

**** THIS IS A DRAFT CONTRACT TEMPLATE, THE TERMS AND CONDITIONS OF THE FINAL CONTRACT IS SUBJECT TO NEGOTIATION WITH SELECTED CONSULTANT DURING THE CONTRACT NEGOTIATION PERIOD. ****

DRAFT AGREEMENT FOR SERVICES – RFP ATTACHMENT 7

This Agreement is made and entered into this **xx day of month, year**, by and between **The Association of Monterey Bay Area Governments** (hereinafter referred to as "AMBAG" or "CLIENT"), and **xxx** (hereinafter referred to as "xxx" or "CONTRACTOR").

WITNESSETH

WHEREAS, AMBAG wishes to improve the regional travel demand model for the central coast of California (Monterey, Santa Cruz and San Benito Counties) to be used by AMBAG; and

WHEREAS, the CONTRACTOR is qualified and experienced and has necessary technical and personnel resources to provide such services.

NOW, THEREFORE, AMBAG and CONTRACTOR for the considerations hereinafter set forth, mutually agree as follows:

1. **SCOPE OF WORK.** CONTRACTOR shall perform those services described in the attached Exhibit A and incorporated herein by this reference and shall comply with all relevant conditions as set forth in the AGREEMENT.

NOW, THEREFORE, AMBAG and CONTRACTOR for the considerations hereinafter set forth, mutually agree as follows:

1. **SCOPE OF WORK**

CONTRACTOR shall perform those services described in the "Project Tasks/Services, Timeline and Budget," Exhibit A attached hereto and incorporated herein by this reference and shall comply with all relevant conditions as set forth in the AGREEMENT.

2. **TERM**

- A. The term of this Agreement shall be from the date of its execution until the completion of the work contemplated by this Agreement and its final acceptance by AMBAG unless terminated earlier as provided herein. CONTRACTOR shall complete all tasks **on or before Month Day, year** unless otherwise extended by written authorization.
- B. Services performed under this Agreement shall commence only upon Notice to Proceed by AMBAG to CONTRACTOR.

This Agreement includes the following Exhibits:

Exhibit A. Project Tasks/Services, Timeline, and Budget

Exhibit B. Debarment and Suspension Certification

Exhibit C. Federal Tax Form W-9, Request for Taxpayer Identification Number and Certification

Exhibit D. Disadvantaged Business Enterprises (DBE) Information Form

Exhibit E. Levine Act

3. COORDINATION/STAFFING

- A. CONTRACTOR shall assign **xx xxxx as Project Manager** to personally participate in said project. AMBAG also retains the right to approve any substitution of the Project Manager. No portion of the work included in this Agreement shall be subcontracted, except as provided herein, without the prior, written authorization of the AMBAG.
- B. Services described in the Scope of Work shall be performed by Contractor's staff, Subcontractor(s) or other members of the project team, hereinafter referred to as "Subcontractor(s)," listed in the "Project Tasks/Services, Timeline, and Budget," Exhibit A, attached hereto and incorporated by this reference.

4. COMPENSATION

AMBAG shall pay CONTRACTOR for services on a firm fixed price basis as shown in Exhibit A. In no event shall compensation exceed **CONTRACT AMOUNT (\$#####)** without prior written consent of AMBAG.

As a condition precedent to the satisfactory completion of said contract AMBAG shall withhold an amount equal to ten percent (10%) of each invoice until completion and acceptance of said contract work.

5. INVOICING

- A. Invoices for services must be presented to AMBAG no later than the fifteenth day of each month for the month prior. CONTRACTOR shall submit an invoice to AMBAG stating the amount due for such services on a monthly basis throughout the duration of the project. Said monthly invoicing shall reflect the task worked on, the percentage of the task completed, and the total dollar amount for the task in comparison to the invoiced amount based upon the percentage of the task then completed. AMBAG shall reimburse the CONTRACTOR as promptly as its fiscal procedures permit, upon receipt of itemized invoices submitted in accordance with this Agreement. Payment of the invoices will be made to CONTRACTOR after acceptance and approval by AMBAG and upon reimbursement by the State of California. AMBAG will withhold 10% of each invoice until fully reimbursed by the State of California. Such reimbursements shall be based upon actual eligible costs incurred by the CONTRACTOR consistent with the "Project Tasks/Services, Timeline, and Budget," Exhibit A. No interest or carrying charges shall accrue to CONTRACTOR by reason of delayed payment.
- B. Prompt Payment to Subcontractor(s): A CONTRACTOR shall pay any Subcontractor(s) for satisfactorily completed work no later than ten (10) days of receipt of each payment from AMBAG. The ten (10) day period is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over thirty (30) days may take place only for good cause and with AMBAG's prior written approval. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the CONTRACTOR or Subcontractor in the event of a dispute involving late payment or nonpayment by the CONTRACTOR, deficient Subcontractor performance,

and/or noncompliance by a Subcontractor. This clause applies to both DBE and non-DBE Subcontractor.

- C. Invoicing Format and Content: All invoices submitted to AMBAG for payment shall be sent directly to:

Association of Monterey Bay Area Governments

ATTN: Accounts Payable

P.O. Box 2453

Seaside, CA 93955

1. The invoice shall be entitled "Invoice" or otherwise clearly identify that the document is an Invoice, and shall contain the following information:
 - i. AMBAG's "Bill To" information as stated in the above paragraph;
 - ii. Invoice number and/or billing number specified by CONTRACTOR. The invoice number must be unique for each invoice submitted;
 - iii. Invoice date;
 - iv. Billing period specified with beginning and ending dates. The beginning date must not be sooner than the Notice to Proceed date of the Agreement, or within any previous billing dates;
 - v. Total amount due for the billing period;
 - vi. Total Contract Value (as identified in 4A. above); and
 - vii. AMBAG Project Manager

6. AGREEMENT COMPLETION RETAINER
CONTRACTOR is prohibited from holding retainage from Subcontractor(s). Any delay or postponement of payment may take place only for good cause and with AMBAG's prior written approval. Any violation of these provisions shall subject the violating CONTRACTOR to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code, if applicable. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONTRACTOR in the event of a dispute involving late payment or nonpayment by the CONTRACTOR, deficient Subcontractor(s) performance, and/or noncompliance by Subcontractor(s). This clause applies to both DBE and non-DBE Subcontractor(s).

7. SATISFACTORY PERFORMANCE
Payment for services under this Agreement is contingent upon AMBAG's determination that the performance of the CONTRACTOR has been satisfactory.

8. UNTIMELY PERFORMANCE BY CONTRACTOR
Timely delivery of project deliverables is crucial to this project. Accordingly, late fees shall be assessed against the CONTRACTOR for every **calendar day** a milestone or

delivery date is not met. Milestone dates and delivery schedules have been negotiated between the CONTRACTOR and AMBAG and shall be assessed as follows:

- Days one (1) through five (5): 0.01 percent of contract total per day
- Days six (6) through fifteen (15): 0.02 percent of contract total per day
- Days sixteen (16) through thirty (30): 0.03 percent of contract total per day

9. OWNERSHIP, CONFIDENTIALITY AND USE OF WORK PRODUCTS

- A. Ownership of any reports, data, studies, surveys, charts, memoranda, and any other documents, which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall vest with AMBAG. AMBAG reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the data.
- B. AMBAG shall receive copyright and ownership to all data and materials delivered under this contract upon formal acceptance, except for those data and materials that are subject to ownership or copyright of others prior to the execution of this contract. No distribution of the original or derived works shall be made prior to acceptance by AMBAG unless specified in the task order or authorized by the contracting officer. The contractor may maintain copyright and ownership of all original or derived works which are not required submittals under this contract.
- C. Methodology and materials developed under this Agreement are the property of AMBAG and may be used by AMBAG as it sees fit, including the right to revise or publish the same without limitation. CONTRACTOR shall not be liable for use of such methodology, materials, software logic, and systems for purposes other than that for which it is developed.
- D. Subject to the California Public Records Act, all Work Products and Related Work Materials including Intellectual Property shall be held confidential by CONTRACTOR. Nothing furnished to CONTRACTOR, which is otherwise known to CONTRACTOR or is generally known, or has become known, to the related industry shall be deemed confidential.
- E. The CONTRACTOR shall not use, release, reproduce, distribute, publish, adapt for future use or otherwise use Work Products and Related Work Materials for purposes other than the performance of the Scope of Work, nor authorize others to do so, without prior written permission of AMBAG Legal Counsel; nor shall such materials be disclosed to any person or entity not connected with the performance of the work. CONTRACTOR shall also safeguard such confidential materials from unauthorized disclosure, using the same standard of care to avoid disclosure, as the CONTRACTOR treats its confidential information, but in no case less than reasonable care.
- F. All equipment, including, but not limited to, computer hardware, printing and duplication equipment, multimedia equipment, software tools and programs, and upgrade packages to existing equipment, procured in whole or part by funds provided under this Agreement, are the property of AMBAG. AMBAG shall determine the disposition of all such property upon completion or termination of this Agreement.
- G. AMBAG may utilize any Work Products or Related Work Materials provided by CONTRACTOR pursuant to this Agreement, in any manner which AMBAG deems appropriate without additional compensation to CONTRACTOR.

10. TERMINATION

A. Termination of Convenience of AMBAG

AMBAG may terminate this Agreement at any time by giving notice to the CONTRACTOR of such termination (including the effective termination date) at least thirty (30) calendar days before the effective date of such termination. In such event, all finished or unfinished documents and other materials as described in this Agreement, at the option of AMBAG, become AMBAG's property. If this Agreement is terminated by AMBAG, as provided herein, AMBAG's only obligation shall be the payment of fees and expenses incurred prior to the termination date, for work deemed satisfactory to AMBAG, in accordance with the cost provisions of this Agreement.

B. Termination for Cause

If through any cause, the CONTRACTOR shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the CONTRACTOR violates any of the covenants, terms, or stipulations of this Agreement, AMBAG shall thereupon have the right to terminate the Agreement by giving not less than ten (10) working days written notice to the CONTRACTOR of the intent to terminate and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the CONTRACTOR under this Agreement shall, at the option of CONTRACTOR, become AMBAG's property.

11. AMENDMENT OF SCOPE OF WORK

The parties may amend the Scope of Work subject to mutual prior written modification of the Agreement.

12. CORRECTION OF WORK

The performance of services or acceptance of information furnished by CONTRACTOR shall not relieve the CONTRACTOR from obligation to correct any defective, inaccurate or incomplete work subsequently discovered and all such work shall be remedied by the CONTRACTOR on demand without cost to AMBAG.

13. DELAYS AND EXTENSIONS

Time is of the essence concerning performance of this Agreement; however, the CONTRACTOR will be granted time extensions for delays beyond the Contractor's control. Time extensions will be equal to the length of the delay or as otherwise agreed upon in writing between the CONTRACTOR and AMBAG.

14. RECORDS RETENTION AND AUDITS

CONTRACTOR shall maintain adequate records of contract performance costs, expenses, etc., and make these records available for inspection, audit, and copying by

AMBAG and Caltrans, FHWA, FTA at the Contractor's principal place of business during the agreement period and for a period of three (3) years from the date of final payment, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until AMBAG, Caltrans, FHWA, FTA, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

15. SUBCONTRACTING

In accordance with Government Code Section 7550, CONTRACTOR agrees to state in a separate section of any filed report the numbers and dollars amounts of all contracts and subcontracts relating to preparation of the report.

16. ASSIGNMENT

The Agreement shall not be assigned by the CONTRACTOR, in whole or in part, without the prior written consent of AMBAG.

17. INDEMNIFICATION

To the full extent permitted by law, CONTRACTOR shall indemnify, hold harmless, release and defend AMBAG, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs and liabilities of any nature that may be asserted by any person or entity including CONTRACTOR, in whole or in part, arising out of Contractor's activities hereunder, including the activities of other persons employed or utilized by CONTRACTOR in the performance of this Agreement (including design defects and regardless of AMBAG's approval, use or acceptance of the work or work product hereunder) excepting liabilities due to the admitted or adjudicated sole negligence or willful misconduct of AMBAG. If the adjudicated or admitted sole negligence or willful misconduct of AMBAG has contributed to a loss, CONTRACTOR shall not be obligated to indemnify AMBAG for the proportionate share of such loss caused by such sole negligence or willful misconduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for CONTRACTOR under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by CONTRACTOR and shall continue to bind the parties after termination/completion of this Agreement.

18. CIVIL RIGHTS

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

- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
 2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
 3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- C. The CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

19. FEDERAL CHANGES - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

20. ENERGY CONSERVATION - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

21. NO OBLIGATION BY THE FEDERAL GOVERNMENT

- A. AMBAG and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to AMBAG, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the Federal Transit Administration (FTA). It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

22. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- A. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.
- B. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. § 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.
- C. The CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

23. SUSPENSION AND DEBARMENT

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the CONTRACTOR is required to verify that none of the its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The CONTRACTOR is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting the contract, the CONTRACTOR shall certify those clauses described in the "Debarment and Suspension Certification," Exhibit B attached hereto and incorporated herein by this reference and shall comply with all relevant conditions as set forth in the AGREEMENT.

24. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- A. The CONTRACTOR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the CONTRACTOR agrees to obtain the express consent of the Federal Government before the CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. The CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- B. The CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

25. INSURANCE/NOTIFICATION

Prior to the beginning, and throughout the duration, of the work, CONTRACTOR will maintain insurance in conformance with the requirements set forth below. CONTRACTOR will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, it will be amended to do so. CONTRACTOR acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to AMBAG.

CONTRACTOR is covered by, and agrees to maintain, general liability insurance for bodily injury and property damage arising directly from its negligent acts or omissions with limits as specified below. Certificates of insurance shall be provided to AMBAG prior to commencement of work by CONTRACTOR. CONTRACTOR agrees to indemnify, protect, defend and name AMBAG, its public officials, officers and employees as additional insured on the Commercial General Liability and Business Auto Insurance and hold harmless from any loss, damage or liability arising directly from any negligent act or omission by CONTRACTOR. CONTRACTOR shall not be responsible for any loss, damage or liability arising from any act or omission by AMBAG, its officials, officers or employees.

CONTRACTOR shall provide the following types and amounts of insurance:

- A. Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01, with an edition date prior to 2004, or the exact equivalent. Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregates.
- B. Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses.
- C. Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including owned, non-owned and hired autos, or the exact equivalent. Limits shall be no less than \$1,000,000 per accident, combined single limit. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If CONTRACTOR or CONTRACTOR'S employees use personal autos in any way on this project, CONTRACTOR shall obtain evidence of personal auto liability coverage for each such person.
- D. Errors and Omissions Liability CONTRACTOR shall provide evidence of professional liability insurance on a policy form appropriate to Contractor's profession. Limits shall be no less than \$1,000,000/claim.
- E. Certificate of Insurance CONTRACTOR shall file a certificate of insurance completed and filed with AMBAG within fifteen (15) days of execution of this Agreement and prior to engaging any operation or activities set forth in this Agreement. The foregoing policies shall provide that no cancellation, major change in coverage, or expiration by insurance company or insured during the term of this contract shall occur without thirty (30) days written notice to AMBAG prior to the effective date of such cancellation or change in coverage.
- F. All such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of two (2) years after completion of the contract.
- G. The Commercial General Liability and Business Auto insurance policies shall provide an endorsement naming AMBAG, its officers, agents, employees and volunteers as Additional Insured, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by AMBAG and that the insurance of the Additional Insured shall not be called upon to contribute to a loss covered by the insurance AMBAG.

26. CONFLICT OF INTEREST

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

CONTRACTOR shall at all time avoid conflicts of interest, or the appearance of conflicts of interest, in the performance of this contract. CONTRACTOR shall file statements of

financial interest on forms provided by AMBAG to the extent and at the times required by AMBAG's Conflict of Interest Code and applicable law.

27. STATEMENT OF ECONOMIC INTEREST

If AMBAG determines CONTRACTOR comes within the definition of CONTRACTOR under the Political Reform Act (Government Code §87100), CONTRACTOR shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with AMBAG disclosing CONTRACTOR and/or such other person's financial interests.

28. MERGER

This Agreement shall constitute the entire Agreement between the parties and shall supersede any previous agreements, whether verbal or written, concerning the same subject matter. No modification of this Agreement shall be effective unless and until evidence by a writing is signed by both parties.

29. DEFAULT

If CONTRACTOR should fail to perform any of his obligations hereunder, within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, AMBAG may terminate this Agreement by giving CONTRACTOR written notice of such termination, stating the reason for such termination. In such event, CONTRACTOR shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the agreement as the services satisfactorily rendered hereunder by CONTRACTOR bear to the total services otherwise required to be performed for such total fee; provided, however, that AMBAG may withhold payments not yet made to CONTRACTOR for the purpose of setoff until such time as the exact amount of damages due AMBAG from CONTRACTOR is determined.

30. NO WAIVER OF BREACH/ TIME

The waiver by AMBAG of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement. Time is of the essence in carrying out the duties hereunder.

31. THIRD PARTY BENEFICIARIES

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

32. ATTORNEYS' FEES, APPLICABLE LAW AND FORUM

In the event either party brings an action or proceeding for damages arising out of the other's performance under this Agreement or to establish the right or remedy of either party, the

prevailing party shall be entitled to recover reasonable attorneys' fees and costs as part of such action or proceeding, whether or not such action or proceeding is prosecuted to judgment. This Agreement shall be construed and interpreted according to California law, and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Monterey.

33. INDEPENDENT CONTRACTOR

The parties intend that CONTRACTOR, in performing the services specified herein, shall act as an independent contractor and shall have control of the work and the manner in which it is performed. CONTRACTOR is not to be considered an agent or employee of AMBAG and is not entitled to participate in any pension plan, insurance, bonus or similar benefits AMBAG provides its employees. In the event AMBAG exercises its right to terminate this Agreement, CONTRACTOR expressly agrees that he/she shall have no recourse nor right of appeal under rules, regulations, ordinances or laws applicable to employees.

34. TAXES

CONTRACTOR agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold AMBAG harmless from any liability which it may incur to the United States or to the State of California as a consequence of CONTRACTOR'S failure to pay, when due, all such taxes and obligations.

35. FEDERAL TAX FORMS

Prior to issuing the initial claim under this Agreement, the CONTRACTOR shall submit Federal Tax Form W-9, Request for Taxpayer Identification Number and Certification to the following address:

**Association of Monterey Bay Area Governments
ATTN: Accounts Payable
P.O. Box 2453
Seaside, CA 93955**

or by FAX to: (831) 883-3755. Unless AMBAG receives a completed Tax Form W-9, payments for services performed under this AGREEMENT shall be subject to federal backup withholding.

36. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

A. CONTRACTOR shall study and comply with all applicable federal, state and local laws, rules and regulations affecting the CONTRACTOR and his/her work hereunder. CONTRACTOR represents and warrants to AMBAG that CONTRACTOR has and will keep in effect during the term of this Agreement all licenses, permits, qualifications and

approvals of whatsoever nature which are legally required for CONTRACTOR to practice Contractor's profession and to do the work hereunder.

- B. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to AMBAG for inspection.

37. FEDERAL AND STATE LOBBYING ACTIVITIES CERTIFICATION (43 CFR PART 18)

By signing this AGREEMENT, the CONTRACTOR certifies, to the best of its knowledge and belief, that no State or Federal funds have been paid or will be paid, by or on behalf of AMBAG, to any person for influencing or attempting to influence an officer or employee of any 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 of any State or Federal contract, the making of any State or Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.

If any funds other than State or Federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Federal Standard Form-LL, "Disclosure Form to Report Lobbying," in accordance with those form instructions.

This certification is a material representation of fact, upon which reliance was placed when this Agreement was entered into. Submission of this certification is a prerequisite for making or entering into this Agreement pursuant to 31 U.S.C. 1352 and 49 C.F.R. Part 19, Appendix A, Section 7.

The CONTRACTOR also agrees by signing this Agreement that it will require that the language of this certification be included in all subcontracts funded wholly or in part by any funds provided herein and which exceed \$100,000 and that all such Subcontractor(s) shall certify and disclose accordingly.

38. CERTIFICATIONS AND ASSURANCES

- A. CONTRACTOR shall adhere to the requirements contained in AMBAG's annual Certification and Assurances (FHWA and FTA "Metropolitan Transportation Planning Process Certification") submitted as part of AMBAG's OWP, pursuant to 23 CFR 450.334 and 23 U.S.C. 134. This Certification shall be published annually in AMBAG's OWP. Such requirements shall apply to CONTRACTOR to the same extent as AMBAG and may include, but are not limited to:

1. Title VI of the Civil Rights Act of 1964 and Title VI Assurance executed by California under 23 U.S.C. 324 and 29 U.S.C. 794;
 2. Pub. Law 105-178, 112 Stat. 107 and any successor thereto, regarding the involvement of disadvantaged business enterprises in FHWA and FTA funded projects (Sec. 105(f), Pub. L. 970424, 96 Stat. 2100, 49 CFR part 26); and
 3. The Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended) and the United States Department of Transportation (US DOT) implementing regulations (49 CFR 27, 37, and 38).
- B. CONTRACTOR shall additionally comply with the requirements contained in the annual FTA Certifications and Assurances for FTA Assistance, including Certifications and Assurances Required of Each Applicant and the Lobbying Certification in compliance with 49 U.S.C. Chapter 53; published annually in AMBAG's OWP. Such assurances shall apply to CONTRACTOR to the same extent as AMBAG, and include but are not limited, the following areas:
1. Standard Assurances
 2. Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions
 3. Drug Free Work Place Agreement
 4. Intergovernmental Review Assurance
 5. Nondiscrimination Assurance
 6. DBE Assurance
 7. Nondiscrimination on the Basis of Disability
 8. Certification and Assurances required by the U.S. Office of Management and Budget
- C. The CONTRACTOR shall require its Subcontractor(s) to comply with these Certifications, and agrees to furnish documentation to AMBAG to support this requirement that all of its agreements with Subcontractor(s) contain provisions requiring adherence to this section in its entirety.

39. COST PRINCIPLES

- D. CONTRACTOR agrees to comply with the following:
1. the Contract Cost Principles and Procedures, 48 Code of Federal Regulations, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq. (Office of Management and Budget Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments), shall be used to determine the allowability of individual project cost items, and
 2. the Federal administrative procedures in accordance with 49 Code of Federal Regulations, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- E. Any costs for which CONTRACTOR receives payment or credit that is determined by a subsequent audit or other review by either AMBAG, Caltrans or other State or Federal authorities to be unallowable under, but not limited to, OMB Circular A-87; 48 CFR,

Chapter 1, Part 31; or 49 CFR, Part 18, are to be repaid by CONTRACTOR within thirty (30) days of CONTRACTOR receiving notice of audit findings. Should CONTRACTOR fail to reimburse moneys due AMBAG within thirty (30) days of demand, or within such other period as may be agreed between Parties hereto, AMBAG is authorized to withhold future payments due CONTRACTOR.

- F. CONTRACTOR agrees to furnish documentation to AMBAG to support this requirement that all of its agreements with Subcontractor(s) contain provisions requiring adherence to this section in its entirety.

40. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- A. The CONTRACTOR and its Subcontractor(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of State or DOT-assisted contracts or in the administration of AMBAG's DBE Program. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as AMBAG deems appropriate.
- B. It is the policy of AMBAG, Caltrans, and DOT, that the Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, shall have an equal opportunity to receive and participate in DOT-assisted contracts. The CONTRACTOR and its Subcontractor(s) shall comply with the requirements of 49 CFR Part 26 and with AMBAG's DBE Program, as amended.
- C. A "DBE Information Form" is attached hereto and incorporated herein by this reference as Exhibit D. Even if no DBE participation will be reported, the CONTRACTOR shall complete and sign such form at the time this AGREEMENT is executed
- D. During the period of this Agreement, the CONTRACTOR shall maintain records of all applicable subcontracts advertised and entered into germane to this AGREEMENT, documenting the actual DBE participation and records of materials purchased from DBE suppliers. Such documentation shall show the name and business address of each DBE Subcontractor(s) or vendor, and the total dollar amount actually paid each DBE Subcontractor(s) or vendor. Upon completion of the AGREEMENT, regardless of whether DBE participation is obtained, a summary of the DBE records shall be prepared, certified correct, and submitted on a form that shall be provided by AMBAG.

41. FLOW-DOWN PROVISIONS

Any subcontract entered into as a result of this AGREEMENT shall contain the following provisions of this Agreement:

Section 3 (Coordination/Staffing); Section 5 (Invoicing for Payment); Section 6 (Agreement Completion Retainer); Section 7 (Satisfactory Performance); Section 9 (Ownership, Confidentiality, and Use of Work Products); Section 10 (Termination); Section 11 (Disputes); Section 15 (Records Retention and Audits); Section 18 (Indemnification); Section 19 (Civil Rights); Section 23 (Program Fraud and False or Fraudulent Statements and Related Acts); Section 27 (Conflict of Interest); Section 34 (Independent Contractor); Section 37 (Compliance with Laws, Rules, and Regulations); Section 38 (Federal and State

Lobbying Activities Certification); Section 39 (Certifications and Assurances); Section 40 (Cost Principles); and Section 41 (Disadvantaged Business Enterprise).

42. INTERPRETATION

Notwithstanding the fact that one or more provisions of this Agreement may have been drafted by one of the parties to this Agreement, such provisions shall be interpreted as though they were a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

AMBAG:

Signature: _____

Name: Maura F. Twomey

Title: Executive Director

Association of Monterey Bay Area Governments (AMBAG)

Signature: _____

Name: Bill Kampe

Title: President

Association of Monterey Bay Area Governments (AMBAG)

CONSULTANT:

Signature: _____

Name: Consultant Name

Title: Title of Consultant

Company Name

APPROVED TO AS TO FORM:

By: _____

Don Freeman, AMBAG Legal Counsel,

P.O. Box 805, Carmel CA 93921