

AGREEMENT BETWEEN
MONTEREY-SALINAS TRANSIT DISTRICT
AND

FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE
SURF! BUSWAY AND BUS RAPID TRANSIT PROJECT
RFP NO. 24-02

THIS AGREEMENT for Professional Services (“Agreement”), effective on the final date listed on the signature page (“Effective Date”) is entered into between Monterey-Salinas Transit District (“MST”) and _____ (“CONTRACTOR”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **SERVICES TO BE PERFORMED:** CONTRACTOR shall furnish all technical and professional labor, and materials to satisfactorily provide Services as described in Exhibit A [RFP #24-02] and Exhibit B [Proposal] (“Services”), attached hereto and incorporated herein by reference.
2. **TERM OF THE AGREEMENT:** The term of the Agreement shall commence upon the Effective Date and continue through CONTRACTOR’s satisfactory completion of Services.
3. **COMPENSATION:** CONTRACTOR shall be paid for Services performed hereunder in accordance with Exhibit C, Compensation, which exhibit is attached and incorporated herein by this reference.
4. **PERFORMANCE OF THE SERVICES:**
 - 4.1 CONTRACTOR represents that it is sufficiently experienced, properly qualified, registered, licensed, equipped, organized and financed to perform the Services under this Agreement.
 - 4.2 CONTRACTOR shall perform the Services under this Agreement with that degree of skill and judgment normally exercised by firms performing services of a similar nature. In addition to other rights and remedies that MST may have, MST, at its option, may require CONTRACTOR at CONTRACTOR’s expense to re-perform any Services that fail to meet the above standard.
 - 4.3 At all times during the term of this AGREEMENT, CONTRACTOR shall have in full force and effect, all licenses required of it by law for the performance of the Services described in this AGREEMENT.
5. **ASSIGNMENT AND SUBCONTRACTS:**

- 5.1 CONTRACTOR shall not assign or transfer this Agreement or any portion thereof without the prior written consent of MST. Additionally, CONTRACTOR shall not subcontract any part of the Services hereunder other than to those sub-contractors that may be identified in Attachment #. Any assignment, transfer, change or subcontract in violation of this Agreement shall be void.
- 5.2 CONTRACTOR shall be fully responsible and liable for the Services, products and actions of all sub-contractors and suppliers of any tier and shall include in each subcontract any provisions necessary to make all the provisions of this Agreement fully effective.
- 5.3 PROMPT PAYMENT TO SUBCONTRACTORS: CONTRACTOR agrees to pay to each subcontractor under this Agreement for satisfactory performance of its Agreement no later than thirty (30) days from receipt of each progress payment CONTRACTOR received from MST. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause and with prior written approval from MST. This clause applies to both DBE and non-DBE subcontracts.
6. **CHANGES:** By written notice from MST's Authorized Representative, MST may, from time to time, make changes within the general scope of this Agreement. If any such changes cause an increase or decrease in the price of this Agreement or in the time required for its performance, CONTRACTOR shall promptly notify MST thereof and assert its claim for adjustment within ten (10) days after the change is ordered, and an equitable adjustment shall be negotiated.
7. **INDEMNIFICATION AND INSURANCE:** Indemnification and Insurance requirements are set forth in Exhibit D, which is attached and incorporated herein by this reference.
8. **AUDIT AND RECORDS:**
- 8.1 CONTRACTOR shall maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records and data with respect to actual time devoted and costs incurred for Services under this Agreement. Such documentation shall be supported by properly executed payrolls, invoices, contracts and vouchers evidencing in detail the nature and propriety of any charges and sufficient to allow a proper audit of the Services. All checks, payrolls, invoices, contracts and other accounting documents pertaining in whole or in part to the Services shall be clearly identified and readily accessible.
- 8.2 For the duration of the Agreement, and for a period of three years thereafter, MST, its representatives and the state auditor shall have the right to examine and audit, during CONTRACTOR's normal business hours, these books, accounts, records, data and other relevant information to the extent required to verify the costs incurred hereunder where such costs are the basis for billings under this Agreement.

8.3 CONTRACTOR shall report indirect costs in accordance with the cost principles contained in 48 CFR Part 31, and follow the uniform administrative requirements set forth in 49 CFR Part 18.

8.4 The provisions of this section shall be included in any subcontracts hereunder.

9. DISADVANTAGED BUSINESS ENTERPRISES:

MONTEREY-SALINAS TRANSIT will not use contract goals to meet any portion of its overall goal in accordance with its commitment to use race-neutral means of facilitating DBE participation.

MONTEREY-SALINAS TRANSIT has established a race-neutral goal of 1.5% for DBE participation in its DOT-assisted contracts. MONTEREY-SALINAS TRANSIT encourages its prime contractors to use DBE firms to the extent possible in all sub-contracting opportunities.

10. PROHIBITED INTERESTS:

10.1 Solicitation: CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, MST shall have the right to rescind this Agreement without liability.

10.2 Interest of CONTRACTOR: CONTRACTOR covenants that neither it nor its officers, directors, or agents, presently has any interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement no person having any such interest shall knowingly be employed.

11. TERMINATION AND SUSPENSION:

11.1 MST may, by giving at least ten (10) business days' written notice to CONTRACTOR, terminate this Agreement, or suspend performance hereunder, in whole or in part at any time for MST's convenience. CONTRACTOR shall be compensated in accordance with the terms of the Agreement for Services satisfactorily performed prior to the effective date and time of termination or suspension. CONTRACTOR shall have no right to recover lost profits on the balance of the work under this Agreement.

- 11.2 MST, by written notice given to CONTRACTOR, may declare default in CONTRACTOR's performance of any term of this Agreement, specifying with particularity the basis for such default. CONTRACTOR shall deliver a response thereto in writing to MST within two (2) business days of receipt of the notice, setting forth a reasonable proposal to cure the default. If CONTRACTOR fails to deliver the foregoing response on time or fails to cure the default within ten (10) business days after receipt of the notice (or within such additional time the Parties may agree upon in writing), MST may elect to terminate this Agreement for cause by serving written notice thereof to CONTRACTOR.
- 11.3 In the event of such termination for cause, MST shall be relieved of any obligation of further payment to CONTRACTOR and may proceed with the performance of Services. The additional cost to MST of completing the Services shall be deducted from any sum due CONTRACTOR and the balance, if any, shall be paid to CONTRACTOR upon demand. The foregoing shall be in addition to any other legal or equitable remedies available to MST.
- 11.4 If, after termination for failure to fulfill contract obligations, it is determined that CONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of MST.

12. AUTHORIZED REPRESENTATIVES AND NOTICES: The Authorized Representatives assigned below have authority to authorize changes to the scope, terms and conditions of this Agreement, as set forth herein.

12.1 For MST: Lisa Rheinheimer Assistant General Manager	CONTRACTOR Name: Title:
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12.2 Written notification to the other party shall be provided, in advance of changes in the name or address of the designated Authorized Representatives.

12.3 NOTICES: Notices shall be in writing and shall be addressed as follows:

For MST: Steven Bruno Purchasing Agent 19 Upper Ragsdale Drive Suite 200 Monterey, CA 93940 sbruno@mst.org	For CONTRACTOR: Name: Title: Address: Email:
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Electronic delivery will be permissible and effective as of the date of the electronic notice.

13. GENERAL PROVISIONS

- 13.1 **OWNERSHIP OF DATA:** All drawings, specifications, reports and other data developed by CONTRACTOR directly related to this project and specifically for MST, its assigned employees or subcontractors pursuant to this Agreement shall become the property of MST as prepared, whether delivered to MST or not. Unless otherwise provided herein, all such data shall be delivered to MST or its designee upon completion of the Agreement or at such other times as MST or its designee may request.
- 13.2 **NONDISCRIMINATION AND AFFIRMATIVE ACTION:** During performance of this Agreement, CONTRACTOR, its employees and sub-contractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability, medical condition, marital status, age or sex, and shall take affirmative action to assure that applicants are lawfully employed, and that employees are lawfully treated during their employment, without regard to their race, religion, color, national origin, ancestry, physical disability, medical condition, marital status, age or sex.
- 13.3 **CONFIDENTIALITY AND PUBLICITY:** Without the written consent of MST, CONTRACTOR shall not disclose to third parties other than its employees or authorized sub-contractors or disclose or use for any purpose other than performance of the Services any information provided to CONTRACTOR by MST in connection with performance of this Agreement, or any information developed or obtained by CONTRACTOR in the performance of this Agreement, unless: (1) the information is known to CONTRACTOR prior to obtaining same from MST or performing Services under this Agreement; (2) the information is at the time of disclosure by CONTRACTOR then in the public domain; or (3) the information is obtained by or from a third party who did not receive it, directly or indirectly, from MST and who has no obligation of confidentiality with respect thereto.
- 13.4 **NONWAIVER:** Failure of MST to insist upon strict performance of any terms or conditions of this Agreement or failure or delay in exercising any rights or remedies provided herein by law or its failure to properly notify CONTRACTOR in the event of breach or its acceptance of or payment for any Services hereunder shall not release CONTRACTOR from the representations or obligations of this Agreement and shall not be deemed a waiver of any right of MST to insist upon strict performance hereof or any of its rights or remedies hereunder.
- 13.5 **SEVERABILITY:** If any of the provisions or portions or applications thereof of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, MST and CONTRACTOR shall negotiate an equitable adjustment in the provisions of the Agreement with a view toward affecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions or portions or applications thereof shall not be affected thereby.
- 13.6 **INDEPENDENT CONTRACTOR:** CONTRACTOR is an independent contractor and not the agent or employee of MST in performing its Services under this

Agreement. The personnel performing the Services under this AGREEMENT on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. Neither MST nor any of its officers, employees, or agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's officers, employees, or agents, except as set forth in this AGREEMENT.

- 13.7 **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between MST and CONTRACTOR relating to the subject matter hereof and supersedes any previous agreements or understandings, oral or written. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.
- 13.8 **DISPUTE RESOLUTION:** CONTRACTOR shall continue to perform under this Agreement during any dispute. Contractor and MST hereby agree to make good faith efforts to resolve disputes as quickly as possible. In the event any dispute arising from or related to this Agreement results in litigation or arbitration, the prevailing party shall be entitled to recover all reasonable costs incurred, including court costs, attorney fees, expenses for expert witnesses (whether or not called to testify), expenses for accountants or appraisers (whether or not called to testify), and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing party and shall not require initiation of a separate legal proceeding.
- 13.8 **AMENDMENT:** Except as expressly provided herein, the provisions of this Agreement shall not be altered, modified or amended except through the execution of a written amendment executed by MST and CONTRACTOR.
- 13.9 **COMPLIANCE WITH APPLICABLE LAW:** In the performance of Services hereunder, CONTRACTOR and its sub-contractors, shall comply with all applicable requirements of state, federal and local law. The provision of this paragraph shall be included in any subcontracts hereunder.
- 13.10 **DOCUMENTS AND WRITTEN REPORTS.** In accordance with Government Code § 7550 *Preparation by nonemployees of state or local agency; inclusion of contract and subcontract numbers and dollar amounts:* If CONTRACTOR prepares any documents or written reports pursuant to the scope of Services under this Agreement, for which the total cost of preparation exceeds \$5,000, such documents or written reports shall contain a separate section that contains the numbers and dollar amounts of all contracts and subcontracts relating to their preparation.

14. **REQUIRED FEDERAL CLAUSES**

The SURF! Busway and Bus Rapid Transit Project is paid for in part using Federal Funds. As such, Federal provisions apply as required by the Federal Transit Administration. Federal clauses are attached and hereby made part of this Contract.

Monterey-Salinas Transit
Carl Sedoryk
General Manager/CEO

Firm:
Name:
Title:

By: _____

By: _____

Date: _____

Date: _____

EXHIBIT C

COMPENSATION

For CONTRACTOR's full and complete performance of its obligations under this Agreement, MST shall pay CONTRACTOR compensation as set forth herein.

- I. **INVOICING:** CONTRACTOR shall invoice MST for actual services performed. On each invoice, Base Work and any Extra Work (Extraordinary Expenses) shall be charged separately. Furthermore, each invoice shall include a description of the work performed, the date the service was performed, and the number of hours allotted.
 - A. Professional services shall be invoiced in accordance with the following Rate Schedule: \$#### per hour, as detailed in submitted the CONTRACTOR's cost proposal.
 - B. Project-related travel expenses, which are directly identifiable to the performance of services under this Agreement, shall be reimbursed at actual cost without mark-up.
 - C. Each invoice shall cite Agreement for Construction Management Services for the SURF! Busway and Bus Rapid Transit Project, and shall specify the time period covered by the invoice and the amount of payment requested.
 - D. Invoices shall be mailed to the attention of Accounts Payable, 19 Upper Ragsdale Drive, Suite 200, Monterey, CA 93940-5795.
 - E. **WAIVER-SERVICES NOT INVOICED WITHIN 3 MONTHS.** **CONTRACTOR SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO PAYMENT FOR SERVICES NOT INVOICED WITHIN 3 MONTHS OF THE DATE THE SERVICE WAS PERFORMED.** For purposes of this provision, the date of the invoice shall be the date it is received by MST.
 - F. Should MST contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. MST may, at any time, conduct an audit of any and all records kept by CONTRACTOR for the Services. Any overpayment uncovered in such an audit may be charged against the CONTRACTOR's future invoices.
- II. **PAYMENT:** Payment shall be made to CONTRACTOR within thirty (30) days after receipt by MST of a proper invoice. CONTRACTOR shall pay subcontractors, if any, for satisfactory performance of Services performed under this Agreement within thirty (30) days of receipt of payment by MST for such services.

EXHIBIT D

INSURANCE AND INDEMNITY REQUIREMENTS for PROFESSIONAL SERVICE AGREEMENT

IT IS HIGHLY RECOMMENDED THAT CONTRACTOR CONFER WITH ITS INSURANCE CARRIERS OR BROKERS IN ADVANCE OF AGREEMENT TO DETERMINE THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS PRESCRIBED AND PROVIDED HEREIN.

I. INDEMNITY

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless MST, its officers, agents, employees, and subcontractors from any and all claims, liabilities, losses, injuries or damages, including legal counsel's fees and costs, caused in whole or in part by the negligent or wrongful act, error or omission of CONTRACTOR, its officers, agents, employees and subcontractors in the performance of Services under this Agreement. CONTRACTOR's duty to indemnify and hold harmless MST shall not extend to the MST's sole or active negligence.

II. INSURANCE

Without limiting CONTRACTOR's indemnification of MST, CONTRACTOR shall, at its sole cost and expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by CONTRACTOR, its agents, representatives, or employees, or sub-contractors.

A. Liability and Worker's Compensation Insurance

1. Minimum Scope of Coverage

Coverage shall be at least as broad as:

- a. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001). Liability insurance written on a "claims made" basis is not acceptable.
- b. Insurance Services Office Business Auto Coverage form number CA 0001 covering Automobile Liability, code 1 "any auto".
- c. Workers' Compensation insurance as required by the Labor Code of the State of California, and Employers Liability insurance.

2. Minimum Limits of Insurance

CONTRACTOR shall maintain limits no less than:

- a. General Liability \$5,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. If a Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability \$3,000,000 combined single limit per accident for bodily injury and property damage.
- c. Workers' Compensation and Employers Liability: Statutory Workers' Compensation limits and Employers Liability limits of \$1,000,000 per accident.

3. Self-Insured Retention

Any self-insured retention in excess of \$5,000 must be declared to and approved by MST. To apply for approval for a level of retention in excess of \$10,000 CONTRACTOR must provide a current financial statement documenting the ability to pay claims falling within the self-insured retention. At the option of MST, either: the insurer shall reduce or eliminate such self-insured retention as respects MST, its officers, officials, employees and volunteers; or the propose/bidder shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

B. Claims Made Provisions

If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly state so. In addition to all other coverage requirements, such policy shall provide that:

1. The policy must be in effect as of the date of this Agreement and the retroactive date shall be no later than the date of this Agreement.
2. If any policy is not renewed or the retroactive date of such policy is to be changed, CONTRACTOR shall obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision shall be of at least two (2) years.
3. No prior acts exclusion to which coverage is subject that predates the date of this Agreement.
4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. Other Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability

- a. MST, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of CONTRACTOR, including MST's general supervision of CONTRACTOR; products and completed operations of the CONTRACTOR and its sub-contractors; premises owned, occupied or used by CONTRACTOR; or automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to MST, its officers, officials, employees, or volunteers.
- b. CONTRACTOR's insurance coverage shall be primary insurance as respects MST, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by MST, its officers, officials, employees, or volunteers shall be excess of CONTRACTOR's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to MST, its officers, officials, employees, or volunteers.
- d. CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability

The insurer shall agree to waive all rights of subrogation against MST, its officers, officials, employees, and volunteers for losses arising from work performed by CONTRACTOR and its sub-contractors for MST.

D. Acceptability of Insurers

Insurance and bonds are to be placed with insurers with a Best's rating of no less than B+VIII, unless MST has granted specific prior written approval.

E. Certificates of Insurance

Contractor shall furnish MST with a Certificate of Insurance prior to execution of Agreement. The certificates for each insurance policy are to be signed by an authorized representative of that insurer. The certificates will be issued on a standard ACORD Form or something substantially similar thereto.

The certificates will (1) identify the underwriters, the types of insurance, the insurance limits and the policy term, (2) specifically list the provisions enumerated for such insurance in Sections B and C. above, and (3) in the "Certificate Holder" box include:

Monterey-Salinas Transit District
19 Upper Ragsdale Drive, Suite 200
Monterey, CA 93940-5795

All certificates are to be received and approved by MST before work commences. MST reserves the rights to require complete, certified copies of all required insurance policies, at any time.

Each insurance policy required by this Exhibit shall provide that if the policy is canceled or coverage reduced, such cancellation or reduction shall not be effective for 30 days, except for non-payment of premium which shall be ten 10 days, after receipt by MST of written notice of such cancellation or reduction.

III. MAINTENANCE OF INSURANCE

If CONTRACTOR fails to maintain such insurance as is called for herein, MST, at its option, may suspend payment for work performed and/or may order CONTRACTOR to suspend work at CONTRACTOR's expense until a new policy of insurance is in effect.