



Association of Monterey Bay Area Governments

Request for Proposals

for

**Environmental Impact Report for the
2045 Metropolitan Transportation Plan/Sustainable Communities Strategy and
Regional Transportation Plans**

Not to Exceed \$225,000

Issued: May 13, 2019

Questions Due: June 3, 2019

Deadline (received by AMBAG): July 15, 2019

Submit all questions and proposals to:

Heather Adamson | AMBAG | 24580 Silver Cloud Court, Monterey, CA 93940 |

hadamson@ambag.org | fax 831.883.3755

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Introduction

As the Metropolitan Planning Organization (MPO) for the tri-county region of Monterey, San Benito, and Santa Cruz counties the Association of Monterey Bay Area Governments (AMBAG) is charged with developing a Metropolitan Transportation Plan (MTP) including a Sustainable Communities Strategy (SCS). The MTP is the metropolitan long-range transportation plan for Monterey, San Benito, and Santa Cruz counties. The Council of San Benito County Governments (SBtCOG), the Santa Cruz County Regional Transportation Commission (SCCRTC), and the Transportation Agency for Monterey County (TAMC) are the state-designated Regional Transportation Planning Agencies (RTPAs) for San Benito, Santa Cruz and Monterey counties, respectively. Each RTPA prepares a county level long-range Regional Transportation Plan (RTPs).

The MTP/SCS and RTPs are used to guide the development of the Regional and Federal Transportation Improvement Programs (RTIP and FTIP) as well as other transportation programming documents and plans. The MTP/SCS and RTPs outlines the region's goals and policies for meeting current and future mobility needs, providing a foundation for transportation decisions by local, regional, and state officials that are ultimately aimed at achieving a coordinated and balanced transportation system. The MTP/SCS and RTPs sets forth actions, programs, and projects to address these needs consistent with adopted policies and goals. The MTP/SCS and RTPs also documents the financial resources needed to implement the plan.

The Sustainable Communities and Climate Protection Act of 2008 (SB 375, Steinberg) enhances California's ability to reach its AB 32 goals by promoting coordinated land use and transportation planning with the goal of creating more sustainable communities. SB 375 mandates regional greenhouse gas emission reduction targets for passenger vehicles. Pursuant to SB 375, the California Air Resources Board (CARB) established targets for 2020 and 2035 for each region covered by one of the State's 18 metropolitan planning organizations (MPOs). AMBAG, as the regional MPO, must prepare a SCS that demonstrates how the region will meet its greenhouse gas reduction target through integrated land use, housing, and transportation planning.

AMBAG is currently preparing the MTP/SCS for the region and plans to contract with a consultant to prepare an Environmental Impact Report (EIR) pursuant to California Environmental Quality Act (CEQA). This EIR also will serve as the EIR for the county level RTPs. The 2045 MTP/SCS/RTPs EIR will analyze impacts on the physical environment and identify strategies to avoid or mitigate significant environmental effects. It will be an informational document intended to inform public decision-makers, responsible or interested agencies, and the general public of the potential environmental effects of a project.

AMBAG has issued this Request for Proposals (RFP) in an amount not to exceed \$225,000 for EIR services which sum includes all expenses. The consultant will prepare a "first-tier" Program EIR for AMBAG that will address the Monterey, San Benito, and Santa Cruz County region. First-tier environmental documents provide analysis of large-scale cumulative impacts, such that the next tier of environmental documents does not have to repeat the previous analysis. These second-tier

documents can instead focus on localized impacts in the vicinity of the smaller-scale individual plan or project under review.

CEQA requires that environmental documents address that which is “reasonably foreseeable” to result from projects to the extent they are known. Most, if not all, of the individual projects within the 2045 MTP/SCS/RTPs will undergo project-specific design and environmental review subsequent to the MTP/SCS/RTPs EIR. Hence, project level details are not available for the MTP/SCS/RTPs EIR, and could not realistically be addressed in this document.

Scope of Work & Project Deliverables

The following provides details of the scope of services required under this contract. Respondents to this RFP should build on this general description by proposing a scope of work with specific sub-tasks as deemed appropriate. The respondent’s proposal should consider how AMBAG and the EIR team should include new potential CEQA areas as well as the approach needed to develop the joint EIR. Respondents should address the potential to prepare a supplemental EIR to the 2040 MTP/SCS/RTPs EIR certified in June 2018 compared to a new full EIR. Some tasks may require additional information from respondents as called out under the description of each task. Respondents also should refer to the Proposal Requirements, and Evaluation and Selection Process sections for additional requirements.

Additional tasks and work elements may be added or deleted during contract negotiations. Upon conclusion of the negotiation process, the selected consultant will be required to prepare a final work plan, schedule, and budget for inclusion into a final contract.

AMBAG seeks a qualified consultant to develop a Program Environmental Impact Report (EIR) for the 2045 MTP/SCS/RTPs. The EIR also will serve as the EIR for the three RTPAs RTPs in the AMBAG region. The EIR must conform to the requirements of the CEQA and may also require coordination with or reference to:

- Fixing America's Surface Transportation Act (FAST Act)
- The Moving Ahead for Progress in the 21st Century Act (MAP-21)
- The Federal Clean Air Act
- The California Clean Air Act
- California Senate Bill 375 (Steinberg)
- California Senate Bill 743 (Steinberg)
- California Assembly Bill 32 (Nunez)
- Senate Bill 32 (Pavley)
- California Executive Order S-3-05
- California Executive Order B-30-15

The consultant will work under the direction of AMBAG's EIR Project Manager. AMBAG will assist the consultant in coordinating work with the RTPAs and the public. The consultant will be responsible for soliciting input from the general public, public agencies, and the private sector, using information approved by AMBAG staff.

The 2045 MTP/SCS/RTPs EIR will be a program-level document that will analyze the cumulative effects of proposed actions, as well as other transportation improvements to be included in the AMBAG 2045 MTP/SCS and the RTPA's RTPs. The consultant will provide all work products in hard copy and digital format, including all maps, charts, figures, and graphs. Approval of the final EIR by the AMBAG Board of Directors must be completed no later than June 2022.

The consultant will be responsible for the following tasks:

- Task A: Project Management
- Task B: Determine Scope of EIR
- Task C: Preparation of Draft EIR
- Task D: Preparation of Final EIR
- Task E: Public Outreach and Agency Coordination
- Task F: Optional Tasks

A. Project Management

The consultant will submit written monthly progress reports with invoices and will participate in bi-weekly conference calls with the AMBAG project manager. AMBAG staff will regularly brief the EIR staff team which will include the RTPA staff. Progress reports will document specific accomplishments of each task, identify percent completion by task, difficulties encountered, and recommended adjustments to the project schedule. The consultant will maintain all electronic and hard copy files pertaining to the project and will provide AMBAG with an electronic version of all reports, technical memos, and backup data prior to completion of the project. Two versions of all deliverables will be provided, the first for AMBAG/EIR staff team review and comment, and the second for stakeholder review and comment.

Within one week of the Notice to Proceed, the project manager and appropriate consultant technical staff will attend a kick-off meeting with AMBAG and the EIR staff team to review the schedule and communication protocols. A final schedule and communication protocols will be established and agreed upon at the kick-off meeting.

The consultant and the EIR staff team will meet, as needed, to discuss key issues related to the EIR development throughout the term of the contract.

Deliverables:

- *Finalize the schedule*
- *Discuss communication preferences*
- *One kickoff meeting including meeting agenda and meeting notes*
- *Bi-weekly conference call with AMBAG project manager and EIR Staff Team for the term of the contract*
- *Written monthly progress reports for the term of the contract*
- *Electronic and hard copy files of the project maintained for the term of the contract*
- *Provide AMBAG with an electronic version of all reports, technical memos, and backup data prior to completion of the project*

Deadline:

Ongoing from October 2019 – June 2022

B. Determine Scope of the EIR

The consultant will prepare the Notice of Preparation (NOP) for distribution by AMBAG, including a project description, location map, potential alternatives, and list of probable environmental effects of the project. Once comments on the NOP are received, the consultant will compile all comments and create a matrix to be included in the EIR that shows comments received and where comments are addressed in the EIR. The consultant will advise AMBAG on early consultation efforts per the *State CEQA Guidelines*. The consultant will conduct three public scoping meetings (one in each county) during the scoping period.

Deliverables:

- *One electronic copy of the Notice of Preparation in MS Word and PDF format*
- *Compile NOP comments and create a matrix*
- *Three (3) public scoping meetings*

Deadline:

January 2020

C. Preparation of Draft EIR

1. Data Needs/Collection

The consultant will identify the data needs for the 2045 MTP/SCS/RTPs EIR. The consultant will work with AMBAG staff to identify data currently available and anticipated to be available for use in the EIR. Any additional data anticipated to be needed to complete a thorough EIR analysis will be identified. The consultant will incorporate their data needs into the project schedule and prepare a master schedule to demonstrate appropriate timelines. The master schedule will provide date-certain timelines based on when the team receives the draft MTP network, draft MTP, and alternative scenarios, and air quality/EMFAC and traffic modeling results from AMBAG.

Each of these elements will be built into the schedule. Critical path items will then be identified to ensure AMBAG and the RTPAs meet the June 2022 deadline to allow federal funds to continue to be disbursed to the region.

2. Required Sections of the EIR

The Draft EIR will include all sections required by CEQA (in particular State CEQA Guidelines Sections 15120-15132), including the following components. Consultant shall work with AMBAG staff and EIR team to identify a reasonable range of alternative scenarios:

- Complete evaluation and comparison of alternative scenarios and work with AMBAG staff to identify a reasonable range of alternatives
- Complete impact assessment of the proposed 2045 MTP/SCS and the alternatives for all identified impact categories
- Complete cumulative impact and growth-inducing impact evaluations
- Complete and finalize list of mitigation measures
- Complete all necessary appendices work

3. Administrative Draft Program EIR

Based on the work described above, the consultant will prepare the Administrative Draft Program EIR. The document will be provided to AMBAG staff for internal review. The draft will then be revised and provided to the EIR staff team for review and comment. The 2045 MTP/SCS/RTPs EIR will address all sections required by CEQA, in particular State CEQA Guidelines Sections 15120-15132, which identify the required components of a Draft and Final EIR. The EIR will focus on the unavoidable significant impacts of the project in accordance with State CEQA Guidelines Section 15126.2. The EIR will include, but is not limited to, the following components:

- a. Executive Summary
- b. Introduction
- c. Project Description
- d. Environmental Setting and Baseline Conditions
- e. Major Implementation Issues of the 2045 MTP/SCS/RTP
 - (1) Schedule
 - (2) CEQA Streamlining
- f. Environmental Impacts including, but not limited to, project-specific, cumulative, growth-inducing, and socioeconomic impacts.
 - (1) Air Quality and Health Impacts/Risks
 - (2) Climate Change/Greenhouse Gases
 - (3) Land Use
 - (4) Noise
 - (5) Traffic and Circulation
 - (6) Environmental Justice/Social Equity
 - (7) Energy

- (8) Biological Resources
- (9) Cultural and Historic Resources
- (10) Hydrology/Water Quality
- (11) Other Topic Areas
 - Aesthetics/Visual Resources
 - Agricultural Resources
 - Geology/Soils
 - Hazards and Hazardous Materials
 - Mineral Resources
 - Population and Housing
 - Recreation
 - Regional Water Supply
- (12) Overview Impacts
- g. Growth Inducement
- h. Other Required CEQA Sections
 - (1) Cumulative impacts
 - (2) Significant effects that would not be avoided
 - (3) Significant irreversible effects
 - (4) Effects found not to be significant
- i. Alternatives
 - (1) Proposed 2045 MTP/SCS (Proposed Plan)
 - (2) No Project Alternative
 - (3) Alternative Scenario 1
 - (4) Alternative Scenario 2
- j. MTP Consistency with Other Plans. This shall include analysis and identification of any potential conflicts or inconsistencies which may results from implementation of the 2045 MTP/SCS and any mitigated alternatives with the adopted goals, objectives, or policies contained within:
 - (1) Comprehensive, general, regional, or local transportation plans
 - (2) Comprehensive, general, regional, or local land use plans
 - (3) Local coastal programs
 - (4) Local or regional Short Range Transit Plans

4. Prepare Public Draft Program EIR

The consultant will revise the Administrative Draft Program EIR based on comments from AMBAG and EIR staff team. Once all comments have been responded to, the consultant will finalize the public Draft EIR for circulation and comment by the public.

Deliverables:

- *Administrative Draft EIR for AMBAG and EIR staff team*
 - *Electronic delivery to AMBAG staff*
- *Draft Program EIR and Technical Appendices*
 - *80 bound printed hard copies of Draft EIR with technical appendices*
 - *One original copy including technical appendices*
 - *Electronic version of the Program EIR in PDF to be posted to AMBAG's website*
- *Prepare the Notice of Availability and publish according to CEQA requirements*

Deadline:

January 2021 to November 2021

D. Preparation of Final EIR

1. Prepare Administrative Final EIR in accordance with the requirements of CEQA Guidelines Section 15132 and SB 375.

The consultant will assemble the Administrative Final Program EIR and Mitigation Monitoring and Reporting Program (MMRP), incorporating by reference the Draft EIR. The Administrative Final Program EIR will address all CEQA requirements including the following:

- An introduction that describes the content of the document and the environmental review process completed for the EIR
- Revisions, corrections, and additions since publication of the Draft EIR
- The MMRP
- Updated chapters which identifies specific changes to the Draft EIR to incorporate comments on the Draft Program EIR
- A list of persons submitting written comments or oral testimony at hearings on the Draft Program EIR
- The final copy of the comments and responses to comments
- Findings and Statement of Overriding Considerations (SOC)

2. Prepare Final Program EIR

Upon the receipt of comments on Administrative Final EIR and MMRP, the consultant will make requested corrections and modifications. The consultant will prepare the Final EIR, any Technical Appendices, and MMRP.

Deliverables:

- *Administrative Final Program EIR*
 - *One electronic copy of the Administrative Final Program EIR*
 - *One electronic version of the Draft Administrative MMRP*
- *Final Program EIR*
 - *80 bound printed hard copies of Final Program EIR including technical appendices, Findings, and SOC*
 - *One original hard copy of Final Program EIR including technical appendices, Findings, and SOC*
 - *One electronic version of the Final Program EIR, including appendices, Findings, and SOC in MS word, etc.*
 - *PDF electronic version of the Final Program EIR in PDF to be posted to AMBAG's website*

Deadline:

February 2022 to May 2022

E. Public Outreach and Agency Coordination

The consultant will prepare and conduct public workshops and hearings, prepare notices and displays, and meet and confer with agencies as necessary to identify and address concerns and comments. The consultant will work with AMBAG staff and the EIR staff team in the development of presentation materials for the public meetings. The consultant will be responsible for attending three (3) public scoping meetings, two (2) AMBAG Board of Directors meetings, one which will be to present the Final Program EIR, three (3) RTPA Board meetings, and four (4) public workshops. The consultant will be responsible for recording all public and Board comments and including a summarization of comments in the EIR. The consultant will be responsible for preparing written responses to comments received during the EIR public review period. Comments and responses to comments are to be included in the EIR.

After certification of the Final Program EIR by the AMBAG Board, the consultant shall file the Notice of Determination for the EIR with all three (3) counties per CEQA requirements.

Deliverables:

- *Presentations to each of the three (3) RTPAs Board of Directors*
- *Two (2) Presentations to the AMBAG Board of Directors*
- *Public notices for NOP and Draft/Final Program EIRs published in local newspapers in each county*
- *Four (4) Public Workshops*
- *File certified Final Program EIR with all counties which require the filing fees for the Final Program EIR.*

Deadline:

Ongoing from October 2019 to June 2022

F. Optional Tasks

AMBAG may add additional tasks to the scope of work which would be executed at AMBAG’s discretion if needed. The additional tasks could involve additional meetings or work beyond the tasks listed above that may be needed for the development of the EIR. This would be negotiated based on the rates included in the final contract.

Schedule

Task	Completion Date
Release RFP	May 13, 2019
Questions Due	June 3, 2019
Post responses to questions/addendum (as needed)	June 7, 2019
Proposals Due	July 15, 2019
Evaluation Committee Completes Proposal Review	August 8, 2019
Short Listed Consultants Notified	August 9, 2019
Oral Interviews	August 22, 2019
Consultant Selection and Notice of Intent	August 27, 2019
Candidates Not Recommended for Selection Notified	August 27, 2019
Notice of Intent to Protest Deadline	August 30, 2019
AMBAG Board Approval of Consultant	September 11, 2019
Execute Contract	September 16, 2019
Project Kick Off Meeting	October 2019

Proposal Submittal

Interested consultants must submit both hard copies and a digital copy of the proposal to the Project Manager as follows:

Hard copy: One original, six copies (double sided preferred)

Digital: Send as a single PDF or PDF portfolio

All submissions must be received by AMBAG on or before July 15, 2019 at 4:00 p.m. Pacific Daylight Time (PDT). By submitting a proposal, the Proposer certifies that his or her name or the consultant firm's name, as well as the name of Proposer's subcontractors, does not appear on the Comptroller General's list of ineligible contractors for federally assisted projects.

Until award of the contract, the proposals shall be held in confidence and shall not be available for public review. Upon award of a contract to the successful Proposer, all proposals shall become public record. No proposal shall be returned after the date and time set for opening thereof.

Submittal Questions and Addenda

All questions regarding this RFP should be received no later than June 3, 2019 at 4:00 p.m. PDT by e-mail to Heather Adamson at hadamson@ambag.org or by fax to (831) 883-3755. Responses that require that an addendum be issued to the RFP will be posted on the AMBAG website at www.ambag.org on or before June 7, 2019 at 4:00 p.m. PDT. It is the responsibility of proposers to check the AMBAG website to determine if any addenda have been issued. Any addenda to the RFP will become part of the RFP.

AMBAG reserves the right to revise the RFP prior to the date that proposals are due. It is the responsibility of proposers to check the AMBAG website to determine if a modified RFP has been issued.

Notice of Award

The final recommended consultant shall be informed by phone and confirmed in writing or in an email on or before August 27, 2019. Candidates not recommended for contract award shall be informed by August 27, 2019.

Project Manager

Heather Adamson, Director of Planning
Association of Monterey Bay Area Governments
24580 Silver Cloud Court, Monterey, CA 93940
Email | hadamson@ambag.org (preferred communication)
Phone | 831.883.3750
Fax | 831.883.3755

Proposal Requirements

- A. Proposals should be concise, well organized and demonstrate the proposer's qualifications and experience applicable to the project. Proposals shall be limited to 50 one-sided pages (8.5 inches x 11 inches). The proposal must include a discussion of the

proposer's approach to the project, a description of the firm's qualifications for the scope of work, a schedule of contract performance and a cost estimate.

- B. The proposal and any required certifications shall be signed by an individual or individuals authorized to execute legal documents on behalf of the proposer.
- C. Failure to comply with the requirements of the RFP may result in disqualification. AMBAG is not responsible for finding, correcting, or seeking clarification regarding ambiguities or errors in proposals. If a proposal is found to contain ambiguities or errors, it may receive a lower score during the evaluation process. AMBAG may, but is not required to, seek clarification from a proposer regarding information in a proposal. Errors and ambiguities in proposals will be interpreted in favor of AMBAG. Proposals and/or modifications received subsequent to the hour and date specified above will not be considered.
- D. The proposer shall certify whether it takes no exception(s) to this RFP and the draft contract. If the proposer does take exception(s) to any portion of the RFP or the draft contract, the specific portion to which exception(s) is taken must be identified and explained. Failure to make exceptions to the RFP or draft contract within the proposal will be deemed a waiver of any objection. Exceptions will be considered during the proposal evaluation process.
- E. AMBAG reserves the right to reject any or all proposals and to waive irregularities contained therein and to accept any proposals deemed most advantageous to AMBAG.

Evaluation and Selection Process

- A. Based upon the proposals and other appropriate evaluation factors, the top-ranked proposer(s) will be identified and short listed. Negotiations with the selected firm may cover: scope of work, contract schedule, contract terms and conditions, technical specifications, level of effort, and price.
- B. Proposers will be evaluated on the following criteria according to the weights assigned below. Oral interviews will be worth 100 points. AMBAG reserves the right to add the proposers' interview scores into the evaluation criteria or to select proposers based solely upon their written proposal and/or oral interview.
- C. All proposals must be completed and convey all of the information requested in order to be considered responsive. The proposals then will be evaluated on the basis of the

criteria listed below. The total number of points used to score the written proposals is 100.

D. Evaluation factors and point values will be as follows:

Criteria	Description	Points
Proposed method to accomplish the work	<ul style="list-style-type: none"> ▪ Professional qualifications ▪ Relevant experience 	25
Project experience	<ul style="list-style-type: none"> ▪ Nature, quality, and relevance of recently completed projects 	25
Staff Qualifications	<ul style="list-style-type: none"> ▪ Unique qualifications of key personnel 	20
Cost or Best Value	<ul style="list-style-type: none"> ▪ Ranking of comparative costs among proposed firms, providing the best value of services offered 	30
Total		100

All proposers must complete a Cost Estimate form (see RFP Attachment A) in addition to the written proposal.

The Evaluation Committee will review all submitted proposals. Proposers may be emailed and asked for further information, if necessary. The Evaluation Committee will make recommendations to AMBAG’s Executive Director on the basis of the proposal and reference check. AMBAG’s Executive Director will review the Evaluation Committee’s recommendation and make the final recommended selection to the AMBAG Board of Directors. If the Board of Directors selects a different consultant than the one recommended by the Evaluation Committee, the Project Manager, in consultation with the AMBAG Executive Director, will prepare a memo explaining the selection.

Contractual Information and Payment Schedule

The contract agreement for the EIR for the 2045 MTP/SCS and RTPs will be between AMBAG and the Consultant. The Consultant will be paid based on work actually performed, deemed a benefit to AMBAG in the sole discretion of AMBAG's Executive Director and accepted in writing by AMBAG, during the preceding month. Funding for the consultant services will be provided by AMBAG. The project deliverables will be reviewed by the AMBAG Project Manager.

The Consultant will be paid based on work actually performed, and accepted in writing by AMBAG, during the preceding month. The consultant should forward a copy of all invoices for payment for work performed, associated expenses and a percentage of work completed by the 15th day of the month. In order to receive payment from Caltrans, AMBAG must submit the consultant's invoice first. AMBAG will issue payment to the consultant upon reimbursement by Caltrans.

Terms & Conditions

A. Limitations

This request for proposal (RFP) does not commit AMBAG to award a contract, to pay any pre-contractual expenses, or to procure or contract for services or supplies. AMBAG expressly reserves the right to reject any and all proposals or to waive any irregularity or informality in any proposal or in the RFP procedure and to be the sole judge of the responsibility of any Proposer and of the suitability of the materials and/or services to be rendered. AMBAG reserves the right to withdraw this RFP at any time without prior notice. Further, AMBAG reserves the right to modify the RFP schedule described above.

B. Award

AMBAG may ask RFP finalists to present oral briefings of their proposals. All finalists may be required to participate in negotiations and submit such price, technical, or other revisions of their proposals as may result from negotiations. AMBAG also reserves the right to award the contract without oral briefings or discussion, based upon the initial written proposals. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and a technical viewpoint.

C. Verbal Agreement or Conversation

No prior, current, or post award verbal conversations or agreement(s) with any officer, agent, or employee of AMBAG shall affect or modify any terms or obligations of the RFP, or any contract resulting from this RFP.

D. Pre-contractual Expenses

Pre-contractual expenses include any expenses incurred by Proposers and selected contractor in:

- Preparing proposals in response to this RFP

- Submitting proposals to AMBAG
- Negotiations with AMBAG on any matter related to proposals.
- Other expenses incurred by a contractor or Proposer prior to the date of award of any agreement.

In any event, AMBAG shall not be liable for any pre-contractual expenses incurred by any Proposer or selected contractor. Proposers shall not include any such expenses as part of the price proposed in response to this RFP. AMBAG shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

E. Signature

The proposal will also provide the following information: name, title, address, and telephone number of individual with authority to bind the consultant or consultant firm and also who may be contacted during the period of proposal evaluation. The proposal shall be signed by an official authorized to bind the consultant or consulting firm and shall contain a statement to the effect that the proposal is a firm offer for at least a ninety (90) day period. Execution of the contract is expected by no later than September 30, 2019.

F. Conflict of Interest Statement

Consultants and consultant firms submitting proposals in response to this RFP must disclose to AMBAG any actual, apparent, perceived, or potential conflicts of interest that may exist relative to the services to be provided under Agreement for consultant services to be awarded pursuant to this RFP. The selected consultant shall refrain from and disclose subsequent potential conflicts during the contract. Consultant shall at all times avoid any actual, perceived or potential conflicts of interest, or the appearance of conflicts of interest, in the performance of this contract. Consultant shall file statements of financial interest on forms provided by AMBAG to the extent and at all times required by AMBAG's Conflict of Interest Code and applicable law.

G. Contract Arrangements

The successful consultant is expected to utilize the AMBAG Agreement for Services which included as Attachment C.

G1. Disadvantaged Business Enterprise (DBE) Policy: It is the policy of the U.S. Department of Transportation (USDOT) that minority-and women-owned business enterprises (hereby referred to as DBEs) as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds.

G2. DBE Obligation: The recipient or its subcontractor agrees to ensure that DBEs have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to

ensure that DBEs have the maximum opportunity to compete for and perform contracts. Recipients and their subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of USDOT assisted contracts.

G3. Title VI of the Civil Rights Act of 1964: The contractor agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (49 USC 2000d) and the regulations of the U.S. Department of Transportation issued there under in 49 CFR Part 21.

G4. Equal Employment Opportunity: In connection with the performance of the contract, the contractor shall not discriminate against any employee or applicant for employment because of race, color, age, creed, sex or national origin. 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.

Each proposal, to be considered responsive, must include the following:

(1) A copy of the consultant's affirmative action policy (applicable for firms with 50 or more employees)

(2) Discussion of the consultant's program for use of DBEs in the performance of this work, including the following:

- The names and addresses of DBE firms that will participate
- The description of the work each named firm will perform
- The dollar amount of participation by each DBE firm

H. Americans with Disabilities Act (ADA) Provisions

To comply with the nondiscrimination requirements of the Americans with Disabilities Act (ADA), it is the policy of AMBAG to make every effort to ensure that its programs, activities and services are available to all persons, including persons with disabilities. For persons with a disability needing a reasonable modification to participate in the procurement process, or for persons having questions regarding reasonable modifications of the procurement process, you may contact the AMBAG representative listed in this RFP.

IMPORTANT: To ensure that we can meet your need for ADA accommodations, it is best that we receive your request for reasonable modification at least 10 working days before the scheduled event (i.e., meeting, conference, workshop, etc.) or deadlines due date for procurement documents. In order to ensure the proposal is in compliance with Federal ADA guidelines, Proposers should review the Federal ADA guidelines at <http://www.ada.gov/>.

I. Alternative Protest Process

This procurement is being conducted under the provisions of the Alternative Protest Process. By submitting a proposal to this solicitation conducted under the Alternative Protest Process, the Proposer agrees that all protests of the proposed award shall be resolved by the Executive Committee of AMBAG, whose decision will be final. During the protest period, any participating Proposer may protest the proposed award on the following grounds:

For major information technology acquisitions – that there was a violation of the solicitation procedure(s) and that the protesting Proposer’s proposal should have been selected; or For any other acquisition – that the protesting Proposer’s proposal should have been selected in accordance with the selection criteria in the solicitation document.

A written notice of intent to protest the proposed award of this solicitation must be received (facsimile acceptable) by the project manager before the close of business 4:00 p.m. PDT on the third (3rd) business day after notifying the Proposer of intent to award, as specified in the solicitation timeline. Failure to submit a timely, written notice of intent to protest waives the Proposer’s right to protest. The Proposer is to send the notice of intent to protest to the project manager at the following address:

Heather Adamson
Director of Planning
Association of Monterey Bay Area Governments
24580 Silver Cloud Court, Monterey, CA 93940
Fax: 831-883-3755

Within seven (7) business days after the last day to submit a notice of intent to protest, the AMBAG project manager must receive from the protesting Proposer the complete protest filing including the signed, written, detailed statement of protest including exhibits, filing fee and deposit or small business certification, as applicable. Untimely submission of the complete protest filing waives the Proposer’s right to protest.

The protest bond amount for this Alternative Protest Process shall be ten percent (10%) of the contract amount as specified in the solicitation.

J. Requirements Protests

Protests regarding any issue other than selection of the successful Proposer are “requirements protests” to be heard by the Executive Director, or his or her designee, and may be appealed to, heard, and resolved by the Executive Committee of AMBAG, whose decision will be final. Before a requirements protest is submitted, the Proposer must make full and timely use of the procedures outlined in this RFP. This procurement procedure is designed to give the Proposer and AMBAG adequate opportunity to submit questions and discuss the requirements, proposals and counter proposals before the Final Proposal is due. The protest procedure is made available in the event that a Proposer cannot reach a fair agreement with AMBAG after exhausting these procedures.

All protests to the RFP requirements must be received by the Executive Committee as promptly as possible, but not later than the respective time and date as noted in this RFP for such protests.

Requirements protests must be mailed or delivered to:

AMBAG Executive Committee
24580 Silver Cloud Court
Monterey, CA 93940

Incorporation of Attachments

The following documents are attached and incorporated by reference if the box next to document title is marked.

- RFP Attachment A – Cost Estimate
- RFP Attachment B – Subconsultant List
- RFP Attachment C– Draft Agreement for Services

COST ESTIMATE – RFP ATTACHMENT A

Project: _____

Consultant: _____

Services will commence on mm/dd/yy and be fully completed on mm/dd/yy.

Combined Overhead (%) +

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		Hours	Actual Rate/Hr	Loaded* Rate/Hr	Labor Amount	Total	Date Due
Task 1: Description							
Name	Classification		\$0.00	\$0.00	\$0.00	\$0.00	mm/dd/yy
Name	Classification		\$0.00	\$0.00	\$0.00	\$0.00	
Name	Classification		\$0.00	\$0.00	\$0.00	\$0.00	
						\$0.00	
						\$0.00	
Task 2: Description							
Name	Classification		\$0.00	\$0.00	\$0.00	\$0.00	mm/dd/yy
Name	Classification		\$0.00	\$0.00	\$0.00	\$0.00	
Name	Classification		\$0.00	\$0.00	\$0.00	\$0.00	
						\$0.00	
						\$0.00	
Task 3: Description							
Name	Classification		\$0.00	\$0.00	\$0.00	\$0.00	mm/dd/yy
Name	Classification		\$0.00	\$0.00	\$0.00	\$0.00	
Name	Classification		\$0.00	\$0.00	\$0.00	\$0.00	
						\$0.00	
						\$0.00	
Other Direct Costs							
Item 1	Classification		\$0.00	\$0.00	\$0.00	\$0.00	mm/dd/yy
Item 2	Classification		\$0.00	\$0.00	\$0.00	\$0.00	
						\$0.00	
						\$0.00	

Total Hours:

Total Cost:

\$0.00

* Loaded hourly rate: includes labor overhead, fringe benefit, and general administrative expenses (% of total direct labor cost)

Loaded hourly rate calculation: \$ actual hourly rate x (1 + combined of overhead & fringe %) x (1 + fee %)

Name and Title of Authorized Representative (typed)

Date

Signature of Authorized Representative

Date

SUBCONSULTANT LIST – RFP ATTACHMENT B

The proposal shall include a complete list of all proposed subconsultants. All subconsultants listed must be provided a meaningful element of work within the defined scope of work. Changes to this Subconsultant List will not be allowed without prior written approval from AMBAG.

PROPOSED SUBCONSULTANTS

Subconsultant Firm Name and Address	Scope of Work	Dollar Amount of Work

Name of Firm

Printed name and Title of Signatory

Signature

Date

DRAFT AGREEMENT FOR SERVICES – RFP ATTACHMENT C

THIS AGREEMENT is made and entered into this xxx day of September 2019, by and between the **Association of Monterey Bay Area Governments**, hereinafter called "**AMBAG**," and the **xxx**, hereinafter called "**CONTRACTOR**."

WITNESSETH

WHEREAS, as the Metropolitan Planning Organization (MPO) for Monterey, Santa Cruz and San Benito Counties, AMBAG is charged with developing a Sustainable Communities Strategy (SCS) in the region's long range metropolitan transportation plan (MTP) per Senate Bill 375; and

WHEREAS, state and federal guidelines requires the preparation of an Environmental Impact Report of the MTP/SCS; and

WHEREAS, pursuant to its annual Overall Work Program (OWP), AMBAG will be engaged in many activities and projects that will require certain technical, professional or support services to complete the Environmental Impact Report; and

WHEREAS, the CONTRACTOR is qualified and experienced and has necessary technical and personnel resources to provide such services for development of an Environmental Impact Report for the 2045 MTP/SCS and for each of the three counties Regional Transportation Planning Agencies' (RTPAs) Regional Transportation Plans; and

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

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. SCOPE OF WORK.

Consultant shall perform those services as specified in detail in Exhibit "A," entitled "Project Tasks/Services, Timeline and Budget," which is attached hereto and incorporated herein.

2. TERM.

A. The term of this Contract shall be from the date of its execution until the completion of the work contemplated by this Contract and its final acceptance by AMBAG unless terminated earlier as provided herein. CONTRACTOR shall complete all tasks **on or before August 30, 2022** unless otherwise extended by written authorization.

B. Services performed under this Contract shall commence only upon written Notice to Proceed by AMBAG to CONTRACTOR.

This Contract 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: Certifications

3. SCHEDULE OF PERFORMANCE.

The services of Consultant are to be completed according to the schedule set out in Exhibit "A," entitled "Project Tasks/Services, Timeline, and Budget," which is attached hereto and incorporated herein. Consultant will diligently proceed with the agreed Scope of Services and will provide such services in a timely manner in accordance with the "Project Tasks/Services, Timeline, and Budget."

4. CHANGE IN TERMS

- A. This contract may be amended or modified only by mutual written agreement of the parties.
- B. CONTRACTOR shall only commence work covered by an amendment after the amendment is executed and written notification to proceed has been provided by AMBAG.

5. COORDINATION/STAFFING

- A. CONTRACTOR shall assign **xxx 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 Contract 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.

6. COMPENSATION

- A. AMBAG shall pay CONTRACTOR for services on a firm fixed price basis as shown in Exhibit A. In no event shall compensation exceed TWO HUNDRED TWENTY-FIVE THOUSAND (\$225,000) which sum includes any and all expenses 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.

It is mutually understood between the parties that funding for this contract is contingent on State Budget passage and federal and state funding as well as reimbursement from Caltrans.

7. 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 Contract. Payment of the invoices will be made to CONTRACTOR after acceptance of work product 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. 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 Contract, or within any previous billing dates;
 - v. Percent of Task Completed;
 - vi. Total amount due for the billing period;
 - vii. Total Contract Value (as identified in 4A. above); and
 - viii. AMBAG Project Manager

8. FUNDING REQUIREMENTS

It is mutually understood between the parties that this contract 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 contract were executed after that determination was made.

This contract is valid and enforceable only, if sufficient funds are made available to AMBAG for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or AMBAG governing board that may affect the provisions, terms, or funding of this contract in any manner.

It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

AMBAG has the option to void the contract under the termination clause, or by mutual agreement to amend the contract to reflect any reduction of funds.

9. CONTRACT 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).

10. SATISFACTORY PERFORMANCE

Payment for services under this Contract is contingent upon AMBAG's determination that the performance of the CONTRACTOR has been satisfactory and beneficial to AMBAG in the sole discretion of the Executive Director.

11. COVENANT AGAINST CONTINGENT FEES

The CONTRACTOR warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONTRACTOR; to solicit or secure this contract; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this contract. For breach or violation of this warranty, AMBAG shall have the right to annul this contract without liability, or at its discretion; to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

12. 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 Contract, 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 Contract 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 Contract, are the property of AMBAG. AMBAG shall determine the disposition of all such property upon completion or termination of this Contract.
- G. AMBAG may utilize any Work Products or Related Work Materials provided by CONTRACTOR pursuant to this Contract, in any manner which AMBAG deems appropriate without additional compensation to CONTRACTOR.

13. TERMINATION

A. Termination of Convenience of AMBAG

AMBAG may terminate this Contract 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 Contract, at the option of AMBAG, become AMBAG's property. If this Contract 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 and a benefit to AMBAG, in accordance with the cost provisions of this Contract.

B. Termination for Cause

If through any cause, the CONTRACTOR shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the CONTRACTOR violates any of the covenants, terms, or stipulations of this Contract, AMBAG shall thereupon have the right to terminate the Contract by giving not less than ten (10) calendar 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 Contract shall, at the option of CONTRACTOR, become AMBAG's property.

14. DISPUTES

AMBAG and CONTRACTOR are fully committed to working with each other throughout the Term of this Agreement and agree to communicate regularly with each other at all times so as to avoid and minimize disputes. AMBAG and CONTRACTOR agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a question or controversy. AMBAG and CONTRACTOR each commit to resolving such dispute in an amicable, professional, and expeditious manner and agree to use the following procedure for resolving the dispute: (a) either party may give notice to the other of the dispute and will meet within three (3) business days to attempt to resolve the dispute; (b) a meeting or meetings shall be promptly between the representatives of the parties regarding the dispute to attempt in good faith to negotiate a resolution of the dispute; (c) if within thirty (30) days after a dispute has arisen, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation; (d) the mediator shall be jointly selected by the parties, or failing agreement on the selection of a mediator within thirty (30) days after the parties fail to negotiate an informal resolution of any dispute, the mediator shall be a retired judge or justice selected by the supervising judge of the Civil Division of the Monterey County California Superior Court. In any mediation conducted pursuant to this section, the provision of the California Evidence Code section 1152 shall be applicable to limit the admissibility of evidence disclosed by the parties in the course of the mediation; and € if the parties are not successful in resolving the dispute through the mediation, then the parties agree that the dispute shall be submitted to binding arbitration to a single arbitrator in accordance with the existing Rules of Practice of Judicial Arbitration and Mediation Services, Inc. (JAMS) within thirty (30) days of the close of mediation as declared by the mediator.

15. AMENDMENT OF SCOPE OF WORK

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

16. 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.

17. DELAYS AND EXTENSIONS

Time is of the essence concerning performance of this Contract; 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.

18. RETENTION OF RECORDS/AUDITS

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONTRACTOR, subcontractor, and AMBAG shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until AMBAG, Caltrans, the Federal Highway Administration (FHWA), the Federal Transit Administration (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).

The State of California, Office of the State Controller, California Department of Transportation (Caltrans), FHWA, or any duly authorized representative of the Federal or State Government shall have access to any books, records, and documents of CONTRACTOR and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

19. 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.

A. Nothing contained in this contract or otherwise, shall create any contractual relation between AMBAG and any subcontractor(s), and no subcontract shall relieve CONTRACTOR of its responsibilities and obligations hereunder. CONTRACTOR agrees to be as fully responsible to AMBAG for the acts and omissions of its subcontractor(s) 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 CONTRACTOR. CONTRACTOR'S obligation to pay its subcontractor(s) is an

independent obligation from AMBAG'S obligation to make payments to the CONTRACTOR.

- B. CONTRACTOR shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by AMBAG, except that, which is expressly identified in the contract.

20. ASSIGNMENT

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

21. INDEMNIFICATION

To the full extent permitted by law, CONTRACTOR shall indemnify, hold harmless, release and defend AMBAG (with legal counsel acceptable to 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 Contract (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 Contract.

22. STATEMENT OF COMPLIANCE

- A. CONTRACTOR'S signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONTRACTOR has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103. During the performance of this Contract, CONTRACTOR and its subcontractor(s) shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave.

CONTRACTOR and subcontractor(s) shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONTRACTOR and subcontractor(s) shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full.

CONTRACTOR and its subcontractor(s) shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement(s).

CONTRACTOR shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.

In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

The CONTRACTOR shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California 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.

The CONTRACTOR, with regard to the work performed by it during the Contract shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractor(s), including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Contract covers a program whose goal is employment.

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.
4. 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.

23. 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 Contract 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.

24. 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.

25. 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.

26. 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.

27. DEBARMENT AND SUSPENSION CERTIFICATION

CONTRACTOR'S signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONTRACTOR has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and 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. Any exceptions to this certification must be disclosed to AMBAG.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONTRACTOR responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

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 CONTRACT.

28. 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.

29. INSURANCE/NOTIFICATION

Prior to the beginning, and throughout the duration, of the work, CONTRACTOR shall 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 contract 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 Contract and

prior to engaging any operation or activities set forth in this Contract. 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.

30. CONFLICT OF INTEREST

CONTRACTOR shall disclose any financial, business, or other relationship with AMBAG that may have an impact upon the outcome of this contract, or any ensuing AMBAG project. CONTRACTOR shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing AMBAG project, which will follow.

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 Contract, no person having any such interest shall be employed.

CONTRACTOR shall at all times avoid conflicts of interest, or the appearance or perceived 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.

CONTRACTOR 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 contract.

31. 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 Contract to complete and file a "Statement of Economic Interest" with AMBAG disclosing CONTRACTOR and/or such other person's financial interests.

32. MERGER

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

33. 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 Contract, AMBAG may terminate this Contract 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 beneficial to AMBAG and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the contract 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.

34. NO WAIVER OF BREACH/TIME

The waiver by AMBAG of any breach of any term or promise contained in this Contract 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 Contract. Time is of the essence in carrying out the duties hereunder.

35. THIRD PARTY BENEFICIARIES

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

36. 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 Contract 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 Contract shall be construed and interpreted according to California law, and any action to enforce the terms of this Contract or for the breach thereof shall be brought and tried in the County of Monterey.

37. 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 Contract, CONTRACTOR expressly agrees that he/she shall have no recourse nor right of appeal under rules, regulations, ordinances or laws applicable to employees.

38. TAXES

CONTRACTOR agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Contract 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.

39. FEDERAL TAX FORMS

Prior to issuing the initial claim under this Contract, 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. 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 CONTRACT shall be subject to federal backup withholding.

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

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

By signing this CONTRACT, 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 CONTRACTOR, 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 state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

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 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; CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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 Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The CONTRACTOR also agrees by signing this Contract 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.

42. 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 contracts with Subcontractor(s) contain provisions requiring adherence to this section in its entirety.

43. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. CONTRACTOR agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. CONTRACTOR 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 CONTRACTOR that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONTRACTOR to AMBAG.

44. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- A. The CONTRACTOR, subrecipient, or 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 United States Department of Transportation (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, which may include but is not limited to:
 - 1. Withholding monthly progress payments
 - 2. Assessing sanctions
 - 3. Liquidated damages
 - 4. Disqualifying the contractor from future bidding as non-responsible
- B. The contractor must make available to the Caltrans contract manager a copy of all DBE subcontracts upon request.
- C. The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains authorization from Caltrans. Unless the Department provides prior authorization approving a request for termination or substitution of a listed DBE, the Contractor shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBEs.
- D. 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.

- E. 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 Contract is executed
- F. During the period of this Contract, the CONTRACTOR shall maintain records of all applicable subcontracts advertised and entered into germane to this Contract, 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 Contract, 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.

45. FLOW-DOWN PROVISIONS

Any subcontract entered into that exceeds \$10,000 as a result of this CONTRACT shall contain the following provisions of this Contract:

Section 4 (Coordination/Staffing); Section 6 (Invoicing); Section 8 (Contract Completion Retainer); Section 9 (Satisfactory Performance); Section 11 (Ownership, Confidentiality, and Use of Work Products); Section 12 (Termination); Section 13 (Disputes); Section 17 (Retention of Records/Audits); Section 20 (Indemnification); Section 21 (Statement of Compliance); Section 22 (Federal Changes); Section 23 (Energy Conservation); Section 24 (No Obligation by the Federal Government); Section 25 (Program Fraud and False or Fraudulent Statements and Related Acts); Section 26 (Debarment and Suspension Certification); Section 27 (Contracts Involving Federal Privacy Act Requirements); Section 28 (Insurance/Notification); Section 29 (Conflict of Interest); Section 36 (Independent Contractor); Section 39 (Compliance with Laws, Rules, and Regulations); Section 40 (Federal and State Lobbying Activities Certification (43 CFR Part 18)); Section 41 (Certifications and Assurances); and Section 42 (Cost Principles and Administrative Requirements); Section 43 (Disadvantaged Business Enterprise (DBE)).

46. INTERPRETATION

Notwithstanding the fact that one or more provisions of this Contract may have been drafted by one of the parties to this Contract, 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: Scott Funk

Title: Board President

Association of Monterey Bay Area Governments (AMBAG)

CONSULTANT

Signature: _____

Name:

Title:

APPROVED TO AS TO FORM:

By: _____

Don Freeman, AMBAG Legal Counsel

P.O. Box 805, Carmel CA 93921

EXHIBIT A. PROJECT TASKS/SERVICES, TIMELINE, AND BUDGET

**EXHIBIT B. DEBARMENT AND SUSPENSION
CERTIFICATION**

**TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29
DEBARMENT AND SUSPENSION CERTIFICATION**

1. All persons or firms, including Subcontractor(s), must complete this certification and certify, under penalty of perjury, that, except as noted below, he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - b. Have not, within the three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and
 - d. Have not, within the three (3) year period preceding this certification, had one or more public transactions (Federal, state, and local) terminated for cause or default.
2. If such persons or firms later become aware of any information contradicting the statements of paragraph (1), they will promptly provide that information to AMBAG.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of actions.

The certification in this clause is a material representation of fact relied upon by AMBAG. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to AMBAG, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The CONTRACTOR agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Name of Firm

Signature (original signature required)

Date

**EXHIBIT C. FEDERAL TAX FORM W-9, REQUEST FOR
TAXPAYER IDENTIFICATION NUMBER AND
CERTIFICATION**

**EXHIBIT D. DISADVANTAGED BUSINESS
ENTERPRISES (DBE) INFORMATION FORM**

EXHIBIT E. CERTIFICATIONS

CALIFORNIA LEVINE ACT DISCLOSURE STATEMENT

California Government Code § 84308, commonly referred to as the "Levine Act," precludes an Officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Officer, or received by the Officer on behalf of any other Officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract. Please refer to the attached code for the complete statutory language.

Current members of the AMBAG Board of Directors are attached.

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any AMBAG Director(s) in the 12 months preceding the date of the issuance of this request for proposal or request for qualifications?

YES NO

If yes, please identify the Director(s): _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any AMBAG Director(s) in the three months following the award of the contract?

YES NO

If yes, please identify the Director(s): _____

Answering yes to either of the two questions above does not preclude RAPS from awarding a contract to your firm. It does, however, preclude the identified Director(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

California Government Code Section 84308

- (a) The definitions set forth in this subdivision shall govern the interpretation of this section.
- (1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.
 - (2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.
 - (3) "Agency" means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.
 - (4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.
 - (5) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.
 - (6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.
- (b) No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.
- (c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a

party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7. If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

- (d) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.
- (e) Nothing in this section shall be construed to imply that any contribution subject to being reported under this title shall not be so reported.

For more information, contact the Fair Political Practices Commission,
428 J Street, Suite 800,
Sacramento, CA 95814,
(916) 322-5660.

AMBAG Board of Directors

Agency	Representative	Agency	Representative
Capitola	Kristen Petersen	Soledad	Carla Stewart
Carmel-by-the-Sea	Bobby Richards	Watsonville	Felipe Hernandez
Del Rey Oaks	Louise Goetzelt	County of Monterey	John Phillips
Gonzales	Scott Funk	County of Monterey	Mary Adams
Greenfield	Lance Walker	County of Santa Cruz	Greg Caput
Hollister	Carol Lenoir	County of Santa Cruz	Bruce McPherson
King City	Carlos Victoria	County of San Benito	Jim Gillio
Marina	Lisa Berkley	County of San Benito	Mark Medina
Monterey	Ed Smith		
Pacific Grove	Jenny Mc Adams	<u>Ex-Officio Members:</u>	
Salinas	Steve McShane	Caltrans District 5	
San Juan Bautista	John Freeman	MBARD	
Sand City	Mary Ann Carbone	MBCP	
Santa Cruz	Justin Cummings	MST	
Scotts Valley	Derek Timm	SBtCOG	
Seaside	Alissa Kispersky	SCCRTC	
		SCMETRO	
		TAMC	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503