



APPROVED

January 8, 2024

MARIN TRANSIT

711 Grand Ave, #110
San Rafael, CA 94901
ph: 415.226.0855
marintransit.org

January 8, 2024

Honorable Board of Directors
Marin County Transit District
3501 Civic Center Drive
San Rafael, CA 94903

Board of Directors

Subject: Contract with Roebbelen Contracting, Inc. for the Construction Management at 3010/3020 Kerner Blvd.

Katie Rice

President
Supervisor District 2

Dear Board Members:

Recommendation

Brian Colbert

Vice President
Town of San Anselmo

Authorize the General Manager to execute a contract with Roebbelen Contracting, Inc. for an amount not to exceed \$280,370.

Eric Lucan

2nd Vice President
Supervisor District 5

Summary

Staff recommends that your Board authorize the General Manager to enter into an agreement with Roebbelen Contracting, Inc. to provide Construction Management (CM) services for the 3010/3020 Kerner Redevelopment Project in San Rafael.

Mary Sackett

Director
Supervisor District 1

Marin Transit completed the purchase of 3010/3020 Kerner in July 2022, with the intention of making it into a parking facility for a portion of Marin Transit's fleet. This contract will include Construction Management services for the construction of the Facility.

Stephanie

Moulton-Peters

Director
Supervisor District 3

On October 11, 2023, Marin Transit issued a Request for Proposals (RFP) for professional services for the Construction Management (CM) for Kerner Blvd Redevelopment. Tasks included a constructability review of design documents, monitoring of construction activities, maintenance of project documents, quality assurance, and project closeout procedures. Proposals were due November 7, 2023.

Dennis Rodoni

Director
Supervisor District 4

The following technical factors were identified as evaluation criteria in the RFP:

Maribeth Bushey

Director
City of San Rafael

Criteria	Max Points Available
Firm Qualifications	35
Qualifications of Key Personnel	30
Adequacy of Resources	20
Past Performance	15
Total	100

Fred Casissa

Alternate
Town of Corte Madera



Marin Transit received proposals from two consultant firms; Roebbelen Contracting, Inc. (Roebbelen) and Sync Consultants LLC (Sync Consultants). Both proposals were initially determined responsive to the RFP. Staff reviewed the proposals based on the criteria specified in the RFP (listed above) and Roebbelen was invited to an interview held on December 5, 2023. The review panel, which was made up of representatives from Marin Transit, concluded that Roebbelen demonstrated a thorough understanding of successful project delivery and experience.

Fiscal/Staffing Impact

The maximum contract cost is \$280,370. This is below the amount estimated in the Independent Cost Estimate prepared by staff. Marin Transit has budgeted for this amount in the FY 2023/24 Capital budget under project FH – Facility -3010/3020 Kerner Improvements. This project is funded through LCTOP, local property tax, and FTA 5307 ZEB Funds.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Anna Penoyar", written in a cursive style.

Anna Penoyar
Capital Projects Manager

Attachment A: Agreement Between Marin County Transit District and Roebbelen Contracting, Inc.

**MARIN COUNTY TRANSIT DISTRICT
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT is made and entered into this ____ day of ____, ____, by and between the MARIN COUNTY TRANSIT DISTRICT, hereinafter referred to as "District" and Roebbelen Contracting, Inc, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, District desires to retain a person or firm to provide the following service: ; and

WHEREAS, Contractor warrants that it is qualified and competent to render the aforesaid services;

NOW, THEREFORE, for and in consideration of the Contract made, and the payments to be made by District, the parties agree to the following:

1. SCOPE OF SERVICES:

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

2. FURNISHED SERVICES:

The District agrees to:

- A. Guarantee access to and make provisions for the Contractor to enter upon public and private lands as required to perform their work.
- B. Make available all pertinent data and records for review.
- C. Provide general bid and Contract forms and special provisions format when needed.

3. FEES AND PAYMENT SCHEDULE:

The fees and payment schedule for furnishing services under this Contract shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Contract. Contractor shall provide District with his/her/its Federal Tax I.D. number prior to submitting the first invoice.

4. MAXIMUM COST TO DISTRICT:

In no event will the cost to District for the services to be provided herein exceed the maximum sum of **\$ 280, 370** including direct non-salary expenses. As set forth in section 14 of this Contract, should the funding source for this Contract be reduced, Contractor agrees that this maximum cost to District may be amended by written notice from District to reflect that reduction.

5. TIME OF CONTRACT:

This Contract shall commence on **January 8, 2024**, and shall terminate on **December 31, 2024**. Certificate(s) of Insurance must be current on day Contract commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor. The final invoice must be submitted within 30 days of completion of the stated scope of services.

6. INSURANCE:

Commercial General Liability:

The Contractor shall maintain a commercial general liability insurance policy in the amount of \$1,000,000 (\$2,000,000 aggregate). The District shall be named as an additional insured on the commercial general liability policy.

Commercial Automobile Liability:

Where the services to be provided under this Contract involve or require the use of any type of vehicle by Contractor, Contractor shall provide comprehensive business or commercial automobile liability coverage, including non-owned and hired automobile liability, in the amount of \$1,000,000.00.

Workers' Compensation:

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance, a letter of self-insurance, or a copy of the Certificate of Consent to Self-Insure shall be provided to the District prior to commencement of work.

Errors and Omissions, Professional Liability or Malpractice Insurance.

Contractor may be required to carry errors and omissions, professional liability or malpractice insurance.

All policies shall remain in force through the life of this Contract and shall be payable on a "per occurrence" basis unless District specifically consents to a "claims made" basis. The insurer shall supply District adequate proof of insurance and/or a certificate of insurance evidencing coverages and limits prior to commencement of work. Should any of the required insurance policies in this Contract be cancelled or non-renewed, it is the Contractor's duty to notify the District immediately upon receipt of the notice of cancellation or non-renewal.

If Contractor does not carry a required insurance coverage and/or does not meet the required limits, the coverage limits and deductibles shall be set forth on a waiver, **Exhibit C**, attached hereto.

Failure to provide and maintain the insurance required by this Contract will constitute a material breach of this Contract. In addition to any other available remedies, District may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

7. ANTI DISCRIMINATION AND ANTI HARASSMENT:

Contractor and/or any subcontractor shall not unlawfully discriminate against or harass any individual including, but not limited to, any employee or volunteer of the Marin County Transit District based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any subcontractor understands and agrees that Contractor and/or any subcontractor is bound by and will comply with the anti discrimination and anti harassment mandates of all Federal, State and local statutes, regulations and ordinances.

8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Contract without prior written approval of the District except for any subcontract work identified herein. If Contractor hires a subcontractor under this Contract, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this

Contract and shall require subcontractor to name Contractor and Marin County Transit District as an additional insured under this Contract for general liability. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to the District evidence of same.

9. ASSIGNMENT:

The rights, responsibilities and duties under this Contract are personal to the Contractor and may not be transferred or assigned without the express prior written consent of the District.

10. LICENSING AND PERMITS:

The Contractor shall maintain the appropriate licenses throughout the life of this Contract. Contractor shall also obtain any and all permits which might be required by the work to be performed herein.

11. BOOKS OF RECORD AND AUDIT PROVISION:

Contractor shall maintain on a current basis complete books and records relating to this Contract. Such records shall include, but not be limited to, documents supporting all bids, all income and all expenditures. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work on this Contract. In addition, Contractor shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items. These documents and records shall be retained for at least five years from the completion of this Contract. Contractor will permit District to audit all books, accounts or records relating to this Contract or all books, accounts or records of any business entities controlled by Contractor who participated in this Contract in any way. Any audit may be conducted on Contractor's premises or, at District's option, Contractor shall provide all books and records within a maximum of fifteen (15) days upon receipt of written notice from District. Contractor shall refund any monies erroneously charged.

12. WORK PRODUCT/PRE-EXISTING WORK PRODUCT OF CONTRACTOR:

Any and all work product resulting from this Contract is commissioned by the Marin County Transit District as a work for hire. The Marin County Transit District shall be considered, for all purposes, the author of the work product and shall have all rights of authorship to the work, including, but not limited to, the exclusive right to use, publish, reproduce, copy and make derivative use of, the work product or otherwise grant others limited rights to use the work product.

To the extent Contractor incorporates into the work product any pre-existing work product owned by Contractor, Contractor hereby acknowledges and agrees that ownership of such work product shall be transferred to the Marin County Transit District.

13. TERMINATION:

- A. If the Contractor fails to provide in any manner the services required under this Contract or otherwise fails to comply with the terms of this Contract or violates any ordinance, regulation or other law which applies to its performance herein, the District may terminate this Contract by giving five (5) calendar days written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.

C. Either party hereto may terminate this Contract for any reason by giving thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.

D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract so long as proof of required insurance is provided for the periods covered in the Contract or Amendment(s).

14. APPROPRIATIONS:

The District's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Marin County Transit District Board of Directors, the State of California or other third party. Should the funds not be appropriated District may terminate this Contract with respect to those payments for which such funds are not appropriated. District will give Contractor thirty (30) days' written notice of such termination. All obligations of District to make payments after the termination date will cease.

Where the funding source for this Contract is contingent upon an annual appropriation or grant from the Marin County Transit District Board of Directors, the State of California or other third party, District's performance and obligation to pay under this Contract is limited by the availability of those funds. Should the funding source for this Contract be eliminated or reduced, upon written notice to Contractor, District may reduce the Maximum Cost to District identified in section 4 to reflect that elimination or reduction.

15. RELATIONSHIP BETWEEN THE PARTIES:

It is expressly understood that in the performance of the services herein, the Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent Contractor and not as officers, employees or agents of the District. Contractor shall be solely responsible to pay all required taxes, including but not limited to, all withholding social security, and workers' compensation.

16. AMENDMENT:

This Contract may be amended or modified only by written Contract of all parties.

17. ASSIGNMENT OF PERSONNEL:

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to District, as is evidenced in writing.

18. JURISDICTION AND VENUE:

This Contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

19. INDEMNIFICATION:

Contractor agrees to indemnify, defend, and hold District, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Contract.

20. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all Federal, State and local laws and resolutions: including, but not limited to the County of Marin Nuclear Free Zone and Living Wage Ordinance Copies of any of the above-referenced local laws and resolutions may be secured from the Contract Manager referenced in section 21. In addition, the following NOTICES may apply:

1. Pursuant to California Franchise Tax Board regulations, District will automatically withhold 7% from all payments made to vendors who are non-residents of California.
2. Contractor agrees to meet all applicable program access and physical accessibility requirements under State and Federal laws as may apply to services, programs or activities for the benefit of the public.
3. For Contracts involving any Federal Transit Administration grant funds, Exhibit D must be attached. Exhibit D provides all Federal Transit Administration Contract Provisions relevant to this Contract.
4. For Contracts involving any State or Federal grant funds, Exhibit E must be attached. Exhibit E shall consist of the printout results obtained by search of the System for Award Management at www.sam.gov.

Exhibit E - Debarment Certification

By signing and submitting this Contract, the Contractor is agreeing to abide by the debarment requirements as set out below.

- The certification in this clause is a material representation of fact relied upon by District.
- The Contractor shall provide immediate written notice to District if at any time the Contractor learns that its certification was erroneous or has become erroneous by reason of changed circumstances.
- Contractor certifies that none of its principals, affiliates, agents, representatives or contractors are excluded, disqualified or ineligible for the award of contracts by any Federal agency and Contractor further certifies to the best of its knowledge and belief, that it and its principals:
 - are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal Department or Agency;
 - Have not been convicted within the preceding three-years of any of the offenses listed in 2 CFR 180.800(a) or had a civil judgment rendered against it for one of those offenses within that time period;
 - 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 2 CFR 180.800(a);
 - Have not had one or more public transactions (Federal, State, or Local) terminated within the preceding three-years for cause or default.
- The Contractor agrees by signing this Contract that it will not knowingly enter into any subcontract or covered transaction with a person who is proposed for

debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

- Any subcontractor will provide a debarment certification that includes the debarment clause as noted in preceding bullets above, without modification.

21. NOTICES:

This Contract shall be managed and administered on District’s behalf by the Department Contract Manager named below. All invoices shall be submitted and approved by this Department and all notices shall be given to District at the following location:

Anna Penoyar

Contract Manager: Capital Projects Manager

711 Grand Ave, Ste 110

Dept./Location: San Rafael, CA 94901

Telephone No.:

Notices shall be given to Contractor at the following address:

Contractor:

Address:

Telephone No.:

22. ACKNOWLEDGEMENT OF EXHIBITS

Check applicable Exhibits CONTRACTOR’S INITIALS

EXHIBIT A.	<input checked="" type="checkbox"/> Scope of Services	
EXHIBIT B.	<input checked="" type="checkbox"/> Fees and Payment	
EXHIBIT C.	<input type="checkbox"/> Insurance Reduction/Waiver	
EXHIBIT D.	<input checked="" type="checkbox"/> Federal Transit Administration Contract Provisions	
EXHIBIT E.	<input checked="" type="checkbox"/> Contractor’s Debarment Certification	
EXHIBIT F.	<input type="checkbox"/> Subcontractor’s Debarment Certification	

IN WITNESS WHEREOF, the parties have executed this Contract on the date first above written.

APPROVED BY

CONTRACTOR MARIN COUNTY TRANSIT DISTRICT:

Attachment A

MCTD Contract #1240

By: _____

Name: _____

Title: _____

By: _____



COUNTY COUNSEL REVIEW AND APPROVAL (required if template content has been modified)

County Counsel: _____ Date: _____

DRAFT

EXHIBIT "A"

SCOPE OF SERVICES (required)

Methodology

Roebbelen, with Abbas Daeenabi leading the way, will work with the Project Team to begin the thorough review of the project documents, the tentative schedule and all known milestones. With the designers, we will work to understand intent and any phasing necessary to meet the project needs. We will plan site visits to gain visual knowledge of potential challenges and get a feel for the environment that may require specific attention. Additionally, we will spend time meeting with Marin Transit staff to familiarize ourselves with specific requirements from the staff and project level perspective.

Relevant Project Issues

Our team understands challenges may come up. If encountered, how Roebbelen prepares to minimize any potential negative impact(s) of such challenges is through exhaustive investigations and data collection. This includes completing an analysis to ensure we can provide the necessary support and recommendations. Abbas will coordinate with our in-house preconstruction, estimating and scheduling experts to ensure projects meet the intent of the design, budget and schedule.

We will work with Marin Transit and the design team to ensure adequate preparation for the start of construction activity, which includes design approvals, identifying permit requirements and coordination with local agencies having jurisdiction over the project.

Our Services

In situations that may require work performed during nighttime, Sunday or holidays, Roebbelen will communicate and work closely with Marin Transit staff and the Project Team to minimize disruptions and negative impact. We will, in advance, notify Marin Transit and, if necessary, prepare a community "news letter" to inform neighbors of such activity during off hours. Additional fees will not be issued to Marin Transit from Roebbelen for such instances, such that there is no major increase in the contract completion date.

Testing and Special Inspections

Roebbelen will enforce the quality assurance plan, in conformance with the plans and specifications. Abbas will take lead in scheduling material testing to verify compliance of the work with contract documents.

Additionally, he will work with the design team to coordinate and review test reports, certificates of compliance and punch walks.

Pre-Construction Phase

Coordination

The start of any successful construction project begins with an alignment of expectations. The required construction management services and responsibilities for the projects, yet similar in practice to other construction projects, may have unique elements due to location and site conditions. We are prepared to hold regular meetings to ensure collaboration occurs and information is shared.

Abbas will lead the Team, review and investigate project-related information, to better prepare for what lies ahead. He will be working with the Project Team to coordinate activity, ensuring thorough understanding of the necessary action items that will lead to positive progress. Additionally, a meeting schedule will be established to develop a regular status check-in venue for the Project Team and other Stakeholders, as deemed necessary by Marin Transit.

Budgeting

From a general perspective and to confirm a holistic approach is taken for an appropriate and realistic budget validation process, Roebbelen will confirm with Marin Transit which key members of the Project Team will need to be involved for budget related discussions and recommendations. Abbas will establish and facilitate a collaborative venue to review, discuss, validate and finalize budgets.

We will establish a process for decision making, with deadlines, to make certain the team does not impact time. This will help understand if we will need to add or remove scope, value engineer scope or simply leave as-is.

Roebbelen will take account of the schedule, as it relates to duration and milestones that may dictate budgetary consideration. We will consider durations and how the time might be affected by Marin Transit or community activity, inclement weather, long lead items and other variables. All to account for potential negative time/cost impacts, including soft costs and escalation.

Scheduling

Roebbelen scheduling experts have the capability to develop a complete schedule for use as preliminary timelines until contractors are on-board to provide actual project construction schedules. With Marin Transit assistance, the preliminary schedule will account for County/City and community events, Council meeting dates and necessary approvals and permitting activity.

As mentioned, our building division is a great resource and provides real time market information on sequencing activity and lead-times for various site and building systems. This will help identify a realistic view of the amount of time it may take to complete the Project.

During this process, we will work to align project activity with Marin Transit, specifically important during the construction phase. Construction is disruptive and knowing important event dates will help minimize the disruption.

When necessary, we have the ability to validate third party and/or contractor construction schedules. Working collaboratively with the Project Team, we review the logic, taking all activity into account to ensure we identify problematic relationships as a way to minimize future

risk that may lead to costly delay challenges. This process helps maintain scheduling objectives.

Once in the construction phase, Abbas will work with the contractors, in a collaborative manner, to review and validate the contractor's baseline schedule and the ensuing monthly updates. The baseline schedule shall show a clear and detailed critical path towards completion of the work, per contract terms. Our scheduling expertise will also help review and validate any claims for delay impacts.

Through the entire process, Abbas will be coordinating between the Project Team and our in-house scheduling team. Providing input and recommending adjustments as we solidify and maintain the schedule.

Design Review

Roebbelen will review the project documents for constructability at predetermined milestones and as requested by Marin Transit. For typical projects, we anticipate constructability review at:

- End of Schematic Design (SD Phase);
- End of Design Development (DD Phase);
- 50% and 90% Construction Documents (CD Phase);
- Backcheck/Bid Set
- Permit Set/Conform Set (including Addenda)

In this case, the RFP states that the design is at 90%. Abbas will coordinate review efforts with the design team and our in-house constructability reviewers. When complete, a full report, with appropriate comments and recommendations, will be issued to Marin Transit and the design team for consideration on recommendations. The review may include verification of design coordination between design disciplines to identify differing elements and minimize risk of change impacts during the construction phase.

Roebbelen utilizes the Bluebeam software to complete constructability reviews. We carry the license and will host all sessions, if necessary. Bluebeam allows the team to work together in real time. It provides user friendly access to review and answer questions on unresolved issues.

Our aim is always to eliminate any potential conflicts and coordination issues before they occur. We work with the design team and strive to make the documents clear for the bidding community. Also, the benefit of Roebbelen's building capabilities allows us, as construction managers, the ability to access our construction superintendents.

They are constantly solving real-time building systems issues in the field and when necessary, the design is viewed through their eye, as a builder.

Professional Consultants

As with procurement and management of the construction contract, Roebbelen is prepared to assist Marin Transit with outreach efforts and procurement of consultants that may not already be on-board. We have good working relationships with many capable consultants that would be pleased to work on projects managed by Roebbelen. And as with contractor services, the greater the interest the greater the opportunity for value add.

Bidding Phase

Project Kick-Off

This is a chance for our team to understand the needs and expectations of the Project. Following our initial meeting we will be able to develop a basic construction management plan that will include roles and responsibilities, tasks, budget, schedule and communication protocols.

Addenda Review

Similar to how we will provide review services for design review, Roebbelen will assist the design team with the coordination necessary for the successful issuance of addenda and will review each addendum for time, cost and constructability impact. There again, providing Marin Transit a full report with appropriate comments and recommendations.

Bid Review, Evaluation And Recommendation

As soon as Roebbelen is on-board, Abbas will take the lead during the Bid Phase that begins with a bid phase schedule and followed by outreach efforts. This will stir interest from the contractor community and allows for greater opportunity to a quality pool of bidders and more competitive bids.

Roebbelen will verify that the Bid Phase complies with public contract code requirements and will review Divisions 0 and 1 of the specifications for clarity and accuracy. We will work with the design team to assist Marin Transit during all aspects of the Bid Phase, including the pre-qualification process, answering bid questions, issuing addenda, being present at bid opening and evaluating each bid for responsive and responsible packages. Our team will evaluate bids and provide a report with recommendations towards selection and award.

Roebbelen will take on the task of managing and overseeing both the Pre-bid conference and Pre-construction meeting, which includes preparing agendas and documenting meeting minutes, as the Pre-bid conferences are generally mandatory for prospective bidders.

It is during the Bid Phase that Roebbelen begins to establish a partnership with the contractors. Extending the necessary professional courtesies, as allowed by codes and regulations, to provide clear information to the bidding community in a timely manner.

Bid Phase Steps:

- Complete the pre-qualification process
- Secure Approvals and/or Permits
- Develop bid schedule
- Develop bid package
- Coordinate advertisement needs/requirements
- Publish bid documents
- Host and facilitate pre-bid meeting
- Host and facilitate pre-bid site walk
- Receive bids
- Evaluate bids
- Recommend award

Rebidding

Should there be a need to re-bid the project, Roebbelen will collaborate with Marin Transit and the design team to make the necessary adjustments and follow the bid phase steps for a re-bid.

Construction Phase

Preconstruction Meeting

Roebbelen will coordinate and facilitate a pre- construction meeting with the project team and the successful bidder. During this meeting, the goal will be to orient the contractor with expectations related to site rules, safety protocols, reporting procedures, inspection protocol, baseline schedule, and pre-start submittals.

Roebbelen will review and verify project documents, such as bonds and contractor licenses to confirm requirements are met and that they stay current through the life of the construction phase. Additionally, formal introductions will take place, roles and responsibilities will be identified and other topics of discussion, related to contract administration, will include securing permits, mobilization, staging areas, safety, temporary fencing and/or barricades, site security, site protection that includes the storm water pollution prevention plan, construction schedule, construction phasing/sequencing, special inspections, submittal schedule and procedures, management of design clarification or revisions (RFI's, ASI's, CCD's), change management, payment applications, weekly meetings, special site or community events, working hours and special coordination protocols.

Document Control

Roebbelen understands that well before construction of your project begins, a file system shall be established.

The project will demand collaboration and through the process we will be communicating by generating, tracking and sharing information with the project team. We will be happy to be the gate keeper and use a web-based management software system, known as Procore, as our tool of choice, but can adapt to any other document control requirements. Through Procore, we digitally monitor and track various forms of communication like; construction questions, known as RFI's, design modifications, known as ASI's, submittals, daily reports, cost items and payment applications.

An important part of maintaining the schedule is to receive, review and return submittals in a timely manner. The submittal procedures, along with other construction related documents such as payment requests, RFI's and change orders will be established, per project contract documents, and we will assist Marin Transit in implementing, as such. The schedule of values is part of the submittal process and Roebbelen will review for accuracy with respect to the requirements of the contract documents. We will work with the design team and the inspector to verify and validate the payment request applications prior to a recommendation to Marin Transit for processing payment.

Roebbelen will coordinate weekly meetings, typically known as the Owner Architect Contractor (OAC) meeting. Abbas will generate an agenda, facilitate, record and issue minutes, with an emphasis on action items and steps towards resolution to open items.

RFI's and ASI's

All additional information and clarifications to the contract documents will be reviewed for accuracy and completeness. We take pride in our ability to stop future problems at this stage. By identifying real questions, and requiring accurate answers, your project has an opportunity to stay on budget and schedule. All RFIs and ASIs are logged, transmitted and tracked to provide timely and complete responses from the project team. An RFI or ASI might be the first sign of a change to the project that might delay the project or increase the cost. Roebbelen will notify Marin Transit if the ASI or RFI will cause a change in the project.

Unless use for another management tracking program is requested by Marin Transit, we will utilize Procore for document control/ routing. We will work with the design team to provide timely and effective responses by the required dates and to post the ASIs. Critical RFIs and ASIs will be included in the discussion at each weekly meeting.

Submittals / Shop Drawings

The contractors will provide a submittal log following receipt of the 'Notice to Proceed'. Prioritization of critical submittals with long lead times will be required to meet expected install dates. Roebbelen will require a complete submission of each specification section in one package and require the contractors to certify the completeness of each submittal and shop drawing. The contractors are responsible for preparing and deliver the submittals and shop drawings for approval by the design team and Marin Transit. Roebbelen will receive, review, track, expedite and log all submittals and shop drawings required by the contract documents. Roebbelen will require the contractors to provide complete and correct submittals and shop drawings prior to routing for final review. Finally, Roebbelen will track, review and coordinate sign-off/ approval of all submittals and shop drawings.

Permits / Utilities

Roebbelen will secure necessary permits, on behalf of Marin Transit. We will complete the coordination necessary to ensure that local utility agencies are notified early and that service will be available on time. In our experience, there is often confusion about the provision for permits and utilities. We will eliminate that confusion by being the party responsible for completing that coordination. In the active Bay Area construction market, if this task slips, it will put the schedule in jeopardy. We will make this a priority.

Schedule Management

Roebbelen will review the original project schedule, as provided by the contractor, and provide Marin Transit a recommendation to accept, if it meets the contract criteria. Additionally, when monthly payment requests are made, Abbas will ensure an updated monthly schedule is provided to confirm milestones remain unchanged. Any deviation to the critical path will be noted and clarification will be requested of the contractor. During the weekly meetings, Roebbelen will request that the contractor provides a short interval schedule (SIS). Typically this schedule is known as a three-week schedule that accounts for the current weeks activity and shows planned activity for the following two weeks. Abbas will review these schedules and compare to the master schedule and the most current update to ensure progress is being accomplished as intended.

Budget Tracking / Payment Applications

Roebbelen will create, or utilize a budget tracking system for use during each project. With the design team and the inspectors assistance, Roebbelen will review payment applications and invoices for

accuracy and completeness. All contracts will be tracked and reported along within the regular budget report. Cost changes will be tracked and will follow a Marin Transit process for approval. This will help provide a complete financial risk assessment on each project for any given time.

Risk Management

Risk management starts with review of the contractor's bonds and insurance to certify compliance with the contract documents. We will transmit the contract, bonds and insurance to Marin Transit for approval. The handling of change orders is discussed in the next section. The remainder of the risk management process will revolve around project controls. Project cost control reports will be maintained on a real-time basis and transmitted to the project team. These reports will cover all project cost exposures tracked against applicable project budget amounts, construction management expenditures, and other contracts for consultants such as testing, etc.

The report tracks cost items, unresolved disputes and contract completion reserves against budgeted construction contingencies. Timely notification shall be required by the contractors for cost items to allow proper review and processing. The contractors must include a complete description of the change and cost estimate including any schedule impacts. Roebbelen performs an independent estimate of questionable cost items and evaluates the schedule change for merit.

Contract Changes

For the most part, the pre-construction phase will identify and correct issues or clashes with design or during site investigation that minimizes cost items. Once in construction, any proposed costs or request for additional time will be reviewed and evaluated against the project contract document requirements. The goal is to minimize the impact to the project with each evaluated cost item. Roebbelen will engage our estimating and scheduling team when appropriate and consult with the Project Team as we review, evaluate and negotiate cost and time impacts. We will use all information available to negotiate fairly, but firmly, while providing transparency to Marin Transit during each and every step. No changes to a project contract document are accepted unless Marin Transit approves and executes a change order. All change orders will be recorded and a change order report will be generated to track status for each. When we encounter a disagreement and a cost item is not approved by Marin Transit, the contractor's may choose to submit a claim.

Roebbelen will review and evaluate each contractor claim and provide Marin Transit with a recommendation.

Dispute Resolution

The contractor's shall notice the disputed work to Roebbelen within the time specified in the contract documents and keep daily records of all work completed under dispute. Roebbelen will pursue resolution to all disputes through the use of dispute meetings where contractor's will be allowed to present their position and documentation regarding the dispute. We will then look to find a resolution or discuss settlement options that will be forwarded to Marin Transit with a recommendation.

Roebbelen's in-house team of experts, that includes estimators, schedulers and builders, will assist when necessary to validate or otherwise reject claims. This is incredibly helpful when it comes to dispute resolution. Whether we need to perform our own estimate, review delay claims, or simply work toward a reasonable solution, we have the resources for a fair outcome.

Quality Assurance

It is critical for the work to be performed according to the approved project contract documents. Through daily construction observation and the assistance of both the design team and the inspector, Roebbelen will ensure quality assurance and quality control. Abbas will establish a site walk routine that will be documented with daily reports. During these walks any non-confirming work will be identified and discussed with the contractor, the inspector and the design team. The idea is to communicate often and ensure clear understanding from every perspective. We will facilitate collaboration to identify best path forward. With the assistance of the design team and the inspector, Abbas will compare performance with approved submittals, RFI's and other project documents. Part of this process is to establish inspection protocols for special testing and inspection needs. Roebbelen will work with the contractor to coordinate these necessary inspections, as identified in the project contract documents.

During our routine site observation activity, we will partner with the contractor and check that their site office maintains on-site records of contract documents and other required documents for easy and quick reference.

This will include the as-built plan set, submittals and shop drawings, Federal, State and local requirements for labor compliance, building code regulations, safety manuals and other logistical needs.

Project Close-Out And Post Construction Phase

Roebbelen will continuously and thoroughly review project activity and will not wait until the punch list phase to raise questions about imperfections and non-conforming work. Items identified will be logged and tracked until satisfactorily complete to meet the project contract documents. When we get to the formal punch walk, outstanding items will be the first to be included and tracked. The punch walk will take place to identify additional imperfections and non-conforming work. The contractors will provide notice that all contractual activity has been completed and we will coordinate the punch walk with the Project Team. Once the walk takes place, we will gather open items, consolidate and input to a master punch list. This list will be issued to the contractor with a directive to proceed and correct all items within a specific time frame. We will work closely with the contractor until these items are completed satisfactorily and once complete, schedule a back-check with the project team to confirm satisfaction from all parties.

Roebbelen is committed to closing out projects in a timely manner. To facilitate prompt project closeout, we take the approach that this activity begins at the start of construction. From the beginning of the construction phase and in partnership with the Project Team, we will be tracking progress on things like as-built document updates. When we setup the project within Procore, we develop a closeout file. All closeout documents will be identified, collected, verified to comply with requirements and filed as progress is made in the field. This includes warranties as scope activity is completed. Additionally, any initial start-up, testing of systems and Training sessions will be coordinated, conducted, recorded and filed as the building and site systems are completed and fully ready for operation. The User trainings will provide both the user group and the maintenance and operations group a better understanding of how the systems work. Additionally, soft and hard copies of systems manuals will be made available.

As we progress into the final stages of the construction phase, Abbas will liaise with Marin Transit to ensure any owner provided contractor installed items are received and handed to the contractor for installation.

Additionally, we will be coordinating with Marin Transit and the contractor for access to owner installations, such as restroom accessories, furniture and other equipment. Similarly, we are prepared to assist with relocation activity and will work with Marin Transit to accomplish a seamless transition. Finally, we will collaborate with Marin Transit and the zero waste team to fulfill deconstruction requirements.

Warranty

We understand a project is not without an occasional warranty call or User complaint. Roebbelen is committed to serving Marin Transit through the warranty period. We will be available to assist, as necessary within the ensuing 1-year warranty period. Our team, in partnership with the Project Team will be ready to expedite any warranty claims and monitor to completion.

Public Outreach

Construction is known to be disruptive to the surrounding community. We understand and carefully navigate through this negative perception of the project everyday. Abbas will work with Marin Transit and assist with public relations activities. We have experience in generating an informative newsletter and issuing these on a monthly basis to the community. The information provided shall be reviewed and accepted by Marin Transit, but for the most part is basic and does not provide details with cost or schedule. In general, it shows what has occurred in the past month and what should be expected for the upcoming month. This information can also be published.

EXHIBIT "B"

FEES AND PAYMENT SCHEDULE (required)

DISTRICT shall pay CONTRACTOR as follows:

CONTRACT RATES. DISTRICT shall pay CONTRACTOR based on the rate table below and billed in quarter hours. CONTRACTOR shall submit requests for payment via invoice net 30 days following provision of services.

- (1) MILEAGE. DISTRICT shall not pay CONTRACTOR for travel by private, leased or hired vehicles as required by this Contract.
- (2) TRAVEL COSTS. DISTRICT shall not pay CONTRACTOR for meals, lodging, or other travel costs not included in this Contract.
- (3) AUTHORIZATION REQUIRED. Services performed by CONTRACTOR and not authorized in this Contract shall not be paid for DISTRICT. Payment for additional services shall be made to CONTRACTOR by DISTRICT if, and only if, this Contract is amended by both parties in advance of performing additional services.
- (4) MAXIMUM CONTRACT AMOUNT. The maximum amount payable to Contractor under this Contract for this period shall not exceed **\$ 280, 370.**

Attachment A

MCTD Contract #1240

Scope	Labor Categories (e.g., Consultant, Sr. Consultant, etc.)	Est. Hours	Hourly Rate	Extended Rate
Task 1 – Preconstruction Services	Director	10	\$ 195	\$ 1,950
	Project Executive	0	\$ 180	\$ -
	Construction Manager	86	\$ 175	\$ 15,050
	Asst. Construction Manager	344	\$ 150	\$ 51,600
	Admin / Accounting	10	\$ 105	\$ 1,050
	Constructability / Value Engineering	64	\$ 155	\$ 9,920
	Estimating / Value Engineering	72	\$ 155	\$ 11,160
	Scheduling	24	\$ 155	\$ 3,720
TOTAL NOT TO EXCEED, TASK 1		610		\$ 94,450
Task 2 – Construction Management Services	Director	0	\$ 195	\$ -
	Project Executive	0	\$ 180	\$ -
	Construction Manager	350	\$ 175	\$ 61,250
	Asst. Construction Manager	440	\$ 150	\$ 66,000
	Admin / Accounting	10	\$ 105	\$ 1,050
	Constructability / Value Engineering	0	\$ 155	\$ -
	Estimating / Value Engineering	0	\$ 155	\$ -
	Scheduling	0	\$ 155	\$ -
TOTAL NOT TO EXCEED, TASK 2		800		\$ 128,300
Task 3 – Closeout Services	Director	0	\$ 195.00	\$ -
	Project Executive	0	\$ 180.00	\$ -
	Construction Manager	176	\$ 175.00	\$ 30,800
	Asst. Construction Manager	176	\$ 150.00	\$ 26,400
	Admin / Accounting	4	\$ 105.00	\$ 420
	Constructability / Value Engineering	0	\$ 155.00	\$ -
	Estimating / Value Engineering	0	\$ 155.00	\$ -
	Scheduling	0	\$ 155.00	\$ -
TOTAL NOT TO EXCEED, TASK 3		356		\$ 57,620
TOTAL NOT TO EXCEED (TASKS 1- 3)				\$ 280,370

STAFF AND FEE RATES

<u>Position Description</u>	<u>Name</u>	<u>Hourly Rates</u>
Officer in Charge	Marsha Perry Taras	\$ 205
Director	Victor C. Lopez	\$ 195
Construction Manager	Abbas Daeenabi	\$ 175
Asst. Construction Manager	Jason Lee	\$ 150
Admin/Accounting	Admin Support	\$ 105
In-House Support Services		
Constructability	Craig Fernandez	\$ 155
Estimating	Steve Connor	\$ 155
Scheduling	Rich Miller	\$ 155

Note: Rates are subject to an annual inflation increase of 3%, beginning January 2025

DRAFT

EXHIBIT "C"
INSURANCE REDUCTION/WAIVER (if applicable)

CONTRACTOR: _____

CONTRACT TITLE: _____

Contractor's professional liability insurance may be provided, in part, by self-insurance or large deductible as long as contractor provides: (1) evidence to the District that contractor has segregated amounts in a special insurance reserve fund meeting the contract's insurance requirements and restricted specifically to this project or (2) contractor's general insurance reserves are adequate to provide the necessary coverage and the Marin County Transit District may conclusively rely thereon.

This statement shall accompany all requests for a reduction/waiver of insurance requirements. Please check the box

if a waiver is requested or fill in the reduced coverage(s) where indicated below:

	Check Where Applicable	Requested Limit Amount	CAO Use Only
General Liability Insurance	<input type="checkbox"/>	\$	
Automobile Liability Insurance	<input type="checkbox"/>	\$	
Workers' Compensation Insurance	<input type="checkbox"/>		
Professional Liability Deductible	<input type="checkbox"/>	\$	

Please set forth the reasons for the requested reductions or waiver.

Contract Manager Signature:

Date:

DRAFT

EXHIBIT "D"

FTA GRANT CONTRACT PROVISIONS PROFESSIONAL SERVICES

1) FEDERAL OBLIGATION

- a) Marin Transit and the 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 the contract and shall not be subject to any obligations or liabilities to Marin Transit, the 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 FTA. It is further agreed that the clause shall not be modified except to identify the subcontractor who will be subject to its provisions.

2) PROGRAM FRAUD, FALSE OR FRAUDULENT STATEMENTS AND 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 Marin Transit 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.

3) ACCESS TO RECORDS AND REPORTS

Contractor shall provide all authorized representatives of Marin Transit, the FTA Administrator, and the Comptroller General of the United States access to any books, documents, papers and records of the Contractor that are directly pertinent to this Contract for the purposes of making audits, copies, examinations, excerpts and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. Contractor also agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this

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 the same until Marin Transit, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

4) FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the [Master Agreement](#) between Marin Transit 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.

5) TERMINATION

- a) Termination for Convenience - Marin Transit, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, Marin Transit shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- b) Termination for Default [Breach or Cause] - If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, Marin Transit may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by Marin Transit that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, Marin Transit, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- c) Opportunity to Cure - Marin Transit in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Marin Transit's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the stated time period after receipt by Contractor of written notice from Marin Transit setting forth the nature of said breach or default, Marin Transit shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Marin Transit from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- d) Waiver of Remedies for any Breach - In the event that Marin Transit elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Marin Transit shall not limit Marin Transit's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

6) CIVIL RIGHTS

- a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
 - b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - i) 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.
 - ii) 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.
 - iii) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - c) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
- 7) DISADVANTAGED BUSINESS ENTERPRISE
- a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation

Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 1.6 %. A separate contract goal has not been established for this procurement.

- b) The Contractor 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 this DOT-assisted contract. 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 Marin Transit deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c) The successful Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. The Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d) The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from Marin Transit. In addition, the contractor may not hold retainage from its subcontractors.
- e) The Contractor must promptly notify Marin Transit, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Marin Transit.

8) INCORPORATION OF FTA TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any of Marin Transit's requests which would cause Marin Transit to be in violation of the FTA terms and conditions.

9) SUSPENSION AND DEBARMENT

The Contractor, including any of its officers or holders of a controlling interest, and its subcontractors are obligated to inform Marin Transit whether or not they are or have been debarred, suspended, ineligible or voluntarily excluded from participation in federally funded contracts and pursuant to Executive Order Nos. 12549 and 12689, "Debarment and Suspension", 31 U.S.C. §6106 note and U.S. DOT regulations 49 CFR Part 29. Should Contractor or a subcontractor be included on such a list or determined ineligible during the performance of this Contract, the Contractor shall so inform Marin Transit. The Contractor is required to include this provision in any lower tiered subcontract where the contract amount is over \$25,000.

10) RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

- a) Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Marin Transit's General Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.
- b) Performance During Dispute - Unless otherwise directed by Marin Transit, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- c) Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- d) Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Marin Transit and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which Marin Transit is located.
- e) Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Marin Transit, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

11) LOBBYING RESTRICTIONS

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

12) CLEAN AIR

- a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in

turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

- b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

13) CLEAN WATER

- a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

14) ENERGY CONSERVATION

Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §6321 et seq. and 49 CFR Part 18.

15) PRIVACY ACT

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.

16) NOTIFICATION TO FTA

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify Marin Transit (Recipient) . The Contractor must require each Third Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying

Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

- (3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this 18 Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

DRAFT