



ASSOCIATION OF MONTEREY BAY AREA GOVERNMENTS

Association of Monterey Bay Area Governments

**Request for Proposals
for
Audit and Consulting Services**

Issued: April 1, 2014

Questions Due: April 8, 2014 by 4:00 p.m.

Deadline (received by AMBAG): April 21, 2014 by 4:00 p.m.

Submit all questions and proposals to:

Arleicka Conley | AMBAG | P.O. Box 809, Marina, CA 93933 | aconley@ambag.org

Planning Excellence!

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I. INTRODUCTION

A. General Information

The Association of Monterey Bay Area Governments (AMBAG) invites the submission of proposals from qualified certified public accounting firms to prepare and audit its annual financial statements and the Regional Analysis and Planning Services, (RAPS), Inc. financial statements for the five (5) fiscal years ending June 30, 2014 through June 30, 2018.

The Association of Monterey Bay Area Governments (AMBAG) is a voluntary association of eighteen cities and three counties in California's Central Coast region, encompassing 5,159 square miles and a population over 700,000. The Association was established under the laws of the State of California in Government Code Section 66500 *et. seq.* The formation of AMBAG was made through a Joint Powers Agreement (JPA) in 1968 between the cities and counties of Monterey, Santa Cruz and San Benito to serve as a forum for discussing issues of regional significance.

AMBAG serves as both a federally designated Metropolitan Planning Organization (MPO) and Council of Governments (COG). AMBAG performs metropolitan level transportation planning on behalf of the region. Among its many duties, AMBAG manages the region's transportation demand model and prepares regional housing, population and employment forecast that are utilized in a variety of regional plans. Further information may be obtained at www.ambag.org.

The purpose of this Request for Proposal (RFP) is to solicit proposals from qualified auditors and to provide prospective auditors with guidelines for submission of proposals to perform financial audit and consulting services for AMBAG and its blended component unit/non-profit arm, Regional Analysis and Planning Services, (RAPS) Inc., a 501(c)(3).

To be considered, your proposal must be received by 4:00 p.m. on Monday, April 21, 2014 to the following addresses.

<u>Mail to:</u> Arleicka Conley Director of Finance and Administrative Services Association of Monterey Bay Area Governments P.O. Box 809 Marina, CA 93933	<u>Email to:</u> Arleicka Conley Director of Finance and Administrative Services aconlev@ambag.org
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To qualify for consideration, one (1) original electronic PDF copy, one (1) original in hard copy, and five (5) hard copies clearly marked "COPY" must be received at the designated above addresses by 4:00 p.m. on April 21, 2014. Late proposals will be rejected as not

meeting the mandatory RFP requirements. Your proposal must comply strictly to the required format.

The deadline for submission of questions is Tuesday, April 8, 2014 by 4:00 p.m. All questions must be submitted electronically to Arleicka Conley at aconley@ambag.org. Address the subject line of your email as follows: QUESTIONS: AMBAG-AUDIT-RFP. All questions regarding the audit RFP and related responses will be posted on the AMBAG website at the following address, www.ambag.org no later than Friday, April 11, 2014 at 4:00 p.m.

II. NATURE OF SERVICES REQUIRED

A. General

1. Before commencement of interim field work the auditor will schedule an entrance conference for the purpose of discussing any perceived audit issues or problems, asking and answering questions, clarifying responsibilities and developing an audit strategy.
2. During the course of the engagement, the auditor will meet with and provide status reports to the Executive Director and/or the Director of Finance and Administrative Services on a regular basis.
3. Upon completion of field work, and before issuing any report or management letter, auditor will schedule an exit conference with the Executive Director, the Director of Finance and Administrative Services and other individuals as deemed appropriate by AMBAG. The purpose of the exit conference is to discuss observations, findings and recommendations, and to discuss matters to be included in the management letter.
4. In addition, the auditor is also expected to provide informal advice and consultation throughout the contract term on matters relating to accounting and financial reporting.

B. Minimum Qualifications

To be eligible to provide services under this RFP, a firm must demonstrate that they meet the following minimum qualifications:

- Independence: The firm must provide an affirmative statement that it is independent of AMBAG and RAPS as defined by generally accepted auditing standards and the standards applicable to financial audits as contained in *Government Auditing Standards*, issued by the Comptroller General of the United States
- License to Practice in the State of California: An affirmative statement is required attesting that the firm and all assigned key professional staff are properly registered and licensed to practice in the State of California.

- Experience: An affirmative statement is required indicating the firm's experience conducting audits of compliance in accordance with generally accepted auditing standards; the standards applicable to financial audits contained in *Government Audit Standards* issued by the Comptroller General of the United States; and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.
- Schedule: The firm must provide an affirmative statement that it will be able to devote the necessary resources to complete the work described in *Scope of Work to be Performed*. The audit or consulting services may occur at any time during the year and there may be more than one project to complete simultaneously.
- The firm must have experience with government agencies, at least one of which must be a transportation agency, for whom it has provided assurance, auditing, and consulting services similar to those covered by this RFP.
- The Proposer must have a local office with staffing within the three-county Monterey Bay Area region.

Other Qualifications

In addition to the above Minimum Qualifications, familiarity with or expertise in the following area is desirable and it will be considered in the evaluation of proposals.

- Recent experience in performing compliance audits as required by the U.S. Office of Management and Budget (OMB) Circular A-133 *Compliance Supplement*.
- Current experience in internal control reviews.

C. Scope of Work to be Performed

The selected auditor or auditor team will be expected to perform all technical and other analyses necessary to complete the scope of work. The auditor receives general direction from the AMBAG Director of Finance and Administrative Services.

The auditor shall examine the financial statements and records of AMBAG and its component unit and prepare an annual audit of the financial transactions and records in accordance with the applicable laws and regulations and contracts that have been entered into by AMBAG.

In accomplishing the foregoing, the auditor shall be required to do the following:

1. Prepare a Provided by Client (PBC) list which will include standard client-prepared audit schedules/documentation the firm anticipates AMBAG will provide.
2. Hold a Kick-Off meeting with AMBAG Finance staff to discuss the engagement and audit plan.
3. Review the annual financial statements as prepared by the AMBAG finance department.

4. Express an opinion on the fairness of presentation of AMBAG's financial statements on their conformity with generally accepted accounting principles and auditing standards.
5. Perform an audit and provide all required reports (and opinions) in accordance with provisions of the Single Audit Act of 1984, Office of Management and Budget Circular No. A-133 *Compliance Supplement* and *Government Auditing Standards* issued by the US General Accounting Office (GAO).
6. Advise and assist AMBAG staff in establishing controls and procedures as may be required during the audit performance.
7. Express an opinion on the fairness of presentation of AMBAG's financial position.
8. Perform the year-end electronic reporting of Single Audit reporting data to appropriate federal, state, and other agencies.
9. Attend at least one of AMBAG's Board meetings to present results of the current audit and answer any questions from the Board. AMBAG Board presentations may include effects of implementing *Governmental Accounting Standards Board* (GASB) pronouncements. May be asked to attend and speak at an AMBAG Executive Finance Committee meeting, should the need arise.
10. Advise and assist AMBAG finance staff in the implementation of new GASB pronouncements.
11. Assist AMBAG finance staff with any accounting issues relating to financial transactions such as investments, contracts, indirect cost plan, and other transactions.
12. Confer with, and provide planning assistance to appropriate AMBAG staff for the purpose of filing for and obtaining a "Certificate of Achievement for Excellence in Financial Reporting" from the Government Finance Officers Association (GFOA). AMBAG has been awarded this Certificate in prior years for its Comprehensive Annual Financial Report (CAFR)
13. If applicable, prepare responses to prior year GFOA comments regarding CAFR submittal.
14. As required by the State Controller's Office, preparation and submission of the annual *Transportation Planning Agencies Financial Transactions and Compensation Report*. The paper copy of this report is due within 90 days after the end of the fiscal year. If filed in electronic format, the report is due within 110 days after the end of the fiscal year.
15. If conditions are discovered, which lead to the belief that material errors, fraud, or other irregularities may exist, or if any other circumstances are encountered that require extended services, the auditor shall promptly advise AMBAG's Executive Director and Director of Finance and Administrative Services. No extended services shall be performed unless they are authorized in a separate contractual agreement or in an amendment to the contract agreement.

16. From time to time, AMBAG's Board of Directors, or Executive Director may request the auditor to perform services in addition to the required services outlined in this RFP. These additional services would generally include special matters or performing special examinations upon request. Such additional service must be approved in writing by AMBAG prior to their performance. Charges for such services will be paid to the auditor in addition to the auditor's charges for the required services, and be based on negotiation between AMBAG and the auditor.

D. Auditing Standards to be Followed

To meet the requirements of this request for proposals, the audit will be performed in accordance with the following:

1. Generally Accepted Auditing Standards as set forth by the American Institute of Certified Public Accountants.
2. The standards for financial audits set forth in the U.S. General Accounting Office's *Government Auditing Standards*.
3. The provisions of the Single Audit Act as amended.
4. The provisions of U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.

E. Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the auditor's expense, for a minimum of five (5) years, unless the firm is notified in writing by AMBAG of the need to extend the retention period. The auditor will be required to make working papers available, upon request, to the following parties or their designees:

- a. AMBAG
- b. U.S. Department of Housing and Urban Development (HUD)
- c. U.S. General Accounting Office (GAO)
- d. Federal Highway Administration (FHWA)
- e. Federal Transit Administration (FTA)
- f. California Department of Transportation
- g. Parties designated by the federal or state governments or by AMBAG as part of an audit quality review process
- h. Auditors of entities of which AMBAG is a subrecipient of grant funds
- i. State of California, Office of the State Controller

In addition, the firm will respond to the reasonable inquiries of successor auditors and allow successor auditors reasonable access to review working papers.

III. DESCRIPTION OF THE GOVERNMENT

A. Background Information

AMBAG, in its role as the federally designated Metropolitan Planning Organization (MPO) is a federally-funded transportation policy-making organization in the United States that is made up of representatives from local government and governmental transportation authorities. Congress created MPOs in order to ensure that existing and future expenditures of governmental funds for transportation projects and programs are based on a continuing, cooperative, and comprehensive ("3-C") planning process. Federal funding for transportation projects and programs are channeled through this planning process. Statewide and metropolitan transportation planning processes are governed by federal law (23 U.S.C. §§ 134–135). Federal law requires transparency through public access to participation in the planning process and electronic publication of plans. As of 2012, there are 342 MPOs in the U.S.

In its role as a COG, AMBAG addresses issues such as regional and municipal planning, economic and community development, cartography and Geographic Information Systems (GIS), hazard mitigation and emergency planning, aging services, water use, pollution control, transit administration, and transportation planning.

The Association is governed by a twenty-four member Board of Directors which is comprised of elected officials from each City and County within the region. The officers of the Association are the President, Vice President, Second Vice President, and Secretary. The Executive Director of the Association serves as Secretary. All policy-making decisions, the annual Overall Work Program and Budget, project budgets, and all material financial matters are discussed and acted upon through the AMBAG Board of Directors.

AMBAG's policy-making process and operational oversight are guided by the work of the Executive/Finance Committee, made up of the AMBAG officers (President, First Vice President, Second Vice President and the Immediate Past President) and such other members as may be appointed by the President with the consent of the Board of Directors. The Committee also assists and advises the Executive Director in developing an annual budget for review and approval by the Board, reviews and evaluates on a continuing basis the financial management practices of AMBAG and analyzes potential financial issues and recommends alternatives for responding to these issues.

The current operating budget is \$4.2 million. AMBAG has a total payroll of \$1.9 million covering thirteen (13) full-time permanent employees and varying levels of temporary employees.

AMBAG's principal sources of revenue to fund its governmental operations include grants from the U.S. Department of Transportation, Office of the Secretary of Transportation (U.S. DOT), including Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), additional funding is provided from the California Public Utilities Commission (CPUC), Caltrans and from other federal, state and local agencies. This contract is subject to Single Audit requirements.

AMBAG prepares a Comprehensive Annual Financial Report (CAFR). Past budgetary, Overall Work Programs (OWP), and audited financial statements for the last six years are located on at the following address: <http://ambag.org/about-us/funding-expenditures>.

B. Background Information – Other Entities

Regional Analysis and Planning Services, Inc. (RAPS), is the 501(c)(3) non-profit arm of the Association of Monterey Bay Area Governments (AMBAG). The Corporation was formed in 1992 for the following purposes:

- Enhancement of the quality of public decision-making in local and other governments through research and development of improved analytic programs, providing technical and educational services, and offering an economic and efficient method of maintaining and distributing such information.
- Serving local governments and other governmental entities and providing educational programs, including workshops, forums, seminars and material on the use of programs, techniques and services.

RAPS receives periodic sponsorship and grant funding from outside agencies to host educational forums of social, economic and regional importance. In forming the entity, AMBAG staff was assigned the task of performing the day-to-day functions of the organization.

RAPS is governed by a seven member Board of Directors. Five of the RAPS Directors are appointed annually on behalf of AMBAG from among its Board of Directors. The remaining Directors are nominated by the AMBAG President and confirmed by the AMBAG Board of Directors from among the public, one each from the County of Monterey and the County of Santa Cruz. The Directors serve a term of one year.

The current operating budget is \$50,000. Principal sources of revenue to fund RAPS non-profit operations include federal, state and local agencies sponsorship and donations.

C. Component Units

Accounting principles generally accepted in the United States of America require that the reporting entity include (1) the primary government, (2) organizations for which the primary government is financially accountable, and (3) other organizations for which the nature and significance of their relationship with the primary government are such that exclusion would cause the reporting entity's financial statements to be misleading or incomplete. The criteria provided in Government Accounting Standards Board Statements No. 14 and 39 have been considered and there are no agencies or entities which should be presented with AMBAG as component units except those noted below.

Blended Component Unit – Regional Analysis and Planning Services, (RAPS) Inc. is a non-profit organization that sponsors conferences and community forums and provides technical assistance in planning activities on issues affecting the Monterey Bay region to public entities who request it. The financial statements of RAPS have been blended with

those of AMBAG's because RAPS is fiscally dependent on AMBAG. RAPS does not issue separate financial statements.

D. Fund Structure

AMBAG uses the following fund types in its financial reporting as of June 30, 2013:

- The General Fund is the general operating fund of AMBAG. All financial resources, except those required to be accounted for in another fund, are accounted for in the General Fund.
- The RAPS Fund is the operating fund of the Regional Analysis and Planning Services, Inc. All Regional Analysis and Planning Services, Inc.'s financial resources, except those required to be accounted for in another fund, are accounted for in the RAPS Fund.

E. Budgetary Basis of Accounting

AMBAG uses the modified accrual basis of accounting which combines accrual accounting and cash basis accounting.

The Association of Monterey Bay Area Governments (AMBAG) as the federally designated Metropolitan Planning Organization (MPO) for the tri-county (Monterey, San Benito and Santa Cruz) Monterey Bay region annually develops and maintains the Overall Work Program (OWP) and Budget. The OWP and Budget includes federal, state and locally funded planning as well as transportation/air quality planning activities. The OWP and Budget also incorporates planning work to be accomplished by the region's Regional Transportation Planning Agencies (RTPAs), transit operators and Caltrans.

The Overall Work Program (OWP) and Budget defines the continuing, comprehensive, and coordinated metropolitan planning process for the Monterey Bay region. It established transportation, air quality, and other regional planning objectives, the methods and timing for achieving those objectives, and identifies planning responsibilities and funding to complete the work. The OWP and Budget also serves as a management tool for AMBAG in that it identifies all projects and services to be provided during the year beyond those mandated by the metropolitan planning process. The OWP and Budget, therefore, presents an annual blueprint for the agency's use of resources for the fiscal year.

The OWP and Budget is a constantly changing document; changes occur during the year to reflect priority, funding and staffing changes. As a working document, the OWP and Budget must be amended prior to making changes in work scope, budget, and completion dates for key tasks.

Annually, the AMBAG Board of Directors approves the AMBAG Overall Work Program (OWP) and Budget. The Overall Work Program (OWP) and Budget is subject to periodic adjustments resulting from changes in activities as well as revisions in revenues and expenditures during the fiscal year.

F. Pension Plan

AMBAG contributes to the California Public Employees Retirement System (CalPERS), a cost sharing multiple-employer public employee defined benefit pension plan. CalPERS provides retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries. CalPERS acts as a common investment and administrative agent for participating public entities within the State of California. Benefit provisions and all other requirements are established by contract with CalPERS in accordance with the provision of the Public Employees Retirement Law.

G. Finance Operations

Currently, financial operations are headed by the Executive Director/Director of Finance and Administrative Services. Functions performed by the Director of Finance and Administrative Services and the Senior Accountant include: client agency billing and collection, accounts receivable/payable, payroll (PAYCHEX), general ledger, fixed asset management and financial reporting. AMBAG finance staff and a Payroll/Human Resources Company oversee payroll.

H. Computer System

The accounting functions are computerized currently using Quickbooks: Premier Nonprofit Edition 2012 financial software. The applications operating on this system are general ledger, accounts payable, purchase orders, accounts receivable, cash collections, fixed assets, and project accounting.

Payroll and time keeping functions are computerized currently using PAYCHEX Preview and Time Labor Online (TLO), respectively.

I. Availability of Prior Year's Work Papers

AMBAG's fiscal year 2012-2013 audit was conducted by Hayashi and Wayland Accounting and Hayashi and Wayland, Accounting and Consulting in Salinas, California. Working papers of the previous audits are the property of the auditor, who should be contacted by the successful proposer as required by generally accepted auditing standards set forth in the AICPA Statement on Auditing Standards, AU Section 315.

IV. SCHEDULE

Observe the following schedule in addition to complying with statutory and other filing and reporting deadlines:

Task	Completion Date
Release RFP	April 1, 2014
Submission of written RFP questions due	April 8, 2014
Post summary of questions/answers	April 11, 2014
Proposals due	April 21, 2014
Selection Review Board completes proposal review	April 23, 2014
Notifications to prospective bidders	April 25, 2014
Oral interviews	April 28-30, 2014
Consultant selection	May 5, 2014
AMBAG Board approval of consultant	May 14, 2014
Execute contract and engagement letter	May 15, 2014
Kick-Off Meeting	June 2, 2014
Auditor to provide AMBAG with an audit plan and a list of schedules to be prepared for interim and final fieldwork	July 1, 2014
Interim fieldwork may begin	July 21, 2014
AMBAG submits to auditors final Trial Balances	August 18, 2014
Final fieldwork may begin	August 25, 2014
Exit conference with Executive Director/Director of Finance	October 6, 2014
Auditors submit to AMBAG the draft management letter and audit report	October 9, 2014
Auditors present draft financials to the AMBAG Board of Directors	November 12, 2014

The schedule reflects current year only.

Upon completion of the audit fieldwork and prior to issuing any audit reports or the management letter, the auditor will participate in an exit conference with the Executive Director, Director of Finance and Administrative Services, and other individuals designated to discuss observations and findings. During the course of the engagement, the auditor shall meet with and provide periodic status reports to the Director of Finance and Administrative Services on a regular basis. The auditor shall also be available to meet with the Executive Director and the Executive Finance Committee as needed, to provide consultation on various accounting and auditing matters.

V. ASSISTANCE TO BE PROVIDED TO THE AUDITOR

A. Finance Department and Clerical Assistance

The Finance Department staff and responsible management personnel will be available during the audit to assist the auditor by providing information, analysis, documentation, schedules and explanations. Arleicka Conley, Director of Finance and Administrative Services, will act as liaison between the auditor and AMBAG staff. To facilitate the flow of information, all requests by the auditor for assistance must be coordinated by AMBAG's

liaison. In requesting information, consideration must be given to the on-going duties and workload of the Finance Department.

B. Work Area, Photocopying, and Fax Machine

The auditor will be provided with reasonable work space, access to telephones, photocopying, internet access and fax machines, as necessary in connection with work as described in this request for proposals.

VI. REPORT PREPARATION

The reports are to be addressed to the Board of Directors of the Association of Monterey Bay Area Governments. The audit report on the financial statements must describe the nature of the audit and that the audit was performed in accordance with auditing standards generally accepted in the United States of America and Government Auditing Standards, issued by the Comptroller General of the United States. The report must include an opinion as to whether the statements conform to accounting principles generally accepted in the United States of America. In addition, a Schedule of Expenditures of Federal Awards (SEFA), prepared by AMBAG staff as required by OMB Circular A-133 must be included.

AMBAG's Comprehensive Annual Financial Report (CAFR) currently consists of the following:

- a. Introductory Section
- b. Financial Section
- c. Basic Financial Statements
 - a. Government-Wide Financial Statements
 - b. Governmental Fund Financial Statements
 - c. Notes to Basic Financial Statements
- d. Required Supplementary Information
- e. Supplementary Information
- f. Statistical Section
- g. Single Audit Section
- h. Reports Required by OMB Circular A-133
- i. Management and Other Auditor's Letter as Applicable

The aforementioned financial reports may change during the engagement period pursuant to laws and regulations.

A management letter, if required, should include a statement of audit findings and recommendations affecting the financial statements, internal control, accounting system, legality of actions, other instances of noncompliance with laws and regulations, and any other material matters.

The report must include specific statements indicating whether conditions noted in prior auditor's comments or findings have been corrected or still exist. AMBAG's Finance staff will be responsible for the posting of any auditor adjusting entries or changes to the financial statements. AMBAG staff will also provide two (2) bound originals and (1) electronic copy of the completed CAFR in its entirety to the auditor.

VII. PROPOSAL REQUIREMENTS

A. General Requirements

To simplify the review process and obtain the maximum degree of comparison, we require that proposals be organized in the manner specified by the RFP. The following outline includes all the information called for in the RFP.

1. Inquiries

- a. Questions regarding this RFP are to be directed by email to: Arleicka Conley, Director of Finance and Administrative Services, at aconley@ambag.org, or by fax to (831) 883-3755. Such contact should be for clarification purposes only. Material changes, if any, to the scope of services or proposal procedures will only be transmitted by written addendum. All questions should be received no later than April 8, 2014 by 4:00 p.m. Responses to submitted questions will be available via the AMBAG website at <http://ambag.org/>, no later than April 11, 2014 by 4:00 p.m.

2. Submission of Proposals

The following material is required to be received by Monday, April 21, 2014 at 4:00 p.m. via email and mail for a proposing firm to be considered:

- a. One copy of a Technical Proposal, to include the following:

(1) Title Page

Title page showing the request for proposal's subject; the firm's name; the name, address and telephone number of the contact person; and the date of the proposal.

(2) Table of Contents

Include a clear and complete identification of the materials submitted by section and page number. Cross-referencing to section and page number in the RFP is helpful.

(3) Transmittal Letter

The transmittal letter should address the firm's understanding of the project based on the RFP and any other information the firm has gathered and the firm's commitment to adhere to the timeline in the RFP. Include a statement discussing the firm's interest and qualifications for this type of work. Certify that the person signing the proposal is entitled to represent the firm, empowered to submit the bid, and authorized to sign a contract with AMBAG. Lastly, include a statement that the proposal is a firm and irrevocable offer for ninety (90) days.

(4) Detailed Proposals

The detailed proposal should follow the order set forth in **Section VII-B** of this request for proposals.

- b. The proposer will submit one copy of a dollar cost bid as separate file, marked as follows:

"Dollar Cost Bid Proposal - Annual Audit Services."

- c. To be considered, your proposal must be received by 4:00 p.m. on Monday, April 21, 2014 to the following addresses:

<u>Mail to:</u> Arleicka Conley Director of Finance and Administrative Services Association of Monterey Bay Area Governments P.O. Box 809 Marina, CA 93933	<u>Email to:</u> Arleicka Conley Director of Finance and Administrative Services aconley@ambag.org
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To qualify for consideration, one (1) original electronic PDF copy, one (1) original in hard copy, and five (5) hard copies clearly marked "COPY" must be received at the designated above addresses by 4:00 p.m. on April 21, 2014. Late proposals will be rejected as not meeting the mandatory RFP requirements. Your proposal must comply strictly to the required format.

- d. Proposals should be concise, well organized and demonstrate the proposer's qualifications and experience applicable to the project. Proposals shall be limited to 50 one-sided pages (8.5 inches x 11 inches).
- e. The Proposal and any required certifications shall be signed by an individual or individuals authorized to execute legal documents on behalf of the proposer.

- f. Failure to comply with the requirements of the RFP may result in disqualification. AMBAG is not responsible for finding, correcting, or seeking clarification regarding ambiguities or errors in proposals. If a proposal is found to contain ambiguities or errors, it may receive a lower score during the evaluation process. AMBAG may, but is not required to, seek clarification from a proposer regarding information in a proposal. Errors and ambiguities in proposals will be interpreted in favor of AMBAG. Proposals and/or modifications received subsequent to the hour and date specified above will not be considered.
- g. The proposer shall certify whether it takes no exception(s) to this RFP and the draft contract. If the proposer does take exception(s) to any portion of the RFP or the draft contract, the specific portion to which exception(s) is taken must be identified and explained. Failure to make exceptions to the RFP or draft contract within the proposal will be deemed a waiver of any objection. Exceptions will be considered during the proposal evaluation process.
- h. AMBAG reserves the right to reject any or all proposals and to waive irregularities contained therein and to accept any proposals deemed most advantageous to AMBAG.
- i. All submissions must be received by AMBAG on or before April 21, 2014 at 4 p.m. Pacific Standard Time (PST). By submitting a proposal, the Proposer certifies that his or her name or the consultant firm's name, as well as the name of Proposer's subcontractors, does not appear on the Comptroller General's list of ineligible contractors for federally assisted projects.
- j. Until award of the contract, the proposals shall be held in confidence and shall not be available for public review. Upon award of a contract to the successful Proposer, all proposals shall become public record. No proposal shall be returned after the date and time set for opening thereof.

B. Technical Proposal

To simplify the review process and obtain the maximum degree of comparison, we require that proposals be organized in the manner specified by the RFP. The following outline includes all the information called for in the RFP.

1. General Requirements

The purpose of the Technical Proposal is to demonstrate the qualifications, competence and capacity of the firm seeking to undertake an independent audit of AMBAG in conformity with the requirements of the RFP. As such, the substance of proposals will carry more weight than their form or manner of presentation. The Technical Proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement. It should also specify an audit approach that will meet the request for proposal requirements and enable the audit to be completed within the time frames enumerated.

The Technical Proposal should address all the points outlined in the RFP, excluding any cost information which should only be included in the sealed dollar cost bid. The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of the request for proposals. While additional data may be presented, the following subjects, items two (2) through twelve (12) below, must be included. They represent the criteria against which the proposal will be evaluated.

THERE SHOULD BE NO DOLLAR UNITS OR TOTAL COSTS INCLUDED IN THE TECHNICAL PROPOSAL DOCUMENT.

2. Independence

The firm should provide an affirmative statement that it is independent of AMBAG, as defined by generally accepted auditing standards and the U.S. General Accounting Office's Government Auditing Standards. The firm should also provide an affirmative statement that it is independent of all of the component units of AMBAG, as defined by those same standards.

The firm should list and describe the firm's professional relationships involving AMBAG or any of its component units, for the past five (5) years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the proposed audit.

In addition, the firm will give AMBAG written notice of any professional relationships entered into during the period of this agreement.

3. License to Practice in California

An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice as certified public accountants in California.

4. Insurance

Attached to the RFP is a draft copy of AMBAG's Standard Contractual Agreement in **Section XIV** (Incorporation of Attachments) which contains the insurance requirements. The selected firm will maintain the minimum insurance requirements during the entire time of the engagement. The selected firm will have a certificate of insurance completed and filed with AMBAG within fifteen (15) days of execution of this agreement and will provide that no cancellation, major change in coverage, or expiration by insurance company or insured during the term of this contract will occur without thirty (30) days written notice to AMBAG prior to the effective date of such cancellation or change in coverage.

5. Firm Qualifications and Experience

The proposer should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed and the number and nature of the professional staff to be employed in this engagement on a full-time basis and the number and nature of the staff to be so employed on a part-time basis.

The firm is also required to submit a copy of the report on its most recent external quality control review, together with a statement about whether that quality control review included a review of specific government engagements.

The firm will also provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years. In addition, the firm will provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations.

6. Partner, Supervisory and Staff Qualifications and Experience

Identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists, who would be assigned to the engagement. Indicate whether each such person is licensed to practice as a certified public accountant in California. Provide information on the government auditing experience of each person, including information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of this audit.

Provide as much information as possible regarding the number, qualifications, experience and training, including relevant continuing professional education, of the specific staff to be assigned to this engagement. Indicate how the quality of staff over the term of the agreement will be assured.

Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permissions of AMBAG. However, in either case, AMBAG retains the right to approve or reject replacements.

Other audit personnel may be changed at the discretion of the proposer, provided that replacements have substantially the same or better qualifications or experience.

7. Prior Engagements with AMBAG

List separately all engagements within the last five (5) years for AMBAG by type of engagement (i.e., audit, management advisory services, other).

8. Similar Engagements with Other Government Entities and References

For the firm's office that will be assigned responsibility for the audit, list the most significant engagements performed in the last three (3) years that are similar to the engagement described in this request for proposal.

9. References

Please provide a list of not less than three (3) client references for which services similar to those outlined in the RFP are currently being provided. For each reference listed provide the name of the organization, dates for which the service(s) are being provided, type of service(s) being provided and the name, address and telephone number of the appropriate contact. AMBAG reserves the right to contact any or all of the listed references regarding the audit services performed by the Proposer.

10. Specific Audit Approach

Submit a work plan to accomplish the scope of the engagement (Section II) and how the time requirements will be met (Section IV). The work plan should include time estimates for each significant segment of the work and the staff level to be assigned and expected client assistance.

The proposal will identify and describe recent changes in accounting principles and pronouncements and their impact on the audit approach and the presentation, scope and disclosure of the financial report.

11. Prepared by Client List

The proposal will include a list of standard client-prepared audit schedules the firm anticipates City staff to provide..

C. Separate Dollar Cost Bid

1. Total All-Inclusive Maximum Price

The separate dollar cost bid should contain all pricing information relative to performing the audit engagement as described in this request for proposals. The total all-inclusive maximum price to be bid is to contain all direct and indirect costs, including all out-of-pocket expenses.

AMBAG will not be responsible for expenses incurred in preparing and submitting the technical proposal or the separate dollar cost bid. Such costs should not be included in the proposal.

The first page of the separate dollar cost bid should include the following information:

- a. Name of firm
- b. Certification that the person signing the proposal is entitled to represent the firm, empowered to submit the bid, and authorized to sign a contract with AMBAG
- c. A total all-inclusive maximum price for each fiscal year engagement (2013-2014, 2014-2015, 2015-2016, 2016-2017 and 2017-2018).

The second page of the separate dollar cost bid should include the total all-inclusive maximum price for each major report by fiscal year **Section XIV** (Incorporation of Attachments)

2. Rates by Partner, Manager, Supervisory, Staff and Clerical Level Times Hours Anticipated for Each

The third page of the separate dollar cost bid should include a schedule of professional fees and expenses, presented in the format provided in the attachment (Section XIV, Incorporation of Attachments), that supports the total all-inclusive maximum price.

3. Rates for Additional Professional Services

If it should become necessary for AMBAG to request the auditor to render any additional services to either supplement the services requested in this request for proposals or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work will be performed only if set forth in an addendum to the contract between AMBAG and the firm. Any such additional work agreed to between AMBAG and the firm will be performed at the same rates set forth in the schedule of fees and expenses included in the separate dollar cost bid.

4. Manner of Payment

Progress payments will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's dollar cost bid proposal. Interim billing will cover a period of not less than a calendar month.

VIII. SUBMITTAL QUESTIONS AND ADDENDA

All questions regarding the RFP should be received no later than April 8, 2014 at 4:00 p.m. PST by e-mail to Arleicka Conley at aconley@ambag.org or by fax to (831) 883-3755. Responses that require that an addendum be issued to the RFP will be posted on the AMBAG website at www.ambag.org on or before April 11, 2014 at 4:00 p.m. PST. It is the responsibility of proposers to check the AMBAG website to determine if addenda have been issued. Any addenda to the RFP will become part of the RFP.

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

IX. NOTICE OF AWARD

The short listed consultants will be interviewed. Interviews will take place on April 28-30, 2014. Shortlisted candidates will be contacted by April 25, 2014. The final selected consultant shall be informed by phone on or before May 15, 2014.

X. PROJECT MANAGER

Arleicka Conley, Director of Finance and Administrative Services
Association of Monterey Bay Area Governments
445 Reservation Rd. Suite G, Marina, CA 93933
Email | aconley@ambag.org (preferred communication)
Fax | 831.883.3755

XI. EVALUATION AND SELECTION PROCESS

1. Based upon the proposals and other appropriate evaluation factors, the top-ranked proposer(s) will be identified and short listed. Negotiations with the selected firm may cover: scope of work, contract schedule, contract terms and conditions, technical specifications, level of effort, and cost or best value.
2. All proposals must be completed and convey all of the information requested in order to be considered responsive. The proposals then will be evaluated on the basis of the criteria listed below. The total number of points used to score the proposal is 100.

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

Criteria	Description	Points
Qualifications and Experience	▪ Firm qualifications ▪ Staff qualifications ▪ Independence ▪ License to practice in California	15
Project Experience	▪ Nature, quality, and relevance of recently completed projects	20
Technical Qualifications	▪ Audit approach, commitment to timeline	50
Cost or Best Value	▪ Ranking of comparative costs among proposed firms, providing the best value services offered.	15
Total		100

4. The Selection Review Board will review all submitted proposals. Proposers may be emailed and asked for further information, if necessary, and may be expected to appear for oral interviews on April 28-30, 2014. The Selection Review Board will make recommendations to AMBAG's Executive Director on the basis of the proposal, oral interview, and reference check. AMBAG reserves the right to select a consultant based solely on written proposals and to not convene oral interviews.
5. AMBAG's Executive Director or designee will make the final recommended selection to the AMBAG Board of Directors. If the Board of Directors selects a different consultant than the one recommended by the Selection Review Board, the Project Manager, in consultation with the AMBAG Executive Director, will prepare a memo explaining the selection.

XII. CONTRACTUAL INFORMATION AND PAYMENT SCHEDULE

The contract agreement for Auditing and Consulting Services will be between AMBAG and the consultant. The consultant will invoice AMBAG for services rendered, and AMBAG will compensate the consultant for these services as set forth in the agreement. Funding for the

consultant services will be provided by AMBAG. The project deliverables will be reviewed by the AMBAG Project Manager.

The consultant will be compensated based on work actually performed, and accepted in writing by AMBAG, during the preceding month. The consultant should forward a copy of all invoices for payment for work performed and associated expenses by the 15th day of the month.

XIII. TERMS & CONDITIONS

A. Limitations

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

B. Award

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

C. Verbal Agreement or Conversation

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

D. Pre-contractual Expenses

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

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

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

E. Signature

The proposal will also provide the following information: name, title, address, and telephone number of individual with authority to bind the consultant or consultant firm and also who may be contacted during the period of proposal evaluation. The proposal shall be signed by an official authorized to bind the consultant or consulting firm and shall contain a statement to the effect that the proposal is a firm offer for at least a ninety (90) day period. Execution of the contract is expected by no later than May 15, 2014.

F. Conflict of Interest Statement

Consultants and consultant firms submitting proposals in response to this RFP must disclose to AMBAG any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided under Agreement for consultant services to be awarded pursuant to this RFP. If the consultant or firm has no conflict of interest, a statement to that effect shall be included in the proposal. The selected consultant shall refrain from and disclose subsequent potential conflicts during this contract. Consultant shall at all-time avoid conflicts of interest, or the appearance of conflicts of interest, in the performance of this contract. Consultant shall file statements of financial interest on forms provided by AMBAG to the extent and at all times required by AMBAG's Conflict of Interest Code and applicable law.

G. Contract Arrangements

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

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

G2. DBE Obligation: The recipient or its subcontractor agrees to ensure that DBEs have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. Recipients and their subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of USDOT assisted contracts.

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

G4. Equal Employment Opportunity: In connection with the performance of the contract, the contractor shall not discriminate against any employee or applicant for employment because of race, color, age, creed, sex or national original. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

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

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

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

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

H. Americans with Disabilities Act (ADA) Provisions

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

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

I. Alternative Protest Process

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

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

A written notice of intent to protest the proposed award of this solicitation must be received (facsimile acceptable) by the project manager before the close of business 5 p.m. PST on the third (3rd) day after notifying the Proposer of intent to award, as specified in the solicitation timeline. Failure to submit a timely, written notice of intent to protest waives the Proposer’s right to protest. The Proposer is to send the notice of intent to protest to the project manager at the following address:

Arleicka Conley
Director of Finance and Administrative Services
Association of Monterey Bay Area Governments
445 Reservation Road, Suite G Marina, CA 93933
Fax: 831-883-3755

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

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

J. Requirements Protests

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

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

Requirements protests must be mailed or delivered to:

AMBAG Executive Finance Committee
445 Reservation Road, Suite G
Marina, CA 93933

XIV. INCORPORATION OF ATTACHMENTS

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

- ☒ RFP Attachment A – Dollar Cost Bid Proposal Estimate
- ☒ RFP Attachment B – Subconsultant List
- ☒ RFP Attachment C – AMBAG Standard Contractual Agreement

DOLLAR COST BID PROPOSAL ESTIMATE – RFP ATTACHMENT A

<u>ASSOCIATION OF MONTEREY BAY AREA GOVERNMENTS</u> <u>TOTAL MAXIMUM PRICE</u> <u>FOR THE FISCAL YEAR ENDING JUNE 30.</u>						
	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>TOTAL</u>
AMBAG - Prepare, Audit & Issue Related Reports						
RAPS - Prepare, Audit & Issue Related Reports						
Single Audit Report & Related Reports						
Prepare and submit State Controller Reports for AMBAG						
Plan and assist with preparation of the CAFR						
Total All-Inclusive Maximum Price						

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES
SUPPORTING SCHEDULE FOR AMBAG – PREPARATION OF
FINANCIAL STATEMENTS AND AUDIT OF FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDING JUNE 30.

	No. of Hours	Hourly Rate	2014	2015	2016	2017	2018		Total
Fees:									
Partner									
Manager									
Supervisory staff									
Staff									
Clerical									
Other (specify)									
Subtotal fees									
Expenses:									
Meals and lodging									
Transportation									
Other (specify)									
Subtotal expenses									
Total all inclusive maximum price									

SUBCONSULTANT LIST – RFP ATTACHMENT B

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

PROPOSED SUBCONSULTANTS

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

Name of Firm

Printed name and Title of Signatory

Signature

Date

DRAFT AGREEMENT FOR SERVICES – RFP ATTACHMENT C

This Agreement is made and entered into this **xx day of month, 2014**, by and between **The Association of Monterey Bay Area Governments** (hereinafter referred to as "AMBAG" or "CLIENT"), and xxx (hereinafter referred to as "xxx" or "CONTRACTOR").

WITNESSETH

WHEREAS, CONTRACTOR represents that it is specially trained and/or has the experience and expertise necessary to competently perform the services set forth in this Agreement; and

WHEREAS, CONTRACTOR is willing to perform the services and work described in this Agreement under the terms and conditions set forth in this Agreement; and

WHEREAS, AMBAG desires to contract with Contractor to perform the services and work described in this Agreement under the terms and conditions set forth in this Agreement; and

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

1. SCOPE OF WORK

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

2. TERM

- A. The term of this Agreement shall be from the date of its execution until the completion of the work contemplated by this Agreement and its final acceptance by AMBAG unless terminated earlier as provided herein. CONTRACTOR shall complete all tasks **on or before June 30, 2014** unless otherwise extended by written authorization.
- B. Services performed under this Agreement shall commence only upon Notice to Proceed by AMBAG to CONTRACTOR.

This Agreement includes the following Exhibits:

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

Exhibit B. Debarment and Suspension Certification

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

Exhibit D. Disadvantaged Business Enterprises (DBE) Information Form

3. COORDINATION/STAFFING

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

4. COMPENSATION

AMBAG shall pay CONTRACTOR for services on a firm fixed price basis as shown in Exhibit A. In no event shall compensation exceed FOUR HUNDRED TO FOUR HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$400,000-425,000) without prior written consent of AMBAG.

As a condition precedent to the satisfactory completion of said contract AMBAG shall withhold an amount equal to ten percent (15%) of each invoice until completion and acceptance of said contract work.

5. INVOICING

- A. Invoices for services must be presented to AMBAG no later than the fifteenth day of each month for the month prior. CONTRACTOR shall submit an invoice to AMBAG stating the amount due for such services on a monthly basis throughout the duration of the project. Said monthly invoicing shall reflect the task worked on, the percentage of the task completed, and the total dollar amount for the task in comparison to the invoiced amount based upon the percentage of the task then completed. AMBAG shall reimburse the CONTRACTOR as promptly as its fiscal procedures permit, upon receipt of itemized invoices submitted in accordance with this Agreement. Payment of the invoices will be made to CONTRACTOR after acceptance and approval by AMBAG and upon reimbursement by Caltrans. Such reimbursements shall be based upon actual eligible costs incurred by the CONTRACTOR consistent with the "Project Tasks/Services, Timeline, and Budget," Exhibit A. No interest or carrying charges shall accrue to CONTRACTOR by reason of delayed payment.
- B. Prompt Payment to Subcontractor(s): A CONTRACTOR shall pay any Subcontractor(s) for satisfactorily completed work no later than ten (10) days

of receipt of each payment from AMBAG. The ten (10) day period is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over thirty (30) days may take place only for good cause and with AMBAG's prior written approval. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the CONTRACTOR or Subcontractor in the event of a dispute involving late payment or nonpayment by the CONTRACTOR, deficient Subcontractor performance, and/or noncompliance by a Subcontractor. This clause applies to both DBE and non-DBE Subcontractor.

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

Association of Monterey Bay Area Governments

ATTN: Accounts Payable

P.O. Box 809

Marina, CA 93933

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

6. AGREEMENT COMPLETION RETAINER

No retainage will be held by AMBAG from progress payments due to CONTRACTOR. CONTRACTOR is prohibited from holding retainage from Subcontractor(s). Any delay or postponement of payment may take place only for good cause and with AMBAG's prior written approval. Any violation of these provisions shall subject the violating CONTRACTOR to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code, if applicable. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONTRACTOR in the event of a dispute involving late payment or nonpayment by the CONTRACTOR, deficient Subcontractor(s) performance, and/or

noncompliance by Subcontractor(s). This clause applies to both DBE and non-DBE Subcontractor(s).

7. SATISFACTORY PERFORMANCE

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

8. UNTIMELY PERFORMANCE BY CONTRACTOR

Timely delivery of project deliverables is crucial to this project. Accordingly, late fees shall be assessed against the CONTRACTOR for every **calendar day** a milestone or delivery date is not met. Milestone dates and delivery schedules have been negotiated between the CONTRACTOR and AMBAG and shall be assessed as follows:

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

9. OWNERSHIP, CONFIDENTIALITY AND USE OF WORK PRODUCTS

- A. Ownership of any reports, data, studies, surveys, charts, memoranda, and any other documents, which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall vest with AMBAG. AMBAG reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the data.
- B. AMBAG shall receive copyright and ownership to all data and materials delivered under this contract upon formal acceptance, except for those data and materials that are subject to ownership or copyright of others prior to the execution of this contract. No distribution of the original or derived works shall be made prior to acceptance by AMBAG unless specified in the task order or authorized by the contracting officer. The contractor may maintain copyright and ownership of all original or derived works which are not required submittals under this contract.
- C. Methodology and materials developed under this Agreement are the property of AMBAG and may be used by AMBAG as it sees fit, including the right to revise or publish the same without limitation. CONTRACTOR shall not be liable for use of such methodology, materials, software logic, and systems for purposes other than that for which it is developed.
- D. Subject to the California Public Records Act, all Work Products and Related Work Materials including Intellectual Property shall be held confidential by CONTRACTOR. Nothing furnished to CONTRACTOR, which is otherwise known to CONTRACTOR or is generally known, or has become known, to the related industry shall be deemed confidential.

- E. The CONTRACTOR shall not use, release, reproduce, distribute, publish, adapt for future use or otherwise use Work Products and Related Work Materials for purposes other than the performance of the Scope of Work, nor authorize others to do so, without prior written permission of AMBAG Legal Counsel; nor shall such materials be disclosed to any person or entity not connected with the performance of the work. CONTRACTOR shall also safeguard such confidential materials from unauthorized disclosure, using the same standard of care to avoid disclosure, as the CONTRACTOR treats its confidential information, but in no case less than reasonable care.
- F. Upon termination of this Agreement or when requested to do so by AMBAG, CONTRACTOR shall erase all copies of Work Products and Related Work Materials from its computers.
- G. All equipment, including, but not limited to, computer hardware, printing and duplication equipment, multimedia equipment, software tools and programs, and upgrade packages to existing equipment, procured in whole or part by funds provided under this Agreement, are the property of AMBAG. AMBAG shall determine the disposition of all such property upon completion or termination of this Agreement.
- H. AMBAG may utilize any Work Products or Related Work Materials provided by CONTRACTOR pursuant to this Agreement, in any manner which AMBAG deems appropriate without additional compensation to CONTRACTOR.

10. TERMINATION

A. Termination of Convenience of AMBAG

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

B. Termination for Cause

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

or other materials prepared by the CONTRACTOR under this Agreement shall, at the option of CONTRACTOR, become AMBAG's property.

11. AMENDMENT OF SCOPE OF WORK

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

12. CORRECTION OF WORK

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

13. DELAYS AND EXTENSIONS

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

14. RECORDS RETENTION AND AUDITS

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

15. SUBCONTRACTING

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

16. ASSIGNMENT

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

17. INDEMNIFICATION

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

18. CIVIL RIGHTS

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - 1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities

undertaken in the course of the Project. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
 3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- C. The CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

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

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

22. NO OBLIGATION BY THE FEDERAL GOVERNMENT

- A. AMBAG and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to AMBAG,

CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

- B. The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the Federal Transit Administration (FTA). It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

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

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

24. SUSPENSION AND DEBARMENT

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

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

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

25. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

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

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

26. INSURANCE/NOTIFICATION

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

CONTRACTOR is covered by, and agrees to maintain, general liability insurance for bodily injury and property damage arising directly from its negligent acts or omissions with limits as specified below. Certificates of insurance shall be provided to AMBAG prior to commencement of work by CONTRACTOR. CONTRACTOR agrees to indemnify, protect, defend and name AMBAG, its public

officials, officers and employees as additional insured on the Commercial General Liability and Business Auto Insurance and hold harmless from any loss, damage or liability arising directly from any negligent act or omission by CONTRACTOR. CONTRACTOR shall not be responsible for any loss, damage or liability arising from any act or omission by AMBAG, its officials, officers or employees.

CONTRACTOR shall provide the following types and amounts of insurance:

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

and that the insurance of the Additional Insured shall not be called upon to contribute to a loss covered by the insurance AMBAG.

27. CONFLICT OF INTEREST

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

CONTRACTOR shall at all time avoid conflicts of interest, or the appearance of conflicts of interest, in the performance of this contract. CONTRACTOR shall file statements of financial interest on forms provided by AMBAG to the extent and at the times required by AMBAG's Conflict of Interest Code and applicable law.

28. STATEMENT OF ECONOMIC INTEREST

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

29. MERGER

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

30. DEFAULT

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

31. NO WAIVER OF BREACH/ TIME

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

32. THIRD PARTY BENEFICIARIES

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

33. ATTORNEYS' FEES, APPLICABLE LAW AND FORUM

In the event either party brings an action or proceeding for damages arising out of the other's performance under this Agreement or to establish the right or remedy of either party, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs as part of such action or proceeding, whether or not such action or proceeding is prosecuted to judgment. This Agreement shall be construed and interpreted according to California law, and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Monterey.

34. INDEPENDENT CONTRACTOR

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

35. TAXES

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

36. FEDERAL TAX FORMS

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

Association of Monterey Bay Area Governments

ATTN: Accounts Payable

P.O. Box 809

Marina, CA 93933

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

37. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

- A. CONTRACTOR shall study and comply with all applicable federal, state and local laws, rules and regulations affecting the CONTRACTOR and his/her work hereunder. CONTRACTOR represents and warrants to AMBAG that CONTRACTOR has and will keep in effect during the term of this Agreement all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for CONTRACTOR to practice Contractor's profession and to do the work hereunder.
- B. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to AMBAG for inspection.

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

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

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

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

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

39. CERTIFICATIONS AND ASSURANCES

- A. CONTRACTOR shall adhere to the requirements contained in AMBAG's annual Certification and Assurances (FHWA and FTA "Metropolitan Transportation Planning Process Certification") submitted as part of AMBAG's OWP, pursuant to 23 CFR 450.334 and 23 U.S.C. 134. This Certification shall be published annually in AMBAG's OWP. Such requirements shall apply to CONTRACTOR to the same extent as AMBAG and may include, but are not limited to:
 - 1. Title VI of the Civil Rights Act of 1964 and Title VI Assurance executed by California under 23 U.S.C. 324 and 29 U.S.C. 794;
 - 2. Pub. Law 105-178, 112 Stat. 107 and any successor thereto, regarding the involvement of disadvantaged business enterprises in FHWA and FTA funded projects (Sec. 105(f), Pub. L. 970424, 96 Stat. 2100, 49 CFR part 26); and
 - 3. The Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended) and the United States Department of Transportation (US DOT) implementing regulations (49 CFR 27, 37, and 38).
- B. CONTRACTOR shall additionally comply with the requirements contained in the annual FTA "Certifications and Assurances for FTA Assistance," including "Certifications and Assurances Required of Each Applicant" and the "Lobbying Certification" in compliance with 49 U.S.C. Chapter 53; published annually in AMBAG's OWP. Such assurances shall apply to CONTRACTOR to the same extent as AMBAG, and include but are not limited, the following areas:
 - 1. Standard Assurances
 - 2. Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions

3. Drug Free Work Place Agreement
 4. Intergovernmental Review Assurance
 5. Nondiscrimination Assurance
 6. DBE Assurance
 7. Nondiscrimination on the Basis of Disability
 8. Certification and Assurances required by the U.S. Office of Management and Budget
- C. The CONTRACTOR shall require its Subcontractor(s) to comply with these Certifications, and agrees to furnish documentation to AMBAG to support this requirement that all of its agreements with Subcontractor(s) contain provisions requiring adherence to this section in its entirety.

40. COST PRINCIPLES

- A. CONTRACTOR agrees to comply with the following:
1. the Contract Cost Principles and Procedures, 48 Code of Federal Regulations, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq. (Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments)," shall be used to determine the allowability of individual project cost items, and
 2. the Federal administrative procedures in accordance with 49 Code of Federal Regulations, Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
- B. Any costs for which CONTRACTOR receives payment or credit that is determined by a subsequent audit or other review by either AMBAG, Caltrans or other State or Federal authorities to be unallowable under, but not limited to, OMB Circular A-87; 48 CFR, Chapter 1, Part 31; or 49 CFR, Part 18, are to be repaid by CONTRACTOR within thirty (30) days of CONTRACTOR receiving notice of audit findings. Should CONTRACTOR fail to reimburse moneys due AMBAG within thirty (30) days of demand, or within such other period as may be agreed between Parties hereto, AMBAG is authorized to withhold future payments due CONTRACTOR.
- C. CONTRACTOR agrees to furnish documentation to AMBAG to support this requirement that all of its agreements with Subcontractor(s) contain provisions requiring adherence to this section in its entirety.

41. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- A. The CONTRACTOR and its Subcontractor(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of State or DOT-assisted contracts or in the

administration of AMBAG's DBE Program. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as AMBAG deems appropriate.

- B. It is the policy of AMBAG, Caltrans, and DOT, that the Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, shall have an equal opportunity to receive and participate in DOT-assisted contracts. The CONTRACTOR and its Subcontractor(s) shall comply with the requirements of 49 CFR Part 26 and with AMBAG's DBE Program, as amended.
- C. A "DBE Information Form" is attached hereto and incorporated herein by this reference as Exhibit D. Even if no DBE participation will be reported, the CONTRACTOR shall complete and sign such form at the time this AGREEMENT is executed
- D. During the period of this Agreement, the CONTRACTOR shall maintain records of all applicable subcontracts advertised and entered into germane to this AGREEMENT, documenting the actual DBE participation and records of materials purchased from DBE suppliers. Such documentation shall show the name and business address of each DBE Subcontractor(s) or vendor, and the total dollar amount actually paid each DBE Subcontractor(s) or vendor. Upon completion of the AGREEMENT, regardless of whether DBE participation is obtained, a summary of the DBE records shall be prepared, certified correct, and submitted on a form that shall be provided by AMBAG.

42. FLOW-DOWN PROVISIONS

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

Section 3 (Coordination/Staffing); Section 5 (Invoicing for Payment); Section 6 (Agreement Completion Retainer); Section 7 (Satisfactory Performance); Section 9 (Ownership, Confidentiality, and Use of Work Products); Section 10 (Termination); Section 11 (Disputes); Section 15 (Records Retention and Audits); Section 18 (Indemnification); Section 19 (Civil Rights); Section 23 (Program Fraud and False or Fraudulent Statements and Related Acts); Section 27 (Conflict of Interest); Section 34 (Independent Contractor); Section 37 (Compliance with Laws, Rules, and Regulations); Section XX (Disadvantaged Business Enterprise); Section 38 (Federal and State Lobbying Activities Certification); Section 39 (Certifications and Assurances); and Section 40 (Cost Principles)

43. INTERPRETATION

Notwithstanding the fact that one or more provisions of this Agreement may have been drafted by one of the parties to this Agreement, such provisions shall be interpreted as though they were a product of a joint drafting effort and no provisions

shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

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

AMBAG:

Signature:_____

Name: Maura F. Twomey

Title: Executive Director

Association of Monterey Bay Area Governments (AMBAG)

CONTRACTOR:

Signature:_____

Name:

Title: President

APPROVED TO AS TO FORM:

By:_____

Don Freeman, AMBAG Legal Counsel

P.O. Box 805, Carmel CA 93921

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

EXHIBIT B. DEBARMENT AND SUSPENSION CERTIFICATION

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

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

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

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

The certification in this clause is a material representation of fact relied upon by AMBAG. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to AMBAG, the Federal Government may pursue available remedies, including but not limited to suspension

and/or debarment. The CONTRACTOR agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Name of Firm

Signature (original signature required)

Date

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

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