	3.50%	\$59.73
Group 1 Special Inspector**	\$184.00	\$216.21	\$248.42	7/1/21	6/30/22	\$58.56	0.00%	\$58.56
Second Shift	\$190.44	\$223.78	\$257.12	7/1/22	6/30/23	\$60.61	3.50%	\$60.61
Non-Exempt	\$197.11	\$231.61	\$266.11	7/1/23	6/30/24	\$62.73	3.50%	\$62.73
	\$204.01	\$239.72	\$275.43	7/1/24	6/30/25	\$64.93	3.50%	\$64.93
	\$211.15	\$248.11	\$285.07	7/1/25	7/31/26	\$67.20	3.50%	\$67.20
Group 2 Special Inspector**	\$157.26	\$184.79	\$212.32	7/1/21	6/30/22	\$50.05	0.00%	\$50.05
Standard Shift	\$162.77	\$191.26	\$219.75	7/1/22	6/30/23	\$51.80	3.50%	\$51.80
Non-Exempt	\$168.47	\$197.95	\$227.44	7/1/23	6/30/24	\$53.61	3.50%	\$53.61
	\$174.36	\$204.88	\$235.40	7/1/24	6/30/25	\$55.49	3.50%	\$55.49
	\$180.46	\$212.05	\$243.64	7/1/25	7/31/26	\$57.43	3.50%	\$57.43
Group 2 Special Inspector**	\$176.93	\$207.90	\$238.88	7/1/21	6/30/22	\$56.31	0.00%	\$56.31
Second Shift	\$183.13	\$215.18	\$247.24	7/1/22	6/30/23	\$58.28	3.50%	\$58.28
Non-Exempt	\$189.54	\$222.71	\$255.89	7/1/23	6/30/24	\$60.32	3.50%	\$60.32
	\$196.17	\$230.51	\$264.85	7/1/24	6/30/25	\$62.43	3.50%	\$62.43
	\$203.04	\$238.58	\$274.12	7/1/25	7/31/26	\$64.62	3.50%	\$64.62
Group 3 Engineering Technician**	\$134.61	\$158.17	\$181.73	7/1/21	6/30/22	\$42.84	0.00%	\$42.84
Standard Shift	\$139.32	\$163.71	\$188.09	7/1/22	6/30/23	\$44.34	3.50%	\$44.34
Non-Exempt	\$144.20	\$169.44	\$194.68	7/1/23	6/30/24	\$45.89	3.50%	\$45.89
	\$149.24	\$175.37	\$201.49	7/1/24	6/30/25	\$47.50	3.50%	\$47.50
	\$154.47	\$181.51	\$208.54	7/1/25	7/31/26	\$49.16	3.50%	\$49.16
Group 3 Engineering Technician**	\$151.45	\$177.96	\$204.47	7/1/21	6/30/22	\$48.20	0.00%	\$48.20
Second Shift	\$156.75	\$184.19	\$211.63	7/1/22	6/30/23	\$49.89	3.50%	\$49.89
Non-Exempt	\$162.24	\$190.64	\$219.04	7/1/23	6/30/24	\$51.63	3.50%	\$51.63
	\$167.92	\$197.31	\$226.70	7/1/24	6/30/25	\$53.44	3.50%	\$53.44
	\$173.79	\$204.22	\$234.64	7/1/25	7/31/26	\$55.31	3.50%	\$55.31
Group 4 Engineering Technician **	\$115.85	\$136.13	\$156.41	7/1/21	6/30/22	\$36.87	0.00%	\$36.87
Standard Shift	\$119.91	\$140.89	\$161.88	7/1/22	6/30/23	\$38.16	3.50%	\$38.16
Non-Exempt	\$124.10	\$145.83	\$167.55	7/1/23	6/30/24	\$39.50	3.50%	\$39.50
	\$128.45	\$150.93	\$173.41	7/1/24	6/30/25	\$40.88	3.50%	\$40.88
	\$132.94	\$156.21	\$179.48	7/1/25	7/31/26	\$42.31	3.50%	\$42.31
Group 4 Engineering Technician **	\$130.34	\$153.15	\$175.96	7/1/21	6/30/22	\$41.48	0.00%	\$41.48
Second Shift	\$134.90	\$158.51	\$182.12	7/1/22	6/30/23	\$42.93	3.50%	\$42.93
Non-Exempt	\$139.62	\$164.06	\$188.50	7/1/23	6/30/24	\$44.43	3.50%	\$44.43
	\$144.51	\$169.80	\$195.09	7/1/24	6/30/25	\$45.99	3.50%	\$45.99
	\$149.56	\$175.74	\$201.92	7/1/25	7/31/26	\$47.60	3.50%	\$47.60

NOTES:

- Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended.
- Billing rate = actual hourly rate + (ICR) * (FEE). Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.
- For named employees and key personnel enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

EXHIBIT 10-H2 COST PROPOSAL
SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
 (CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant BSK Associates Prime Consultant Subconsultant

Project: _____ Contract: _____ Date 6/8/21

SCHEDULE OF OTHER DIRECT COST ITEMS				
DESCRIPTION OF ITEMS	QUANTITY	UNIT	UNIT COST	TOTAL
Unit Prices (Per attached fee schedule)				TBD
Laboratory Services (Per attached fee schedule)				TBD

NOTES:

1. List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
2. Proposed ODC items should be consistently billed regardless of client and contract type.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency and shall not exceed current State Department of Personnel Administration rules.
7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is its standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.
9. The cost proposal format shall not be amended. All costs must comply with the Federal cost principles.
10. Add additional pages if necessary.
11. Subconsultants must provide their own cost proposals.

EXHIBIT 10-H3 COST PROPOSAL Page 2 of 2

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

- 13. Generally Accepted Accounting Principles (GAAP)
- 14. Terms and conditions of the contract
- 15. [Title 23 United States Code Section 112](#) - Letting of Contracts
- 16. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
- 17. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
- 18. [48 Code of Federal Regulation Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: Tim Rodriguez Title*: Vice-President, Northern Regional Manager

Signature : _____ Date of Certification (mm/dd/yyyy): 06/23/2021

Email: trodriquez@bskassociates.com Phone Number: 925-315-3151

Address: 399 Lindbergh Avenue, Livermore, CA 94551

* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

<p>Materials testing services</p>

EXHIBIT 10-H3 COST PROPOSAL Page 2 of 2

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

- 13. Generally Accepted Accounting Principles (GAAP)
- 14. Terms and conditions of the contract
- 15. [Title 23 United States Code Section 112](#) - Letting of Contracts
- 16. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
- 17. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
- 18. [48 Code of Federal Regulation Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: Tim Rodriguez Title*: Vice-President, Northern Regional Manager

Signature:  Date of Certification (mm/dd/yyyy): 06/23/2021

Email: trodriguez@bskassociates.com Phone Number: 925-315-3151

Address: 399 Lindbergh Avenue, Livermore, CA 94551

* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Materials testing services



City of Emeryville

CALIFORNIA

EXHIBIT B

Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **ZEPHYR RAIL**.

1. MINIMUM REQUIREMENTS

Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work or Services required by the Contract hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage, as checked below:

1.1 *Minimum Scope of Insurance*

Coverage shall be at least as broad as the latest version of the following:

- General Liability**
Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).
- Automobile Liability**
Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto) or if Contractor owns no vehicles, this requirement may be met through a non-owned auto endorsement to the General Liability Policy.
- Professional Liability / Errors and Omissions**
Written on a policy form specifically designed to protect against acts, errors or omissions of the Contractor wherein "Covered Professional Services" as designated in the policy must specifically include Services performed under this Contract.
- Workers' Compensation and Employer's Liability**
Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract.
- Pollution Liability Insurance**
Pollution Liability insurance for claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater. This shall include on and off-site clean up and emergency response costs and claims arising from above ground and below ground storage tanks.

1.2 **Minimum Limits of Insurance**

Contractor shall maintain limits no less than:

General Liability

- All Contract Types**
\$1,000,000.00 per occurrence and \$2,000,000.00 aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability.

OR

- Construction Specific**
\$2,000,000.00 per occurrence and \$4,000,000.00 aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability, and coverage for explosion, collapse and underground property damage hazards.

- Automobile Liability**
\$2,000,000.00 per accident for bodily injury and property damage.
- Professional Liability / Errors and Omissions**
\$2,000,000.00 per claim and aggregate.
- Workers' Compensation and Employer's Liability**
Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000.00 each accident, policy limit bodily injury or disease, and each employee bodily injury or disease.
- Pollution Liability Insurance**
\$2,000,000.00 per occurrence and \$2,000,000.00 aggregate.

Except for the professional liability / errors and omissions policy, defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the Parties required to be named as additional insureds pursuant to this Contract.

2. **INSURANCE ENDORSEMENTS**

The insurance policies shall contain the following provisions, if checked, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions, if checked, to the insurance policies:

- General Liability**
(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10 or CG20 37, or endorsements providing the exact same coverage, with

City of Emeryville | Contract Insurance Requirements (Exhibit B)

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respect to the work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it.

 Automobile Liability

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

 Professional Liability Coverage

Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and Contractor agrees to maintain continuous coverage through a period no less than three years after termination of the Contract.

 Workers' Compensation and Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

 Pollution Liability Coverage

(1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status with respect to claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon

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land, any structure, the atmosphere, watercourse or body of water, including groundwater; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

ALL COVERAGES

Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and authorized volunteers.

3. SEPARATION OF INSURED; NO SPECIAL LIMITATIONS

All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and authorized volunteers.

4. DEDUCTIBLES AND SELF-INSURANCE RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

5. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

6. VERIFICATION OF COVERAGE

Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The

City of Emeryville | Contract Insurance Requirements (Exhibit B)

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certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

7. SUBCONTRACTORS

All subcontractors shall meet the requirements of this Section before commencing any work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

8. REPORTING OF CLAIMS

Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the work performed under this Contract.